Wills & Estate Planning – Dual Representation Request/Waiver of Confidentiality

To All Married Couples Requesting Wills

Provided by the Office of the Staff Judge Advocate
Aberdeen Proving Ground, Maryland 21005

1. You have asked the Aberdeen Proving Ground (APG) Legal Assistance Office to perform estate planning services for you and your spouse. This may include advice and preparation of a will and/or other estate planning documents. Because this legal office would be representing both spouses, the rules of professional responsibility for attorneys require that we tell both of you that a potential conflict of interest might rise that could prevent us from continuing as the lawyer for both of you in your estate planning. It is in your interest, and our ethical obligation to each of you, that you fully understand the considerations involved in such "dual representation."

2. Matters to which such representation will most likely extend include the following:

a. Analysis of your wills, codicils, trusts, and property agreements, if any.

b. Analysis of the assets owned by each of you, including consideration of their value and the nature in which title is or should be held, and the categorization of such assets as separate or community property.

c. Discussions about the manner in which you wish to dispose of such property.

d. Analysis of the tax impact of such disposition and recommendations relative thereto.

e. Preparation of the documents necessary to accomplish the desired disposition.

3. Spouses can have differing, and sometimes conflicting, interests and objectives regarding the disposition of their property upon their death. This is a common problem if either spouse has children from another relationship. If you are domiciliaries of Maryland, then each of you has the absolute right to dispose of your property by testamentary (will) disposition. Futhermore, as domiciliaries of Maryland, the law provides each of you with certain rights in your respective property interests, and these rights cannot be taken away from you without your informed consent and understanding.

4. Although joint representation may have the advantage of convenience, efficiency, and even reduced legal expense were you to pay for these services, joint representation also has the following disadvantages that you must acknowledge and accept as a condition to use the free service of the APG Legal Assistance Office.

a. Joint representation may result in less vigorous assertion or protection of one person's individual or separate interests than if we represented only that person.

b. Joint representation has the further disadvantage that no attorney-client privilege would apply to communications between you or with the attorney in any dispute between you. In other words, the attorney cannot keep confidential from one of you any communication with the other of you in the course of the joint representation, and the attorney would be compelled to testify concerning any such communication. Also any possession of confidential information from any other representation of one of you may work to the other's disadvantage.

c. When the attorney communicates with you concerning matters of potential conflict or the pros and cons of any particular item, the attorney may rely on communication with only one of you. For this reason and possibly others, joint representation may have the disadvantage of communication that is less complete or effective than if the attorney only represented one person.

d. You should not assume that the attorney will advise each of you of the substance of every communication received by the attorney from the other of you.

5. If you each had a separate lawyer, you would each have an "advocate" for your position and would receive totally independent advice. Information given to your own lawyer is confidential and cannot be obtained by your spouse without your consent.

6. That is not the case when one law firm (in this case, the APG Legal Assistance Office) advises both of you. The Legal Assistance Attorney cannot be an advocate for one of you against the other. Information that either of you gives us relating to your estate planning and will preparation cannot be kept from the other. If a conflict arises which is of such a nature that we cannot adequately carry out our obligations to both of you, we will withdraw our representation, and will advise you to obtain separate and independent civilian attorneys.

7. After considering these factors, each of you must decide whether you wish us to continue to represent you jointly in connection with your estate planning and related matters. If you do, please sign the acknowledgment below and return it to the Legal Assistance Office. If you have any questions regarding these issues, please discuss them with the Legal Assistance Attorney and do not sign this acknowledgment.

ACKNOWLEDGMENT

Each of us has read and understands the information regarding dual representation as it affects our mutual and respective estate plans. We realize the potential for conflicts of

interest and differences of opinion between us and that each of us has the rights expressed above.

We know that each of us has the right at any time to hire an independent lawyer or to seek legal assistance at another military legal assistance office in connection with these matters.

We have discussed and evaluated the problems, and each of us requests that the APG Legal Assistance Office represent both of us in connection with our estate planning and related matters. Each of us consents to that dual representation. Each of us also knows and agrees that any communication and information the APG Legal Assistance Office receives from either of us relating to those matters may be shared with the other.

_____	_____
Husband	Wife
Date:_____	Date:_____