

DL Blended Family Hypothetical

Client is the service member. He has been divorced and has 2 children from his previous marriage, and his ex-wife has custody. His relationship with his ex-wife, the children's mother is not good and he doesn't want her to manage or control any of the children's assets. He has remarried, and his present wife has 1 child from her former marriage, has custody, and the child lives with them. Client feels the same way about her ex-husband managing that child's assets. They have 1 child in common from their present marriage, and have been married for 2 years.

Client initially wanted a straight "I love you" will leaving all to his present wife, and then in equal shares to all 4 children. Once you explained to him the possibility that his present wife may never ever see his 2 children after his death, he decides that he will use a portion of his SGLI to fund a trust immediately upon death. The trust will be a single trust for both children, the balance to be distributed when the last child reaches age 25.

He wants to leave all of his sporting equipment to the children of his previous marriage, and the sum of \$1000 to the Guardian of these children, once the Guardian is appointed. All other tangible personal property and the residue is to go to his wife, and if she predeceases, then into a trust for their mutual child and her child from her former marriage, until the last reaches 25. In the event neither the wife or the children survive, then to his children from his previous marriage, and if they don't survive, 50% to his parents or issue and 50% to his wife's parents or issue.

There is to be a trustee and alternate for the SGLI Trust, and different trustee and alternate for the children's trust.

The wife will be the Personal Representative, with a successor, and a second successor.

There will be separate guardians for the person and the property of the children of his previous, as well as separate guardians for the person and the property of the his child with the present wife and her child.

In the event either of the former spouses are appointed guardians, they shall be required to post a bond.

DL Wills Smart Templates

DL-N1: Single, no children, no specific bequests, all to parents then to (adult) siblings, no tax apportionment.

DL-N2: Single, no children, no specific bequests, all to parents then to *minor* siblings

DL-N3: Single, no children, specific bequest & general legacy, residue to parents then to siblings, tax apportionment.

DL-N4: Single parent, never married, one child, contingent children's trust to 25, residue to parents then to siblings, tax apportionment.

DL-N5: Same as N4, except divorced with two children. This now inserts language as to guardian of the property, excluding former husband.

DL-N6: Married, no children but anticipate them, all to husband then to a trust to 25 if children, and then 50% to each set of parents, with gift over.

DL-N7: Married, 2 children, all to spouse, then to CT to 25, and then 50% to each set of parents, with gift over.

DL-N8: Blended Family-Married, 1 child with present spouse, 3 from previous marriage. Disinherit 1 son. 50% to spouse, if predecease to 1 common child, 50% to 2 children of previous marriage. DL does not do this well, so adjust the language accordingly.

DL-N9: Blended Family-Married twice, SGLI trust for children of 1st marriage, then to spouse with CT for children of present marriage, different trustees and guardians.

DL-N10: Married, DCST using available credit, balance of estate (residue) to spouse, contingent children's trust to 25.

DL-N11: Married, all to spouse with Disclaimer Credit Shelter Trust, then all in contingent children's trust.

DL-N12: Same as 11. Married all to *non-citizen* spouse, with QDOT, DCST, then all in contingent children's trust.

The following is a brief description of the first 12 templates in the DL Shared Answers Directory (the default directory that DL provides for selecting saved answers). The Word Documents that they produce are located in the DLWIN folder on the "C" drive, in the Smart Wills subfolder. You must read each Smart will, as there are changes and suggestions in the Word documents. These are just suggestions to provide a path through the DL logic tree, and never should replace your legal judgment or the client's intent. If you have any comments, suggestions, gripes please let me know.

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Remember, always add your information to the document, such as:

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This can be done automatically by using the DL Wills utility function. On the menu bar click Utilities, then Setup. There is a screen that asks information about the law firm. Check "Firm", and type your Office name, i.e., "Naval Legal Service Office Southeast" or "Office of Staff Judge Advocate". Type your name in attorney # 1. In the first address box type in "Member of (State) Bar", and then complete the second address box with enough info to locate the office, i.e., "NAS Jacksonville, FL 32212-0107" or "Ft Hood, TX ZIP".

Information About Your Firm

Are you a sole practitioner (rather than a member of a law firm)? Yes No

Name of Firm
Naval Legal Service Office Southeast

Attorney Names (followed by "Esq." or "Attorney at Law")

Atty #1 LT John Smith, JAGC, USNR Atty #2

Atty #3 Atty #4

Street Member [state] Bar

City, St, Zip NAS Jacksonville, FL 32212-0107 Tel. No. 904-542-2565

Cancel Next >

This will work if only only that attorney uses the computer. If another attorney uses the PC (a Reserve, etc.) they can insert their name as attorney # 2, but they must then always change the name of the state bar.

This information is required in both the Navy (JAGINST 5800.2) and Army (AR 27-3) as you will be the most important person to contact when and if the will is probated. The following is a list of the "Smart Wills". Each numbered saved answer has a corresponding will document. I have tailored each will with suggested changes. As these were prepared for use in Florida, most have Florida selected as the state. As you go through to produce a document, just change that answer, or any other, to tailor it to your client's situation.

1. DL-N1.dlx: Single, no children, no specific bequests, all to parents then to (adult) siblings, no tax apportionment (residue must pay all estate taxes).

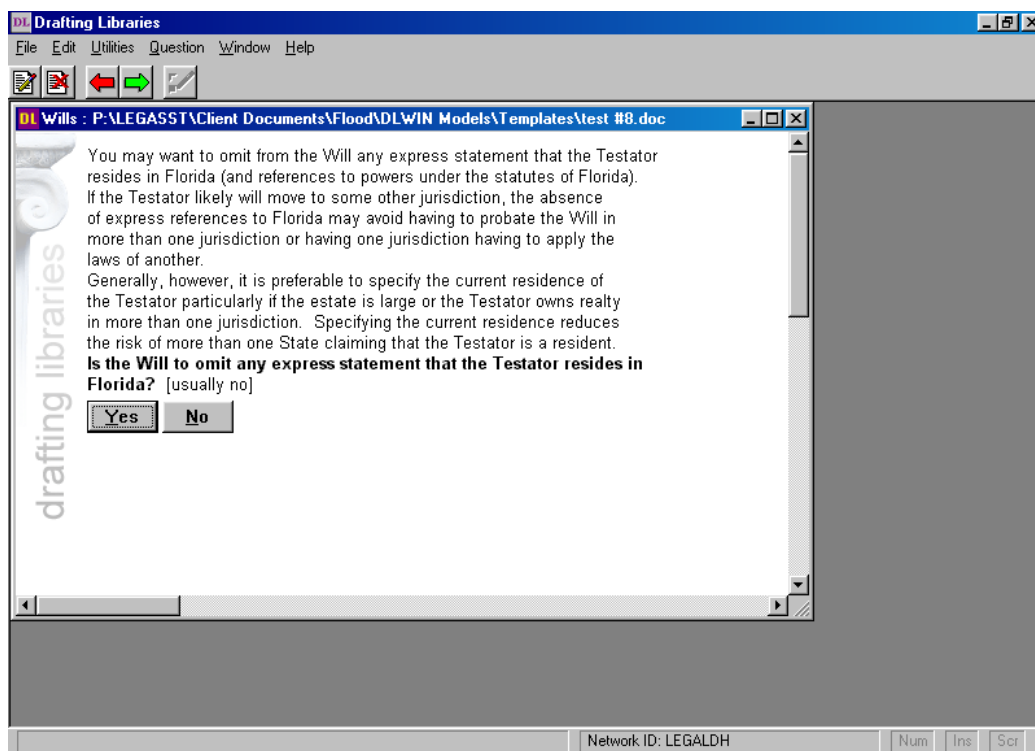
Tax apportionment is when most of the beneficiaries will pay their pro rata portion of any federal or state estate/death taxes. To illustrate, if a beneficiary receives \$100,000.00 taxed at the rate of 5%, the beneficiary receives the net amount, or \$95,000.00. The states that have apportionment statutes have some exceptions when types of gifts (i.e., specific, homestead, etc.) or relationship of beneficiary will exempt that beneficiary from paying the tax. If the gift to a beneficiary is not taxable (marital deduction or charitable deduction) there is no pro-rata, as there is no tax. The assets passing outside the probate estate (insurance, joint with right of survivorship

[JWTROS], pay on death accounts [POD] and Totten trust accounts) will also bear their share of any tax.

No tax apportionment is the default in DL. This forces the residuary estate to pay all federal and state estate taxes, regardless of the type asset, probate or non-probate. If there are substantial non-probate assets (to a paramour, perhaps) the tax burden could conceivably wipe out the residue (for the children, perhaps).

The DL program will make decisions for you, if you permit it. There are certain key questions and depending on your answer selection, you may be foreclosed from ever seeing many of the following options. Take the first screen question “Is this a BASIC will.....” If you answer “yes”, the program permits you only to see a very limited number of question choices, those that the DL programmers have decided are enough to draft their conception of a legally sufficient “basic” will. For example, to reach the dialogue screen to avoid tax apportionment must answer the "basic will" question “no”. The next roadblock to complete access is the screen that discusses the Federal estate tax exempt amount. You must select "between 500K and 1MIL", or higher, to reach the tailoring screen that will permit you to choose tax apportionment. (See *DL-N2 below*) Personally, I always chose “E”, 5 million or over so there are no “stoppers” left.

In each will DL will insert the phrase “a resident of the State of Florida”, and then in the powers clause will insert “under Sections 733.608, 733.612 and 733.6121 of the Florida Statutes, as amended, or any successor thereto,” or the like. Most of our active duty clients are transient until they finally decide to retire. The choice of where to probate will be made at death and will be decided by many factors, location of property, contacts with a state, death taxes, location of executors, trustees and/or guardians. Unless the client is retired, or about to, I suggest a “generic” military will. You can choose the state by the client’s present contacts, or ownership of realty, and then towards the end of the DL dialogue screens you will have the choice to remove any reference in the will to a particular state (see below). Leaving the powers language in might force a court in the jurisdiction of probate to use the law of another state (in the above example Florida) each time an issue comes up. This only will cause delays and increased legal fees.



DL-N2.dlx: Single, no children, no specific bequests, all to parents then to *minor* siblings - however treats beneficiaries that are minors, and forces tax apportionment from all assets.

We have young service members whose siblings may be minors, and therefore did we give the client the choice to create a trust or some other management device. In order to create the trust you must answer the questions to split the residue half to parents and half to siblings, and then edit the wording. An alternative would be to leave all to parents, then to siblings and cut and paste the language from a contingent children's trust.

DL-N3: Single, no children, specific bequest of automobile, general legacy of \$500.00, residue to parents then to siblings, tax apportionment (each recipient pays the tax generated by their bequest/devise), provision to hold bequest till 21 if any beneficiary is a minor.

Nota Bene: After you do the general legacy of money DL tells you that if the beneficiary predeceases the gift will lapse and become part of the residue. This will happen as the DL default conditions the bequest on the recipient surviving. Be careful if you modify the language. You must always provide *specifically* for the recipient surviving, a contingent beneficiary, or for it to lapse to the residue. If you do not where the bequest will go will depend on the anti-lapse statute in the state where the will is probated.

DL-N4: Single parent, never married, one child, contingent children's trust to 25, residue to parents then to siblings, tax apportionment (each recipient pays the tax generated by their bequest/devise), provision to hold bequest till 21 if any beneficiary is a minor.

Appoints separate guardians and successors as guardians of the person and guardians of the property. This is new in DL version 6.01F; there are very powerful guardianship choices. In many cases the client does not want the other natural parent to manage any of the child's funds, even though they may wind up with custody, or guardianship of the person. Now DL allows you to nominate a separate guardian of the property. In later examples you will see that you can even force a bond if the other natural parent is appointed.

DL-N5: Same as N4, except divorced with two children. This now inserts language as to guardian of the property, excluding former husband, and requires a bond if the former husband is appointed.

DL-N6: Married, no children, but due to age, etc, may anticipate children in the future, all to husband then to a trust to 25 if at time of death have children. If no husband and no children, then 50% to each set of parents, with gift over.

DL-N7: Married, 2 children, all to spouse, then to children pooled trust to 25. If no spouse, no issue surviving, then 50% to each set of parents, with gift over.

DL-N8: Complex Blended Family - Married, 1 child with present spouse, 3 from previous marriage. Disinherit 1 son from previous marriage. All of the tangible personal property to the spouse plus 50% of the residue, if spouse predeceases, then to 1 common child. The remaining 50% of residue to 2 other children of previous marriage. The children's shares are to be held in trust until age 25. DL does not do this well. DL will give 1/2 to spouse outright, then to her issue if fail to survive, but it is a gift outright, not in trust. Must "trick" the DL by leaving the first 50% to a person in trust (the child from the present marriage), then edit document and draft provision for spouse, or cut & paste trust. Must also be careful, as it will not add afterborn children to the first trust; to do that you must cut and paste language from the second trust. It will draft a trust for the other children of previous marriage.

It also will not give you the option for a "pooled" or "unitary" trust, but divides into shares. Note choices for Trustee and Guardians in version 6.01F, as in this case with children of two marriages probably want different trustees, as well as different guardians. This document can be drafted to cover all or a portion of the SGLI going to the children of the former marriage by having the first residuary disposition (A) be for all (100%) of the residue, and the trust at B be solely for the proceeds of any insurance. However if you want a SGLI trust DL will now give you the option to draft a will leaving all to wife and children and adding a separate trust for the SGLI. (See DL-N9 below)

DL-N9: Complex Blended Family- Married twice, SGLI trust for children of previous marriage, then to spouse with contingent trust for children of present marriage, different trustees and guardians. This is a complex will; here is the fact pattern:

Client is the service member. He has been divorced and has 2 children from his previous marriage, and his ex-wife has custody. His relationship with his ex-wife, the children's mother is not good and he doesn't want her to manage or control any of the children's assets. He has remarried, and his present wife has 1 child from her former marriage, has custody, and the child lives with them. Client feels the same way about her ex-husband managing that child's assets. They have 1 child in common from their present marriage, and have been married for 2 years.

Client initially wanted a straight "I love you" will leaving all to his present wife, and then in equal shares to all 4 children. Once you explained to him the possibility that his present wife may never see his 2 children after his death, he decides that he will use a portion of his SGLI to fund a trust immediately upon death. The trust will be a single trust for both children, the balance to be distributed when the last child reaches age 25.

Client wants to leave all of his sporting equipment to the children of his previous marriage, and the sum of \$1000 to the Guardian of these children, once the Guardian is appointed. All other tangible personal property and the residue is to go to his wife, and if she predeceases, then into a trust for their mutual child and her child from her former marriage, until the last reaches 25. In the event neither the wife nor the children survive, then to his children from his previous marriage, and if they don't survive, 50% to his parents or issue and 50% to his wife's parents or issue.

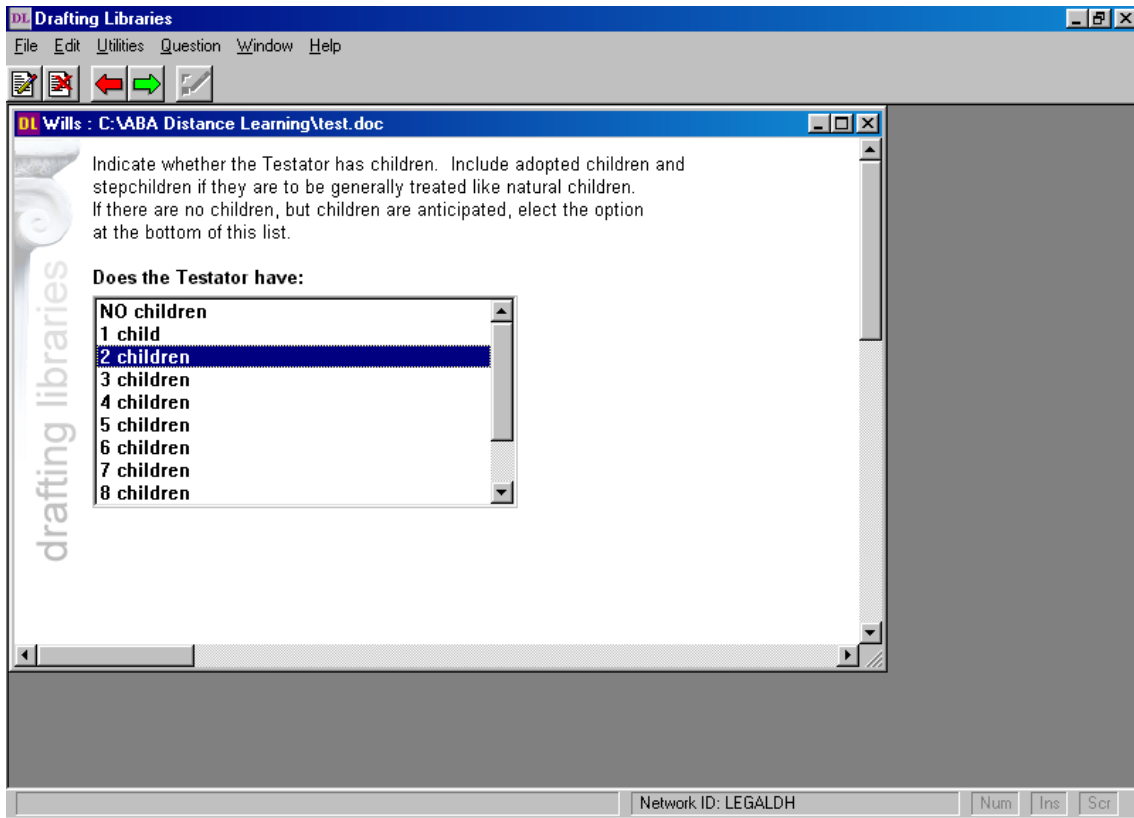
There is to be a trustee and alternate for the SGLI Trust, and different trustee and alternate for the children's trust.

The wife will be the Personal Representative, with a successor, and a second successor.

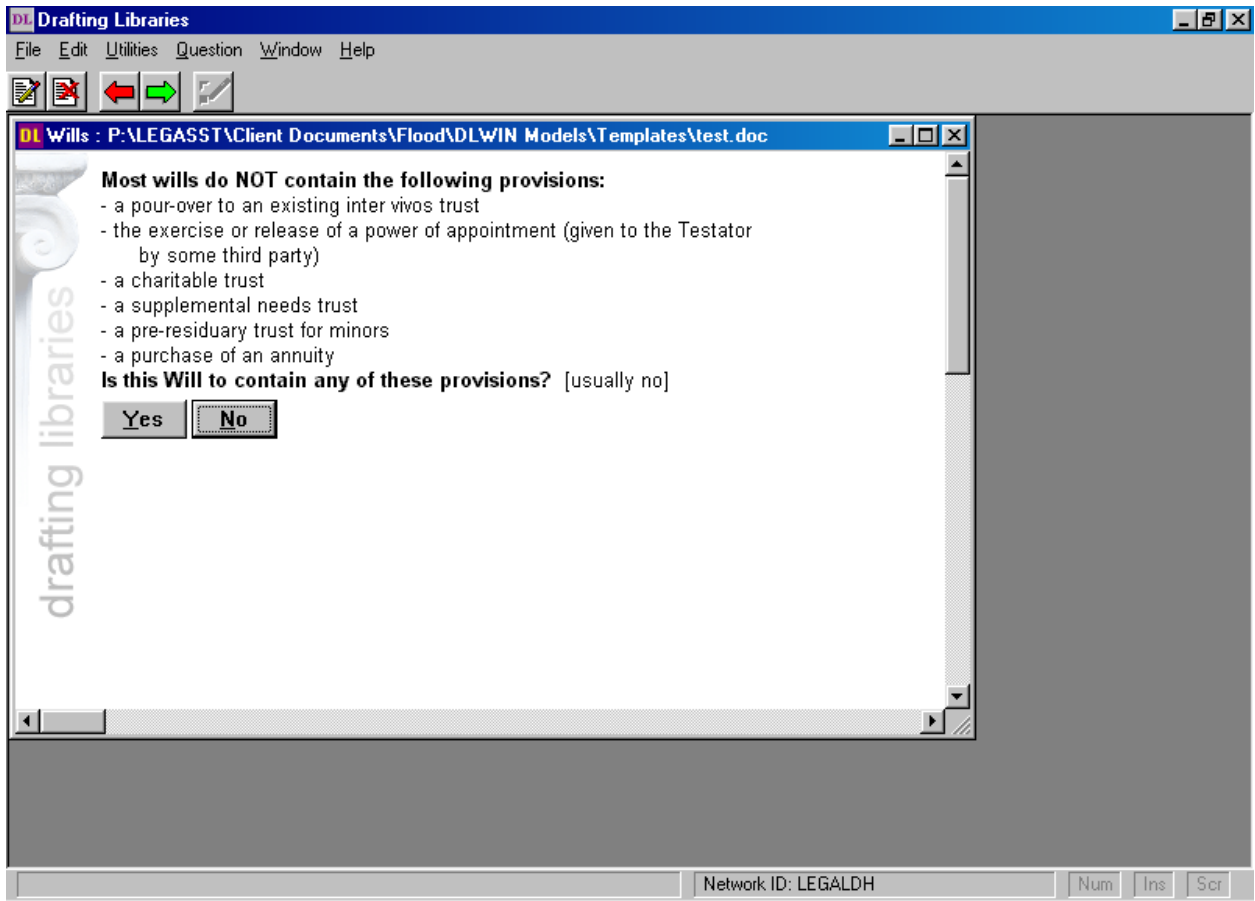
There will be separate guardians for the person and the property of the children of his previous, as well as separate guardians for the person and the property of the his child with the present wife and her child.

In the event either of the former spouses are appointed guardians, they shall be required to post a bond. (End facts)

There are 4 children in total, however only 2 of them will be mentioned in the residuary to take all if the wife predeceases. The easiest way to do this (with the least amount of editing) is to only list the number of children that will take all of the residue, and then name them on the later screen. You will be asked in separate questions for the names of the beneficiaries of the SGLI (pre residuary trust) as well as names of alternative beneficiaries.



There are now very powerful choices for pre-residuary trusts, insurance [SGLI] or monetary, as well as a supplemental or special needs trust.



DL-N10: Married, Credit Shelter Trust (CST) using available credit (up to \$675,000 in 2001, then 1 million in 2002, and increasing), balance of estate (residue) to spouse, contingent children's trust to age 25.

Be careful using this type CST as the exempt amount will be 1 million in 2002, and then increase, as follows:

Calendar Year	Estate and GST exemption	Highest estate, gift, and GST tax rates
2002	\$ 1 million	50%
2003	\$ 1 million	49%
2004	\$ 1.5 million	48%
2005	\$ 1.5 million	47%
2006	\$ 2 million	46%
2007	\$2 million	45%
2008	\$ 2 million	45%
2009	\$ 3.5 million	45%
2010	Repealed-unlimited	35% Taxable gifts only
2011 and out	\$ 1 million	55%

You may lock up more than necessary in the trust.

The disclaimer option was chosen, so that the spouse can still disclaim and force more into the CST than that year's exempt amount. Useful if the first estate will be at a lower bracket (37%) than the second estate (43%).

The option was chosen to have the wife always be presumed to *survive* the testator (reversing the simultaneous death rule) to achieve two taxable estates. **NOTA BENE: Remember to reverse this presumption in the wife's will, so that the husband is always presumed to predecease.** The two estates are not necessary if both H and W have less than \$675,000.

11. DL-N11: Married, all to spouse with Disclaimer Credit Shelter Trust, then all in contingent children's trust. The remarks at DL-N10 also apply here. At the present time, with the tax rates changing a Disclaimer is most probably the preferred method for our clients who have \$1 million to 2.5 million estates, but bear in mind that it may not work because the spouse may refuse to disclaim.

12. DL-N12: Same as 11. Married all to *non-citizen* spouse, with Qualified Domestic Trust (QDOT), Disclaimer Credit Shelter, then all in contingent children's trust. **NOTA BENE: The Testator has the exempt amount that he can pass to the spouse with no tax problem; you only need a QDOT when the amount to the spouse exceeds the exempt amount.**

This smart will uses a DCST for flexibility, but bear in mind that it may not work because the spouse may refuse to disclaim. See the screen shot below.

