

# **USAG-Humphreys Client Legal Service Office**



## **WILLS, LIVING WILLS, AND POWERS OF ATTORNEY**

**Building 6400**

**Room 301**

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**0503-357-2617**

## **INSTRUCTIONS FOR OBTAINING A WILL AND POWERS OF ATTORNEY**

**APPOINTMENTS.** Please phone us at: 703-571-3114 to schedule an appointment to have your estate plan prepared. **You must bring your military identification card with you to all appointments, even when in uniform.** This is a two-step procedure which requires an initial appointment with the attorney, and a following appointment to modify and sign your documents. After the initial appointment, a draft copy of the will and any powers of attorney will be prepared and either sent electronically or mailed to you. **Any changes/corrections can be addressed through email, fax, or written correspondence.** Please note that our regulations require our office to supervise the execution of your will.

**ESTATE PLANNING** creates a process under which your property and assets are given to others upon your death. It may also include the preparation of documents that permit others to make financial and medical decisions for you in the event you become incapacitated. Every estate plan is different, but most include a will, an advanced medical directive, and various powers of attorney.

**SGLI / Life Insurance.** Your estate plan should account for life insurance (especially SGLI), government benefits (especially the death gratuity) and other types of assets (such as jointly-owned bank accounts and real estate) that automatically pass to your designated beneficiaries upon your death. Pending your appointment with our office, we recommend that you update your DD Form 93, Record of Emergency Data, to designate beneficiaries to your \$100,000 death gratuity.

**Blended Families.** If you have children from a prior marriage or relationship, you should discuss “pre residuary trust” options with your attorney. These trusts guarantee that your children from prior relationships will obtain your intended gifts, and not risk the possibility that your spouse will neglect them in the spouse’s estate plan.

**Trusts.** If you have minor children or other beneficiaries that are not yet ready to manage assets on their own, you may want to include a trust in your will that allows you to designate a person to look after your beneficiary’s assets until your beneficiary is able assume sole ownership and control of the assets, at an age that you consider appropriate. Your will should name guardians for your minor children in the event you die while your children are young. Please be sure to discuss special life insurance options with your attorney when leaving life insurance money to minors. Your attorney can advise you on whether you should pay your life insurance through your will, or whether it might be better to use a statutory trust, such as the Uniform Transfer to Minors Act (UTMA).

**Taxes.** For estates generally over a certain dollar value (which changes every few years), state and Federal taxes can come close to 50%. With proper estate planning, we can help eliminate those taxes through special trusts in your will. Therefore, please carefully estimate the net value of all of your property, including life insurance and jointly-owned assets, as this information is crucial in providing you sound advice.

**Providing Us Information.** You (and if married, your spouse) should read and complete the following questionnaire. Please bring your completed questionnaire with you when you consult with your attorney. If both you and your spouse consult with the same attorney for estate planning advice, you will be asked to sign a dual representation waiver to facilitate assistance. Later, your attorney may ask you to provide additional documents (e.g., deeds to real property) and life insurance forms. If you are divorced and are required to provide for a former spouse or your children upon your death, please bring your documents with you.

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#### **Data Required by the Privacy Act of 1974**

**Authority:** Title 10 USC Section 3013

**Principal Purpose:** The purpose of this form is to assist the attorney in preparing legal documents for the client. The information on this form is protected by the attorney-client privilege and may be released only in accordance with law or with the approval of the client.

**Routine uses:** Information on this form will be used to provide legal advice and to prepare legal correspondence and documents for the client.

**Disclosure:** Voluntary. However, nondisclosure may preclude the legal assistance desired by the client

## **WILL TERMINOLOGY**

**WHAT IS A WILL?** A will is a legally effective declaration of a person's wishes as to the disposition of his/her property upon his/her death. It must be executed with the formalities required by statute. The provisions of wills do not take effect until after the death of the maker. A will never disposes of the proceeds of insurance policies with named beneficiaries, nor does it dispose of some items of property which are held under various forms of special ownership, such as joint tenancy with a right of survivorship, or tenancy by entirety. In a will, you will designate an executor/trix, and if minor children are involved, a guardian (see definitions below). It is important that you contact the prospective executor/trix and guardian prior to the preparation and execution of the will to ensure that he/she/they is/are willing to accept the position.

**WHO IS THE BENEFICIARY?** Anyone to whom the maker of a will (testator/trix) leaves a portion of his/her property.

**WHAT DOES BEQUEATH MEAN IN A WILL?** To give personal property by will.

**WHAT IS A BOND?** Money put up by a guardian or executor to insure against loss occasioned by their negligence or theft.

**WHAT IS DOMICILE?** A person's permanent home. The place to which, whenever he/she is absent, he/she has the intention of returning. You can have more than one residence, but you can only have one domicile. Your intent, voting, paying taxes, registering automobiles, obtaining a driver's license, and location of assets are factors considered in determining domicile. For military members, your domicile is often your legal residence (e.g., your home of record), not the place you are currently living.

**WHAT IS AN ESTATE?** All property, real and personal, in which a person has an interest, such as money, savings accounts, stocks, house, furniture, insurance policies, etc.

**WHAT DOES RESIDUARY ESTATE MEAN?** Residuary is a derivative of the word "residue." It means what is left over. Your residuary estate is the portion of your estate that is left over when everything else is disposed of.

**WHAT DOES EXECUTION MEAN?** To validate a will by correctly signing it and having it witnessed.

**WHO IS THE EXECUTOR/EXECUTRIX?** The person named in a will to carry out the wishes expressed in the will. An Executor is male; an Executrix is female. Upon the death of a maker of a will, the Executor/trix must take the will to the proper court for probate. Once the court

accepts the will as valid, the court officially appoints the person as Executor/trix. An Executor/trix may be entitled to compensation for his/her services. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. A bond may be required of an Executor/trix. In some states the term "Personal Representative" means the same thing as Executor/trix.

**WHO IS A GUARDIAN?** One who is responsible for caring for the person and/or property of a minor child. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. Courts can require guardians to post a bond.

**WHO IS THE TESTATOR/TESTATRIX?** You, the person making the will. A Testator is male; a Testatrix is female.

**WHAT IS PERSONAL AND TANGIBLE PROPERTY?** Property which is moveable.

**WHAT IS A PROBATE?** A court proceeding where the Executor/trix seeks to establish a will as genuine, settle all the debts of an estate, and distribute the property in the estate to the heirs according to the wishes of the will maker as expressed in the will.

**WHAT IS A PROBATE ESTATE?** The portion of an estate that requires court supervised administration to effect transfer of title. It does not include property transferred at the time of a person's death by other means, such as property held as joint tenants with right of survivorship, or life insurance paid to a designated beneficiary. For tax purposes, all property which the decedent owned or in which he/she had an interest, may be included in the taxable estate, although some of it is not within the probate estate.

**WHAT IS REAL PROPERTY?** Property that has a fixed location, such as land or a house.



## QUESTIONNAIRE

**A. PERSONAL INFORMATION:**

Client's Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Are you a U.S. citizen? \_\_\_\_ Yes; \_\_\_\_ No      State of residence \_\_\_\_\_

Military Rank: \_\_\_\_\_

Phone #s: (home): \_\_\_\_\_ (work): \_\_\_\_\_ (cell): \_\_\_\_\_

Email address: \_\_\_\_\_

Do you have a pre-nuptial agreement or divorce decree affecting your property rights? \_\_\_\_\_

**B. MARITAL STATUS** (select the most appropriate):

\_\_\_\_ Married once, and my spouse is alive.

\_\_\_\_ Presently married, and had a prior marriage (previous spouse is deceased or divorced).

\_\_\_\_ Widow/ widower

\_\_\_\_ Divorced, not presently married.

\_\_\_\_ Single, never married.

(If married) Full name of spouse: \_\_\_\_\_

Spouse's current address (if different from yours):

\_\_\_\_\_  
 Is spouse a U.S. citizen? \_\_\_\_ Yes; \_\_\_\_ No      State of residence \_\_\_\_\_

Military Rank: \_\_\_\_\_

Phone #s: (home): \_\_\_\_\_ (work): \_\_\_\_\_ (cell): \_\_\_\_\_

Does your spouse have a pre-nuptial agreement or divorce decree affecting property rights?  
 \_\_\_\_\_ Yes; \_\_\_\_\_ No

**C. CHILDREN:** Please list your children's names, ages, and whether they are biological, adopted, or stepchildren:

NAME	DOB/AGE	Bio/Adopted/Step	Special needs?

Are any of these children from different/prior relationships? \_\_\_\_ Yes; \_\_\_\_ No

If you have adopted children or stepchildren, do you wish to leave them property in your will, the same as your natural children? \_\_\_\_ Yes; \_\_\_\_ No

Are you expecting any children? \_\_\_\_ Yes; \_\_\_\_ No

**D. VALUE OF ESTATE:** To determine what type of will is appropriate for you, we need an estimated value of your estate. For this purpose, include the value of all of the property you own in your name, jointly with others, and if married, the value of your spouse's property. If any of your property secures a debt (for example, a mortgage on your home), include your equity in the property. Also include the value of your life insurance policies (SGLI, VGLI, etc.). The policy's face value is included in determining whether estate taxes will apply in your case.

**FINANCIAL INFORMATION**

1. **Do you own a home, timeshare or any other real estate? Indicate which is your residence/homestead.**

Description and Location	Titled in whose name Indicate if Joint or Beneficiary and name	Purchase Price	Fair Market Value	Less Mortgage (enter as a negative number)	Market Value - Mortgage = Equity
Total Net Value					

Is any of the real estate identified above a farm? \_\_\_\_ Yes; \_\_\_\_ no

**Do you own any other titled property such as a car, boat, etc.?**

Description	Titled in whose name Indicate if Joint or Beneficiary and name	Market Value	Less Mortgage	Equity
Total Net Value				

2. **Do you have any checking accounts?**

Name of Bank	Titled in whose name <u>Indicate if Joint or Beneficiary and name</u>	Approx. Balance
Total Value		



**3. Do you have any interest bearing accounts (savings, money market) and/or CD's?**

Name of Bank	Titled in whose name Indicate if Joint or Beneficiary and name	Approx. Balance
Total Value		

**4. Do you own or have an interest in a family business? \_\_\_\_\_ Yes; \_\_\_\_\_ no**

Name of Business	Owners & Ownership Interest	Fair Market Value	Value of your interest
Total Value			

**5. Do you own any stocks, bonds or mutual funds (including company stock)?**

Number Shares	Name of Security	Titled in Whose Name Indicate if Joint or Beneficiary and name	Purchase Price	Current Value
Total Value				

**6. Do you have any profit sharing, IRAs or pension plans?**

Description/Location	Beneficiary	Current Value
Total Value		

**7. Do you have any life insurance policies and/or annuities?**

Name of Company	Insured	Policy Owner	1 <sup>st</sup> Beneficiary	2 <sup>nd</sup> Beneficiary	Death Benefit
SGLI					
Total Value					

**8. Does anyone owe you money?**

Description	Approx. Value
Total Net Value	

**9. Do you have any special items of value such as coin collections, antiques, jewelry, etc.?**

Description	Approx. Value
Total Net Value	

What is the approximate total value of all your remaining personal property--whatever you own that has not been included above? (clothes, furniture, etc.) Just estimate.....\$ \_\_\_\_\_

**10. Do you have any debts other than mortgage(s) and loans listed above (credit cards, personal loans, etc.)?**

Description	Amount Owned
Total Debt	

- 1. (a) Total value of everything you (and your spouse) own..... \$ \_\_\_\_\_
- 2. (b) Total amount you (and your spouse) owe ..... \$ \_\_\_\_\_
- 3. **TOTAL NET ESTATE VALUE**..... \$ \_\_\_\_\_

**E. SPECIFIC BEQUESTS:** You may make separate gifts of cash, specific investments, real estate, or personal property to specific people or charities in your will. These bequests will be distributed first and reduce the amount of property left for your other beneficiaries. Specific bequests (and trusts) are appropriate methods of setting aside money and property for children of prior relationships. If you make no specific bequests, all of your property will pass to your primary beneficiaries listed below in Part H.

Do you wish to make any specific bequest in your will? \_\_\_\_ Yes; \_\_\_\_ no

If Yes, please list your specific bequest(s) and who you want to receive it (them):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**F. PERSONAL PROPERTY:** Whom do you want to receive your personal property? "Personal property" is tangible items such as furniture, cars, clothing, household effects, etc.

\_\_\_\_ My spouse, if he/she survives me, and if not, then my children.

\_\_\_\_ My children.

\_\_\_\_ Other: \_\_\_\_\_

**G. REAL ESTATE:** Whom do you want to receive your real property?

\_\_\_\_ My spouse, if he/she survives me, and if not, then my children.

\_\_\_\_ My children.

\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_ Different properties to different people (please explain): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**H. PRIMARY BENEFICIARIES:** Whom do you want to receive the property remaining after the payment of your debts and probate expenses, and after your specific bequests have been made? Since most people do not make specific bequests, the "residuary estate" usually describes all the property left to your beneficiaries after all of the debts and any applicable taxes, probate fees are paid.

My spouse, if he/she survives me, and if not, then my children.

My children.

My parents in equal shares, or if not, then my siblings in equal shares (please provide names and relationships):

\_\_\_\_\_

To these other beneficiaries in the percentages noted below:

\_\_\_\_\_

If any of the above beneficiaries die before you and leave descendants (children/issue), do you want the share of the deceased beneficiary to pass to their children, or to pass only to the beneficiaries you named above? (For example, if one of your children dies before you and leaves children, do you want the share of your deceased child to pass to his children (your grandchildren) or to go only to your surviving children?)

To the children of any deceased beneficiary.

Only to the named beneficiaries listed above.

**I. SECONDARY BENEFICIARIES:** If your primary beneficiaries predecease you or die within 30 days of your death, to whom do you wish to leave your estate (provide name, relationship, and percentage of inheritance).

\_\_\_\_\_

\_\_\_\_\_

**J. TRUSTS FOR CHILDREN AND OTHERS:** If any of your beneficiaries are minors, or incapable of managing money, at what age do you want them to receive their portion of your estate?

18    21    25    Some other age (please indicate the age): \_\_\_\_\_

Do you want a single trust for all beneficiaries?  Yes;  No

Whom do you wish to name as Trustee (the person responsible to manage the money for and support your minor beneficiaries)? (Please list name and relationship):

1st choice: \_\_\_\_\_

2nd choice (optional): \_\_\_\_\_

3rd choice (optional): \_\_\_\_\_

**K. EXECUTOR:** Your Executor (or in some States, "personal representative") ensures your estate is settled upon your death. This ordinarily involves going through "probate", a court-administered procedure for settling an estate as provided in your will or under State law. Probate involves petitioning a court for letters of appointment, settling creditor claims, finding and distributing

assets, and filing any necessary tax returns. Any adult may serve as your executor, although many States prefer or require an executor who is a legal resident of the State where probate is conducted. Therefore, if possible, you should select family members or responsible friends who are residents of the same State as your legal residence or the state where you own real estate.

Whom do you wish to have as your executor?

- My spouse.
- My spouse and a co-executor.\*
- My spouse and a successor executor.\*\*
- One executor other than my spouse.
- One executor and a successor executor, neither of whom are my spouse.\*\*
- Two co-executors, neither of whom are my spouse.\*

**\*This option is not usually recommended because conflicts can arise between the executors that could complicate the administration of your estate.**

**\*\*The successor will act only if your first choice is unable to be your executor.**

Names of Executor and Alternate Executor.

	NAME	RELATIONSHIP
First		
Second		

**L. GUARDIANS FOR CHILDREN:** If your children are minors when you die, and if the other natural parent is not alive or for any reason cannot act as guardian, the court will normally appoint the person(s) you name to act as legal guardian(s) of your minor children person and property. The individual(s) named will have physical control and custody of the children until they reach 18 and control over the property passing to them under your Will. If you are divorced, the court will usually appoint the child’s natural parent-your former spouse as guardian of the person, even if you provide otherwise in your will. You should still name a guardian, however, in case your former spouse dies before you, or for any reason cannot act as the guardian. Note: You can name a separate person as Guardian for the property only.

Do you wish to appoint:

- One guardian for any child when I die.
- One guardian and a successor guardian.
- Two co-guardians.
- No guardian.

	NAME	RELATIONSHIP
First		
Second		

**M. DISINHERITANCE.** Do you desire to disinherit anyone? \_\_\_\_\_ Yes; \_\_\_\_\_ no

	NAME	RELATIONSHIP
First		
Second		

Do you wish to disinherit anyone who contests your will? \_\_\_\_\_ Yes; \_\_\_\_\_ no

**N. MILITARY STATUS:** I am:

- \_\_\_\_\_ Active duty / Reserve military.
- \_\_\_\_\_ Retired from the military.
- \_\_\_\_\_ Married to someone on active duty.
- \_\_\_\_\_ Married to a military retiree.
- \_\_\_\_\_ A dependent of someone on active duty.
- \_\_\_\_\_ A dependent of a military retiree .
- \_\_\_\_\_ Other (please specify): \_\_\_\_\_

**O. ADVANCE MEDICAL DIRECTIVE/"LIVING WILL":** An advance medical directive or "living will" is separate from your will, but may be an important part of your estate plan. It tells your physicians and family what medical care you would like to receive in the event you are incapacitated with an incurable medical condition and your death is imminent. This document indicates whether you would like to be removed from life support and whether you would like to end the administration of nutrition and hydration under the conditions described above, whether you are an organ donor, and can designate an agent to make health care decisions for you.

Do you want a living will? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If you currently live in a state other than the one in which you are a legal resident, you may want your living will to be drafted in accordance with the laws of the state where you actually live and not your state of legal residence, because it is more likely to be used where you currently live.

Which state do you want it to apply in? \_\_\_\_\_

Do you wish to specify that you desire to donate your body organs for transplant upon death?

\_\_\_\_\_ Yes; \_\_\_\_\_ no

If Yes, are you also willing to donate organs and tissue for medical, educational, or scientific purposes? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If Yes, are there any organs you expressly wish not to donate? \_\_\_\_\_

If there is a charge associated with your organ donation, do you still wish to donate?

\_\_\_\_ Yes; \_\_\_\_ no

Do you wish to specify that, if possible and if it does not place an undue burden upon your family, that you prefer to die at home rather than in a hospital? \_\_\_\_ Yes; \_\_\_\_ no

Do you want your health care agent to deal with the disposition of your remains?

\_\_\_\_ Yes; \_\_\_\_ no

Have you already paid for your funeral arrangements? \_\_\_\_ Yes; \_\_\_\_ no

With whom? \_\_\_\_\_

**P. SPECIAL POWER OF ATTORNEY FOR HEALTH CARE:** Another important document is a special power of attorney for health care. You may execute this in addition to or instead of a living will. It appoints someone you name to make medical care decisions for you if you cannot make your own medical decisions. It applies to more situations than the living will, which addresses only continued life support if you have a terminal condition. The power of attorney for medical care can give the person you name as your agent the authority to make a wide range of medical decisions on your behalf. It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care you receive.

Do you want a Health Care Power of Attorney? \_\_\_\_ Yes; \_\_\_\_ no

Whom do you wish to name as your agents?

	NAME	ADDRESS	PHONE
First			
Second			

If you have listed a second choice, do you want:

\_\_\_\_\_ both agents to have the authority to act separately.

\_\_\_\_\_ to require both agents to act jointly unless one is incapacitated.

\_\_\_\_\_ the second agent to be as a successor, acting only if the first choice is incapacitated.

**Q. DURABLE GENERAL POWER OF ATTORNEY FOR FINANCIAL MATTERS:** Your will enables you to dispose of your property as you wish **after** you die. While you are living, you have the right to decide what happens to that property as long as you are of sound mind. But if you become incapacitated, and cannot handle your own affairs, a court order may revoke your right to manage your own money/property and appoint a guardian or conservator. To protect you from this, you may appoint an agent through a power of attorney. A power of attorney is your written

authorization for someone to act on your behalf, for whatever purpose you designate. Ordinarily, a power of attorney expires if you become mentally disabled – the time when you need help the most. A **durable** power of attorney will last as long as you are alive or until you revoke it. As long as you are mentally competent, you can revoke a durable power of attorney whenever you like simply by destroying the document. If you choose to have a durable general power of attorney, remember to name someone you trust as your attorney-in-fact. Your agent will have great authority over your affairs. Not only can they keep your affairs in order, but they have the potential to abuse this document at your expense.

Would you like a durable general power of attorney? \_\_\_\_\_ Yes; \_\_\_\_\_ no

Do you currently have a durable general power of attorney? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If Yes, do you want to revoke it expressly? \_\_\_\_\_ Yes; \_\_\_\_\_ no

Whom do you wish to name as your agents?

	NAME	ADDRESS
First		
Second		

If you have a second choice, do you want:

\_\_\_\_\_ both agents to have the authority to act separately.

\_\_\_\_\_ to require both agents to act jointly unless one is incapacitated.

\_\_\_\_\_ the second agent to be as a successor, acting only if the first choice is incapacitated.

Do you want to grant your attorney-in-fact the right to do the following acts under the Durable Power of Attorney:

1. Allow for the sale of a business? \_\_\_\_\_ Yes; \_\_\_\_\_ no

2. Sell Real Estate? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If yes, do you want to specifically identify this property in the DPOA? \_\_\_\_\_ Yes; \_\_\_\_\_ no

Property address: \_\_\_\_\_

3. Make gifts? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If "yes":

a) Do you want to limit the class of people a gift can be made to only the spouse, kids, and children of your children (grandkids, great-grandkids, etc.)?

\_\_\_\_\_ Yes; \_\_\_\_\_ no



b) Do you want to allow an unlimited gift or limit the gift to the annual exclusion (currently \$13,000 per person) so that no gift taxes are incurred by your estate?

SELECT ONE:

\_\_\_\_\_ Unlimited Gift Amount

\_\_\_\_\_ Gift Amount Limited to the Annual Gift Tax Exclusion Amount\*

Do you want to lift the exclusion for gifts of tuition and medical expenses?

\_\_\_\_\_ Yes; \_\_\_\_\_ no

\* The annual gift tax exclusion amount is currently \$13,000 per recipient/donee.

c) Allow the attorney-in-fact to make gifts to him/herself? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If "yes," do you want to allow an unlimited gift, or limit the gift to self to 5% or \$5,000? (This will prevent the whole amount from being drawn into the attorney-in-fact's estate.)

\_\_\_\_\_ Unlimited Gift Amount

\_\_\_\_\_ Gift Amount Limited to 5% or \$5,000 per year

4. Is your agent authorized to transfer assets (if permitted by law) so that you can qualify for Medicaid or similar programs? \_\_\_\_\_ Yes; \_\_\_\_\_ no

5. May your agent revoke or amend revocable intervivos trusts? \_\_\_\_\_ Yes; \_\_\_\_\_ no

If Yes, do you currently have a revocable trust? \_\_\_\_\_ Yes; \_\_\_\_\_ no

6. Disclaim bequests to you (the Testator)? This allows your attorney-in-fact to refuse any inheritance you may receive. This can be a beneficial estate planning tool to minimize your overall taxable estate. \_\_\_\_\_ Yes; \_\_\_\_\_ no

7. Change IRA/retirement plans? \_\_\_\_\_ Yes; \_\_\_\_\_ no

8. Pay taxes? \_\_\_\_\_ Yes; \_\_\_\_\_ no

**R. FUNERAL ARRANGEMENTS:**

\_\_\_\_\_ I do not wish to express my desires concerning my remains and leave this decision to those who survive me; or

\_\_\_\_\_ I desire:

\_\_\_\_\_ To be cremated.

\_\_\_\_\_ To be buried.

\_\_\_\_\_ To be buried at sea.

Do you want a specific location? If so, where? \_\_\_\_\_

With full military honors? \_\_\_\_\_ Yes; \_\_\_\_\_ no

Other: \_\_\_\_\_