

LEGAL INFORMATION

Contact the command's Staff Judge Advocate (SJA) office for guidance and legal assistance or the nearest military installation's SJA office.

Power of Attorney

A **general Power of Attorney (POA)** gives your designated agent the legal ability to do anything you can do. Serious consideration is encouraged when determining if and to whom you choose to give a general POA. Make sure that you trust the person designated as your POA to always keep your best interests in managing your affairs as well as everything you own, because that is, in fact, what a general Power of Attorney authorizes. Many organizations do not accept general Power of Attorneys. When considering a POA, contact the agency or organization to verify which type of POA they accept.

A **special Power of Attorney** is limited power, giving your designated agent the power to perform a specific task on your behalf. For example, you may give your agent the power to sell your car or cash an income tax refund check. Your agent will be limited to doing only those tasks specified in the special Power of Attorney.

Powers of attorney are effective when it is given to the individual designated. POAs expire when you take it back from the attorney and provide written notice to institutions where POAs were used and should be destroyed when you return, upon a specific expiration date (consider 3 years) or when you die.

These are some of the legal matters where a Power of Attorney (POA), either general or special, can be used:

- The functions required by your state pertaining to a vehicle can be accomplished with a POA – buy, register, license, sell, etc.
- Legal and financial transactions are possible with a POA.
- Household goods can be shipped or received.
- If the Soldier has deployed, a POA permits an eligible family member to sign for a military ID card.
- A Soldier having responsibilities for a loved one can direct legal, financial and medical care or limited guardianship through a POA.

Medical POAs are recommended for routine caregivers that can be used when the custodian parent is out for the evening, out of town or out of the country.

Powers of Attorney are not always needed to conduct business on behalf of a Soldier. Institutions may or may not accept a general Power of Attorney. Financial institutions may require use of their own Power of Attorney form. Check with them first. Many institutions require their own signature cards.

Remember, there is no requirement for an organization or individual to accept a POA.

Powers of Attorney are revoked by giving notice to the attorney-in-fact and destroying the original document. Additionally, all who received the POA should be advised that it is no longer in effect.

WILLS

A will is a legal document that designates your wishes for how property is distributed upon your death. Changes are made by drafting a new will and destroying all previous copies of a will already executed. Your will may also designate a guardian for minor children in the event that your spouse is not living or incapable of providing care at the time of your death.

Who needs a will - Anyone who has minor children, owns real estate, wants to make a specific bequest or disinherit a natural heir should have a will. Both the Soldier and spouse should have separate wills. If you die without a will, the laws of your state of legal residence will determine distribution of your property. These laws vary from state to state. Generally, the deceased's natural heir(s) inherit the property. These laws are mandatory in the absence of a will and the court's distribution of the property may not be in accordance with the deceased's wishes.

How to get a will – Contact your servicing Legal Support Office (LSO) or command Staff Judge Advocate office to prepare a will.

Important considerations are:

- a Deed takes priority over a will under the Right of Survivorship.
- most states allow the parent to split the conservator (protect interests and manages finances) and the guardian (caregiver) for minor child(ren).

When - If you do not have a will, give serious thought to making a will now, before you die or become incompetent. Wills must be written and signed according to legal requirements and the original will should be maintained by the family in a fire-proof safe as copies are not recognized by the court. When executing a new will, destroy all previous wills by tearing and burning.

Property Exempt – A soldier will normally have property that cannot be disposed of a will. Proper estate planning requires you to consider all such property, even though it is not distributed by your will. Examples of such property are:

- Death gratuity & final pay and allowances. Soldiers must designate the recipients by completing a Record of Emergency Data Card (DD Form 93).
- Life insurance (including SGLI) - Determine your beneficiaries by designating them in writing. You should **not** write “BY LAW” when designating a beneficiary.
- Property held in “joint tenancy” with right of survivorship. Under this arrangement, your surviving joint tenant(s) automatically receive your ownership interest in the property immediately upon your death, regardless of the existence of a will.

Review your will when you experience a major change of circumstances, such as:

- divorce, death in the family, or substantial increase in your personal wealth.
- immediate family has changed or executor, guardian of your children or their alternates is no longer able to serve in that capacity.
- you claim a new state as your state of legal residence.
- Discuss provisions of a Living Will or Advanced Directive with your Legal professional.

Servicemembers Civil Relief Act (SCRA)

The purpose of the Servicemembers Civil Relief Act (SCRA) is to delay the soldier's civil obligations due to military service. SCRA applies to Reserve Soldiers on active duty or when a Soldier is ordered to report for military service. Some protections covered by SCRA are:

Civil Court Proceedings – temporary suspension of judicial and administration proceedings that may adversely affect the civil rights of a soldier during military service. SCRA does not stay criminal proceedings.

Debt Reduced to 6% Interest - applies only when materially affected to meet obligations that the soldier is singly or jointly responsible and on debts incurred before ordered to active duty. With written notice, excess interest is permanently forgiven and payment is reduced by the amount of interest saved.

Eviction – a landlord may not evict a soldier or their family while on active duty due to nonpayment of rent that does not exceed \$2465 per month in 2004.

Taxes – prevents states from using the soldier's earned income to determine the spouse's tax rate when legal residence is maintained in another state.

Termination of Residential Lease – permits the soldier to terminate a residential lease upon receipt of deployment orders.

Termination of Vehicle Leases – permits the soldier to terminate vehicle leases without incurring early termination penalties upon receipt of deployment orders with written notice and delivery of the vehicle to the company within 15 days of notification. Damage and excess mileage costs still apply.

When invoking the Servicemembers Civil Relief Act (SCRA), the soldier must provide written notice to the lessors/lenders along with a copy of the Soldier's orders. The burden is on the lender to seek relief in court if the lender asserts no material affect for the reduction to the 6% interest rate.

Proper legal documentation is required by a soldier requesting relief under the Servicemembers Civil Relief Act (SCRA).