

DEPLOYMENT GUIDE

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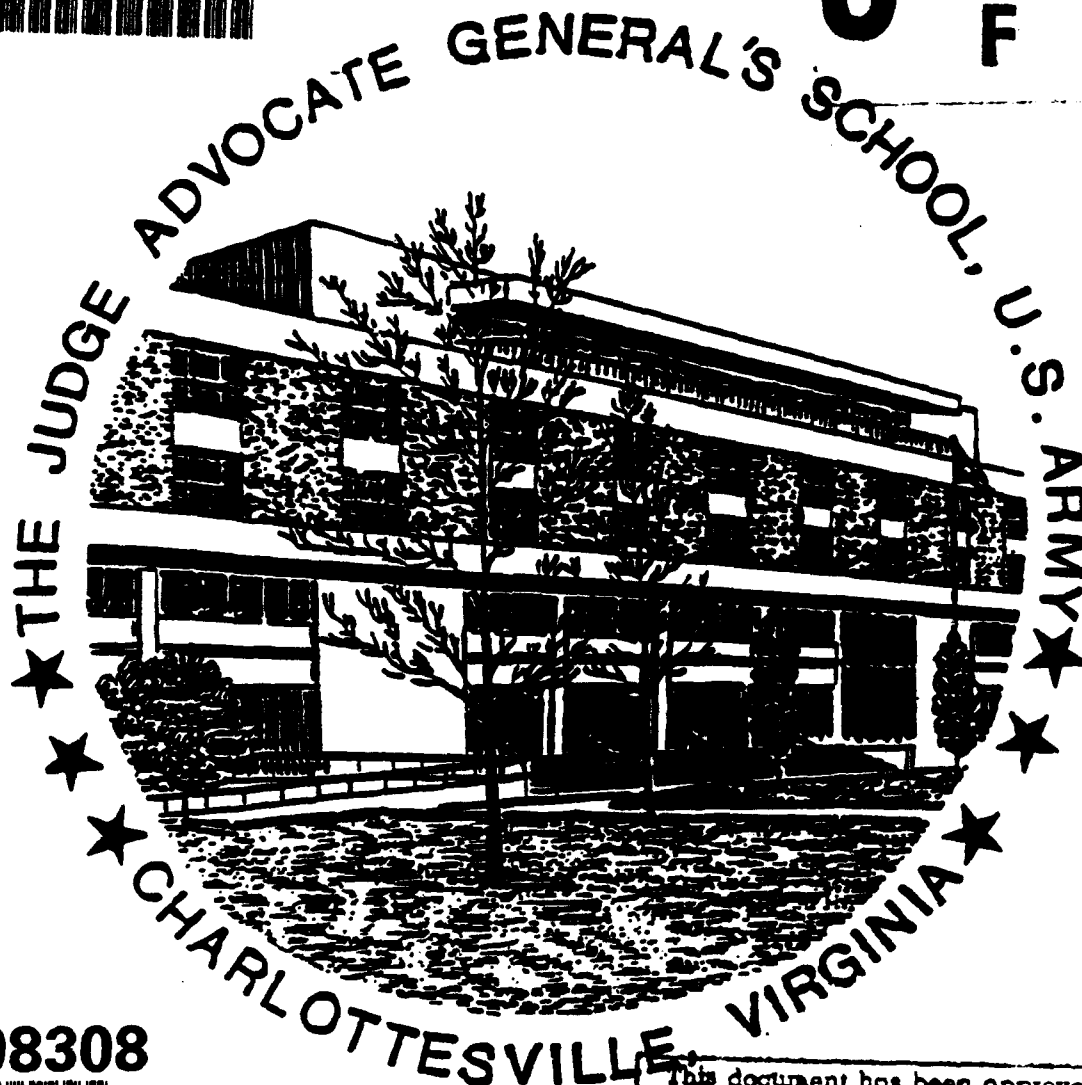


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INTRODUCTION

On 6 September 1991, Major General Fugh (then TJAG of the Army), established the Desert Storm Assessment Team (DSAT) to collect after-action reports, analyze lessons learned, resolve issues, propose doctrine changes, recommend changes to training, and preserve historical records of the operations of the Judge Advocate General's Corps (JAGC) in Desert Storm.

Among other suggestions, DSAT recommended that the JAGC better prepare for mobilization, deployment, and war by training more in soldier skills, cross training personnel in all legal functional areas for greater operational law utility, and developing light, easily-deployable packages of up-to-date automated and other research materials which will withstand severe conditions.

More than 400,000 U.S. military personnel, many Reserve Component (RC), deployed to support Desert Storm.

As a consequence, both Active Component (AC) and RC JA's experienced a tremendous Preparation for Overseas Movement surge for legal assistance. Some commands reported that as high as one out of two soldiers required wills and powers of attorney prior to deployment. Reports in DSAT reflected that all who needed services, got them, though it was not "pretty", smooth or ideal legal practice. The bottom line from DSAT: "We need to rethink how we go about this business."

During late 1992/early 1993, DAJA-LA tasked the MACOMs with providing input and recommendations for developing a Legal Assistance Deployment SOP. This Guide addresses most of those suggestions:

- * Develop Criteria to Determine the Need for Wills.
- * Establish Uniform Pre-Deployment Processing.
- * Develop a Personal Assets Inventory for Use During Pre-deployment Lectures.
- * Develop Guidelines for Advising Soldiers on the Need for General and Special Powers of Attorney.
- * Clarify the Authority of Armed Forces Personnel to Perform Notarial Acts.
- * Address the Need for General Acceptability of Powers of Attorney

In addition, Legal Assistance CLE working groups provided suggestions for the Deployment Guide which were considered:

- Make the Guide simple/not bulky
- Include short, simple fact sheets for handouts
- Include teaching outlines for family/unit briefings (to include POA/wills/consumer law/insurance war clauses)
- Provide fill-in-blank sheets to send coordinators of pre-deployment exercises to list legal support needed, what items the unit is expected to bring or provide, and what the schedule will be.
- Make the units provide the laser printers for wills.
- Provide simple directions to download information from the LAAWS bulletin board.
- Cross train within legal office (provide teaching outlines)
- Include information on Anti-deficiency Act (re: offers of services and equipment from private firms)
- Include will screening form
- Basic guidance on running a POM
- Reference other service regulations
- Emphasize preventive law

LEGAL ASSISTANCE
DEPLOYMENT OVERVIEW

I. INTRODUCTION.

- A. Winning in wartime depends in large part on the efficiency of each soldier in combat. However, the soldier's combat efficiency may be adversely affected by legal problems left behind at deployment. One objective of the Army Legal Assistance Program is to assist the soldier in avoiding those problems and thereby enhance combat efficiency. The Deployment Guide outlines a program that will enable judge advocates involved in deployment activities to tailor their legal assistance program to meet the needs of soldiers and their families both before and during such deployment.
- B. The many facets of legal assistance make it impossible to summarize in this Guide all necessary law and to identify all resources. However, it does provide material that may help a Legal Assistance Office (LAO) prepare for pre-deployment and deployment operations.

II. PRIOR PLANNING PREVENTS POOR PERFORMANCE.

A successful deployment legal assistance program will generally involve:

- 1. Advance planning by the legal assistance officer(s) and other judge advocates that may become involved in providing assistance to deploying soldiers. A Deployment SOP will prove extremely valuable. (See samples herein)
- 2. Coordinating the Deployment SOP with relevant unit commanders and staff elements,
- 3. Testing the Deployment SOP in the course of both announced and unannounced exercises, and
- 4. Revising the Deployment SOP in the light of lessons learned at such exercises.

III. THE LEGAL ASSISTANCE MISSION.

- A. From an operational standpoint, the mission of legal assistance is to ensure that the soldiers' personal legal affairs are in order prior to deployment, and then, in the deployment location, to meet the soldiers' legal assistance needs as quickly and as efficiently as possible. Accomplishing this mission may well be one of the JA's most important functions. Personal legal difficulties may not only reduce combat efficiency but may also result in problems requiring disciplinary action.
- B. Given this situation, performing legal assistance functions during peacetime exercises is crucial, as the legal problems soldiers encounter on exercises are often the same as those which arise during combat. Prior to deployment, both the soldier and the soldier's family must be prepared for the deployment. For the soldier, this preparation is an ongoing effort that should begin upon his arrival at the unit and end only upon transfer. The SJA office must make an aggressive and continuous effort to ensure soldiers' legal affairs are reviewed and updated.

IV. PHASES OF DEPLOYMENT LEGAL ASSISTANCE.

- A. Pre-Deployment Activities

 - 1. At Legal Assistance Office. One initial step in legal assistance processing is ensuring that every deployable soldier's legal status has been screened as required by the Soldier Readiness Program (SRP) (AR 600-8-101) which is discussed later in this Guide.
 - 2. Exercises. The SRP status screening is supplemented by legal review during combat readiness exercises such as the

 - a. emergency deployment readiness exercise (EDRE) or
 - b. an ARNG readiness for mobilization exercise (REMOBE) or
 - c. mobilization deployment readiness exercise (MODRE).

[No distinction made between type of legal assistance rendered to individual office clients and that provided to soldiers preparing to deploy (AR 27-3)].

3. Each of these activities should automatically involve legal assistance processing. The ultimate goal is to ensure that each deployable soldier has all of his or her legal affairs, including a will and any necessary powers of attorney, in order prior to deployment. In dealing with a large unit, the entire SJA office may become involved in the legal assistance process.
4. Remember the Families. Soldiers' families are an integral part of the predeployment processing. The Family Assistance Briefing is an important tool available for the provision of legal assistance to families.
 - a. The Family Assistance Briefings should be conducted well in advance of the exercise deployment in order to provide soldiers and their dependents with sufficient time to address their legal concerns.
 - b. The briefings should be provided by, not only a representative from the SJA office, but individuals from other service organizations on post, such as Army Emergency Relief.
 - c. The primary purpose of the briefing, from the JA's point of view, is to inform dependents of the types of legal problems they may expect to encounter and to provide guidance concerning the legal services available. Additionally, it provides time for resolution of many problems prior to deployment in a more orderly fashion.

B. Preparation.

1. JAs deploying on regularly scheduled exercises have more time to prepare than do JAs deployed on short notice combat missions. Include in this Guide is a list of suggested supplies and equipment which should be included in the LAO Ready Box.

2. If predeployment preparation is emphasized, legal assistance problems in the exercise deployment location will be minimized. Even in the best prepared unit, however, some soldiers will suddenly discover a need for legal assistance, and dependents will encounter unforeseen legal problems.

C. Deployment Activities.

1. At the Departure Point

- a. Document Processing. The two main items of "assistance" provided deploying soldiers are wills and powers of attorney.
 - (1) While individual screening and attention is by far preferable, experience has shown that in most deployment situations group presentations and initial screening is the most practical.
 - (2) Thorough presentations, well prepared and presented, describing who actually needs what documents, will save valuable time and effort in deployment situations.
- b. Once the documents are prepared, the JA should ascertain precisely where the soldier is going--if the soldier is going to the deployment site, the JA should retain the documents for the rear detachment CDR (or have the soldier mail the documents to proper recipients). If the soldiers are returning to the unit area, they should turn over the documents to the rear detachment CDR or next of kin themselves.

2. Departure Point Check List.

- a. Spot-check deploying soldiers to determine that basic legal assistance needs have been met. The use of armbands or other media identifying the legal assistance personnel as such may be helpful.
- b. Coordinate with unit CDRs at the departure site and with the departure site CDR.

- c. Prepare and execute wills and powers of attorney.
- d. Notify the LA office and the unit CDR of any personnel who have pending court appearances or other legal problems.
- e. Legal assistance must be conducted in a manner which does not interfere with the mission of the deploying personnel.

3. Departure Point Activities.

- a. Briefings. Probably the judge advocate's most visible contribution to deployment activities is the group legal briefing provided to deploying soldiers. This Guide includes sample briefings and forms.
- b. Substantive Assistance. Even though a Division may have an aggressive SRP, a percentage of soldiers will deploy without putting their personal affairs in order, and numerous others will encounter legal problems after they deploy. Deploying JAs should be prepared to provide powers of attorney and wills immediately upon notification of deployment. They should be able to assist in simple tax matters while deployed.

D. In the Theater of Operations

- 1. The key to success is anticipating the needs of both soldiers and their commanders and preparing for the worst. Communication and flexibility are essential.
- 2. Casualties may occur and the LAO must be prepared to assist the command, the Survivor Assistance Officer and the next of kin.

E. Legal Assistance "In the Rear."

- 1. On-going legal assistance to dependents left behind is essential. Aggressive contact should be maintained with family members to ensure they understand that legal assistance is still available to assist them while the soldiers are deployed.

2. Providing liaison with those LAC deployed is also imperative to ensure they are provided the support they require to function at optimal levels.

F. Post-Deployment Activities.

1. Reevaluate the LAO SOP. Was it sufficient to provide for most contingencies? How can it be improved?
2. Experience has shown that many returning soldiers face serious legal problems with their spouses, creditors, and others. Legal Assistance should target those problems and provide assistance.

CHAPTER 1
PREPARATION FOR EXERCISES AND DEPLOYMENT

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CHAPTER 1

PREPARATION FOR EXERCISES AND DEPLOYMENT

PART 1: SOLDIER READINESS PROGRAM

I. REFERENCES.

- A. AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing), 26 February 1993.
- B. AR 27-3, The Army Legal Assistance Program (30 September 1992).
- C. Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. Appendix, as amended, §§ 500-548; 560-591 (1990).
- D. JA 260, Soldiers' and Sailors' Civil Relief Act Guide (TJAGSA Jun 93).

II. INTRODUCTION.

- A. The Army Legal Assistance Program (ALAP), AR 27-3, consists of a number of client and preventive law services. No distinction is made between the type of legal service assistance that is provided to a client seeking help with a personal legal problem and that which is rendered to a soldier preparing for deployment.
- B. Legal Assistance is provided by Active Component (AC) and Reserve Component (RC) judge advocates and civilian attorneys in a variety of settings, to include:
 - 1. During combat readiness exercises such as an emergency deployment readiness exercise (EDRE) or an ARNG readiness for mobilization exercise (REMOBE) or mobilization deployment readiness exercise (MODRE),
 - 2. During a RC Premobilization Legal Preparation (PLP),
 - 3. During Soldier Readiness Program (SRP) processing, and
 - 4. During a demobilization briefing.

III. SOLDIER READINESS PROGRAM (PEACETIME).

- A. AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing) establishes the Soldier Readiness Program (SRP):
 - 1. To ensure that all soldiers will be administratively ready for deployment at all times,
 - 2. To replace preparation of replacements for overseas movement (POR) qualification, and
 - 3. To incorporate planned checks on the soldier readiness status of the individual soldier.
- B. The processing program prepares, validates and reports individual soldier and unit readiness for deployment, including shortfalls, to the unit commander.
- C. The status of individual soldier readiness is checked during:
 - 1. In-processing (at the battalion/unit level, follow-up action is required on soldier readiness processing requirements),
 - 2. Once annually as a unit or an individual,
 - 3. During out-processing, and
 - 4. Within 30 days of actual unit deployment date or date individual soldier departs on extended TDY (90 days or more).
- D. DA Form 5123-1-R (Personnel In-processing Record) is used to determine the readiness status of the soldier. (Form contained in AR 600-8-101)
- E. The Soldier Readiness Processing Team (SRPT) from the installation and community staff agencies:
 - 1. Accomplishes the "unit and individual annual " and "30 days prior to actual deployment" soldier readiness checks, under general leadership of the G1/AG (Chief, Military Personnel Division).

2. The SRPT will include a representative from the legal office (as well as personnel, medical, dental, provost marshall, finance, security, logistics, and operations).
- F. There are five (5) levels of requirements to prepare soldiers for basic movement through deployment and wartime movement. Each level requires different legal preparation.
1. Level 1 - Basic movement soldier readiness processing requirements. No specific legal review requirements; however, SGLI forms will be reviewed or revised - also, soldiers requiring them will have satisfactory Family Care Plans (DA Form 5304-R) on file; otherwise, they will not deploy.
 2. Level 2 - Wartime movement stopper soldier readiness processing requirements. Each soldier must have received sometime in their current enlistment/career, a Geneva Convention briefing prior to deployment. (see Appendix re: LOW training/Geneva Convention)
- Note: At Levels 1 and 2, signature of the person in charge of the individual SRPT station is required (signifying all requirements have been met by the soldier) before clearance for movement is granted).
3. Level 3 - Other soldier readiness processing requirements.
 - a. Each soldier pending civil felony charges will be provided assistance and may not move as result of these charges.
 - b. Given time and other resources, power of attorney support may be provided to each soldier.
 - c. Given time and other resources, support may be provided to each soldier for making a Will.
 - d. Soldiers will be counseled on insurance and other civil matters.

4. Level 4 - Deployment area/mission unique soldier readiness processing requirements. Each soldier will be briefed on the applicable local laws for deployment area.
5. Level 5 - Peacetime PCS/transition soldier readiness processing requirements. Assistance will be provided soldiers pending civil and military charges, which may result in the soldier not complying with PCS orders.

IV. UNIT AND INDIVIDUAL MOVEMENT (PEACETIME).

A. Unit movement policy.

1. Contingency operations.

- a. Prior to actual soldier or unit movement in support of combat or contingency operations, commanders will:
 - (1) Physically review on-site
 - (2) Within 30 days of departure
 - (3) Processing requirements in Levels 1 through 4 (see III above). Levels 1 and 2 are mandatory compliance levels while 3 and 4 may be waived by a general officer in command.
- b. The Soldier Readiness Processing Team (SRPT) will assist commanders.

2. Administrative movement.

- a. Prior to actual movement during peacetime, commanders will review processing requirements at Level 1.
- b. SRPT will assist commanders.

B. Conducting unit movement soldier readiness check:

1. Chief, SRPT will coordinate with Bn S1 on schedule, location and roster of personnel to be checked.

2. Chief, SRPT will provide list of nondeployables and reason(s) for this status to Bn S1 for corrective action, with copy furnished to G1/AG and G3 operations.
3. AR 600-8-101, Table 5-1, provides steps and work centers for unit movement soldier readiness checks. (See Appendix)

PART II: THE RESERVES

V. INTRODUCTION.

Use of ARNG and Army Reserve personnel can be critical to mission accomplishment. As General Collin Powell stated in December 1990 before the Senate Armed Services Committee, "[t]he success of the Guard and Reserve participation in DESERT STORM cannot be overemphasized. Their participation has been a significant factor in affording us flexibility and balance, and [it] reinforces... the Total Force concept."

VI. MOBILIZATION PROCESSING PROGRAM.

- * Involves home station and mobilization station processing requirements to administratively access individuals and units into the active force.
 - * Involves expansion of the peacetime in- and out-processing activity (work center is IOPR) as a sub-work unit of the installation mobilization and deployment center (MADC).
 - * Involves installation task force operations, if partial or higher state of mobilization has been declared.
- A. Mobilization is the process by which the Armed Forces or part of them are expanded and brought to a state of readiness for war or other national emergency.
1. Includes calling all or part of the Reserve Components to active duty and assembling and organizing personnel supplies and material.

2. The call of Reserve Component units to active duty may include:
 - a. A Presidential Selected Reserve Call-up, S-Day,
 - b. Partial mobilization, T-Day, or
 - c. Full mobilization, M-Day.
- B. There are 5 phases of federalizing/mobilizing RC units:
 1. Phase I - Preparatory. Concerns RC units at home station during peacetime. The units plan, train, and prepare to accomplish assigned mobilization missions.
 2. Phase II - Alert. Begins when RC units receive notice of pending order to active duty and ends when units enter active Federal service.
 3. Phase III - Mobilization at Home Station (HS). Begins units' entry onto active Federal duty and ends when unit departs for their mobilization stations (MS) or ports of embarkation (POE).
 4. Phase IV - Movement to Mobilization Stations. Begins with units departing from HS, by most expeditious and practical means available, and ends when units arrive at MS or POE.
 5. Phase V - Operational Readiness Improvement. Begins when units arrive at their MS and ends when they are declared operationally ready for deployment.
- C. CONUS Replacement Centers (CRC).
 1. Operations are executed by the CRC Replacement Battalion (USAR) on pre-designated Army installations. CRC units normally ordered to duty under Presidential Selected Reserve Call-up.
 2. CRC mission is, among other things, to verify completion of SRP (Soldier Readiness Processing).
- D. Soldier Readiness Processing Requirements.
 1. Levels I and II SRP requirements (see above) are mandatory. Deficiencies will be remedied on the

spot during processing or follow-up referrals made.

2. SGLV 8286 (SGLI) and needed Wills are SRP requirements which are major workload generators at both home station and mobilization station.
- E. AR 600-8-101, chapter 6, details the mobilization process. Para. 6-43 provide rules for mobilization processing at the legal station:
1. All soldiers will process through this station.
 2. Ar 600-8-101, chapter 4, details SRP requirements (see outline above)
 3. If resources permit, Wills and powers of attorney may be made.
 4. Copies of Wills and POA will be filed in the soldier carried mobilization packet. The original and one copy will be given to soldier.
 5. AR 600-8-101, Table 6-17, provides steps and work centers for Mobilization Processing at the Legal Station. (See Appendix)

PART III: LEGAL ASSISTANCE PREPARATION

VII. LEGAL ASSISTANCE PREPARATION FOR READINESS EXERCISES AND DEPLOYMENT.

- A. Legal Assistance offices should be aggressive in sponsoring preventive law programs to educate soldiers and their families before deployment occurs. Topics covered should include:
1. Who is eligible for legal assistance services.
 2. SGLI designations and "By Law" implications.
 3. Wills for both spouses.
 4. Powers of Attorney.
 5. Consumer law issues.

- B. Typically readiness exercises and rapid deployments will be conducted on no-notice or short-notice basis.

1. The Chief, Legal Assistance should:

- a. Designate teams of attorneys and clerks to staff exercise and deployment sites,
- b. Establish an SOP (Standard Operating Procedure) for legal administration both on-site and at the legal assistance office during the exercise or deployment.

(1) Include directions regarding Will and Power of Attorney preparation.

- (a) Execution is not done during exercises and appointments should be scheduled to properly complete documents at the legal office.

- (b) Wills should be prepared using LAAWS; however, statutory form wills may be used.

- (c) Will executions will be supervised by an attorney.

(2) Provide attorneys guidance concerning soldiers pending civil and criminal proceedings.

- (a) Requests for stays of civil proceedings should be made via letter from the soldier's commanding officer - requests for stays by legal assistance attorneys may be considered appearances and work to the detriment of the soldier

(See: The Soldiers' and Sailors' Civil Relief Act (SSCRA)).

- (b) Attorneys may request postponements of criminal proceedings, but such stays are not governed by the SSCRA.

- (3) Designate when and where the legal team will meet for the exercise or deployment,
 - (4) Provide who will remain at the legal assistance office as back-up support for the exercise/deployment legal team.
- c. Reschedule office hours of operation if necessary.
- d. Ensure close coordination with unit commanders for sufficient logistical support and full soldier participation,
- e. Ensure all needed supplies, forms and equipment are available at the site.
- f. Get adequate feed-back after the exercise from the legal team.
- 2. During deployment, the legal assistance office should continue briefing family members as needed.
- 3. After deployment, the legal assistance office should follow-up on legal assistance matters not resolved prior to deployment.

PART IV: FAMILY CARE PLANS

I. REFERENCE.

AR 600-20, Interim Ch. 102 (1 Apr 92), para 5-5.

II. INTRODUCTION.

- A. Mission, readiness, and deployability needs especially affect Active Component (AC) and Reserve Component (RC) single parents and dual military couples with dependent family members.
 - 1. AR 600-20, Interim Ch. 102, requires those soldiers to implement the Family Care Plan to provide for the care of their family members when military duties prevent the soldier from doing so.
 - 2. Plans must be made to ensure dependent family members are properly and adequately cared for when the soldier is deployed, on TDY, or otherwise not available due to military requirements.
- B. RC soldiers are subject to these policies and regulations, and will implement plans during any periods of absence for Annual Training, regularly scheduled unit training assemblies, emergency mobilization and deployments, or other types of active duty.
- C. All married soldiers who have dependent family members are encouraged, even if not required by the regulation, to complete and maintain a Family Care Plan.

III. FAMILY CARE PLAN RESPONSIBILITY.

- A. Commanders have responsibility for ensuring affected soldiers complete the Family Care Plan.
 - 1. The unit commander is the sole approving authority for DA Form 5304-R.
 - 2. This responsibility will not be delegated.
- B. Affected soldiers are considered nondeployable until a Family Plan is validated and approved.

IV. FAMILY CARE PLAN FORMS.

- A. The DA Form 5305-R (Family Care Plan) is the means by which soldiers provide for the care of their family members when military duties prevent the soldier from doing so.**
- B. DA Form 5305-R (Family Care Plan) must include:**
- 1. Proof that guardians and escorts have been thoroughly briefed on the responsibilities they will assume for the sponsor/soldier and on procedures for accessing military and civilian facilities and services on behalf of the dependent family members of the sponsor/soldier,**
 - 2. Attestation that the guardian and escort agree to provide care and have been provided all necessary legal authority and means to do so.**
 - a. Proof of the foregoing will consist of (as a minimum) attachments to the DA Form 5305-R:**
 - (1) DA Form 5841-R (Power of Attorney), or equivalent delegation of legal control, which the legal assistance office prepares, the soldier executes and has notarized, and the guardian/escort receives,**
 - (2) DA Form 5840-R (Certification of Acceptance as Guardian or Escort) which the guardian/escort completes, has notarized, and returns to the soldier,**
 - (3) DD Form 1172 (Application for Uniformed Service Identification Card DEERS enrollment) which the soldier executes for each dependent family member (AR 600-8-14 directs that ID cards will be issued for children under age 10 who reside with a single parent or dual military couple),**
 - (4) DD Form 2558 (Authorization to start, stop, or change an allotment for Active Duty or Retired Personnel) which the soldier executes, or other proof of financial arrangements for the care of dependent family members, and**

- (5) Letters of Instruction executed by the soldier which contain additional pertinent information for escorts, temporary or long-term guardians.
- 3. DA Forms 5304-R, 5305-R, 5840-R and 5841-R will be locally reproduced.
- 4. Forms and sample Letter of Instruction contained in 102, AR 600-20.

V. WILLS.

In conjunction with Family Care Plan counseling, commanders will encourage, but not require, soldiers to consult legal assistance attorneys for will preparation.

APPENDIX A

LAW OF WAR TRAINING (The Geneva Convention)

The 1949 Geneva Conventions cover four categories: (1) Wounded and Sick in Armed Forces in the Field, (2) Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, (3) Treatment of Prisoners of War, and (4) Protections of Civilian Persons in Time of War.

REFERENCES.

- Elliott, "Theory and Practice: Some Suggestions for the Law of War Trainer," The Army Lawyer, July 1983 at 1.
- Addicott and Hudson, "The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons," 139 Mil. L. Rev. at 153 (1993).
- DoD Directive No. 5100.77, The DoD Law of War Program (10 Jul 79)
- AR 350-216, Training - The Geneva Conventions of 1949 and Hague No. IV of 1907, para. 5a (7 Mar 75) (though this regulation has been canceled, it has not been rewritten)
- FM 27-2, Your Conduct in Combat
- FM 27-10, The Law of Land Warfare
- DA Pam 27-1, Treaties Governing Land Warfare
- Commentary on the Geneva Conventions of 1949, Vols. I-IV (J. Pictet ed. 1958)
- Army Training Film - TF 21-4228, The Geneva Conventions and the Soldier.

The following is taken from Addicott and Hudson, "The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons," 139 Mil. L. Rev. at 153 (1993) and Elliott, "Theory and Practice: Some Suggestions for the Law of War Trainer," The Army Lawyer, July 1983 at 1.

The Army is the training proponent for the law of war for all branches of the military. In response to the DoD mandate found in DoD Directive No. 5100.77, The Army has developed a ready-made lesson plan for the law of war instructor, which includes discussion in the following areas:

- (1) The rights and obligations of U.S. Forces personnel regarding the enemy, other personnel, and property;

- (2) The rights and obligations of U.S. Forces personnel if captured, detained, or retained;
- (3) The requirements of customary and conventional law pertaining to captured, detained, or retained personnel, property, and civilians;
- (4) The probable results of acts of violence against, and inhumane treatment of, personnel;
- (5) Illegal orders;
- (6) Rules of Engagement; and
- (7) The procedures for reporting war crimes.

The one thread that runs throughout the complex web of ensuring compliance with the law of war is the role of the judge advocate. To ensure that American forces comply with all aspects of the law of war, the Army has expanded its use of military attorneys dramatically. For example, all combat forces have an 'operational law' attorney assigned at the division level. This judge advocate advises operational commanders on decision-making and training to ensure that their units comply with and adhere to the law of war. The operational law advisor also examines the full range of international and domestic law that impacts 'specifically upon legal issues associated with the planning for and deployment of U.S. forces overseas in both peacetime and combat environments. Addicott and Hudson, "The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons," 139 Mil. L. Rev. at 182 (1993)

See Elliott, "Theory and Practice: Some Suggestions for the Law of War Trainer," *The Army Lawyer*, July 1983 at 1 for an excellent discussion of the judge advocate as LOW teacher.

APPENDIX B

THE RESERVE COMPONENT STRUCTURE

(contains excerpts from JA 422, as updated and amended by DDL and GRA, TJAGSA, Nov 93)

A. Introduction.

Use of ARNG and Army Reserve personnel can be critical to mission accomplishment. As General Collin Powell stated in December 1990 before the Senate Armed Services Committee, "[t]he success of the Guard and Reserve participation in DESERT STORM cannot be overemphasized. Their participation has been a significant factor in affording us flexibility and balance, and [it] reinforces... the Total Force concept."

The purpose of this section is to provide the AC SJAs with information on the following topics:

1. Nature, mission, and capabilities of ARNG and Army Reserve legal units and individuals,
2. Examples of prior employment of such RC legal personnel,
3. Procedures that may be used by AC SJAs to procure such RC legal personnel, and
4. The RC Premobilization Legal Preparation Program (PLP)

B. Nature, Mission, Capabilities, and Procurement of ARNG Legal Personnel

ARNG legal personnel support both militia missions and preparation for mobilization in federal service missions. Approximately 50% of ARNG judge advocates are embedded in SJA sections in combat and support units. The TOE structure is the same in the National Guard units as in the AC. The remaining 50% of ARNG judge advocates are usually assigned to the state (STARC) or territory (TARC) headquarters and from there support both the militia and federal missions. Each of the fifty states, and Guam, Puerto Rico, Virgin Islands, and the District of Columbia have their own distinct independently commanded National Guards. Therefore, the roles and missions of the judge advocates assigned to the state and territory area commands vary.

Fifty-three of the fifty-four National Guards each have a single full time AGR judge advocate and most a senior traditional State Staff Judge Advocate. Their primary mission is to advise

their respective Adjutant Generals. The AGR Judge Advocate or the State SJA are the POC for purposes of coordinating training and preparations for natural disasters, civil disturbance, civilian assistance, and counterdrug missions within their jurisdictions. They are also the POC for the post federal mobilization mission of assistance to all military family members within their jurisdictions beyond the support capability of Class 1 AC installations.

The SJA of ARNG combat or support units is the POC for training for his or her SJA office for the federal mobilization mission. Depending on other demands, the SJAs of these National Guard units are generally interested in one or two of their legal personnel working in an AC SJA office during a 15 day Annual Training period. ARNG judge advocates possess a broad range of experience and expertise. Many ARNG judge advocates have prior AC judge advocate experience. Others have extensive civilian legal practices focusing on such areas as government regulation, labor law, environment, contracts, criminal law, and family legal practice. All have the experience of providing general legal services to their respective ARNG units. ARNG judge advocates because of their local community contacts are effective liaisons with local and state governments. ARNG SJAs recognize the necessity to develop AC training opportunities for ARNG enlisted personnel. Candid SJA to SJA contact is recommended in order to insure that the partnership established meets the expectations of both the AC and ARNG SJAs.

The POC for the Mil to Mil program and solicitations for ARNG judge advocate individual volunteers is the Office of the Judge Advocate, National Guard Bureau. The Key Personnel Upgrade Program (KPUP) permits individual volunteers to deploy for several weeks or longer to an AC unit. AC SJAs with specific training opportunities can request a KPUP tour through AC channels to the National Guard Bureau.

The ARNG POCs telephone numbers and addresses are listed in the JAGC Personnel and Activity Directory beginning at page 209.

C. Nature, Mission, and Capabilities of Army Reserve Legal Personnel. See Chs. 2-3, FM 27-100, Legal Operations, 3 Sep 1991.

1. Judge Advocate Service Organizations (JAGSOs). General. The JAGSOs are cellular TOE teams designed to provide legal services to nondivisional troops not otherwise provided sufficient organic legal support. JAGSOs also provide CONUS sustaining base support for mobilization, mobilization sustainment, and casualty assistance. Eight types of JAGSO teams exist.

2. **Mission.** JAGSOs provide combat, combat support, and combat service support commanders and soldiers professional and responsive legal services in all functional areas to ensure mission accomplishment. In an area of operations, all JAGSO teams (except defense and military judge teams) function under and are responsible to the SJA and commander of the unit to which they are assigned. Such teams may be used to augment the existing SJA section or they may work as a remote detachment.

3. **Assignment.** The Army assigns JAGSO teams to theater armies (TAs), theater army area commands (TAACOMs), corps, corps support commands (COSCOMs), corps artillery, and other organizations as required. TJAG is responsible for the technical supervision, training, and assignment of JAGSO personnel.

4. **Legal Support Organizations (LSOs)** (Formerly Military Law Centers). Among the eight teams, the LSO's size, structure and functions resemble those of a heavy division SJA section (one colonel, six lieutenant colonels, four majors, four captains, one warrant officer, five legal NCOs, four legal specialists, and two court reporters). There are now 20 LSOs, each commanded by an O6 RC JA. The Army expects to reduce the number of LSOs to 15 and, in addition, to designate the 15 as follows:

- a. Seven of the 15 are allocated one to each of three corps, two theater armies, and two TACOMs. (These are the headquarters at echelons above division programmed to fight in two major regional contingencies.)
- b. The remaining eight function as Mobilization Support Organizations (MSOs). MSO assignments are made by HQ, FORSCOM, on the basis of recommendations by HQ, USARCOM.

5. **Other Types of JAGSOs.** In addition to the LSO, seven other types of JAGSOs exist as listed below:

- a. **The International/Operational Law Team.** This JAGSO team advises on the application of international and operational law to military operations. In particular, the team is trained to investigate and prepare reports on alleged violations of the law of war by enemy forces (one, major, one captain, one legal NCO).
- b. **The Court-Martial Trial Team.** This JAGSO team advises on matters related to the administration of military justice, including the disposition of alleged violations of the UCMJ. In particular, the team is trained to perform trial counsel duties at all levels of courts-martial and to act as recorders before

administrative boards (one major, three captains, two court reporters, two legal NCOs).

- c. The Court-Martial Defense Team. Members of this JAGSO team performs all defense counsel duties in courts-martial and represents soldiers before administrative boards and other proceedings. Team members may also act as "consulting counsel" as required by law or regulation (one major, three captains, one legal NCO).
- d. The Legal Assistance/Claims Team. This JAGSO team receives, investigates, and adjudicates claims by and against the United States arising from military activities. In addition, members of the team provide legal assistance services (one major, two captains, one legal NCO, two legal specialists).
- e. The Administrative/Contract Law Team. In addition to performing all administrative law functions, this JAGSO team provides advice and assistance on all aspects of the acquisition process -- including combat contracting (one major, two captains, one legal NCO, one legal specialist).
- f. Two Military Judge Teams. Judges from the regular military judge team preside at general and special courts-martial; they also perform magistrate and other judicial duties. Senior Military Judge Teams perform the same functions as the regular team but also provide technical supervision to other military judges (one military judge, one legal NCO).

D. Employment of RC Legal Units and Personnel

1. General. RC legal personnel are capable of providing legal support to AC units in many diverse ways. Here are some actual examples of such RC support.

- a. Mobilization Legal Assistance. In the course of Operation DESERT STORM, AC JAs at Fort Sill, OK, recognized that they would not be able to provide all of the mobilization legal assistance (wills, powers of attorney, etc.,) needed by AC and RC personnel deploying from Fort Sill. Accordingly, the 218th JAGSO, headquartered in Bismarck, ND, was requested to help provide such assistance at Fort Sill. Similar support was provided at other installations around the country by other JAGSO units.

- b. **Procurement Law.** Soon after U.S. Forces began arriving in SWA for Operation DESERT STORM, AC JAs recognized the need for additional legal support to help with local procurement activities. Accordingly, the 207th JAGSO, headquartered near Washington, DC, was mobilized and deployed to SWA where they provided the majority of acquisition law services to U.S. Forces. In fact, the ARCENT and 22d SUPCOM (TAA) SJA offices were principally staffed with RC JAs.

2. Other examples include activation of teams to:

- a. **Augment the Military Police/Enemy Prisoner of War Structure.** Presently, the reserve EPW structure has an insufficient number of JAs to support the national and theater prisoner of war information centers and fourteen EPW battalions in the reserve structure.
- b. **Augment STARC and TARC Headquarters.** With usually one full time AGR and one or two other NG JAs, the STARCs and TARCs are not staffed to support military family members within their jurisdiction. Although these HQs have the mission, they lack the resources to staff casualty assistance centers, to assist family support groups, and to provide individual legal assistance to family members as well as function as the command judge advocate.
- c. **Augment garrison SJA offices to replace deploying JAs.**
- d. **Augment theater army SJA offices to perform foreign claims commission function or war crimes investigation.**
- e. **Augment SJA offices to assist with civil affairs function and staffing of civilian military operation centers.**

E. Procurement of RC Legal Units and Personnel

1. Corps/Division SJAs may be able to secure RC legal support depending upon several factors. First, the time factors: how quickly support is needed and for period. Second, the particular legal expertise required. Third, the number and grade of the people needed. And, fourth, the availability of funds.

2. Funding may or may not be a problem. For example, when an entire RC unit and any individual member of the ARNG or Army Reserve performs annual training (AT), funds for such AT are usually set aside long before the two-week training period commences. Accordingly, to the extent that AC SJAs are able to secure legal support ARNG/Army Reserve units or individuals during their AT periods, funds for such training normally need not be provided by the AC unit seeking RC legal support. Furthermore, with sufficient advance notice RC units and individuals may be able to reschedule AT to fit the needs of the AC unit. During Operation Desert Storm, preparation of many AC and RC soldiers for overseas movement could not have been accomplished without the help of RC JAGSOs that rescheduled and performed their AT at installations where such soldiers were processed.

3. While there are many possibilities, two scenarios will be discussed: first, a Corps SJA needs two company grade RC judge advocates for a single short period -- say 60 days of temporary active duty and, second, a Division SJA needs a dozen field and company grade JAs plus the enlisted members for two weeks to each year during an exercise to backfill most of the military staff of the Division SJA office.

a. Two RC JAs for Two Months. First note that absent mobilization by the President, it is exceedingly difficult to get individual RC soldiers -- including JAs -- involuntarily activated for the performance of such duties. Even during DESERT STORM, individual RC JAs were not involuntarily activated under the 200K limitations. However, volunteers can be requested to fill this requirement for RC company grade JAs. Since the period of active duty is more than two weeks, such volunteers would not be able to use their AT period (and related funds) to provide such service. Accordingly, the first hurdle here may well be funding since the Corps may not have budgeted funds for such RC temporary active duty. Assuming the Corps supports such a request for RC personnel but does not have the funds, the Corps SJA might informally contact PPT&O, the FORSCOM SJA Office (and perhaps the USARCOM SJA Office) to explain the need for these RC JAs, to determine whether such temporary active duty could be funded, and to seek assistance in locating suitable RC volunteers.

b. Dozen RC JAs for Two Weeks Annually. As the required period of active duty equals two weeks each year, any RC units or individuals who performed such duty for the Division SJA could do so during their regular AT periods without expending Division funds. To acquire such a group of JAs, the Division SJA has some less

formal and more formal options available. On an informal basis, the Division SJA could contact the Commanders of the two or three nearest military law centers (MLCs) to make known the Division's need for legal support during the specified two-week period. For example, from time to time XVIII Airborne Corps SJA contacts contact such Commanders to invite them to consider AT at Fort Bragg, NC. Given the variety of legal expertise and experience within each MLC and its subordinate units, the MLC Commander might even be able to tailor a special AT group to fit the particular needs of the Division SJA. Once the Division SJA identifies a particular MLC with the appropriate personnel to support the Division on a long-term basis, consideration might then be given to a formal affiliation between the RC unit and the AC Division through the Army's CAPSTONE program. See AR 11-30.

Note: During DESERT STORM there were a number of requests for the activation of entire JAGSO units. Determining which JAGSO's to activate in response to these requests was a joint function of the FORSCOM SJA and PPT&O.

APPENDIX C

LEGAL ASSISTANCE IN THE RESERVES

(excerpt from: Arquilla, "The New Army Legal Assistance Regulation," The Army Lawyer at 3 (May 1993)).

A. General

AR 27-3 addresses the following types of RC judge advocates:

(1) Those assigned to RC units, which include the following:

(a) All ARNG judge advocates.

(b) All USAR judge advocates who are assigned to units (i.e., TPUs).

(2) USAR judge advocates in the Individual Ready Reserve (IRR) (i.e., those not assigned to RC units), including individual mobilization augmentees (IMAs).¹

B. Background

Under previous legal assistance regulations, providing legal assistance services in the Reserves was limited strictly.² Personnel assigned to the RC generally were not authorized to receive legal assistance unless they were serving on military duty. Even then, they were not extended the same legal assistance services afforded AC personnel unless they were serving on active duty for thirty days or more.³ RC personnel training outside the United States, regardless of their periods of duty, could receive legal assistance on "simple wills and powers of attorney and problems relating to preparing for active duty,"⁴ while those serving in the United States for twenty-nine days or less, and their family members, were limited to legal assistance "for emergencies only."⁵

RC personnel and their family members were authorized to receive PLP from RC judge advocates "at any time."⁶ Strangely PLP was not defined as legal assistance but, nevertheless, was described to include legal counseling to soldiers and their families on their personal legal affairs, and legal services such as wills and powers of attorneys.

RC judge advocates could provide legal assistance only when they were serving on active duty.⁶ This restriction generally meant that RC judge advocates could provide legal assistance only during weekend drill periods and during their two weeks of Annual Training (AT).

This restriction applied to legal assistance provided by RC judge advocates to AC soldiers and other eligible clients,⁹ but not to PLP counseling and services provided to RC soldiers and their families.¹⁰

On the other hand, RC judge advocates who were designated by TJAG as special legal assistance attorneys (SLAAs) could provide legal assistance any time, regardless of whether they were on or off duty, or assigned to a RC unit or not.¹¹ This distinction had no basis in law¹² and made very little sense. Obviously less reason exists to control the off-duty legal assistance activities of judge advocates assigned to RC units than those not assigned to any unit at all. Nevertheless, previous legal assistance regulations went in just the opposite direction, effectively prohibiting off-duty legal assistance activities by those assigned to units unless they were designated as SLAAs.¹³

The procedure for authorizing RC judge advocates to provide legal assistance for retirement points was designed primarily for USAR judge advocates in the USAR Individual Ready Reserve (IRR)--that is, those not assigned to TPUs. Prior Army legal assistance regulations, however, never limited SLAA designation to judge advocates assigned to the IRR. Judge advocates assigned to the ARNG or to USAR TPUs generally earn the maximum number of retirement points each year that they are authorized to credit toward retirement through participation in weekend drills and AT. They generally do not need to perform legal assistance work to earn retirement points. Only judge advocates in the USAR IRR, including IMAs, need to do legal assistance or other work to earn enough points for a "good retirement year."¹⁴

C. The War with Iraq--Mobilization and Demobilization

Not surprisingly, during and following the war with Iraq, many RC judge advocates expressed concerns over the extent to which, if at all, the United States Government would stand behind them if malpractice claims arose out of the legal assistance services they were providing to AC and RC personnel and their families incident to mobilization and demobilization. Their concerns were legitimate because the legal assistance regulation then in effect prohibited RC judge advocates, unless they were on duty, from providing legal assistance to anyone.¹⁵

Nevertheless, much of the assistance that occurred during peacetime was being provided by RC judge advocates during weekend drills, as well as during their "off duty" hours during the work week--often at their civilian law firms.¹⁶ This problem became even more acute for RC judge advocates after large numbers of RC soldiers were called to active duty. The active duty status of these soldiers meant that all of the family members that they left behind also became entitled to legal assistance. Even some of the on-site assistance that was provided by RC judge advocates was without benefit of military orders which meant that they were just "volunteering their time" to meet the legal assistance work load.¹⁷

The method chosen to address the concerns of RC judge advocates about liability protection was to encourage all USAR and ARNG judge advocates to apply for designation as SLAAs.¹⁸ Under the legal assistance regulation then in effect, SLAAs were not limited to providing legal assistance services during only weekend drills.¹⁹ This was the easiest way to afford maximum liability protection to RC judge advocates. Any other method would have required a major revision of the legal assistance regulation then in effect. This measure promptly met the liability concerns of RC judge advocates. It also laid the foundation for the new approach taken in AR 27-3 concerning legal assistance in the Reserves.

D. New Provisions

1. RC Legal Assistance Providers.--All USAR judge advocates assigned to TPUs and all ARNG judge advocates now may provide legal assistance unless inconsistent with superior orders or other duties or responsibilities, even while in civilian status, when acting pursuant to AR 27-3.²⁰ This is one of the most significant changes made in AR 27-3 in response to the many legal assistance "lessons learned" from Desert Storm.

In addition, all RC judge advocates, regardless of assignment, may continue to provide legal assistance while not on active duty if authorized by the Chief, Legal Assistance Division, OTJAG.²¹ All ARNG and USAR judge advocates, including IMAs and others in the IRR, may--and are encouraged to--apply for authorization, even if not seeking to earn retirement points.²² Any RC judge advocate who wants to earn retirement points for legal assistance,²³ however, must submit an application to the Chief, Legal Assistance Division, OTJAG, and, as part of that application, must agree to be listed in the JAGC Reserve Officer Legal Assistance Directory (Directory).²⁴ This requirement is based on the so-called "one Army" concept and on the needs of the Army Legal Assistance Program. If RC judge advocates want to earn retirement points for legal assistance they must agree to assist their fellow AC and RC judge advocates on legal assistance matters within their areas of specialty. One of the primary needs of the legal assistance program, given the diversity of state domiciliaries among its clients, is to identify and fully employ RC judge advocates across the United States who can assist on legal assistance issues, cases, and publications within their areas of expertise. This need now is met by AR 27-3 and the procedures in place, together with the success that has been achieved in expanding size and use of the Directory.

Reserve component judge advocates listed in the Directory agree to assist legal assistance attorneys on "legal questions and issues" in their areas of expertise.²⁵ They may, but are not required to, accept a legal assistance client referral.²⁶ They may, if they desire, volunteer to assist TJAGSA legal assistance instructors by updating the state-law-specific sections of TJAGSA legal assistance publications and LAAWS-LA software program materials.²⁷

An application form, DA Form 7206-R (Application to Provide Legal Assistance Work for Retirement Points and to be Listed in the JAGC Reserve Officer Legal Assistance Directory) now is included in AR 27-3, together with directions on its submission and completion.²⁸ The records of officers listed in the Directory, which include all attorneys authorized to provide legal assistance for retirement points throughout the Army, are maintained in the Office of the Chief, Legal Assistance Division, OTJAG. Each record includes the completed DA Form 7206-R; a copy of the letter authorizing the RC judge advocate to provide legal assistance for a period of three years; and all copies of correspondence to, from, and on behalf of, the RC judge advocate concerned.

ARNG and USAR TPU judge advocates may obtain retirement points by submitting their completed copies of DA Form 1380 (Record of Individual Performance of Reserve Duty Training) through their units for all legal assistance work performed except legal research on a legal assistance subject on behalf of a TJAGSA instructor. All those performing legal research on a legal assistance subject, and all IMAs and other judge advocates in the IRR performing any type of legal assistance work for retirement points, submit their completed copies of DA Form 1380 through Legal Assistance Division (Directory), The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310-2200.²⁹

2. RC Legal Assistance Clients.--RC members and their family members are authorized to receive legal assistance under certain circumstances.³⁰ RC members serving on active duty for more than twenty-nine days, and their family members, may receive legal assistance on equal footing with AC service members and their families. Legal assistance for RC members serving on active duty for twenty-nine days or less, and their family members, continues to be limited, as under the prior legal assistance regulation, because of limited resources. AC legal offices often cannot meet the potential demand for legal services by RC personnel, which surges at certain installations when RC units perform their two weeks of AT. AC supervising attorneys, however, may now limit legal assistance to emergencies or to certain categories of cases for RC personnel on active duty for twenty-nine days or less, based on the availability of resources³¹ or expertise, regardless of where RC soldiers are training.

For the first time, RC members are authorized by military regulation to obtain legal assistance services from RC judge advocates on a permanent basis. The language used in AR 27-3 to accomplish this is similar to that used to authorize legal assistance to RC members following the war with Iraq.³² AR 27-3 authorizes RC judge advocates to provide legal assistance to RC members "on personal legal problems and needs that may adversely affect readiness or that have arisen from or been aggravated by military service, including military administrative matters."³³ The interpretation of this provision, and

the extent to which legal assistance will be provided, if at all, is left to the discretion of RC supervising attorneys, who "may limit legal assistance to emergencies or to certain types of cases based on availability of expertise or resources."³⁴

In addition, AR 27-3 authorizes both RC and AC judge advocates to provide PLP to RC soldiers and their family members.³⁵ AR 27-3 defines PLP as "[l]egal assistance counseling and the preparation of wills and powers of attorney, for ARNG and USAR soldiers and their family members in anticipation of the always present possibility of mobilization."³⁶

The expansion of legal assistance in the Reserves is based on meeting the same military needs for which legal assistance is provided in AC units.³⁷ Another reason for this expansion is to provide legal assistance training and experience to all RC judge advocates, any of whom--as the last war demonstrated--may be called upon on very short notice to provide legal assistance to soldiers and their families.

1. The IRR has no counterpart in the ARNG. With few exceptions, all ARNG judge advocates are assigned to ARNG units. All IMAs in the USAR IRR are assigned or designated to the AC, not to RC units.
2. See Legal Assistance Item, Reserve Components and Legal Assistance, ARMY LAW., Apr. 1989, at 62. This note discusses the provisions of AR 27-3 (1989), supra note 3, and various TJAG policy letters that generally prohibited RC judge advocates from providing legal assistance to RC soldiers and their families.
3. AR 27-3 (1989), supra note 3, para. 2-4a(1), (2).
4. Id. para. 2-4a(3)(a).
5. Id. para. 2-4a(3)(b) and (4). During the staffing of the new AR 27-3, reviewers were unable to justify affording more legal assistance services to RC personnel stationed outside the United States than to stateside Reserve personnel. The burden on legal assistance offices overseas caused by RC units training outside the United States is fairly equivalent to the burden on legal assistance offices stateside caused by RC units training in the United States. The new AR 27-3 corrects this disparity. See AR 27-3, supra note 1, para. 2-5a(2)(b).
6. AR 27-3 (1989), supra note 3, para. 2-4a(3).
7. Id. para. 4-6.
8. Id. para. 2-2a(2).
9. Many USAR TPU judge advocates provide legal assistance in SJA offices during weekend drills on Army installations across the United States. This means that at many Army installations, legal assistance attorneys are available to assist eligible clients seven days a week. This legal assistance usually is provided as a result of appointments made by the AC SJA staff during the week. The old AR 27-3 did not comport with the reality of legal assistance practice in the Reserves even during peace time. Cf. id. para. 2-2a. The problems of clients, and the advice and assistance they require, do not always fit neatly into weekend drill periods. RC judge advocates who support AC legal offices during weekend drills frequently must provide follow-up advice and assistance during the week--often from their civilian law firms--such as making or answering follow-up telephone calls and investigating the facts or researching the law. The need to provide follow-up advice and assistance now is recognized in AR 27-3. AR 27-3, supra note 1, paras. 2-2a, 2-3b.
10. See Policy Letter 88-1, Office of The Judge Advocate General, U.S. Army, subject: Reserve Component Premobilization Legal Preparation (4 Apr. 1988), reprinted in ARMY LAW., May 1988, at 3-

4. Compare AR 27-3 (1989), supra note 3, para. 2-2a(2) with id. para. 2-4a(3).

11. AR 27-3 (1989), supra note 3, para. 2-2a(3). Since 1961, the Army has authorized RC judge advocates to provide legal assistance for retirement points when not serving on active duty. See AR 608-50 (1961), supra note 151, para. 4b; DEP'T OF ARMY, REG. 608-50, PERSONAL AFFAIRS: LEGAL ASSISTANCE, para. 4b (28 Apr. 1965) [hereinafter AR 608-50 (1965)]; AR 608-50 (1974), supra note 24, para. 5b(2); DEP'T OF ARMY, REG. 27-3, LEGAL SERVICES: LEGAL ASSISTANCE, para. 1-6b(c) (1 Apr. 1984); AR 27-3 (1989), supra note 3, para. 2-2a(3). Since 1974, TJAG has delegated, by regulation, his authority to designate SLAAs to the Commandant, TJAGSA. See AR 608-50 (1974), supra note 27, para. 5b(2). An earlier delegation may have existed outside of the regulation. The award of retirement points in the past was processed through the Judge Advocate Guard and Reserve Affairs Department, TJAGSA. AR 608-50 (1965), supra, para. 4b, provided that SLAAs were designated "for the primary purpose of rendering legal assistance to members of the Active Army, and their dependents, assigned to units not having reasonable access to a legal assistance office of the Army, Navy, Air Force, or Coast Guard." Nevertheless, nothing indicates that geography ever played a part in determining which Reserve judge advocates were designated SLAAs. SLAAs provided all the legal assistance services that were provided by AC judge advocates. In 1974, SLAAs and other Army attorneys also were authorized to appear in court on behalf of "soldiers and dependents unable to pay legal fees for the services involved without substantial hardship to themselves or families." See AR 608-50 (1974), supra note 27, paras. 4a(3), 5b(2). In 1984, in-court representation was limited to service members--and to family members in cases not adverse to the service member--if TJAG and the nearest SJA approved. If the court was within 40 miles of the post, however, the SLAA had to be accompanied by an AC judge advocate as associate counsel. See id. paras. 1-6b(c), 2-5b(2)(b), 2-6b. The old AR 27-3 generally continued these procedures, but dropped the mileage requirement. See AR 27-3 (1989), supra note 3, para. 2-9. It continued the requirement for SJA approval of in-court representation in any case, including SJA approval for an SLAA to act alone without an AC judge advocate as associate counsel because one is not available. It also required TJAG approval of any in-court representation program initiated by an SJA, including one in which a SLAA participated. See id. para. 2-10b. The SLAA program continued basically unchanged until Operation Desert Storm.

12. As to federal liability protection, the old AR 27-3 was more restrictive of "off-duty" legal assistance activities of RC judge advocates than 10 U.S.C. § 1054, which provides that the United States Attorney General will defend legal malpractice suits arising from "legal services" provided by

an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment.

ARNG judge advocates, regardless of whether they are in a title 10 or title 32 status, are covered under this statute for legal malpractice claims arising from the "in scope" delivery of legal services. This coverage includes Department of Justice representation and removal to federal district court. See Policy Letter 89-2, Office of The Judge Advocate General, U.S. Army, subject: Malpractice Protection for National Guard Personnel Providing Legal Services (17 Feb. 1989), reprinted in ARMY LAW., Apr. 1989 at 4. The "in scope" delivery of legal services includes the performance of duties authorized by regulation such as the performance of legal assistance work pursuant to an authorization from the Chief, Legal Assistance Division, OTJAG. See Message (5 Mar. 1991), supra note 50, para. 5; cf. 32 U.S.C. § 502(f) (1988).

13. Compare, e.g., AR 27-3 (1989), supra note 3, para. 2-2a(2) with id. para. 2-2a(3). SLAAs provided legal assistance--and presumably, in some instances, PLP--for retirement points, but were not required to request retirement points for the legal assistance they provided.

14. To have a "good retirement year," an RC soldier seeks to earn the maximum of 50 points each year that he or she is allowed to accumulate and have credited toward his or her military retirement. Each RC soldier earns 15 points just for being in the Reserves. Therefore, they need to accumulate only an additional 35 points each year. Those assigned to the ARNG and USAR TPUs generally earn their maximum allowable 50 points each year through participation in weekend drills and AT. These judge advocates, when they perform "off-duty" legal assistance work, generally do so without applying for the retirement points they earn. Judge advocates in the IRR who are IMAs generally earn 12 of the 35 additional points they need each year by performing two weeks of AT with AC units. Judge advocates in the IRR who are not IMAs must earn their 35 additional retirement points--and IMAs their 23 additional points--through correspondence courses, paid active-duty training, and nonpaid training such as performing legal assistance or other legal work for retirement points.

15. AR 27-3 (1989), supra note 3, para. 2-2a(2). Another liability concern raised by RC judge advocates was the requirement that they be designated legal assistance attorneys before they actually provide legal assistance. See id. para. 2-2a(2)(c). This requirement, although ministerial in nature, often was overlooked both in RC and AC legal offices.

16. Clearly, they would not be covered on malpractice claims from military clients under most commercial insurance policies covering clients they served in their private legal practices.

17. See DSAT Report, supra note 5, issue 359.

18. Message, Headquarters, Dep't of Army, DAJA-ZA, subject: Designation of Special Legal Assistance Attorneys, para. 5C (191530Z Apr. 91).

19. AR 27-3 (1989), supra note 3, para. 2-2a(3).

20. Id. para. 2-2a(3), (4).

21. Id. para. 2-2a(5). The new AR 27-3 eliminates the term "SLAA." Nevertheless, the concept of authorizing RC judge advocates to perform legal assistance work for retirement points is incorporated fully in the new regulation. See 27-3, supra note 1, para. 2-2b. The authority for designating SLAAs was decentralized during Desert Storm to allow them to be designated not only by the Commandant, TJAGSA, but also by every SJA of a Continental United States Army and by the commander of each installation having a casualty assistance command. See Message (5 Mar. 1991), supra note 50, para. 5. This provided much-needed flexibility to the SLAA designation process and facilitated the recruitment of additional RC judge advocates to assist with legal problems arising from casualty assistance and demobilization. This effort met with mixed results. One problem was that no single person knew the identity of all individuals who had been designated as SLAAs. If only from a liability concern, this had to be corrected. The liability concerns covered not only the type of guidance being given to SLAAs, but also the military status of those being appointed. For example, despite the clear guidance in the old AR 27-3 and the messages that were dispatched, one SJA appointed several retired judge advocates as SLAAs, and another SJA made designations after the authority was terminated. See Message, Headquarters, Dep't of Army, DAJA-LA, subject: New Designation Procedures for Special Legal Assistance Attorneys (SLAA'S), para. 5 (101200Z Feb 1992) [hereinafter Message (10 Feb. 1992)] (terminating, effective 31 May 1992, all SLAA appointments made by anyone other than the Chief, Legal Assistance Division, OTJAG). Since 15 February 1992, only the Chief, Legal Assistance Division, OTJAG, has had the authority to authorize RC judge advocates to perform legal assistance work for retirement points. This consolidation of authority at HQDA identified--and as appropriate, redesignated--all SLAAs; developed up-to-date and complete records on all SLAAs; facilitated direct communication between the Chief, Legal Assistance Division, OTJAG, and all SLAAs; standardized procedures for supervising all USAR IRR SLAAs and evaluating their retirement points; and, most importantly, compiled a comprehensive directory of all RC judge advocates who were willing and able to provide legal assistance to eligible clients, to assist fellow

judge advocates on legal assistance cases and issues, and to perform legal research on TJAGSA legal assistance publications and the contents of LAAWS-LA computer programs. See Message (10 Feb. 1992), supra, paras. 5, 6.

22. AR 27-3, supra note 1, para. 2-2a.

23. AR 27-3 does not govern the award of retirement points for matters unrelated to legal assistance, such as administrative law work. Those who desire to perform legal work unrelated to legal assistance for retirement points should obtain guidance from the judge advocate for whom the legal work will be performed.

24. Id. para. 2-2b(2).

25. Id. paras. 2-2b(1)(b), 4-5d.

26. Id. paras. 2-2b(1)(a), 4-5d.

27. Id. paras. 2-2b(1)(c), 4-5d. The last SLAA directory published by TJAGSA contained the names of 188 RC judge advocates. See THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 267, LEGAL ASSISTANCE GUIDE: OFFICE DIRECTORY ch. 3 (Sept. 1990). The first JAGC Reserve Officer Legal Assistance Directory, published by the Chief, Legal Assistance Division, OTJAG, on 19 August 1991, contained the names of 426 judge advocates. For the first time, the Directory included each listed judge advocate's geographical and specialty areas of practice. The current Directory (1992-1993), which also is included in the LAAWS-LA software program, contains the names of 562 judge advocates: 7 in the AGR, 115 in the ARNG, and 440 in the USAR. Within the USAR, 271 are assigned to TPUs, 151 are IMAs, and 18 are non-IMAs within the IRR--63 RC judge advocates also have volunteered to update TJAGSA legal assistance publications.

28. AR 27-3, supra note 1, para. 2-2b(2).

29. Id. para. 2-2b(3).

30. See supra text accompanying notes 104-107.

31. AR 27-3, supra note 1, para. 2-5a(2)(b); see note 159 and accompanying text.

32. Message (5 Mar. 1991), supra note 50, paras. 2, 3 (extending legal assistance to each RC member for a period of one year following his or her release from active duty, and for any legal problem that arose from or was aggravated by Desert Storm operations).

33. AR 27-3, supra note 1, para. 2-5a(3). Although AR 27-3 (1989), supra note 3, did not authorize legal assistance on military administrative matters--such as helping a soldier respond to an adverse personnel action--it did not actually prohibit it. The omission probably was an oversight.

34. AR 27-3, supra note 1, para. 2-5a(3)(b).

35. Id. para. 2-5a(3)(a). PLP continues to be the only type of legal assistance authorized for family members of RC service members not on active duty. The new AR 27-3, however, authorizes both AC and RC judge advocates to provide PLP. During the staffing of the new AR 27-3 reviewers pointed out that AC units occasionally assist RC units with PLP.

36. AR 27-3, supra note 1, glossary.

37. See supra note 49 and accompanying text.

APPENDIX D

ARMY NATIONAL GUARD (ARNG) PREMOBILIZATION LEGAL PREPARATION PROGRAM (PLPP)

[The following was taken from Udland, LTC Robert J., DSJA, NDARNG, "NGB, FORSCOM, and Other Requirements for the ARNG Premobilization Legal Preparation Program (PLPP)," 5th JA STARC Mobilization and Training Workshop (14 Jul 93)]

REFERENCES:

- * AR 27-3, The Army Legal Assistance Program (30 September 1992)
- * AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing) (26 February 1993)
- * DA PAM 360-525, Family Assistance Handbook for Mobilization (15 January 1984)
- * FORSCOM/ARNG Regulation 350-2, Reserve Component Training (15 May 1989)
- * FORSCOM Regulation 500-3-1, FORSCOM Mobilization and Deployment Planning System (FORMDEPS), Vol 1, FORSCOM Mobilization Plan (FMP) (1 August 1991)
- * FORSCOM Regulation 500-3-3, FORSCOM Mobilization and Deployment Planning System (FORMDEPS), VOL III, Reserve Component Unit Commander's Handbook (RCUCH) (1 March 1993)
- * FORSCOM Regulation 500-3-5, FORSCOM Mobilization and Deployment Planning System (FORMDEPS), Vol V, STARC/MUSARC Commander's Handbook (1 September 1991)

During the 5 phases of mobilization processing (see AR 600-8-101, chapter 6 and FORSCOM Regulation 500-3-3), the ARNG is primarily concerned with the first 3 phases, that is: planning, alert, and home station phases. Lawyers usually get involved in Phase I (Planning) and Phase III (Home Station).

The primary vehicle outlining the Premobilization Legal Counseling Program (PLCP) and Premobilization Legal Service (PLS) is the Reserve Component Unit Commander's Handbook (RCUCH), Vol III, FORMDEPS, FORSCOM Regulation 500-3-3, 1 March 1993.

PLCP will include:

- Organization of Legal Affairs
- Estate Planning
- Wills
- Guardianship of Minor Children
- Powers of Attorney
- Soldiers' and Sailors' Civil Relief Act
- Veterans Reemployment Rights

PLS is the provision of individual legal advice and preparation of legal documents such as wills and powers of attorney.

- PLS is provided to RC soldiers and their families by RC JAs subject to available resources.
- PLS will not detract from supported unit mission essential task list (METL) training requirements.
- PLS is primarily a RC initiative supported by RC JAs and RC resources
- Commanders will ensure that work processing center support is available for preparation of legal documents.

This is a proactive program. Commanders must ensure that PLCP and PLS are scheduled and accomplished. Soldiers must be made aware that failure to have proper legal documents at the implementation of mobilization will not stop his or her deployment.

At mobilization, family members will be entitled to seek legal advice and assistance from any military installation where there is a Legal Assistance Office. (DA PAM 360-525, Family Assistance Handbook, para. 6-5)

UNIT MOVEMENT SOLDIER READINESS CHECKS
(Table 5-1, AR 600-8-101)

STEPS	WORK CENTER	REQUIRED ACTION
1	BN1	Issue soldier DA Form 5123-1-R
2	SDR	Process at personnel station
3	SDR	Process at medical station
4	SDR	Process at dental station
5	SDR	Process at finance station
6	SDR	Process at legal station
7	SDR	Process at security clearance station
8	SDR	Process at Bn S3
9	SDR	Return completed DD Form 5123-1-R to Bn S1
10	BN1	Verify completeness of forms
11	BN1	Inform unit commander and Bn S3 on unit processing status and specific deficiencies by soldier
12	BN1	File form for future reference

MOBILIZATION PROCESSING AT THE LEGAL STATION
(Table 6-17, AR 600-8-101)

Step	Work Center	Required Action
1	IOPR	Verify Geneva Convention Briefing
2	IOPR	Determine soldier's requirement for a Will
3	IOPR	Provide powers of attorney services
4	IOPR	Verify pending military charges
5	IOPR	Verify pending civilian charges
6	IOPR	Process application for Soldiers' and Sailors' Civil Relief Act if required

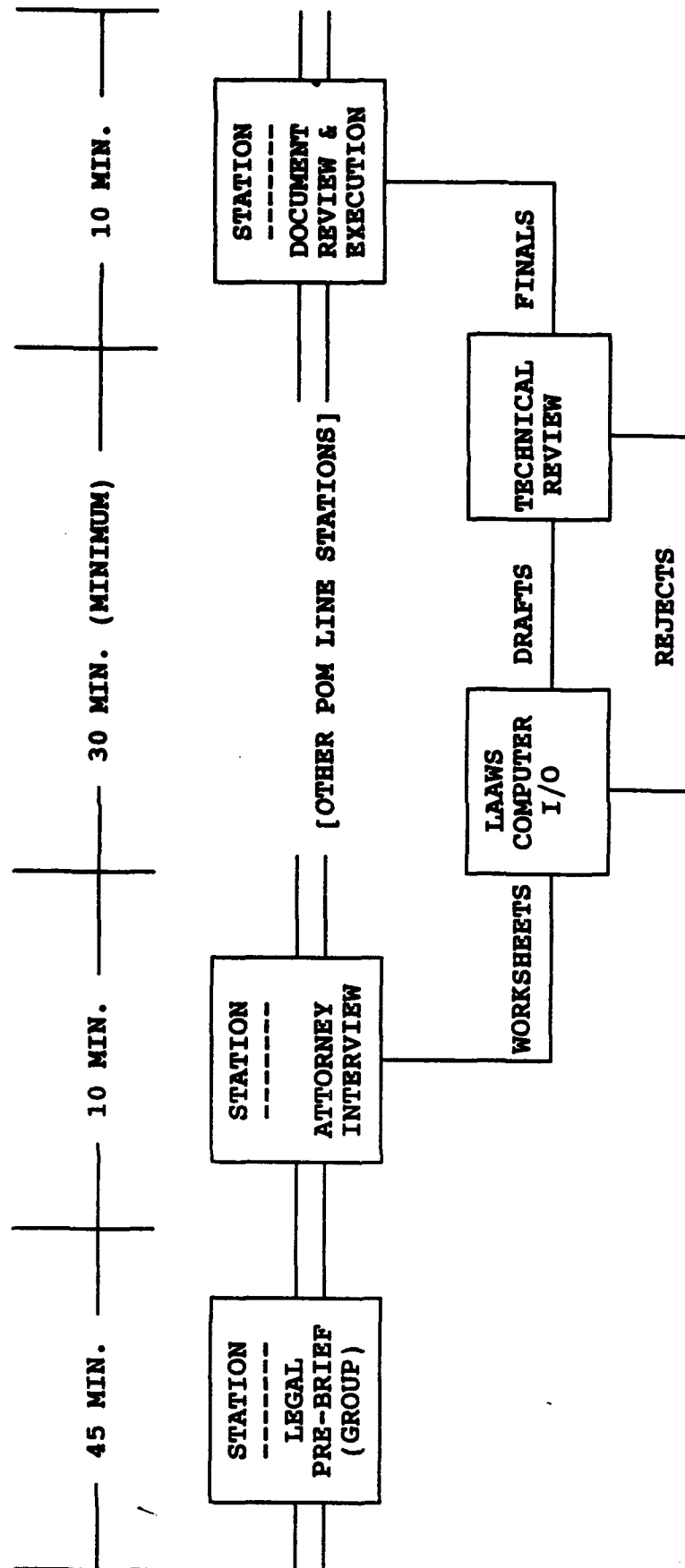
LEGAL CHECKLIST

							I have a WILL located at: _____ _____
							I do not have a WILL and I do not desire one
							I have _____ unexecuted POWER of ATTORNEY located in my Personal Readiness Folder.
							I do not have a POWER OF ATTORNEY and I do not desire one.
							I have a POWER OF ATTORNEY located at: _____ _____
							I am a SINGLE PARENT or TWO SOLDIER FAMILY; when I deploy my one child (_____ children) should be sent to live with: _____ address: _____ telephone: (____) _____
							I am a SINGLE PARENT or TWO SOLDIER FAMILY; I have _____ unexecuted POWER OF ATTORNEY, _____ CONSENT for GUARDIANSHIP forms, and/or _____ DD1172 located in my Personal Readiness Folder.

I desire to have any legal documents prepared for me mailed to:

REMARKS:

PROCESSING FOR OVERSEAS MOVEMENT
(LEGAL AFFAIRS PROCESSING)



CHAPTER 2

LEGAL ASSISTANCE SUPPORT DURING DEPLOYMENT

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CHAPTER 2

LEGAL ASSISTANCE SUPPORT DURING DEPLOYMENT

I. REFERENCES.

- A. TJAGSA Publication JA 422, Operational Law Handbook.
- B. AR 27-3, The Army Legal Assistance Program, 30 Sep 1992.
- C. AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing), 26 Feb 1993.
- D. HQDA DAJA-LA 21 May 1993 letter to Commandant, TJAGSA, subject: Implementation of Desert Storm Assessment Team (DSAT) Legal Assistance Recommendations.

II. PREPARATION.

- A. While the term "mobilization" technically refers to the activation of Reserve Component (RC) personnel -- including individuals and units of both the Army National Guard (ARNG) and the Army Reserve (AR), here the term "mobilization" is used more broadly to refer to the preparation of both AC and RC units for deployment overseas or other distant movements.
- B. Timely effective legal support of the mobilization of AC and RC units depends in large part on the following five factors:
 - 1. Familiarity with the general legal support needed during mobilization, so that SJA offices can be organized and functions prioritized to provide such support,
 - 2. Knowledge of the particular requirements in each substantive area of the law in order that all legal personnel can be properly trained and so that proper references and forms will be on hand when needed,
 - 3. Opportunities to participate in Corps/Division exercises to test the deployment plans that have been made and the training provided,
 - 4. Effective utilization of RC legal personnel wherever feasible, and

5. Establishment of good working relationships with key personnel within the Corps and Division

III. IN THE THEATER OF OPERATIONS.

A. Legal Assistance in Theatre. The nature of combat causes Legal Assistance services to become more pronounced and take on significant immediate importance to the client, the command, and the servicing attorney. The provision of legal assistance during combat deployments may occur anywhere within the theater. As soon as possible, do the following:

1. Establish communications links with the Rear,
2. Establish courier/fax service to home station,
3. Build rapport with family support groups,
4. Anticipate problems arising with Casualty Assistance.

B. Casualty Assistance.

1. In addition to legal assistance problems arising at the deployment location, casualties may occur. If so, the SJA elements, both on the exercise and with the rear detachment, must be prepared to assist the next of kin of the soldier, the command, and the Survivor Assistance Officer (SAO). Among the many issues that attend the death of a soldier are reporting the casualty, notifying the next of kin, appointing an SAO and providing legal advice to that officer, disposition of the remains, including a possible autopsy, advising the next of kin concerning their legal rights and benefits, appointing a summary court officer, and conducting a line of duty investigation. Pre-deployment preparation is essential.
2. Familiarity with DA Pam 608-33 (Casualty Assistance Handbook) and AR 600-8-1 (Casualty and Memorial Affairs) is essential.

3. JAs will also become involved in helping next of kin of soldiers missing in action or taken prisoner. DOD 7000.14-R, Part 4 (40304), DOD Pay Entitlements Manual (1 Jan 93), permits the Secretary of the Department concerned to initiate or increase an allotment on behalf of family members if circumstances so warrant.
4. Prior to deployment, soldiers should be encouraged to closely review their DD Form 93 (Record of Emergency Data) which designates beneficiaries of pay and allowances.

IV. GENERAL LEGAL ASSISTANCE CONSIDERATIONS.

- A. In the area of deployment, the Legal Assistance section should:
 1. Respond to inquiries from soldiers in country.
 2. Establish liaison with communications, transportation, and aviation elements for contact and courier service with JAs in the rear echelon (the installation from which the deployment took place).
 3. Establish liaison with US Consulate at deployment location for overseas marriage and adoption coordination, in addition to emergency leave procedures.
 4. See Appendix for synopsis of Desert Storm After-Action Report from MAJ Richard Barfield.
- B. At the home installation, the Legal Assistance section should:
 1. Follow up on legal assistance cases referred by deployed LAOs.
 2. Coordinate with communications, transportation, and aviation elements on the installation to ensure contact and courier service with deployed LAOs.
 3. Extend legal assistance office hours, as necessary, to handle legal assistance problems of working dependents.

4. Continue legal assistance briefings for family members. Notice of these meetings should be mailed to the individual, using previously obtained mailing addresses and disseminated by post newspaper and local television and radio media.
5. Coordinate with local banks and financial institutions to expect a higher usage of powers of attorney.
6. Coordinate with local courts concerning the failure of deployed members to appear.
7. Be prepared to brief and assist survivor assistance officers.

V. LEGAL RESOURCES NEEDED.

- A. If possible, Legal Assistance Attorneys should take the following resources with them to the theater of operations.

1. Supply of pens and pencils
2. Wills and POA worksheets
3. Envelopes
4. Lap top computer/printer
 - a. LAAWS program
 - b. Disks containing sample forms
 - c. Downloaded disks with all relevant TJAGSA LA publications (See The Army Lawyer for downloading directions)
 - d. CD ROM with publications (if available)

[TJAGSA Publications on LAAWS Bulletin Board (available for downloading) and on CD ROM in 1994]

JA 260	Soldiers' & Sailors' Civil Relief Act
JA 261	Real Property Guide
JA 262	Wills Guide
JA 263	Family Law Guide
JA 265	Consumer Law Guide
JA 267	Legal Assistance Office Directory
JA 268	Notarial Guide
JA 271	Legal Assistance Office Administration Guide
JA 272	Legal Assistance Deployment Guide
JA 274	Uniformed Services Former Spouses' Protection Act Outline and References
JA 276	Preventive Law Series

- B. In the event of computer failure, the following should also be included.
1. Manual typewriter with supply of ribbons (include correction ribbons or tape).
 2. Simple Form Will for soldiers with no dependents.
 3. Simple Form Will for soldiers with spouse only.
 4. Simple Form Will for soldiers with spouse and children.
 5. Statutory Form Wills for states authorizing them.
 6. Form Letters (250 each):
 - a. Form letter to creditor requesting extension of payment date because of deployment.
 - b. Form letter to landlord/mortgagor requesting extension because of deployment.
 - c. Form letter: Soldiers' and Sailors' Civil Relief Act (e.g., request for stay of proceedings; request for interest rate reduction to 6%). (See samples in SSCRA chapter herein)
 - d. IRS Forms requesting extension of filing deadline or local JAG office form letter requesting extension because of deployment.
 - e. Form letters to state or municipal tax authorities requesting extension because of deployment.
 7. Powers of Attorney Forms:
 - a. General Power of Attorney Form.
 - b. Special Power of Attorney Form with standard clauses for special situations, e.g., sale of car, sale of house, ability to engage in particular banking transactions.
- C. If available, copies of the following regulations, pamphlets, and legal publications should also be taken.
1. AR 27-3, The Army Legal Assistance Program (30 Sep 90)
 2. AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing) (26 Feb 93)
 3. AR 600-15, Indebtedness of Military Personnel (14 Mar 86)
 4. AR 600-240, Marriage in Overseas Command.
 5. AR 608-61, Application for Authorization to Marry Outside the US.
 6. AR 608-99, Family Support, Child Custody, and Paternity (22 May 87)
 7. DA PAM 608-33, Casualty Assistance Handbook (17 Nov 87)

8. DA PAM 608-4, A Guide for the Survivors of Deceased Army Members (23 Feb 89)
9. Martindale-Hubbell Law Digests, vol. VIII (most recent edition).

**Preparation for Deployment
Supplies and Equipment**

SAMPLE READY BOX

<u>Item</u>	<u>Quantity</u>
Lap top computer/printer	2
LAAWS program	
Disks containing sample forms	
Downloaded disks with all TJAGSA LA publications	
CD ROM with publications (if available)	
Manual Typewriter/ribbons/correction tape	2
Client Interview Cards (DA Form 2465, Jul 92)	100
Electrical extension cords	3
Will Cover Letters	200
Envelopes, 4" x 9 1/2" (DA)	50
Envelopes, 4" x 9 1/2" (plain)	50
Markers, red	10
Masking tape, rolls	2
Scotch Tape, rolls	5
Paper, tablets	2
Pens, boxes	5
DA Form 4944-R (Jul 92) Report on Legal Assist. Services	10
Powers of Attorney (10 USC 1044a Notary)	
General	200
Blanks	50
Special Power of Attorney Clause Formats	1
Check Cashing	50
Medical	50
Temporary Guardianship	50
Use of Car	50
Seals (authority of 10 USC 1044a)	2
Signs (Legal Assistance)	2
Staple removers	4
Stapler w/extra staples	4
Will Guides	3
Will Interview Worksheets	100
Simple Will Forms	100
Routine Form Letters	

APPENDIX A

MOBILIZATION AND MOVE OUT

(contains some excerpts from JA 422, Operational Law Handbook)

8 STEPS FOR DEPLOYMENT PREPARATION.

The JA must be aware of those countries to which his/her unit, as a part of the Army component of a Unified Command, is most likely to deploy. After identifying which international agreements are relevant to such deployments, one should then concentrate on the following 8 areas of deployment preparation:

1. OPLAW Training
2. OPLAN Development and Review (TAB I of JA 244)
3. Developing the Legal Annex
4. The Deployment Checklist
5. Personal Preparation for Deployment
6. Preparation of the Legal Deployment Package
7. Effecting the Deployment SOP
8. Developing Rules of Engagement (ROE). (TAB K of JA 244)

OPLAW DEPLOYMENT CHECKLISTS.

This checklist helps one prepare for deployment/combat. It aids the JA in continuously planning for deployment from the time of assignment to the unit, through the actual deployment. It is divided into 3 sections: PREPARATION, PRE-DEPLOYMENT, and DEPLOYMENT.

I. PREPARATION.

Personal Considerations. Personal readiness reduces turmoil and uncertainty, increases individual confidence, and helps establish credibility.

- Do you have TA-50 and is it serviceable?
- Have you familiarized yourself with, and qualified with your assigned weapon?
- Take care of personal affairs. Consider: a will, power of attorney, automatic deposits/payment of bills, child care plans, etc. Encourage subordinates to do the same.
- Are your dog tags correct (particularly your blood type)? Wear them!
- Is your field equipment and TA-50 assembled IAW your unit's SOP?
- Do you have a TOP SECRET security clearance? Get one if possible! Operational decision making is based on Top Secret and compartmented information. If you don't have

access to this information, your advice will be limited and you'll look foolish.

— Are your shots (and shot records) up to date?

— Is your "A Bag" packed and ready to deploy at all times? (Check the SOP for items in addition to: additional uniforms, field jacket, socks and underwear, shaving gear, toothbrush and paste, wash cloth, soap, towel, etc.). A packed bag allows you to minimize personal turmoil and be able to focus on the mission when it's time to go to the field or to war.

Office Considerations

— Is SJA office on the distribution list for message traffic and for all OPLANS/CONPLANS?

— Is a JAG attending all staff briefings? By becoming part of the normal staff team, you won't be overlooked during deployment planning. If your unit is overlooking the LAGs, talk to the S-3/G-3 and get on the notice list.

— Does SJA office have sufficient transportation to move personnel and equipment to the field?

— Are the vehicles dedicated to the SJA office?

— Is there a licensed driver (JAG Office) for each assigned vehicle?

— Do all personnel have a military driver's license?

— Can the office deployment package be deployed on the available transportation?

— Has the load plan been tested?

— Does the office have sufficient field equipment (tentage, chairs, field tables, field desks, etc.) to be able to operate in a field environment for an extended period of time?

— Do the personnel know how to set up the tentage and break it down quickly?

— Are the field desks fully stocked with supplies and ready for deployment?

— Are there portable manual typewriters so that power outages won't stop the office operation?

— Are there flashlights and batteries?

— Is the deployment library ready (fully stocked) for immediate deployment?

— Does the office have an effective Field SOP (SOP) and Readiness SOP (RSOP)? Simplicity and workability should be the goal.

— Has everyone been through SRP? Are all fully qualified to deploy?

— Do all office personnel have serviceable TA-50/field gear? INSPECT IT!

— Do parents have plans for the care of their children? See AR 600-20, Family Care Plan

— Does the office have an up-to-date alert roster and has it been tested?

— If after-action reports of prior deployments exist, review them!

II. POST-ALERT / PRE-DEPLOYMENT PREPARATION CHECKLISTS ("after the balloon goes up")

These are issues that may arise and considerations that should be addressed from the point of the alert, or notification of deployment, up to the time of actual deployment.

LEGAL ASSISTANCE CONSIDERATIONS

- Establish sites to rapidly process deploying personnel. It may be necessary to draw upon other cross-trained attorneys in the office to assist in this effort.
- Are there sufficient forms to handle last-minute legal assistance problems at departure site?
- Spot-check deploying soldiers to ensure basic legal assistance needs have been met.
- Notify JAs remaining at the installation of follow up legal assistance requirements.
- If reservists will augment the SJA office, leave guidance.
- Organize and initiate legal assistance briefings for dependents.

Legal Assistance References and Forms

AR 27-3, The Army Legal Assistance Program (30 Sep 92).
AR 27-55, Notarization (pending publication 1994).
AR 600-8-101, Personnel Processing (In- and Out- and Mobilization Processing) (26 Feb 93).
AR 600-15, Indebtedness of Military Personnel.
AR 600-240, Marriage in Overseas Command.
AR 608-61, Application for Authorization to Marry Outside the US.
AR 608-99, Family Support, Child Custody, and Paternity (22 May 87)
JA 260, Soldiers' and Sailors' Civil Relief Act Guide (Jun 93).
JA 262, Wills Guide (May 93).
JA 263, Family Law Guide (Jun 93).
JA 265, Consumer Law Guide (Sep 93).
JA 268, Notarial Guide (Jun 92).
JA 272, Deployment Guide (Nov 93).
JA 274, Uniformed Services Former Spouses' Protection Act (Nov 92).
JA 276, Preventive Law Guide (Dec 92).
Martindale-Hubbell Law Digests, vol. VIII (most recent edition).

Required Forms (LAAWS Wills/POA program should be loaded on computers)

Simple Form Wills:

- Simple Form Will for soldiers with no dependents.
- Simple Form Will for soldiers with spouse only.
- Simple Form Will for soldiers with spouse and children.

Form Letters:

- Form letter to creditor requesting extension of payment date because of deployment.
- Form letter to landlord/mortgagor requesting extension because of deployment.
- Form letter: Soldiers and Sailors Civil Relief Act (e.g., request for stay of proceedings).
- IRS Forms requesting extension of filing deadline or local JAG office form letter requesting extension because of deployment.
- Form letters to state or municipal tax authorities requesting extension because of deployment.
- Powers of Attorney:**
 - General Power of Attorney Form.
 - Special Power of Attorney Form with standard clauses for special situations, e.g., sale of car, sale of house, ability to engage in particular banking transactions.

III. POST DEPLOYMENT CHECKLISTS.

These are issues that may arise and considerations that should be addressed from the time of actual deployment, until the final redeployment of forces.

LEGAL ASSISTANCE CONSIDERATIONS

In the area of deployment, the Legal Assistance section should:

- Respond to inquiries from soldiers in country.
- Establish liaison with communications, transportation, and aviation elements for contact and courier service with JAs in the rear echelon (the installation from which the deployment took place).
- Establish liaison with US Consulate at deployment location for overseas marriage and adoption coordination, in addition to emergency leave procedures.

At the home installation, the Legal Assistance section should:

- Follow up on legal assistance cases referred by deployed LAOs.
- Coordinate with communications, transportation, and aviation elements on the installation to ensure contact and courier service with deployed LAOs.
- Extend legal assistance office hours, as necessary, to handle legal assistance problems of working dependents.
- Continue legal assistance briefings for family members. Notice of these meetings should be mailed to the individual, using previously obtained mailing addresses and disseminated by post newspaper and local television and radio media.
- Coordinate with local banks and financial institutions to expect a higher usage of powers of attorney.
- Coordinate with local courts concerning the failure of deployed members to appear.
- Be prepared to brief and assist survivor assistance officers.

APPENDIX B

LIMITATION ON ACCEPTANCE OF VOLUNTARY SERVICES

31 U.S.C. § 1342; AR 37-1, para. 7-6a(4).

- I. **GENERAL RULE.** An officer or employee may not accept voluntary services or employ personal services exceeding those authorized by law, except for emergencies involving the safety of human life or the protection of property. To Glenn English, B-223857, Feb. 27, 1987 (unpub.).
- A. Voluntary services are those services rendered without a prior contract for compensation or without an advance agreement that the services will be gratuitous. Army's authority to accept servs. from the American Assoc. of Retired Persons/Nat'l Retired Teachers Assoc., B-204326, July 26, 1982 (unpub.).
- B. Acceptance of voluntary services does not create a legal obligation. Richard C. Hagan v. United States, 229 Ct. Cl. 423, 671 F.2d 1302 (1982); T. Head & Co., B-238112, July 30, 1990 (unpub.); Nathaniel C. Elie, B-218705, 65 Comp. Gen. 21 (1985). Cf. T. Head & Co. v. Dep't of Educ., GSBGA No. 10828-ED, 93-1 BCA ¶ 25,241.
- C. Examples of voluntary services authorized by law.
1. 5 U.S.C. § 593 (agency may accept voluntary services in support of administrative dispute resolution).
 2. 5 U.S.C. § 3111 (student intern programs).
 3. 10 U.S.C. § 1588 (military departments may accept voluntary services from museums, natural resources programs, or family support activities).
 4. 10 U.S.C. § 2602 (President may accept assistance from Red Cross).
 5. 10 U.S.C. § 4541/9538 (Army/Air Force Reserve officer services for training and consultation).
 6. 33 U.S.C. § 569c (Corps of Engineers may accept voluntary services on civil works projects).
- D. Application of the emergency exception. This exception is limited to situations where immediate danger exists. Voluntary Servs. -- Towing of Disabled Navy Airplane, A-34142, 10 Comp. Gen. 248 (1930) (exception not

applied); Voluntary Servs. in Emergencies, 2 Comp. Gen. 799 (1923) (exception applied). This exception does not include "ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342.

II. GRATUITOUS SERVICES DISTINGUISHED.

- A. It is not an ADA violation to accept voluntary services from a person who agrees, in advance and in writing, to waive entitlement to compensation. Army's authority to accept servs. from the American Assoc. of Retired Persons/Nat'l Retired Teachers Assoc., B-204326, Jul. 26, 1982 (unpub.); To the Adm'r of Veterans' Affairs, B-44829, 24 Comp. Gen. 314 (1944); To the Chairman of the Fed. Trade Comm'n, A-23262, 7 Comp. Gen. 810 (1928).
- B. An employee may not waive compensation if a statute establishes entitlement, unless another statute permits waiver. To Tom Tauke, B-206396, Nov. 15, 1988 (unpub.); The Agency for Int'l Dev.--waiver of compensation fixed by or pursuant to statute, B-190466, 57 Comp. Gen. 423 (1978) (AID employees could not waive salaries); In the matter of waiver of compensation, Gen. Servs. Admin., B-181229, 54 Comp. Gen. 393 (1974); To the Director, Bureau of the Budget, B-69907, 27 Comp. Gen. 194 (1947) (expert or consultant salary waivable); To the President, United States Civil Serv. Comm'n, B-66664, 26 Comp. Gen. 956 (1947).
- C. Acceptance of gratuitous services may be an improper augmentation of an appropriation if federal employees normally would perform the work, unless a statute authorizes gratuitous services. Compare Community Work Experience Program--State Gen. Assistance Recipients at Fed. Work Sites, B-211079.2, Jan. 2, 1987 (unpub.) (augmentation would occur), with Senior Community Serv. Employment Program, B-222248, Mar. 13, 1987 (unpub.) (augmentation would not occur). But cf. Federal Communications Comm'n, B-210620, 63 Comp. Gen. 459 (1984) (noting that augmentation entails receipt of funds).

APPENDIX C

DESERT STORM AFTER-ACTION LEGAL TEAM REPORT (excerpts)

The following excerpts are taken from a Desert Storm After-Action Report from Major Richard Barfield, USMC, 41st Graduate Course, TJAGSA.

[Major Barfield, then assigned to the Legal Service Support Section, 2d Force Service Support Group, Camp Lejeune, North Carolina, deployed and served as Officer in Charge of a legal team in Saudi Arabia].

INTRODUCTION

While in Saudi Arabia, the team provided support in four main areas: military justice, legal assistance, administrative and operational law. The legal assistance efforts focused on providing Wills and Powers of Attorney to Marines preparing for combat. The team served over 400 Marines and Sailors with legal assistance matters. Upon the team's arrival in Saudi Arabia, it was the forward most permanent position for U.S. Marines in country and remained so until after the battle of Khafji on 29 January 1991.

OVERVIEW

In order to detail the varied duties of a legal team in a combat zone, the report which follows is divided into two parts. Part I covers duties required to operate and survive in a combat zone and is organized in terms of normal staff functions. Part II focuses on the duties particular to legal services.

In general, five points stand out in preparing to conduct legal services in a combat zone:

1. Be self-sufficient. Take care of logistics support for your team yourself. Bring what you need with you. Go to the rear area supply points yourself and get the gear.
2. If you have vehicles and communications assets you will be able to accomplish your mission; if not, you will not be able to accomplish your mission.
3. In a combat environment loyalty is the key to success. As times get tough, everyone has a tendency to complain, especially about higher headquarters. An "us/them" attitude will not work. Loyalty must be actively encouraged especially toward the commander and staff in charge of your defensive compound.

4. Officers, SNCO's and NCO's face magnified responsibilities and leadership challenges in a combat and field situation. The normal legal services environment does not prepare them for these challenges, so leadership principles must immediately be emphasized.

5. Organize to accomplish a broad range of functions in field and combat duty not just to accomplish legal duties. Divide the non-legal duties along normal staff functioning: S-1 personnel, S-2 intelligence, S-3 training and security, and S-4 logistics. Prepare junior enlisted Marines to be more than legal clerks.

PART I

PERSONNEL, S-1

1. Duties were assigned in two sets - legal duties and staff functions. Duties were assigned along the framework of normal staff functioning for three main reasons:

- a. It gave Marines an opportunity to learn about Marine Corps staff functioning.
- b. It divided responsibility equally so no one had too much or too little to do. It allowed for Marines to make a greater contribution to the team, taking advantage of the Marines' prior experience in functional areas or their natural inclinations.
- c. It facilitated the legal team's integration with GSG-2, as team members got to know and work with their counterparts on the GSG-2 staff.

2. Leadership, morale, and welfare. Loyalty was the key to maintaining morale, as we knew that if we stuck together we would make it through the war. Team spirit had to be encouraged by emphasizing leadership traits not usually exercised in the garrison environment at a law center. SNCO's and Officers had to focus on troop welfare in new ways. Most importantly, they had to exercise the principle that officers and SNCO's take care of the troops' comforts before their own; for example, the troops eat first, and get benefits such as PX runs and phone calls home first. Our habits in the garrison legal services situation don't prepare us for this. SNCO's had not had much experience in supervising police of areas, construction of field fortifications, personal hygiene, or even reveille. They learned that proper supervision demands physical observation not merely an order to junior troops to do something.

Remember that guard duty is tough in a combat area and that troops will be spending more time on duty at night than usual, so allow for rest during the day. Troop morale and welfare also depend upon ready information, for the enemy and friendly situations change rapidly. Therefore a system for rapid troop information dissemination and feedback should be organized. Team morale is also maintained through team sports. The legal team had football games every Sunday. This did more to increase Esprit de Corps than any one event. Billeting arrangements also allowed for a troop tent. Troops were, thus, able to get away to themselves and relax periodically.

As time in the field went on, it also became important to give Marines a break and vary their schedule. By giving a day off, work on the other six days of the week is improved and Marines can last for longer periods in the field without getting mentally worn down. We also broke up the normal day to day work schedule with classes, to include taking Marines out of the compound to visit other units in the area.

Above all else, morale depended, in large part, upon postal services. One key to postal support is to maintain an accurate roster of team personnel with the local postal unit. This applies also to disbursing support, as the disbursing office requires an accurate roster of team members in order to pay them.

3. Personnel Records. Take copies of RED, SGLI, and the Basic Individual and Training Record. You must have information necessary to complete a casualty report.

4. Information Systems. Coordination with ISMO should be made before deploying from CONUS.

INTELLIGENCE, S-2

The need for intelligence on the enemy situation is obvious. Marines in a combat zone generate rumors and rumors can only be stopped with a good intelligence flow. (included was a discussion of the GSG-2 organized briefings for personnel). It is important to give the troops an orientation briefing immediately upon their arrival which will give them an appreciation for the enemy and friendly situation. Most importantly, it awakened their sense of danger which enhance team and personal safety. A realistic sense of danger based on available intelligence must be impressed upon every Marine. A SNCO was assigned as our team intel chief. He got challenge and passwords each day and read intel messages and the intel LAN line reports. You need someone dedicated to do this each day and then brief the team. Therefore, to be fully briefed, troops also need to have a secret clearance. It was also important to have a map of the entire area posted in the legal tent. Legal contact teams

had to travel hundreds of kilometers often to units essentially in the middle of the desert off main roads. Also, remember to get a compass before leaving CONUS. Finally in order to maintain morale, don't just focus information briefs on the enemy situation. Make sure everyone knows the friendly situation and all the assets, including air assets, which provide support. (discussion included types of intelligence used)

TRAINING AND SECURITY, S-3

1. The training required for legal Marines takes on a different orientation in a combat area. The focus of the Marine's duties at times is on security functions rather than legal duties. The legal team set up a training package to prepare Marines prior to going to Al Mishab and the GSG-2 compound, then held refresher training in the compound covering several essential areas. We then maintained a weekly training schedule which covered tactical training, legal training, and a variety of other areas.

2. Preparatory training began at Camp Lejeune, NC, and focused on NBC refresher training and combat skills. (further discussion included)

3. Once at our base camp in Jubail, Saudi Arabia, the legal team organized its own refresher training using FSSG Combat Skills Instructors, and 1st FSSG, H&S BN communications and medical instructors. The following classes were conducted: (1) Orientation to Persian Gulf History and Culture, (2) Field Sanitation, (3) First Aid and Medevacs, (4) Desert Survival, (5) Crew-served Weapons, (6) Communications, (7) Patrolling, (8) Field Fortifications, and (9) Weapons Safety.

4. Once the team got to the GSG-2 compound, it was important to have a training schedule, as guard and working party requirements made control of enlisted Marines difficult. However, the schedule had to be flexible because the tactical situation changed rapidly. The schedule was designed to provide for intermittent classes to keep interest up but not to be so taxing as to interfere with legal duties, guard duties, and working parties. The schedule also made clear the required uniform and equipment which became more important as the NBC threat increased. Instructors were assigned for classes and each was required to submit a lesson outline and document the training.

5. Training at GSG-2 covered four main areas: (1) MOS Skills, (2) Field Duty, (3) Physical Training, and (4) Other Training. (discussed)

6. The training schedule also included inspections of personnel, billeting areas, and office spaces. Marines

designated for guard duties, drivers, and working parties were also noted on the schedule so Marines had a good idea what they were supposed to be doing throughout the week.

7. Security. At the outset of the war, guard duty became the enlisted Marines most important and difficult task. It is essential that a clear guard order is published immediately upon forming a permanent defensive compound. GSG-2 banded together and we worked as a whole for the benefit of general security. Legal Marines who do not have a great deal of field experience need to be aware of the strict need for noise and light discipline. They also need to be aware of the capabilities of night vision and thermal observation devices both to ensure they know how to use them and to ensure they guard their own movements from enemy night observation.

Since the main threat to the unit came in the form of missile, rocket, or air attack with both conventional and chemical weapons, the team's main form of protection was found in the strength of protective positions. (discussion of protective holes and gear included)

Marines also have to be aware of communications security and not pass classified information over unsecured lines. The same with phoning home using AT&T satellite phones.

LOGISTICS, S-4

1. [List of equipment and supplies used by the team not available for inclusion herein]

2. Full discussion of the following: (1) Acquiring Gear, (2) Embarkation and Transportation, (3) Tentage, (4) Vehicles, (5) Food and Water, (6) Medical and Personal Hygiene, (7) Ordnance, (8) Computers, and (9) Communication. Highlights follow:

- Key to team's productivity was vehicle assets to travel to units which needed support.
- Important to maintain computers.
- Take gear with you and go out and get it yourself (i.e. shovels, brooms, picks, watercans, gas cans, and lanterns) Don't let anyone convince you that you can get needed gear when you arrive at the place you need it.
- Arrange for guide to go with tractor trailer carrying legal team gear to be sure it is delivered to right place. Prearrange availability of a forklift.

- Before taking custody of vehicles, check for spare tire, lugnut wrench, and pioneer equipment. If missing, get them yourself. Carry first aid kit. Don't fill any vehicle with diesel unless that's what it runs on.
- Perform preventive maintenance on vehicles. Bring driver's license applications with the team for any Marines who fail to get a license.
- Rehearse medevacs, especially at night. Give Marines a tour of the hospital - it was well organized and staffed and gave Marines sense of confidence in care they would get if needed. Drill troops on basic first aid for both shrapnel wounds and chemical attacks.
- Be fanatic about personal hygiene. Hold hygiene inspections.
- Bring proper clothing to keep cool or warm.
- Stress ammunition accountability. Bring your own weapons cleaning gear.
- Keep computers and disks clean (ISMO gave team class on preventive maintenance).
- Repro machine is vital to legal team.
- Coordinate with communications detachment and learn communication set-up.

PART II

[Discussion included on military justice, administrative law, operational law, and legal assistance. The following concerns legal assistance].

LEGAL ASSISTANCE

The importance of legal assistance is amplified in a combat area, first due to the need for Wills in the face of imminent danger; second, problems at home often give rise to the need for powers of attorney and assistance with correspondence to creditors. Our legal assistance officer took the time to tailor legal document to individual needs through use of computer programs adapted to legal assistance. By the time most Marines got to the forward areas, they had already been offered the opportunity for legal assistance, consequently, there was not a mass of Marines needing this service. However, the Marines who did require legal assistance usually had a particular problem

which required more attention and time from the legal assistance officer. The key for good support lay in getting out to units to make services available. Often the legal team's visit to a unit flushed out legal problems the command was unaware of.

APPENDIX D

PROPOSED ARMY DOCTRINE ON WILL PRIORITY

(COL Arquilla's ltr to Commandant, TJAGSA, of 21 May 1993.
Subject: Implementation of Desert Storm Assessment Team (DSAT)
Legal Assistance Recommendations; phonecon MAJ Hostetter, TJAGSA,
and COL Arquilla, Chief, Legal Assistance Division, USA of 24
November 1993)

The following is proposed Army doctrine on establishing wills-screening criteria by grouping soldiers into two categories: (1) Those who should be encouraged to have Wills; and (2) Those who should be provided Wills only upon request when resources are available or become available.

WILLS SCREENING

- * **PRIORITY ONE - ENCOURAGE WILLS**
- * **PRIORITY TWO - PROVIDE WILLS IF REQUESTED**

PRIORITY ONE WILLS

- * **SINGLE PARENT, EITHER CUSTODIAL OR NON-CUSTODIAL;**
- * **PRIMARY BENEFICIARY IS A MINOR;**
- * **VALUE OF ESTATE, EXCLUDING INSURANCE AND JOINTLY-HELD PROPERTY, EXCEEDS \$10,000; OR**
- * **CLIENT DESIRES PROPERTY TO BE DISTRIBUTED IN A MANNER DIFFERENT FROM WHAT WOULD OCCUR UNDER THE APPLICABLE LAWS OF INTESTATE SUCCESSION**

PRIORITY TWO WILLS

- * **CLIENT HAS NO CHILDREN;**
- * **PRIMARY BENEFICIARY IS NOT A MINOR;**
- * **VALUE OF ESTATE, EXCLUDING INSURANCE AND JOINTLY-HELD PROPERTY, DOES NOT EXCEED \$10,000; OR**
- * **CLIENT DOES NOT DESIRE PROPERTY TO BE DISTRIBUTED IN A MANNER DIFFERENT FROM WHAT WOULD OCCUR UNDER THE APPLICABLE LAWS OF INTESTATE SUCCESSION**

Will Screening Form

NAME: _____ SSN: _____

RANK: _____ UNIT: _____

This is your will screening form. It will help you decide if you need a will. Remember, the decision to have a will is a personal decision which only you can make. If you are married, complete Sections II and IV only. If you are single, complete Sections III and IV only. If you need a will, you should take this form to the legal assistance office, _____ (location) _____ to be scheduled for a will interview. If you already have a will with which you are satisfied, show this in Section IV by indicating that you DO NOT want a will.

II

MARRIED PERSONNEL

If you are married, both you and your spouse should consult an attorney at the legal assistance office to see if you need a will. This is even more important if you have children. Now proceed to para. IV.

III

SINGLE PERSONNEL

If you are single, read this section to see if you need a will. If you die without a will, the law of your home state will determine who will receive your valuables, money, and property. Your home state is the state with which you have the most contact (voter registration, driver's license, vehicle registration, property ownership, and where you intend to live when you leave military service). Circle your home state in the chart below. This chart tells you who will receive your property if you are single and you die without a will.

ALASKA	MAINE	OKLAHOMA
ARIZONA	MARYLAND	OREGON
ARKANSAS	MASSACHUSETTS	PENNSYLVANIA
CALIFORNIA	MICHIGAN	RHODE ISLAND
COLORADO	MINNESOTA	SOUTH DAKOTA
CONNECTICUT	MONTANA	TENNESSEE
DELAWARE	NEBRASKA	TEXAS
DELAWARE	NEVADA	UTAH
DC	NEW HAMPSHIRE	VERMONT
FLORIDA	NEW JERSEY	VIRGINIA
HAWAII	NEW MEXICO	WASHINGTON
IDAHO	NEW YORK	WEST VIRGINIA
IOWA	NORTH CAROLINA	WISCONSIN
KANSAS	NORTH DAKOTA	AMERICAN SAMOA
KENTUCKY	OHIO	GUAM

If your home state is listed above, your property will be divided as follows if you have no will:

1. If you have children, your property will be divided equally among your living children.
2. If you have no children, your property will be divided equally between your two parents or, if only one parent is living, that parent will receive all your property.
3. If you have neither children nor parents living, your property will be divided equally among your living brothers and sisters.

GEORGIA
INDIANA
ILLINOIS

MISSISSIPPI
MISSOURI

SOUTH CAROLINA
WYOMING

If your home state is listed above, your property will be divided as follows if you have no will:

1. If you have children, your property will be divided equally among your living children.
2. If you have no children, your property will be divided equally among your living parents, brothers, and sisters, each one taking an equal share. (In Indiana, each living parent must get at least 1/4 of your property. In Illinois, if only one parent is living, that parent receives a double share.)

If your home state is ALABAMA or TEXAS, your property will be divided as follows if you have no will:

1. If you have children, your property will be divided equally among your children.
2. If you have no children and both parents are living, each parent will receive 1/2 of your property.
3. If you have no children and only one parent is living, that parent will receive 1/2 of your property and your brothers and sisters will divide the remaining 1/2 equally among them. If you have no brothers or sisters, your one living parent will receive all your property.
4. If you have no children or parents living, your property will be divided equally among your brothers & sisters.

If your home state is LOUISIANA, your property will be divided as follows if you have no will:

1. If you have descendants (children, grandchildren), your property will be divided equally among them.
2. If you have no descendants but are survived by:
 - a. One or both parents and one or more brothers or sisters, then the parents(s) will receive a usufruct (right of the use and possession) of the property for life of the parent(s); legal title belongs to the brothers and sisters.
 - b. One or both parents and no brothers or sisters (or their descendants) then the parent(s) would receive full ownership in equal share.
 - c. One or more brothers or sisters and no surviving parents, then the brothers or sisters (or their descendants) would receive full ownership in equal shares.

If your home is PUERTO RICO, consult a legal assistance attorney.

ANSWER THESE 4 QUESTIONS

1. Do you object to your state's plan regarding distribution of your property in the absence of a will?
2. Do you have children?
3. Do you own land or a house?

4. Do you estimate the total value of everything you own to be greater than \$10,000?

If you answer YES to any of the above questions, you may need a will and you should visit the legal assistance office to discuss this with an attorney.

I (DO) (DO NOT) want a will.

SIGNATURE OF SERVICE MEMBER

DATE

FOR LEGAL ASSISTANCE OFFICE USE ONLY

Will executed on _____. Will is located at _____.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

1. Authority: 10 USC 3037

2. Principal Purpose(s): The information required by this form is necessary to prepare a will.

3. Routine Uses: Information recorded on this form will be used by to prepare wills.

4. Mandatory or voluntary disclosure and effect on individual not providing information: Disclosure of the information required by this form is voluntary. Failure to provide information results in the inability of this office to provide the requested service.

2

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CHAPTER 3 **SAMPLE DEPLOYMENT DESKBOOK**

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CHAPTER 3

SAMPLE DEPLOYMENT DESKBOOK

A WORKABLE SYSTEM FOR ENSURING LEGAL PREPAREDNESS OF SERVICE MEMBERS

FORT STEWART, GEORGIA

FOREWORD

This deskbook * provides an example of a workable and efficient system for Soldier Readiness Program (SRP) processing. All Legal Assistance Offices (LAOs) need to have such a system in place in order to ensure that all service members are legally prepared for deployment. Such a system is an imperative for a LAO at a FORSCOM installation.

The Desert Shield/Desert Storm deployment revealed the shortcomings of the legal preparedness of many service members. Most importantly of all, it taught us that legal preparedness of service members should be an ongoing concern instead of an afterthought once a deployment has occurred.

The enclosed materials represent the 24th Infantry Division (Mech) and Fort Stewart LAO's system for ensuring legal preparedness of service members. Users of this deskbook are encouraged to implement the documents found at the appendices into their own operating procedures. The forms, information papers and SOPs contained herein comprise the essence of this deskbook. While this system is by no means static, it does provide an excellent model for any LAO.

BRYANT S. BANES
CPT, JA
Chief, Legal Assistance

MARK A. BRIDGES
CPT, JA
Legal Assistance Attorney

* This deskbook was edited by TJAGSA for inclusion in the Deployment Guide. Not all documents referenced are included. Some forms which are included come from other sources. Tailor this Guide to your needs.

** Also, refer to Chapter 2 of this Guide: Army Policy on Will Priority

A WORKABLE SYSTEM FOR ENSURING LEGAL PREPAREDNESS OF SERVICE MEMBERS

I. REFERENCES.

- A. AR 27-3, The Army Legal Assistance Program (30 Sep 92).
- B. JA 272, Deployment Guide (most recent date).
- C. 24th Inf Div (Mech) and FS Reg 525-1, Deployment Plan (25 Nov 91).
- D. 24th Inf Div (Mech) and FS Reg 612-1, Soldier Readiness Processing (Proposed Draft).

II. INPROCESSING.

It is probably safe to say that the most important aspect of a Legal Assistance Office (LAO) is the Soldier Readiness Program (SRP). Ensuring the legal preparedness of service members and family members in case of deployment should be a primary and ongoing concern. Satisfying this objective starts with the inprocessing of each service member at the installation.

Since the inprocessing of service members is a daily occurrence, one legal NCO should be tasked to provide continuing assistance to the installation inprocessing center. The responsibilities of that legal NCO and the Office of the Staff Judge Advocate should be clearly defined in a written Standard Operating Procedure (SOP) (Appendix #).

The legal NCO should provide standard SRP processing for each incoming service member. Powers of Attorney (POAs) should be prepared on the spot. Anyone desiring a Will should be told where and when they can have a Will prepared. It should be noted at this point that preparation of Wills outside the LAO should be discouraged. Wills should be prepared in the office setting where attorneys are present. This allows not only attorney review of all Wills produced, but also ensures that testators have adequate time to reflect on their testamentary desires.

All inprocessing service members should also be briefed concerning local laws and regulations that may affect them. Such topics can include automobile registration, voting assistance and claims, to name a few. Service members should also be told what services the LAO offers.

III. SOLDIER READINESS PROGRAM (SRP).

SRP processing allows commanders to gauge the preparedness of their units for deployment, legally and otherwise. As with inprocessing, each LAO should have an SOP for SRPs (Appendix #). The main goal of any SRP is to ensure that each service member's legal requirements are met. Simple documents, such as POAs, should be prepared at the SRP. More complex documents, such as Wills, may necessitate a visit to the LAO.

Ideally, an SRP is really just a "records check". For this reason, preparation of needed legal documents should take place before the actual SRP, if possible. Once the LAO is informed about a scheduled SRP, a Memorandum should be sent to the unit's commander offering legal assistance services (Appendix #). Commanders should also be informed about SJA participation in SRPs through information papers distributed at various command functions (Appendix #). The commander will be given the opportunity to schedule an Advance SRP Briefing for the unit regarding the necessity of POAs and Wills (Appendix #). It is at this briefing that service members will be informed about where and when Wills and POAs can be obtained. The more proactive the commander, the better legally qualified the unit will be. After the SRP, the LAO will send another Memorandum to the commander which will reflect the legal preparedness of the unit (Appendix #).

A SRP tracking sheet is suggested to keep track of steps taken in each scheduled SRP (Appendix #). Each service member should also have a Personal Readiness Folder at the SRP site. A standard form for SJA Processing should be maintained in each Personal Readiness Folder reflecting the individual's legal preparedness (Appendix #).

IV. PREVENTIVE LAW.

Too often LAOs get caught up in the routine of SRPs. It is important to remember that not every service member needs a POA and/or a Will. More importantly, all LAOs must keep in mind that service members must be educated about their legal affairs before they can make an informed decision about what documents are needed. One method is the Advance SRP Briefing previously mentioned. Another is the Family Deployment Briefing (Appendix #). The Family Deployment Briefing is generally given prior to a unit's deployment to NTC or a real world mission. The Briefing should include, but not necessarily be limited to, topics such as POAs, Wills, SGLI, Soldiers' and Sailors' Civil Relief Act and Legal Assistance services.

Each Division should also have a Deployment Plan dealing with all aspects of family preparedness during deployment of the

service member (Appendix #). Deployment Plans are extremely useful in helping families identify areas of concern associated with the absence of the service member.

Lastly, information papers are an easy, time saving method of informing the military community about important legal matters. Some examples are provided (Appendix #).

V. CONTINUING SOLDIER READINESS PROGRAM (SRP).

In addition to inprocessing and SRPs, a LAO must have an SOP for day-to-day preparation of needed legal documents (Appendix #). Such documents generally include POAs, Wills, Living Wills and Durable POAs for Health Care. Having a written SOP ensures that office personnel, as well as clients, know the proper procedures to follow concerning when and how such documents are to be prepared.

Each LAO should have an easy to use "Will questionnaire" (Appendix #). The attorney will be able to use the questionnaire to ensure that the client has thought about all aspects of the will. It also provides a standard form for the typist of the Will to read.

In general, a LAO should strive to provide Wills to all individuals who want one. However, in some circumstances, providing Wills to everyone may not be feasible. For example, the deployment of an entire Division may cause the Office of the Staff Judge Advocate to screen clients and determine which individuals really need a Will. For such occasions, "Will screening" forms may be used (Appendix #).

Legal Assistance Attorneys are required to inform service members about the legal effect of their designation of beneficiaries under SGLI whenever a Will is prepared for a service member. Therefore, it is a good idea to have an information paper which provides information about the designation of beneficiaries under SGLI (Appendix #). Such an information paper provides a ready source of information for attorneys, legal NCOs and clients.

POAs are useful and needed documents in the military community due to the extended absences of service members from their families. Therefore, it is important for LAOs to have a wide variety of POAs available for clients. Office personnel should be educated on how to effectively determine what type of POA a client needs. Again, information papers, along with attorney input, will achieve this goal (Appendix #). The LAO should make available a general POA, along with a wide variety of special POAs (Appendix #). A LAO should not begin the slide

down the slippery slope of handing out general POAs to all service members who walk through the door.

VI. CONCLUSION.

This deskbook has been assembled in order to provide tangible documents for LAOs that need to revise their current system of ensuring legal preparedness of service members. This is a proven system. Use those documents that will be of benefit to your LAO's operating procedure, but keep in mind that all can be improved upon. Your own innovative improvements will better the legal service that your LAO provides to the service members at your installation.

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(* TJAGSA note: not all chapters/documents referenced are included in this section. This Table of Contents is provided as a guide to establishing your own Deskbook).

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**OFFICE OF THE STAFF JUDGE ADVOCATE
LEGAL ASSISTANCE BRANCH
STANDARD OPERATING PROCEDURES
OSJA SUPPORT TO THE VICTORY SOLDIERS CENTER**

Section 1 - SJA Responsibilities

There are three OSJA responsibilities for the Victory Soldiers Center:

- a. Soldier Readiness Processing (SRP) Records Check
- b. Family Legal Preparedness Check
- c. Education

These responsibilities will be accomplished by one Legal NCO each afternoon (Monday - Friday/1300-1600).

Section 2 - Legal NCO Responsibilities to Legal Assistance

The Legal NCO providing SJA support to the Victory Soldiers Center (VSC) will be assigned to the Legal Assistance Branch, and will have the following additional responsibilities:

1. Ensure all soldiers passing through the SJA station sign in using the Legal Assistance Sign-In Log, and ensure that the log is properly annotated depending on the type of assistance provided to each soldier (See Tab A).
2. Ensure input of the Daily VSC Log into the LA Front Desk Computer for inclusion in the monthly and annual LA Reports. The hard-copy log should be properly dated and then filed under a VSC file maintained in the LA Office.
3. Keep the Chief, Legal Assistance informed of any recurrent legal problems faced by either inprocessing or outprocessing soldiers.
4. Attend weekly Legal Assistance Staff Meetings and requestor record any consumer or legal pitfalls noted of which either inprocessing or outprocessing soldiers should be aware.
5. Ensure a one month supply of pertinent documents for the OSJA VSC station.
6. Obtain certification as a (state) Notary Public.

Section 3 - Legal NCO Responsibilities to Inprocessing Soldiers

1. The Legal NCO will be responsible for providing and explaining, within each of SJA's three responsibilities, the following to each incoming soldier:

a. Soldier Readiness Processing (SRP) Records Check.

(1) Each soldier desiring a power of attorney (POA) will be both informed of the different types and offered an opportunity to obtain one on the spot (TAB B).

(2) Soldier Readiness Processing (SRP). Provide and review with each incoming soldier (Form _____) (Individual Statement of SJA Processing for SRP Qualification), asking appropriate questions to determine if the soldier's legal affairs are in order (TAB C). Note here that all aspects of SRP (wills, living wills, POAs, durable POAs for health care, and general estate planning) are done on a walk-in basis on Wednesdays, 0900-1600, at the Family Law Center, Building _____. All Forms _____ should be retained by soldier and taken to the soldier's receiving unit along with the remainder of his/her SRP packet. The SRP packet should be stapled shut upon completion of all SRP processing so as to prevent loss of documents prior to the soldier reaching his/her unit.

(3) The rationale for not doing wills at the VSC may be found at TAB D.

b. Family Legal Preparedness Check.

(1) Automobile Registration and Insurance. Each soldier will be advised concerning (state) automobile registration procedures and insurance requirements, and will be provided a Service member's Ad Valorem Tax Affidavit (Form _____) (See TAB E).

(2) Voting Assistance. Each incoming soldier will be provided an information paper explaining both voter registration procedures and the consequences of registering to vote in (state), and may be given a voter registration/absentee ballot request upon request (TAB F).

(3) Claims. Each incoming soldier will be offered an appropriate claims packet, and will be briefed concerning the significance of and time limitations on same (TAB G). Claims may be submitted on a walk-in basis during duty hours each day at the Family Law Center, Building _____, extension _____.

c. Education.

(1) Soldier Legal Assistance Services Information Paper. Soldiers requiring emergency assistance or a legal assistance appointment will be informed how to obtain same (TAB H).

(2) Consumer Affairs. Each incoming soldier will be provided with a list of area off-limits establishments, and will be advised of certain business practices which, in the opinion of the OSJA, soldiers should be watchful for and avoid (TAB I).

(3) Uniform Code of Military Justice. Each incoming soldier will be provided with a personal copy of "The Ten Rules of the UCMJ" (TAB J).

Section 4 - Legal NCO Responsibilities to Outprocessing Soldiers

1. The OSJA Welcome Center stop is purely voluntary for outprocessing soldiers. As always, the OSJA will remain available for emergency appointments with soldiers who have legal problems preventing them from clearing (i.e. landlord/tenant disputes, veterans benefits problems, adverse administrative actions, etc.).

Section 5 - Problems or Queries Concerning this SOP

POC this SOP is the undersigned, Chief, Legal Assistance Branch, Office of the Staff Judge Advocate, extensions ____/____.

Encls

CPT, JA
Chief, Legal Assistance

LA SOP

Supervisory Action

DSJA - (approved/disapproved)_____, DATE:_____

SJA - (approved/disapproved)_____, DATE:_____

SOP

date

**SOP: Participation of OSJA, Legal Assistance Office,
in Soldier Readiness Program (SRP) Processing**

1. References:

- a. AR 27-3, The Army Legal Assistance Program, 30 Sep 92.
- b. (local regulation), Soldier Readiness Processing, (Proposed Draft).
- c. (local regulation), Deployment Plan, (date).

2. The following is the Legal Assistance Office (LAO) standard operating procedure (SOP) for participation in SRPs for active duty units stationed at Fort _____, _____.

3. The Judge Advocate General (TJAG) policy is as follows:

a. Commanders are responsible for ensuring that preventive law services are provided within their commands (AR 27-3, para 3-3a). Supervising attorneys will ensure that preventive law services are provided by attorneys performing legal assistance duties. Attorneys should be aggressive and innovative in disseminating information to soldiers and their families that is responsive to potential legal problems and issues (AR 27-3, para 3-3b).

b. The same legal and professional standards that apply to preparing and executing wills within an Army legal office apply to those that are prepared and executed during a military exercise (e.g., EDRE). Where those standards cannot be met during the exercise, follow-up legal assistance appointments should be made to prepare or execute wills for soldiers who need them. In appropriate cases, soldiers may be encouraged to have wills (or new wills) drafted and executed following their mobilization or deployment (AR 27-3, para 3-6b(2)(a)).

4. The unit Commander will coordinate with ACofS, G1/AG, Deputy AG, 45 to 60 days prior to their expected date of SRP (cite local regulation). Subsequently, ACofS, G1/AG will task OSJA to provide legal support for the SRP. OSJA should be informed of the unit, number of soldiers, time and date, location and point-of-contact (POC) for the SRP. The LAO is then tasked with ensuring that the necessary legal support is provided for the SRP.

5. Upon receiving notice of the SRP, the Legal Assistance (LA) NCOIC will:

- a. record the mission on the office calendar;
- b. notify the Chief, LA of the mission;
- c. notify the LAA responsible for that unit of the mission, and;
- d. notify the Consolidated Legal Center (CLC) NCOIC, through the OSJA NCOIC, of the date of the SRP, the availability of pre-SRP classes concerning Wills and POAs, the name of the LAA supporting the mission and the mission requirements (including the need to keep statistics). The CLC NCOIC shall task a legal clerk to provide support for the SRP. The legal clerk tasked will be a certified Notary Public.

6. The LAO contributes to the accomplishment of the SRP mission in two (2) phases. In the first phase, the LAA responsible for the unit scheduled for the SRP will, upon request, provide all soldiers with a legal briefing concerning the availability and necessity of obtaining POAs and wills. In the second phase, the legal representative on the SRP team evaluates the legal readiness of the unit at the SRP site and reports the results in a statistical format to the LAO, which in turn reports the results to the unit Commander.

7. Phase I - Unit Preparation:

a. No less than thirty (30) days prior to the date of the SRP, the Chief, LA will send a letter to the unit Commander advising the Commander that the standard for successfully passing the legal portion of the SRP is that no soldier should leave the SRP desiring and not having a POA or a will. The Chief, LA will offer the following services to the Commander (see attachment 1):

(1) Conduct classes in Preventive Law to reduce the number of legal problems confronting soldiers and their families, and;

(2) Brief soldiers before the SRP on the necessity of placing their legal affairs in order prior to deployment. This briefing provides soldiers with information about the availability and necessity of POAs and wills. The Commander and the soldiers will be informed of the dates and times available at the LAO for will and POA preparation. It is the responsibility of the Commander to ensure that each soldier desiring a Will or POA has the opportunity to see a LAA at the LAO for Will and POA preparation.

8. Phase II - Unit Evaluation:

a. The LAO is responsible for providing legal support for the SRP, but the Commander must ensure that:

- (1) soldiers present for duty attend the SRP;**
- (2) the Personnel Readiness Folder (PRF) for each unit member is available at the SRP site, and;**
- (3) PRFs of all soldiers present for duty have been checked by the appropriate legal clerk.**

b. The LAA and the legal clerk(s) comprise the legal SRP team. At the SRP site, the legal clerk will:

- (1) assist the soldier in completing Form _____, having the soldier verify that he/she has received a legal briefing and indicating his/her informed choice regarding a POA and Will;**

NOTE: Form _____ is maintained in the soldier's PRF and is updated during subsequent SRPs. It provides the legal SRP team and the unit Commander with a simple method of determining an individual's legal readiness for deployment. This form records the individual's status regarding POAs and a will.

- (2) prepare and notarize POAs on request (allowing the soldier to maintain the original POA);**

- (3) inform all soldiers desiring a Will of the dates and times that a Will may be obtained at the LAO. Wills are not prepared at the SRP site (except during EDREs/Deployments--see below). The LAA may hand out Will questionnaires (Form _____) and explain the procedure to the soldier. A list of the name, unit and duty phone of all soldiers desiring Wills should be provided to the Commander and the LAO within two (2) days of the SRP completion;**

- (4) maintain legal readiness statistics using pre-printed form (see attachment 2) for soldiers processing through the SRP station. This form provides the legal clerk with the means to properly account for soldiers having/desiring/not desiring POAs and wills. These statistics should be provided to the LAO within two (2) days of the SRP completion;**

- (5) IAW AR 27-3, para 3-6b(1), advise soldiers concerning designation of beneficiaries under Servicemen's Group Life Insurance (SGLI). The legal clerk will have and be familiar with the LAO Information Paper entitled "Designation of Beneficiaries Under SGLI". The legal clerk will only answer questions which are addressed in the Information Paper. Soldiers**

with unanswered questions will be directed to the LAO. IAW AR 27-3, para 3-6b(1)(b), the "legal" SRP station should be stationed before the personnel and finance sections so that soldiers can receive legal advice before they designate SGLI and final pay beneficiaries.

(6) assist the LAA as necessary.

c. During an Emergency Deployment Readiness Exercise (EDRE) or an actual Deployment, Phase II procedures will be altered. In addition to the procedures outlined in subparagraph b (above), the legal SRP team will prepare and execute Wills. During EDREs, however, the LAA reserves the right to refuse to prepare Wills if he/she feels that the desired Will is too complex for on site preparation or the testator has not had sufficient time to reflect on testamentary intentions. In such cases, the soldier will be required to visit the LAO for preparation of a Will at a later date.

The Will preparation/execution will be conducted as follows:

(1) At the legal SRP station (preferably the first SRP station), those soldiers desiring a Will shall complete the Will questionnaire (Form ____). The LAA will review the questionnaire to ensure that the soldier has properly recorded his/her testamentary wishes. The soldier will be allowed to complete the other SRP stations while the Will is being prepared;

(2) Once prepared, the Will shall be delivered to a second legal SRP station located at the end of the SRP site. At this station, the Wills shall be executed. IAW TJAG policy, all will executions shall be conducted by a LAA. Other personnel required at this station include at least one legal clerk (notary public) and three (3) witnesses. If possible, the witnesses should not be from the same deploying unit as the testator. Ideally, the witnesses should be civilian employees. Using unassociated witnesses reduces the likelihood that the testator and all witnesses will die and helps to ensure that at least one witness will be alive to attest to the validity of the Will. Although more personnel are required, this procedure greatly reduces the amount of time required in preparing and executing Wills.

9. Using the legal readiness statistics prepared at the SRP, the Chief, LA will inform the Commander of the legal readiness of the unit (see attachment 3).

10. Each SRP file should contain the initial letter to the Commander from the Chief, LA offering pre-SRP legal services (see attachment 1) and the post-SRP letter to the Commander informing

the Commander of the legal readiness of the unit (see attachment 3).

11. The legal SRP readiness of the unit is the joint responsibility of the Commander and the LAA supporting that unit. Therefore, the LAA should work closely with the Commander to achieve and maintain a unit legal SRP readiness rating of 100%.

12. POC is CPT _____ or CPT _____, OSJA, Legal Assistance Office, Building __, ext. ____/____.

date

INFORMATION PAPER

SUBJECT: Legal Assistance Services

1. **PURPOSE:** To inform commanders and individuals of the legal assistance services available at Fort _____.

2. **FACTS:**

a. Legal assistance is an Army-wide program for soldiers on active duty (and others as resources permit). Legal assistance is also available at Fort _____ to family members of soldiers, retirees and their family members.

b. The following services are available to eligible clients: domestic relations, paternity, non-support, wills and estates, adoptions and name changes, indebtedness, taxes, landlord-tenant relations, consumer affairs, adverse administrative actions (i.e., reports of survey, bars to reenlistment, OER/EER appeals, letters of reprimand), powers of attorney, notary services, immigration and naturalization, veterans affairs, medical disability processing, and general advice concerning civil suits, and other matters.

c. The attorneys at the Fort _____ legal assistance office see clients on an appointment basis Monday, Tuesday, Thursday and Friday. No appointments may be made or walk-ins accepted for enlisted soldiers or supervising officers during Sergeants time on Thursday morning (0830-1130). The office opens at 0830 Monday thru Friday and closes at 1700 Monday, Tuesday, Wednesday and Friday, and at 1600 on Thursday. The office will see clients with bona-fide emergencies on a walk-in basis or as soon as possible. Powers of attorney, electronic tax filing (through 15 August 1993) and notary services are provided on a walk-in basis between 0830 - 1700, Monday through Friday. Wills, Living Wills, Medical Durable Powers of Attorney preparation, and general advice concerning estate planning are provided on a walk-in basis Wednesdays, 0830-1130 and 1330-1530, at the Fort _____ Office. Divorce/Separation briefings are provided, by appointment, at the Fort _____ office on Thursdays at 1330 and 1500. Please note that attendance at a divorce/separation briefing is not a prerequisite to a divorce/separation appointment. Other domestic relations matters (adoption, non-support, custody, etc.), are seen by appointment. Additionally, victims of domestic violence and other crimes may seek emergency representation and assistance.

SUBJECT: Legal Assistance Services

d. The Fort _____ legal assistance office is located at the Family Law Center, Building __, telephone numbers _____. This office is a branch of the Office of the Staff Judge Advocate, _____.

3. The legal assistance branch also offers preventive law classes and pre-SRP (Soldier Readiness Processing) briefings for the benefit of soldiers, retirees and their family members. During the preventive law briefings, a legal assistance attorney will address various legal topics, including estate planning and a discussion of pitfalls in the consumer law area. In the pre-SRP briefing, the attorney will advise the soldiers of the importance of powers of attorney, and whether or not the soldier should have a will. When the legal assistance branch is notified of any upcoming SRP, the legal assistance attorney responsible for that particular unit will contact the commander, and provide a briefing to the unit if one is desired. The overall purpose of this program is to ensure that the soldiers are continuously SRP qualified so that the minimum amount of time is needed to finish processing for movement.

*** THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS YOU SHOULD CONSULT THE CHIEF, LEGAL ASSISTANCE.

Legal Assistance Branch
Office of the Staff Judge Advocate
CPT _____/phone _____

(office symbol)
date

INFORMATION PAPER

SUBJECT: Soldier Readiness Program (SRP)

1. **PURPOSE:** To inform Commanders about the services provided by the Legal Assistance Office in preparation for SRPs.

2. **FACTS:**

a. SRPs are the mechanism through which Commanders ensure the readiness of their units, legally and otherwise. The following details the steps involved for the "legal" portion of a SRP.

b. All SRPs must be coordinated through ACofS, G1/AG between 45 and 60 days prior to the date of the SRP. ACofS, G1/AG will then notify the SJA that a SRP has been scheduled. The Chief, Legal Assistance, will then send a Memorandum to the Commander offering our services in "legally" preparing the unit for deployment.

c. If the Commander desires, an attorney from the Legal Assistance Office will give instruction to the unit concerning the uses and necessity of Powers of Attorney and Wills. Those soldiers who need to have a Will or Power of Attorney prepared must come to the Legal Assistance Office. Powers of Attorney can be prepared in just a matter of minutes. However, since Will preparations take a minimum of one week, scheduling this class well in advance of the SRP is advisable in order to maximize the number of soldiers who will be legally qualified at the SRP.

d. After the SRP, the Chief, Legal Assistance, will provide the Commander with a status report regarding the legal preparedness of the unit. Remember, a SRP is really just a "records check" from a legal perspective. The Commander must be proactive in order to ensure that the unit is legally prepared at the time of the SRP.

THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT THE LEGAL ASSISTANCE OFFICE.

Legal Assistance Office
Office of the Staff Judge Advocate
Building __, ext. ____/____

(office symbol)

(DATE)

MEMORANDUM FROM LEGAL ASSISTANCE OFFICE

MEMORANDUM FOR COMMANDER, (UNIT), FORT _____, _____

SUBJECT: Legal Preparation for the Soldier Readiness Program/Processing (SRP) scheduled on (DATE)

1. As the Chief, Legal Assistance, I will be supervising the legal support provided for your SRP scheduled on (DATE).
2. In order to legally qualify your soldiers for the SRP, each must receive a briefing concerning wills and powers of attorney and no one should leave the legal processing point requiring these documents. Powers of attorney can be prepared at the SRP site. In order to prepare a will, each soldier must complete a will questionnaire and be interviewed by a Legal Assistance Attorney at the Legal Assistance Office. Once the will is prepared, it must be formally executed to take effect. This takes time. These briefings must be scheduled well in advance of the SRP to provide the needed legal documents.
3. To aid in your goal to have all soldiers SRP qualified, I offer the following services prior to the SRP:
 - a. conduct Preventive Law classes to decrease the likelihood of legal problems developing for your soldiers and their families;
 - b. brief your soldiers on the necessity of having their affairs in order and provide them with information on how to obtain powers of attorney and wills.
4. After the SRP, I will provide you with a statistical analysis of the legal readiness of your unit.
5. I am here to support you. If you have any questions or desire to discuss the assistance available, please contact me at the Family Law Center, Building ___, telephone ___/___.

(NAME)
CPT, JA
Chief, Legal Assistance

(office symbol)

(DATE)

MEMORANDUM FROM LEGAL ASSISTANCE OFFICE

MEMORANDUM FOR COMMANDER, (UNIT), FORT _____, _____

SUBJECT: Legal Readiness of (UNIT)

1. During the SRP held on (DATE), statistics were obtained to evaluate your unit's legal readiness. The following statistics are based on only those soldiers who processed through the legal SRP site. Of the (#) soldiers assigned or scheduled to perform the SRP, _____ soldiers (or _____ %) were processed. Of those _____ soldiers, _____ soldiers did not have a Last Will and Testament, though they desired one. Consequently, they were not legally prepared for deployment. Enclosed is a list of those soldiers desiring a Last Will and Testament.

2. The following is a breakdown of the statistics:

UNIT	SOLDIERS ASSIGNED/ SCHEDULED FOR SRP	SOLDIERS PROCESSED	SOLDIERS DESIRING A WILL	SOLDIERS NOT DESIRING A WILL	SOLDIERS WHO HAVE A WILL
power of attorney (POA)				SOLDIERS NOT DESIRING A POA	SOLDIERS WHO HAVE A POA

3. A good percentage (_____ %) of the soldiers processed are legally prepared for deployment. Soldiers desiring wills and powers of attorney should contact the Family Law Center, Building _____, phone _____/_____. I am always available to improve your unit's deployment readiness.

(NAME)
Captain, JA
Chief, Legal Assistance

ROUTINE SRP TRACKING SHEET

UNIT: _____ POC: _____

ACTION	DATE/INTLS
1. SJA tasking letter for SRP received from G1/AG (standard - 45 day rule applies)	_____
2. Chief, LA letter to Commander completed (standard - 24 hour turn around)	_____
3. Ch, LA letter hand delivered by LA Legal Clerk Attorney tasked provided copy of all documents (standard - 24 hour turn around)	_____
4. NCOIC of the CLC contacted, through NCOIC OSJA, to task legal clerk for notary support to pre-SRP brief and SRP (Provide: Trk sht/G1 ltr/Ch, LA ltr/AAR Form) (standard - 24 hour turn around)	_____
5. Legal Clerk Tasked by NCOIC CLC: _____ (standard - 24 hour turn around/notary public)	_____
6. Commander contacted by attorney to inquire concerning need for pre-SRP legal brief (standard - NLT 30 days pre-SRP)	_____
7. Commander Requests pre-SRP Legal Brief (standard - disallow if not at least two Wednesdays b/t requested brief date and SRP) Date/time of Brief: _____	_____
8. Pre-SRP Brief conducted (standard - attorney brief/legal clerk serve as notary for POAs on the spot).	_____
9. SRP Conducted (standard - legal clerk review "SRP Statement of SJA Processing")	_____
10. After-Action Report Forwarded to Chief, LA (standard - NLT 24 hours post-SRP)	_____
11. Unit Evaluation Completed/Forwarded to Commander by Chief, LA (standard - NLT 72 hours post-receipt of AAR)	_____
12. Response from Commander received	_____

CPT _____ - phone _____

**SOP: Preparation of Wills, Living Wills and
Durable Powers of Attorney**

The following is the Legal Assistance Office (LAO) standard operating procedure (SOP) for preparation of Wills, Living Wills and Durable Powers of Attorney (Durable POA's) for soldiers, dependents and retirees at Fort [].

One day of each week will be devoted to the preparation and execution of Wills, Living Wills and Durable POA's for the general legal assistance client population. The Chief, Legal Assistance, will be responsible for designating the day and times for such purpose. There will also be a Soldier Readiness Program (SRP) day designated to accommodate those soldiers previously identified as needing legal documents.

The preparation of Wills, Living Wills and Durable POA's consists of three (3) phases. Phase I involves the client's initial appointment with a Legal Assistance Attorney (LAA) to discuss the client's needs and involves preparation of the necessary documents at the Legal Assistance Office (LAO). Phase II involves the execution of the documents.

* [these phases presume that the LAA will generate the document using the LAAWS program during the client interview/if this is not the procedure in your office, modify these phases to account for a clerk generating the document]

Phase I - Appointment with LAA:

a. On the designated day, clients will be seen on a walk-in basis.

b. Upon arriving at the LAO, the client will sign in, complete a client card, and fill out a Will/POA worksheet.

c. A LAA will see each client one-on-one to determine the client's testamentary intentions. The LAA will also determine whether the client desires a Living Will or Durable POA. If the client desires a Last Will and Testament, the LAA will prepare the document using the LAAWS program while the client is in his or her office. The client is then afforded the opportunity to read the document and indicate corrections.

d. IAW AR 27-3, the LAA also will advise each active duty client concerning designation of beneficiaries under Servicemen's Group Life Insurance (SGLI). Copies of the most current SGLI election form will be available in the LAO. If the client

desires to change the designation of beneficiaries under his/her SGLI, the LAA will assist the client in filling out the form properly, then ensure that the client takes the form to the appropriate personnel office for processing.

e. Once the client interview is completed and the necessary documents generated, the LAA will schedule the client for an appointment (during designated times) to execute the document(s). If emergency circumstances exist, the appointment for execution will be for that same day. Otherwise, the appointment for execution will be made for the following week. The LAA will provide the client with an appointment card indicating the date and time of scheduled execution and the LAA's name. The client may review the document when the document is generated [this depends on LAA work load] or 30 minutes prior to execution time.

5. Phase II - Document Execution:

a. The Chief, Legal Assistance, will designate document execution times on a given day. LAAs will be assigned, on a rotating basis, the responsibility for conducting the executions.

b. The client will come to the LAO one-half hour prior to the scheduled time for execution in order to review the document(s) which have been prepared (unless the client has already done so). If any corrections are needed, the typist will make those corrections on the spot. If client wishes to make substantive changes to the document(s), he/she must first consult the LAA who prepared the document(s).

c. When all clients are prepared to execute their Wills, Living Wills and/or Durable POAs, the LAA in charge of executions will move the clients into his/her office (or other designated area). General questions may be answered by the LAA at this time. However, more specific questions involving private matters should not be answered in this group setting.

d. The Last Will and Testament execution ceremony will take place first and will be performed as follows (variations eliciting the below information are acceptable):

(1) A LAA will conduct the execution ceremony and a civilian Notary Public will be present.

(2) Each testator/testatrix will be asked the following questions, to which an affirmative answer must be received before proceeding:

(a) "Are you (name of testator/testatrix) ?"

(b) "Do you declare in the presence of these witnesses that this is your Last Will and Testament?"

(c) "Are you at least eighteen (18) years of age?"

(d) "Have you read this document and does it express your desires concerning the disposition of your property upon your death?"

(e) "Are you signing this document voluntarily, free from any duress or coercion?"

(f) "Do you request that these individuals witness the signing of your Last Will and Testament?"

(3) The LAA will then determine if anyone is from the state of New York. If so, the LAA must ensure that the New York testator/testatrix only signs at the end of the Will (not on every page) in accordance with New York law. Also, the LAA must sign the Will in his/her capacity as an attorney in charge of the execution (so, the LAA cannot be a witness to the New York Will).

(4) At this point, the Last Will and Testament shall be signed by the testator/testatrix.

(5) After the Wills have been signed, each of the witnesses will be asked the following questions, to which an affirmative answer must be received before proceeding:

(a) "Does each testator/testatrix appear to be of sound mind?"

(b) "Does each testator/testatrix appear to understand the nature of his/her actions?"

(c) "Does any testator/testatrix appear to be under any duress or coercion to sign his/her Last Will and Testament?"

(d) "Did you see each of the testators/testatrixes sign his/her Last Will and Testament?"

(6) The LAA should then ensure that none of the witnesses are beneficiaries of the Will being executed before proceeding (generally occurs with Husband and Wife).

(7) At this point, the LAA should have each Will witnessed by three (3) witnesses.

(8) After all Wills have been executed and witnessed, each Will shall be notarized by the civilian Notary Public

present during the execution ceremony. Unless the client has a Living Will or Durable POA, he/she may leave at this time with his/her executed Will.

(9) The typist or LAA will mark a big "X" across the front of each Will questionnaire once the Will has been executed and file the Will questionnaire form.

e. Living Wills and Durable POAs will then be executed according to the formalities of the state in which the client is domiciled. All Durable POAs will be notarized by a civilian Notary Public.

7. POC is [], OSJA, Legal Assistance Office,
Building [] ext. [].

date

INFORMATION PAPER

SUBJECT: Designation of Beneficiaries Under Servicemen's Group Life Insurance (SGLI)

1. PURPOSE: To assist soldiers in properly designating desired beneficiaries under SGLI.

2. FACTS:

a. Soldiers must designate beneficiaries by name on their SGLI election form (SGLV-8286). Designation of beneficiaries by name ensures that the proceeds will be distributed according to the soldier's true intent. Use of the by-law designation on SGLI election forms is no longer authorized. However, soldiers will not be required to change their current SGLV-8286 even if they have used the by-law designation. Changes to these forms will be made when soldiers routinely update their SGLI-8286s in the future.

b. If one or more of the following occurs:

- (1) none of the beneficiaries designated by name on the SGLI election form survives you; or
- (2) if you do not name a beneficiary to receive the proceeds of your insurance; or
- (3) if you direct the proceeds to a trust that is not properly established; or
- (4) if your SGLV-8286 still contains the by-law designation,

the proceeds will be distributed in the following order:

- (1) widow or widower; if none, it is payable to --
- (2) child or children in equal shares with the share of any deceased child distributed among the descendants of that child; if none, it is payable to --
- (3) parent(s) in equal shares; if none, it is payable to --
- (4) a duly appointed executor or administrator of your estate; if none to --
- (5) other next of kin.

SUBJECT: Designation of Beneficiaries Under Servicemen's Group Life Insurance (SGLI)

Note: The terms "child" and "children", as used above, do not include step-children. Likewise, the term "parent(s)" does not include step-parents.

c. You may name minor children as beneficiaries. If you name a minor child as a beneficiary, payment of the proceeds will be paid to the court-appointed guardian of the child. The guardian will usually be the surviving parent, if one, of the child. Legal fees and court costs will usually have to be paid for appointing a guardian before the proceeds may be distributed.

d. You can establish a trust for the benefit of a child and name the trust as the beneficiary. A trust names a trustee (someone you choose) to be legally responsible for administering the insurance proceeds for the child. Some legal fees and court costs may be avoided. If you have already established a trust for either principal or contingent beneficiaries, the language in either (1) or (2) below should be used to direct the proceeds to the trust:

- (1) For a living (inter-vivos) trust: "My trustee, (name), under trust agreement dated (insert date) ."
- (2) For a testamentary trust: "My trustee, (name), under my last will and testament."

Note: The language in d(1) and d(2) above does not establish a trust. You must see a military or civilian lawyer to establish a living trust agreement or to establish a trust in your will.

e. You may change a beneficiary at any time, even without the knowledge or consent of the beneficiary. This right cannot be waived or restricted. However, no designation or change of beneficiary will be valid unless you complete and sign a new SGLI election form (SGLV-8286) and it is received by your Uniformed Service before your death.

f. If you have any questions about the legal effect of your designation on the SGLI election form, you may obtain advice from a military lawyer at no expense.

THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT THE LEGAL ASSISTANCE OFFICE.

Legal Assistance Office
Office of the Staff Judge Advocate
Bldg _____ phone _____

SAMPLE DESIGNATION OF BENEFICIARIES
(DAJA-LA Proposed formats for
SGLI Beneficiary Designations - Nov 92)

BY-NAME

Single Principal Beneficiary - "My wife, Mary A. Doe, SS#, address, 100%, Lump Sum."

Two Principal Beneficiaries - "My father, John E. Doe, SS#, address, 50%, Lump Sum; and to my Mother, Mary A. Doe, SS#, address, 50%, Lump Sum."

Multiple Principal Beneficiaries - "My sister, Ann E. Doe, SS#, address, 33 1/3 %, 36 payments; my brother, James E. Doe, SS#, address, 33 1/3 %, 36 payments; and my friend, Jerry Smith, SS#, address, 33 1/3%, 36 payments."

Do not place Principal Beneficiaries on the Contingent Beneficiary Lines of the form.

When designating Contingent Beneficiaries, the designation is done in the same manner as explained above for Principal Beneficiaries.

LIVING TRUST

Trust for Minor Children - "My trustee, John A. Doe, to fund a Trust established for the benefit of my children, under Trust Agreement dated _____. 100% Lump Sum."

Trust for an Individual Child - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Son, Jerry A. Doe, under Trust Agreement dated _____. 100% Lump Sum."

Trust for an Adult - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Mother, Mary A. Doe, under Trust Agreement dated _____. 100% Lump Sum."

TESTAMENTARY TRUST

Trust for Minor Children - "My trustee, John A. Doe, to fund a Trust established for the benefit of my children, under my Last Will and Testament dated _____. 100% Lump Sum."

Trust for an Individual Child - "My Trustee, John A. Doe, to fund a Trust established for the benefit on my Son, Jerry A. Doe, under my Last Will and Testament dated _____. 100% Lump Sum."

Trust for an Adult - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Mother, Mary A. Doe, under my Last Will and Testament dated _____. 100% Lump Sum."

date

INFORMATION PAPER

SUBJECT: Powers of Attorney

1. **PURPOSE.** To provide Legal Assistance clients with information regarding a power of attorney.

2. **FACTS.**

a. A Power of Attorney (POA) is one of the strongest legal documents that an individual can give to another person. A POA is a document authorizing a designated person to act on your behalf. This person is called your agent or attorney-in-fact. A POA is generally used at times when you are not available to personally take care of your affairs. Acts performed by your agent or attorney-in-fact as designated by your POA are legally binding on you. Thus, a POA should only be used when absolutely necessary. Your agent should be mature, able to exercise good judgment, and be intelligent. PLEASE NOTE that third parties (banks, businesses, etc.) DO NOT have to accept or acknowledge your POA. It is totally within their discretion to do so. However, the majority of persons, businesses and institutions will accept your POA. Check with a particular business or financial institution BEFORE obtaining or using a POA to be sure that it will be accepted.

b. General Power of Attorney (GPOA). A GPOA authorizes your agent to act for you in all matters, to include the following:

- * Access to any banking, checking, leave and earnings statement (LES), safety deposit box, or other accounts.
- * Ability to borrow money in your name (i.e., signature loans).
- * Ability to use your credit account to incur additional bills in your name only.
- * Ability to sell or mortgage your property.
- * Ability to sign any kind of contract in your name.

This type of POA is rarely needed and usually not recommended because it can be easily misused by an agent. This POA gives the agent the "power" to make almost any decision on your behalf. You may only find out about the decision when it is too late to change the obligation. A GPOA should only be given in a case where prolonged absence or unavailability is anticipated and

SUBJECT: Powers of Attorney

actions to protect your property or family's welfare are likely to be necessary. As a rule, you should almost never grant a GPOA if a special POA will be sufficient. However, a GPOA to your spouse for a limited period of time is often useful.

c. Special Power of Attorney (SPOA). A SPOA authorizes your agent to perform a certain specified act. The following are examples:

- * Sell or ship you automobile
- * Ship or receive household goods
- * Cash your paycheck or tax return
- * Authorize medical care for children in your absence

A SPOA is preferable to a GPOA because it is limited in scope. It can help protect you against an error in judgment or dishonesty by your agent.

d. Safeguarding your POA.

- * Never have a POA unless you need one.
- * If you feel you might need a power of attorney, but are not certain, have one prepared but do not sign it until you need it.
- * Always put an expiration date on your POA; never make a power of attorney that lasts indefinitely.
- * Make sure your expiration date is for a fairly short period of time. The policy of this office is to limit a POA to years.
- * Never use a GPOA where a SPOA will do.

e. Expiration and Revocation of a POA.

Your POA automatically terminates:

- * Upon your death
- * Upon the death of your agent
- * On the expiration date specified in the POA, or
- * When you revoke the POA

You can revoke a POA by:

- * Destroying the original and all copies,
- * Informing your agent of the revocation, or
- * Preparing and executing a Revocation of Power of Attorney and giving a copy of the revocation to any person that might deal or might have dealt with the person to whom you gave your POA.

SUBJECT: Powers of Attorney

f. Making a POA. POAs are available on a walk-in basis at the Fort _____ Legal Assistance Office from 0800-1600 hours. The POA must be signed before a notary or someone authorized to administer oaths.

THIS INFORMATION PAPER IS INTENDED ONLY FOR GENERAL INFORMATION REGARDING POWERS OF ATTORNEY. YOU SHOULD CONTACT A LEGAL ASSISTANCE ATTORNEY FOR ALL SPECIFIC QUESTIONS.

Office of the Staff Judge Advocate
Legal Assistance Division
CPT _____ phone _____

date

INFORMATION PAPER

SUBJECT: Revision of General Power Of Attorney (POA)

1. PURPOSE: To inform commanders, soldiers and family members about recent revisions to the General POA used by the Fort _____ Legal Assistance Office.

2. FACTS:

a. The General POA used by the Fort _____ Legal Assistance Office has recently been revised in an attempt to rtail some abuses which became apparent during the Desert Storm/Desert Shield deployment. The revisions are as follows:

(1) The agent on the new General POA is no longer allowed to open new credit and/or banking accounts in the name of the principal or to increase and/or exceed credit limits on existing credit accounts.

(2) The agent's ability to borrow money in the principal's name is expressly limited to Army Emergency Relief (AER) loans and/or similar emergency loans available from the American Red Cross.

(3) The General POA now contains a clause which expressly gives the agent the authority to pick up the soldier's LES from the finance office and to transact any other business allowable by the finance office on the soldier's behalf.

b. You may obtain a General POA by visiting the legal assistance office, building _____, daily during the hours _____. Be sure to bring the following information with you: the full name, address, and social security number of the person you want to name.

NOTE: This revision was prompted in part, by the Georgia Supreme Court decision in American Express v. Web, 1991 WL 124625 (Ga. July 3, 1991) (ruling that state law imposes no duty on credit card issuer to mitigate despite cardholder notification that an authorized user is making unauthorized charges, even where such charges are beyond existing credit limits).

THIS INFORMATION PAPER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT THE LEGAL ASSISTANCE OFFICE.

Legal Assistance Office
Office of the Staff Judge Advocate
Bldg _____ phone _____

PORT STEWART GENERAL POA MODIFICATIONS

ENDORSING CHECKS AND DEPOSITING MONEY (additional clause)

"To close accounts and to receive statements, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I have an interest. The power to open new credit and/or banking accounts in my name or to increase and/or exceed credit limits on existing credit accounts is expressly disallowed."

BORROWING MONEY: "To borrow money in my name, but only from those sources stated hereafter, when deemed necessary to my said attorney upon such terms as to my said attorney appear proper and to execute such instruments as may be required for such purpose. Said power to borrow money shall be limited to Army Emergency Relief (AER) loans and/or similar emergency loans available from the American Red Cross."

FINANCE: "To obtain from any military finance office my Leave and Earnings Statements (LES), or copies thereof, in my behalf and to further transact any business allowable by said finance office in my behalf and to execute such instruments as may be required for such purpose."

date

INFORMATION PAPER

SUBJECT: Demobilization Legal Issues for Reserve Component (RC) Units and Individuals

1. **PURPOSE.** To provide legal information to RC units and individuals concerning demobilization.
2. **UNIFORM CODE OF MILITARY JUSTICE (UCMJ).** The UCMJ, at Article 2, and the Manual for Court Martial, United States, 1984 (MCM), at Rule for Court-Martial (RCM) 202, provide for continuing jurisdiction (expanded RC UCMJ authority) over RC personnel, when they return to their RC status. The Army only loses jurisdiction over those soldiers who totally terminate their relationship with the Army. Accordingly, the chain of command will be able to administer military justice for offenses that occur during active duty, but are discovered after demobilization. Also, there is authority to retain RC soldiers on active duty for disposition of UCMJ offenses. Commanders should attempt to resolve all outstanding military justice actions prior to redeployment/demobilization from the Area of Responsibility (AOR).
3. **REEMPLOYMENT RIGHTS.**
 - a. The Veterans' Reemployment Rights Law (VRRL) (38 U.S. Code Sections 2021-2026) provides for reemployment of RC soldiers.
 - b. The position held by the RC soldier prior to mobilization must have been an "other than temporary" position to obtain the protections of the law.
 - c. The RC soldier must have left the position for the purpose of entering active duty.
 - d. The RC soldier's service, during the period of mobilization, must be characterized as "under honorable conditions" to receive the benefits of the law.
 - e. For soldiers called up under the Presidential Selected Reserve Call-up authority (10 U.S.C. 673b), application for reemployment with the preservice employer must be made within 31 days after demobilization. For those activated under other authorities, such as sections 672(d) or 673 of Title 10 U.S.C., the application period is 90 days. In all case, demobilizing soldiers are urged to apply for reinstatement as soon as possible after release from active duty.

SUBJECT: Demobilization Legal Issues for Reserve Component (RC) Units and Individuals

Those soldiers on active duty after January 18, 1991, have 90 days to apply for reemployment, regardless of call-up authority.

f. The demobilizing RC soldier, under VRRL, is entitled to the same level of position, in terms of seniority, status, and rate of pay, that the RC soldier would have attained if the soldier had remained continuously employed, instead of serving on active duty.

g. The VRRL provides the demobilizing RC soldier, who was called up under 10 U.S.C. 673b, a six month period of special protection against discharge from the civilian position without cause. For those activated under different authorities, the period of special protection is one year. Those soldiers on active duty after January 18, 1991, have one year protection, regardless of call-up authority.

h. In accordance with 38 U.S.C. 2025, the Secretary of Labor, through the Office of Veterans' Reemployment Rights, shall render aid in the reinstatement of a RC soldier in the former position, if the employer does not comply with the law. Section 2025 also authorizes the National Committee for Employer Support of the Guard and Reserve (NCESGR) to assist the Secretary of Labor, by providing employers and employees informal guidance, mediation, and, where necessary, referral, should reemployment rights problems arise. Soldiers experiencing reinstatement problems should contact the NCESGR Ombudsman at 1-800-336-4590, or their local Department of Labor, Veterans' Employment and Training Service representative for assistance.

4. HEALTH INSURANCE REINSTATEMENT. a. The Veterans' Reemployment Rights Law, Title 38 of the U.S. Code, Section 2021(b) provides for the reinstatement of health insurance upon reemployment. The statute states that a reemployed military member is entitled to the medical insurance benefits that an employer provides as if he or she had never been activated and his/her civilian employment had never been interrupted.

b. The SSCRA, Section 703, also requires an insurer - upon the release of a service member from military duties - to reinstate his or her health insurance coverage (and that of his or her family), which was in effect on the day before military service began, and which was terminated during the period of military service. The amendment also states that said person and his/her family are entitled to the health insurance coverage which they would have received if no military duties had intervened.

SUBJECT: Demobilization Legal Issues for Reserve Component (RC) Units and Individuals

c. Note that the above provisions are meant only to provide for health insurance reinstatement for those injuries which are other than "service connected". For advice concerning "service connected" injuries, contact the nearest Military Treatment Facility prior to demobilization. "Service Connected" injuries involve injuries of a soldier either incurred or aggravated during military service, which are not due to the soldier's personal conduct.

5. SOLDIERS' and SAILORS' RELIEF.

a. The Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. Section 501, et seq.), provides for the suspended enforcement of civil liabilities in certain cases for RC soldiers on active duty.

b. Generally, the period of time the act covers is the duration of active service. However, the various sections of the act qualify the period of service, and provide additional periods after termination of active service, and, in some instances, back date certain coverage under the Act.

c. RC soldiers who took advantage of the six percent (6%) interest cap under the Act are reminded to immediately notify their lender of their demobilization, to avoid penalties for wrongfully claiming the lower rate after release from active duty.

d. RC soldiers have 90 days from discharge to request reopening of default judgments entered against them during their term of active service.

e. For RC soldiers, certain statutes of limitation (a time period to bring a law suit) may be suspended during their term of active service.

f. Consult with the Demobilization Station (DAMS) Staff Judge Advocate (SJA) for applicability of the Act in your particular circumstances.

6. CLAIMS.

a. Soldiers should file claims for lost or damaged personal property to the servicing SJA office as soon as possible prior to redeployment/demobilization. This will allow the soldier time to obtain the required documents to support the claim, and assist in the expeditious adjudication of the claim.

SUBJECT: Demobilization Legal Issues for Reserve Component (RC) Units and Individuals

b. Claims that result from damages to personal property during redeployment or demobilization should be documented as soon as possible by the claimant. The RC soldier should obtain documentation to support the claim that the damage or loss was the result of government activities.

c. Claims will be investigated, and claim packets prepared in accordance with AR 27-20. Claims submitted after demobilization will be filed with the claims office supporting the area where the RC soldier resides. Unit commanders can obtain the address of this claims office from the DMS SJA office during demobilization.

7. REVOCATION OF POWERS OF ATTORNEY (POA). Soldiers who gave a POA to a holder prior to activation or mobilization are reminded that the POA does not necessarily expire automatically upon deactivation or demobilization. If you want to revoke your POA, see your DMS SJA.

8. COMBAT ZONE TAX ISSUES (See IRS publication 945, Tax Information for Those Affected by Operation Desert Storm).

a. An executive order signed by the President on 21 January 1991, effective 17 January 1991, triggers several benefits under the Internal Revenue Code for all soldiers who served in Operation Desert Shield/Storm in the "Combat Zone".

b. The "Combat Zone" covers the Persian Gulf, the Red Sea, the Gulf of Oman, that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude, the Gulf of Aden, and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. Members outside the Combat Zone can also take advantage of the Combat Zone exclusion (see c. below), if their service is in direct support of military operations in the Combat Zone and they are receiving Hazardous Duty Pay.

c. The first benefit is a Combat Zone exclusion from income of military pay for tax year 1991. All military compensation received by enlisted and warrant officers and up to \$500.00 for officers, for any month served, or for any part of a month served in the Combat Zone, is excluded from income. The exclusion also applies for up to two years if the soldier is hospitalized after termination of combatant activities in the Zone as a result of wounds, disease, or injury incurred while in the Combat Zone.

**SUBJECT: Demobilization Legal Issues for Reserve Component (RC)
Units and Individuals**

d. The second benefit is an automatic extension to file tax returns while in the Combat Zone, or hospitalized, due to an injury received in the Zone, or 180 days after leaving the Zone or in the hospital. This provision applies to anyone serving in the Zone from 2 August 1990 forward. Interest and penalties on unpaid taxes are also waived. If the soldier is due a refund, interest will be paid on it at the Federal short-term rate plus two percent (2%) from 15 April 1991 for tax year 1990. The current Federal short-term rate is eight percent (8%).

e. The third benefit is an abatement (forgiveness) of taxes for the tax year in which a soldier dies while serving in the Combat Zone or as a result of wounds, disease, or injury incurred while so serving. This also applies to any prior taxable year ending on or after the first day served in the Zone after the 1990 tax year. Soldiers who died during Operation Desert Shield are not covered by this section.

f. For soldiers or civilians who die at any time as a result of wounds or injury incurred outside the U.S. in a terroristic or military action, all income received in the year of death and the year in which the wounds or injury occurred (if before the year of death) and the year prior to either of these years is abated (forgiven). However, there must be some causal relationship between the death and the military action for the abatement to apply.

g. The two words "Desert Storm" should be written at the top of any tax return, envelope or correspondence to the IRS, to take advantage of any of the above special relief afforded those persons serving in Operation Desert Storm and their spouses. If you receive an audit notice, contact the official immediately to correct the error.

h. The IRS will accept any POA or statement from a person serving in Desert Storm authorizing another to prepare and file and income tax return for 1990. IRS will also accept a statement from a spouse of a person serving in Desert Storm to prepare and file a joint return.

i. IRS offices will help spouses and any others representing persons serving in Desert Storm, including free electronic filing, "when authorized, and where that is available".

j. Virtually all the states with income taxes allow the same and exemptions set forth above. Some are unwilling, however, to pay interest retroactive to 15 April 1991, on refunds claimed after the normal filing date. Some also require copies of orders for extension and exemption purposes.

**SUBJECT: Demobilization Legal Issues for Reserve Component (RC)
Units and Individuals**

9. LEGAL SERVICES AFTER DEMOBILIZATION. Each DMS SJA will provide legal service for commanders and soldiers of units demobilizing on their installation. After demobilization, RC units and soldiers will be serviced by their servicing RC SJA Office. The RC unit commander will receive advice and assistance from the servicing RC SJA office on legal issues occurring during mobilization that remain to be resolved subsequent to demobilization.

THIS INFORMATION PAPER IS INTENDED FOR GENERAL INFORMATION
REGARDING DEMOBILIZATION LEGAL ISSUES AFFECTING RESERVE COMPONENT
SOLDIERS AND UNITS. IF YOU HAVE ANY SPECIFIC QUESTIONS, YOU
SHOULD CONSULT A LEGAL ASSISTANCE ATTORNEY.**

**Office of the Staff Judge Advocate
Legal Assistance Division
Fort Stewart, Georgia 31314-5000
CPT _____ phone _____**

APPENDIX _____

SAMPLE CLIENT INTERVIEW FORM

Date: _____

(Rank, name, SSN, and unit)

The service member is to check the blocks below which most correctly describe his/her situation.

Marital status:

_____ Single
_____ Married

Children:

_____ None
_____ Child(ren) less than 18 years of age
_____ Child(ren) more than 18 years of age
_____ Children from another marriage

Property:

_____ Do not own land
_____ Own land and/or house in the state of _____
_____ Approximate value of insurance and property _____

Will and Power of Attorney:

_____ Have a will which is satisfactory to me
_____ Have a current power of attorney
_____ Desire to have a will prepared for me
_____ Desire to have a power of attorney prepared for me
_____ Appointment with SJA for will or POA not desired
_____ Appointment with SJA for will or POA made for _____

(Date)

(Signature)

T A K E - 1

FAMILY MEMBER PRE-MOVEMENT CHECKLIST

[This document is the product of the North Carolina State Bar's Committee on Military Personnel, in conjunction with the America Bar Association's Standing Committee on Legal Assistance for Military Personnel]. * Edited and revised by TJAGSA November 1993.

This checklist should be reviewed periodically and ALWAYS prior to a TDY or deployment.

MEDICAL

1. Are all the immunizations for myself and my family members up to date?
2. Do I know where my medical and dental records are kept?
3. Do I know where these records for my family members are kept?
4. Do I know how to get medical assistance if it is needed?
5. Do I have one of more reliable sitters for absences or emergencies?

FINANCE

1. Will I have my money available to me on a continuing basis during my sponsor's absence?
2. Has my sponsor initiated an allotment to be sent to me or directly to the bank monthly?
3. Will the allotment provide me with enough money to buy all the necessities needed to maintain in a household?
4. If we are planning to leave the installation area, have we been saving for the move? [Neither Army Emergency Relief nor America Red Cross is authorized to lend money for such a move.]
5. Do I know the address of banks where we have money?
6. Do I know the account numbers and types of accounts that we have?

7. Do I know the location of the bank books--checking and savings?
8. Do we have a safe deposit box? Do I know where the key is?
9. Do I know where each of our credit cards is? Are their numbers logged and kept in a safe place? Do I know the company address for each so I can notify them immediately of any loss?
10. Am I prepared to take complete control over our checking accounts, know the balance at all times, and never write a check unless I am certain of sufficient funds in the bank?
11. Do I know how to change the address to which an allotment is mailed? [Write to: U.S. Army Finance Center, ATTN: Allotment Operations, Fort Benjamin Harrison, Indiana 46249; request a change and also file a change of address with your serving post office immediately.]
12. Do I know all payments that must be made--to whom (account numbers, addresses, phone numbers) and when for the following:
 - a. Mortgage/Rent
 - b. Telephone
 - c. Water
 - d. Electricity
 - e. Trash collection
 - f. Insurance (life, property, auto, etc.)
 - g. Taxes
 - h. Gas/fuel
 - i. Credit cards
 - j. Other debts
13. Do I know whom to contact if my allotment check does not arrive?
 - a. Give the check three or four days after normal arrival time; then,
 - b. Contact Army Community Service if check still has not arrived.

AUTOMOBILE/TRANSPORTATION

1. If the vehicle is financed, do I know the name and address of the loan company?
2. Do I have the title or know its location?

3. Do I have the vehicle's registration?
4. Do I have the vehicle's insurance policy?
5. Do I know the renewal date for the license plate?
6. Do I know when to renew the inspection sticker?
7. Am I insured to drive?
8. Do I have a valid car or truck state driver's license?
When does it expire?
9. Is our car or truck in good operating condition and do I
know where to go for repairs?
10. Do I have a duplicate set of all keys?
11. Can I make emergency repairs on the car if the situation
arises (such as overheating, flat tire, dead battery)?
12. If I am not licensed to drive, have I made arrangements to
have transportation available?

LEGAL/ADMINISTRATIVE

1. Are my family's identification cards up-to-date and valid
until after the sponsor's return?
2. Do I know where and how to obtain new identification
cards?
3. Has my sponsor executed a special power of attorney so I
can take necessary action on important family matters
during his or her absence?
4. Has my sponsor executed a special power of attorney so
that I can cash his or her monthly check (if the check
will continue to be sent to my address)?
5. Do I know where the general/special powers of attorney are
kept?
6. Do I have birth certification for myself and family?
7. Do I have a copy of our marriage certificate?
8. Do I have copies of any adoption papers? Do I know where
they are kept?
9. Do I have a Social Security card?

10. Do I have copies of our federal and state tax records?
11. Do I know where all of our insurance policies are kept?
12. Do I know where any stocks, bonds, or other securities that we own are kept?
13. Do I know where any deeds are kept?
14. Have I safeguarded all of our important papers?
15. Do my sponsor and I have up-to-date wills? Do I know where the originals are kept?

IMPORTANT DOCUMENT FILE

It is very important for the military family to keep copies or important documents and other valuable information in a safe place. It is equally important that the wife and husband jointly organize this file so that each knows how and where to find the documents when they are needed.

Your sponsor should have most of this information. . . PLEASE SIT DOWN WITH HIM OR HER AND GATHER THIS INFORMATION AND THESE DOCUMENTS. THE HOUR YOU SPEND GOING OVER THIS WILL SAVE YOU TIME LATER ON. KEEP THE FOLLOWING DOCUMENTS IN A SPECIAL CONTAINER THAT YOU CAN DEFINITELY FIND IMMEDIATELY!!! As a minimum, the following documents should be included:

1. Marriage certificate.
2. Birth Certificates for all family members.
3. Citizenship papers, if any.
4. Adoption papers, if any.
5. Passports, if any.
6. List of Social Security Numbers of family members.
7. Shot records (up-to-date) for all family members.
8. Powers of attorney, if any.
9. Wills.
10. Insurance policies (both government and civilian)--with a list of companies, policy numbers, types of insurance coverage, addresses and phone numbers of agents or companies.

11. Vehicle titles, if any.
12. List of all members of immediate families with current addresses and phone numbers.
13. List of all credit cards and account numbers.
14. List of all bonds and stocks where certificates are located.
15. Court orders relating to divorce, child support, custody, alimony or property division, if any.
16. Real estate documents--leases, deeds, mortgages and promissory notes, closing papers.
17. Copies of any sales or installment contracts and finance agreements.
18. List of bank accounts with types of accounts and account numbers.
19. Armed Forces' identification cards for all family members 10 years of age or older.
20. Nine (9) copies of your spouse's TDY and/or PCS orders.
[If you must move by yourself, you will need extra copies of these orders. However, with these copies, you can have others made without cost to you by going to your sponsor's unit.]
21. Current addresses and telephone numbers of all members of immediate families of both you and your spouse.
[Immediate family includes father, mother, children, brother(s), sister(s). You should have all other important telephone numbers you may need in case of emergency.]

APPENDIX _____

ARMY GUIDANCE FOR ESTATE PLANNING

AR 27-3, para. 3-6(b), Legal Assistance, provides:

(1) Legal assistance will be provided on wills, testamentary trusts for minors, guardianships, and the designation of beneficiaries under life insurance policies (including the Servicemen's Group Life Insurance (SGLI)). Legal assistance will also be provided on preparing health care directives, including living wills, powers of attorney for health care, and anatomical gift designations. Legal assistance on other aspects of estate planning may be based on the availability of expertise and resources.

(2) Wills should not be prepared for service members without also discussing the legal effect of their designation of SGLI beneficiaries. Clients who indicate that they desire that their SGLI benefits be distributed "by law" should be advised that Army policy prohibits "by law" designations. A "by will" designation generally should be discouraged. The service member will be assisted in executing a SGLV-8286 (Servicemen's Group Life Insurance Election and Certificate). This form may be obtained through normal channels. Any designation or change of beneficiary by a soldier on a SGLV-8286 is not effective unless received by the custodian of the soldier's DA Form 2-1 (Military Personnel Records Jacket (MPRJ), U.S. Army) before the soldier's death. All clients should be advised to file newly executed forms in their military records. They should also be provided the telephone and room and building numbers (or address) of the custodian for those records.

(3) Attorneys who provide legal assistance should maintain sufficient copies of SGLV 8286 for use by their clients.

(4) Those providing legal assistance to soldiers during EDRES, REMOBES, MODRES, SRPs, and NEOs should request to be stationed before the personnel and finance sections so that soldiers can receive legal advice before they designate SGLI and final pay beneficiaries.

(5) No will may be executed until an attorney interviews the client and reviews the will. An attorney shall be present to supervise the execution of the will and to review the will after the client and witnesses have signed it. The attorney who drafts the will shall insert his or her name on the will as its drafter, together with the designation for a state or other legal bar of which he or she is a member, using the following language: "This document was prepared under the authority of 10 U.S.C. § 1044 and implementing

military regulations or instructions by (name of attorney,) who is licensed to practice law in name of one state or other legal bar. "

(6) The same legal and professional standards that apply to preparing and executing wills within an Army legal office apply to those that are prepared and executed during a military exercise (e.g., EDRE). Where those standards cannot be met during the exercise, follow-up legal assistance appointments should be made to prepare or execute wills for soldiers who need them. In appropriate cases, soldiers may be encouraged to have wills (or new wills) drafted and executed following their mobilization or deployment.

(7) The execution of preprinted fill-in-the-blank wills is limited to clients domiciled in states that specifically authorize the execution of such wills. If authorized by statute, a properly drafted and executed fill-in-the-blank will complies with Judge Advocate General Corps (JAGC) standards.

(8) Consistent with this regulation, every effort will be made to assist PNOK in probating wills and settling estates (particularly uncontested or exempt-from-administration proceedings) of soldiers who die while in a military duty status. When available resources, personnel, or expertise are insufficient to provide the legal assistance required, clients should be referred to other attorneys who provide legal assistance or to civilian lawyers in accordance with para. 3-7h. Attorneys assisting a PNOK with a problem related to a soldier's designation of SGLI beneficiaries should review the provisions of Chapter 38, Code of Federal Regulations, Part 9 (Servicemen's Group Life Insurance and Veterans' Group Life Insurance) for restrictions on beneficiary entitlements.

(9) AR 27-3 also provides guidance for "death-bed" retirements and assistance.

** Also refer to Chapter 2 of this Guide for Army policy on Will priority during mobilization/deployment.

APPENDIX _____

FAMILY DEPLOYMENT BRIEFING (adapted from Fort Stewart, GA, SOP)

1. The following is the Fort [] Legal Assistance Office (LAO) SOP for conducting Family Deployment Briefings. Such briefings are usually attended by soldiers and family members. The briefing usually includes a number of speakers, one of which will be a Legal Assistance Attorney (LAA). The LAA will usually be asked to speak for ten (10) or fifteen (15) minutes. As such, this SOP is designed for that purpose. However, if the unit desires a longer briefing, the LAA may add to the information contained herein. This SOP is only a guide for LAAs. Each LAA is encouraged to add their his or her insightful comments.

2. This briefing is designed to prepare families for times that the soldier will be absent from the family due to training and/or actual missions. The five (5) topics that are covered in this SOP include powers of attorney (POA), wills, insurance, tax assistance and Soldiers' and Sailors' Civil Relief Act (SSCRA). This is not a comprehensive list of subjects that may be covered.

3. POWERS OF ATTORNEY

a. What is a POA?

(1) A POA is a document which authorizes another person (i.e., your "agent") to act on your behalf and conduct your business while you are absent. Basically, the POA will give your agent the ability to sign for you and that signature will have the same legally binding effect as if you had personally signed.

(2) Businesses are not required to accept a POA. No one can force a business, including a bank, to accept the POA. You should check with your bank and the other businesses with which you deal to ensure that they will honor the POA.

b. Who needs a POA?

(1) If you and your spouse have joint bank accounts and own all of your property jointly (i.e., cars, houses, investments, etc.), then you may not need a POA. If everything is jointly owned, your spouse is probably already able to take care of all family business in the your absence. However, where property is not jointly owned, a POA may be needed. Only you know your business affairs. Therefore, it is up to you to determine whether or not a POA is required.

c. What kind of POA do I need?

(1) There are two (2) types of POAs:

General POA -- gives your agent virtually unlimited authority to act on your behalf. This is the most powerful POA.

Special POA -- gives your agent the authority to do one or more specified acts. You specify on the POA document what acts the agent may perform on your behalf (i.e., sell or register car, ship or receive household goods, cash paychecks, etc.). This is a more limited and less powerful POA since the agent's authority to act is limited to only those specific acts which you have authorized.

(2) In deciding which type of POA is needed, always remember the general rule -- DON'T GIVE AWAY ANY MORE POWER THAN IS ABSOLUTELY NECESSARY. Don't get a General POA if all you need is a Special POA.

(3) In deciding who to give a POA to (i.e., your agent), there are three (3) important factors to keep in mind -- TRUST, TRUST AND TRUST. If you give someone a General POA, he or she will be able to do virtually anything concerning your business. You had better have a lot of trust in that person.

(4) To use the POA, your agent must have the original signed document. Though POAs can be revoked at any time, it is often difficult to ensure that all entities which could honor that power are notified properly.

(5) POAs may be obtained weekdays between [hours] at the Fort [] Law Center, Building [].

4. WILLS

a. Who needs a will?

(1) Not everyone needs a will. Unmarried soldiers with no children generally do not need a will if they intend their property to be distributed to their closest relatives, usually mother and father, and siblings if the parents are deceased. This is usually how state law will control distribution if you do not have a will. However, if some other distribution is desired, then a will is advisable.

During times of deployment, those "needing" wills will have first priority and these people include those soldiers (married or

unmarried) with minor children and those who are married. Only if resources are available will others have wills prepared. This prioritization is the result of our experiences during Desert Storm. Consequently, if you desire a will now, have it prepared prior to deployment.

b. Where can I get a will prepared?

(1) Soldiers and family members can have wills prepared, free of charge, at the Fort [] Law Center, Building []. Clients desiring a will shall be seen on a [walk-in or appointment] basis on [day and hour]. A follow-up appointment will be required to execute the will [unless office policy combines preparation and execution]. If you have minor children, discuss with your spouse guardianship provisions before coming to our office. Many times this decision takes time and also entails talking with the prospective guardians to ensure they are willing to act in that capacity.

(2) During deployments, the LAO will have a will station at the SRP site. Again, it is recommended that you have your will prepared prior to deployment.

5. INSURANCE

a. All soldiers who have private insurance (other than SGLI) should check with their insurance agent to make sure the policy doesn't contain what is called a "war clause" or "combat exclusion clause".

b. Such clauses state that the insurance policy will pay nothing if the insured is killed during combat.

c. Obviously, soldiers do not want to have such a policy (or clause). Find insurance without such a clause.

6. TAX ASSISTANCE

a. The LAO offers free tax assistance with the filing of tax returns. We even have electronic tax filing. This is a valuable service which soldiers and their family members should take advantage of.

b. Spouses should not become delinquent in filing their tax returns just because the soldier is deployed. Just bring your financial records to the LAO and we will help.

7. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

a. The SSCRA is a federal law designed to protect soldiers (and in many circumstances their dependents) from certain legal obligations when their military service interferes therewith. The Act allows a soldier to postpone certain civil (not criminal) actions during their absence, reduce interest rates to 6% on their pre-service loans, have protection against foreclosures and repossessions without court order, and request prospective relief of the court for certain financial obligations they can't meet because of military service. Additionally, this is the Act that allows soldiers to keep their home state as their domicile while in the military (i.e., continue to pay income and personal property taxes only in the state you call home).

b. However, keep in mind that there are many prerequisites before employing the protections of the SSCRA. Come see us at the LAO before a problem arises, if possible.

8. CONCLUSION

a. Regular Legal Assistance services will still be available for all family members during deployments.

b. If you have a legal problem, come see us first. This briefing was designed to provide general information. If you have a specific legal problem, you should contact the legal assistance office.

c. Any questions?

9. POC is [], OSJA, Legal Assistance Office,
Building [], ext. [].

APPENDIX —

SAMPLE WILL BRIEFING

This briefing covers the main topics that should be explained to the client. It by no means is an exhaustive treatment of these topics nor by excluding other topics does it mean to indicate that they should not be briefed. It is simply designed to be a guide. Individual attorneys should feel free to vary from it.

Introduction.

- The underlying purpose of a Will is to ensure that your property is distributed after death according to your wishes. There are, however, several other purposes which you should keep in mind during the Will preparation and execution process.
- Avoidance of unnecessary costs in the probate process, e.g., bonds, court supervision, or taxes.
- Avoidance of unnecessary delays, e.g., avoidable will contests caused by confusion in the language of the Will.
- Each state has slightly different laws that establish Will formalities, taxes, etc. Generally, your state of legal residence will control, regardless of whether you die in that state.

Total Revocation of Previous Wills.

- Execution (signing before the appropriate number and type of witnesses) of this Will totally revokes any previous Wills or codicils (amendments to a Will).
- An earlier Will can never be "resuscitated."
- Nevertheless, to avoid confusion and unnecessary delays, destroy (e.g., tear up or burn) any previous Wills and their copies.

Safeguarding Wills.

- Only the original, signed and witnessed, Will can be presented to the court for probate after your death (with one very narrow exception).
- The copies only serve the purpose of convenience in informing personal representatives/executors and beneficiaries that you have named them as such.

- The exception to the rule that only the original can be presented to the court arises in the "lost Will" situation.
- There is a very heavy presumption in the law that if the original Will cannot be found at your death it is because you destroyed it with the intention of revoking it and dying without a Will altogether. As a result of this presumption and the attendant burden of proving to the contrary, almost never can someone prove that the Will was merely lost and not revoked.
- About the only way to overcome the presumption is for someone to testify that he or she talked to you within hours of death and you told them that the Will was still valid, had never been revoked, but was somehow lost; either you did not know where it was or when the witness went to look for it, he or she could not find it.
- The situation above, as a practical matter almost never happens. The more common occurrence is that "Aunt Irma" talked to the Testator a year, a month, or maybe even as little as a few days prior to the death, but that in the mean time, the Testator had the opportunity to revoke the Will either physically or by a clear and express intention to revoke.
- If a "lost Will" can be proven to the satisfaction of the court, then and only then, a copy may come in as evidence of what the lost Will would have said.
- The bottom line is: safeguard the original Will.
- The Will should be kept someplace safe from fire, theft, damage, or other loss.
- A fire-proof safe or lock box in your home would be an appropriate location as long as the survivors would have access to it by giving them a key or the combination or telling them where same can be found (this place of course being someplace similarly safe from loss).
- Generally a safety deposit box is an ideal location for storage of legal documents. Unfortunately, this is not true in many states for Wills. In these states, law requires that the box be sealed upon the death of the owner. In order to access the sealed box, a court order is necessary. To get the order, the Will usually must have been shown to the court. If the Will is in the box, it is easy to see the

problem that arises. The best advice is to ask the bank about the safety deposit laws prior to placing the Will in it. Of course the problem would not exist if the Will is in someone else's box, such as one belonging to a personal representative/executor - unless there is a distinct likelihood that the personal representative may die at the same time as the Testator such as with spouses or family members living in the same household.

- Make sure that the survivors know where the Will is stored. If you give copies of the Will to personal representatives or beneficiaries, be sure to indicate on them where the original is located. Any time this location is changed, update this information on the copies.

Documents to Keep With the Will.

- Property Inventory.
 - With the original Will you should keep an inventory of all real and personal possessions as well as certain financial information.
 - The inventory should include a description and location of all important property: real estate, life insurance policies, bank accounts, safety deposit boxes, stocks, bonds, debts owed to you, business interests, significant personal property, credit accounts, loans, and important legal documents such as the Will, birth certificate, marriage certificate, and discharge papers.
- Letter of Instruction.
 - Unless your state recognizes and your Will contains a "Memorandum Clause" which allows for a separate written instrument to dispose of personal property then the Letter of Instruction is not legally binding on your survivors. The nonbinding factor can often be advantageous however. It allows you to express your desires as to what the beneficiaries should do with the inherited property, but allows them to do otherwise if conditions change. For example, it might seem to you that it would be a good idea to set aside \$10,000 for an education fund for children, but at your death the money might be better spent for living expenses if the financial picture has changed. The Letter of Instruction would not bind the beneficiary; but, it would still allow you to make your desires known.
 - Items to place in a Letter of Instruction include information about the use of inherited property, last

words to the survivors, and instructions concerning burial accommodations. This last item should be as specific as possible. This area is one of the hardest ones for the survivors to deal with and by putting it in a Letter of Instruction, you relieve the survivors of trying to determine what you would have wanted, all too often an area of considerable disagreement among survivors.

Estate Taxes.

- When you die, your estate may be subject to taxes. These taxes, variously called death taxes, estate taxes, or inheritance taxes could be levied by the federal government, a state government, or both.
- Federal Estate Tax.
- In very broad terms, federal estate taxes do not play a part until the value of your estate reaches \$600,000.
- If you estimate your estate to be worth \$600,000 or more then you should consult a civilian attorney who specializes in estate planning. The fees you pay to the attorney will usually be much less than the tax savings.

Insurance Considerations.

- An option available for life insurance policies, including SGLI, is to name your estate as the beneficiary of the policy ("By Estate" for SGLI). The effect is that the insurance is paid to the named beneficiaries in the Will. There may be a good reason to do so if advised by a civilian estate planning expert, but for most people, it is not a good idea.
- Time Delay. Generally, life insurance is paid to the beneficiaries within days. Unfortunately, an estate may not be settled for months. In the mean time, the beneficiaries must wait for the insurance proceeds.
- Tax Consequences. If the estate is the beneficiary of insurance, then the insurance proceeds will be taxed as if the money existed in the estate before your death. In some cases, the insurance will be the factor to make the entire estate taxable if, by including it, the estate value exceeds the tax "floor." In any case, the insurance proceeds may be taxed where they might not have been otherwise.

Living Wills.

- Some states recognize what is commonly called a "Living Will." In basic terms, it is a set of instructions to "pull the plug" under certain circumstances.
- A typical example: "If in the professional opinion of my attending physician and one other physician, I am (1) comatose; (2) as a result of a fatal condition from which in medical probability I will not recover; and (3) I am being kept alive by artificial means, such as a respirator, heart-lung machine or other extraordinary means, but not to include intravenous feeding which must continue; I direct that such artificial means be discontinued."
- These documents can often become extremely important. If you have any desires along this line, you should consult the Legal Office.

Reviewing and Updating the Will

- You should periodically review the Will to ensure that it meets your current situation. Generally, you should update your Will upon:
 - The death of any person named in the Will.
 - Marriage or divorce.
 - Substantial change in your financial condition.
 - Mental or physical disability of someone in your Will.
 - Any other event which might influence distribution of your property.
- If you ever want to change or update your Will, DO NOT cross out, add any words or make any marks in it. Any such alterations may completely invalidate the entire Will. Make changes on a copy if you wish or simply write down the changes you wish to make and then see an attorney to update your Will.

APPENDIX _____

LEGAL ASSISTANCE OFFICE - WILL WORKSHEET

Welcome to the Legal Assistance Office. This Worksheet will answer common questions concerning Wills, prepare you to discuss your needs and desires with an attorney, and provide a convenient form on which to record important information. This Worksheet starts the Will preparation process. After you complete it you will discuss your Will with an attorney. IF YOU HAVE ANY QUESTIONS WHICH ARE NOT ANSWERED BY THIS WORKSHEET, PLEASE DISCUSS THEM WITH THE ATTORNEY.

PRINT YOUR FULL NAME (FIRST, MIDDLE, LAST):

HAVE YOU EVER BEEN KNOWN BY ANY OTHER NAME? NO YES

SOCIAL SECURITY NUMBER: _____ DO YOU
CURRENTLY HAVE A WILL? NO YES - IF SO, BRING IT WITH YOU.

WHAT IS A WILL? A Will is a legal document which states your desires concerning what will happen to your property after your death. A Will also contains other specific directions from you concerning who is to implement your instructions and perhaps, who will care for any minor children you may leave behind.

WHY SHOULD I MAKE A WILL? If you die without a valid Will, the distribution of your property will be governed by the laws of your state of Legal Residence, and perhaps by the laws of the state in which you die. Your wishes usually won't be considered.

IS ALL OF MY PROPERTY CONTROLLED BY MY WILL WHEN I DIE? NO.
For example, proceeds of insurance policies are distributed as you have designated in the insurance policy, and property which you own jointly with another person will, normally, go to the other joint owner.

WHAT IS PROBATE? Probate is a court procedure by which a Will is proved to be valid or invalid. Probate proceedings also address the administration of your estate, taxes, the guardianship of children, etc.

HOW DO I DETERMINE MY LEGAL RESIDENCE, AND WHAT DIFFERENCE DOES IT MAKE TO MY WILL? Your Legal Residence is a place where you have been and which you consider your PERMANENT home. If you are on active duty or are the family member of an active duty service member, your Legal Residence is the place you intend to return to when you leave the Service. Your Legal Residence is important to your Will because when you die the laws of your state of Legal Residence will be used to interpret and implement your Will.

YOUR STATE OF LEGAL RESIDENCE: _____ IN WHAT
STATE ARE YOU NOW LIVING: _____

MARITAL STATUS: NEVER MARRIED NOW MARRIED SPOUSE'S NAME:

PLEASE LIST THE NAMES OF YOUR NATURAL BORN OR ADOPTED CHILDREN,
OR STEPCHILDREN:

MILITARY STATUS: ACTIVE DUTY RETIRED FORMER SERVICE MEMBER
SERVICE: _____ NEVER A SERVICE MEMBER

WHAT IS A PERSONAL REPRESENTATIVE? A Personal Representative is a person that you name in your Will to carry out your desires, as expressed in your Will, and to settle your estate. Settlement includes paying, from your estate, any taxes and debts you may owe. Many married people name their spouses as Personal Representative. Often a security fee, or bond, is required of this person; however, most states allow you to specify in your Will that you want the fee waived for your Personal Representative. Your Personal Representative will have an important role; choose him or her with care, and discuss the matter with him or her. Be sure that the person you name is one you trust and have confidence in.

WHO IS THE PERSON YOU WISH TO NAME AS PERSONAL REPRESENTATIVE OF YOUR WILL:

SPOUSE OTHER: _____

[print the person's name and his or her
relationship to you]

DO YOU WANT TO HAVE AN ALTERNATE PERSONAL REPRESENTATIVE? NO
YES (PRINT INFORMATION ON NEXT LINE)

HOW SHOULD I LEAVE MY PROPERTY? Generally speaking, you may state in your Will that you are leaving your property to anyone you wish, although there are laws in some states which may give your spouse and/or your children a right to a portion of your property. Most married persons leave all their property to their spouse, and, if their spouse does not outlive them, then to their children.

CAN I JUST WRITE A LETTER TO TELL HOW I WANT TO LEAVE MY PROPERTY? Some states allow you to write a memorandum to your Personal Representative to tell her or him to dispose of your property. You should discuss this with your attorney.

WHAT IF I WANT SOMEONE TO MANAGE MY CHILDREN'S MONEY AND PROPERTY FOR THEM? As part of your Will you may name someone to be a financial custodian to manage any money or property that you leave to any child under 18 years old. Most states have a simple method of appointing some adult to the custodian for a child's property. If you are interested in this sort of an arrangement, you should discuss it with the person who you want to name custodian and then discuss it with your attorney.

CAN I GIVE SPECIFIC THINGS TO SPECIFIC PEOPLE? Yes, these are called Specific Bequests and you may make them by fully describing what you want to give and the person who is to receive it. You should be careful about Specific Bequests. If you dispose of the property that you describe, or if there is any doubt about the exact property that you have described in your Will, you may be creating difficulties for your Personal Representative.

HOW DO YOU WANT TO LEAVE YOUR PROPERTY WHEN YOU DIE?

1. ALL TO YOUR SPOUSE (or) ALL TO:

2. IF THE PERSON(S) NAMED IN #1 DOES NOT OUTLIVE YOU, THEN WHO DO YOU WANT TO HAVE YOUR PROPERTY?

YOUR CHILDREN OTHER:

3. IF THE PERSON(S) NAMED IN #2 DOES NOT OUTLIVE YOU, THEN WHO DO YOU WANT TO HAVE YOUR PROPERTY?

YOUR GRANDCHILDREN OTHER:

WHAT IS A GUARDIAN? A legal guardian is the person who will act as parent for any of your children who are minors at the time of your death. Normally, if you are survived by your spouse, he or she becomes the children's guardian if he or she is the biological or adoptive parent of the children. However, it is recommended that you name a guardian and an alternate guardian in the event that both you and your spouse die. If you or your spouse have children not born of your current marriage, you should discuss the situation in detail with an attorney to determine the most appropriate way to provide for the children. **IF YOU HAVE ANY CHILDREN WHO ARE MINORS AT THE TIME OF YOUR DEATH, WHO IS YOUR FIRST CHOICE TO BE THEIR LEGAL GUARDIAN(S)?**

YOUR SPOUSE? YES NO SOMEONE ELSE? (PRINT THE PERSON'S NAME AND RELATIONSHIP TO YOU:

DO YOU WISH TO NAME AN ALTERNATE GUARDIAN? YES/NO-IF YES, PRINT THE PERSON'S NAME AND RELATIONSHIP TO YOU:

MAKE NOTES BELOW ABOUT ANYTHING ELSE ABOUT YOUR WILL THAT YOU WANT TO DISCUSS WITH YOUR ATTORNEY:

APPENDIX

T A K E - 1

MAKING YOUR WILL

[A project of the North Carolina State Bar's Special Committee on Military personnel, in conjunction with the American Bar Association's Standing committee on Legal Assistance for Military Personnel]. Edited by TJAGSA November 1993.

1. Q. WHAT IS A LAST WILL AND TESTAMENT?
 - A. A Last Will and Testament is the legal document which controls the disposition of your property at death and may provide for guardianship for your children after your death. A will is not effective until death. As long as you are living, your will has no effect and no property or rights to property are transferred by it.
2. Q. CAN MY LAST WILL AND TESTAMENT BE CHANGED?
 - A. Yes. Changes to a will are made by drafting a new will and destroying the old one, or by adding a "Codicil." A Codicil is a legal document which must be signed and executed in the same manner as your will. NEVER MAKE ANY CHANGES TO YOUR WILL without consulting an attorney. Changes on the face of your original will may make it invalid.
3. Q. WHAT IS MY LEGAL RESIDENCE?
 - A. Your legal residence is the state in which you have your true, fixed and permanent home and to which, if you are temporarily absent, you intend to return. Voting, paying taxes, owning property, motor vehicle registration and so on, are some indicators of one's legal residence. If you are a citizen of the United States, you must be a legal resident of some state. You cannot be a citizen at large. If you are a naturalized U.S. citizen, you are considered to be a resident of the state in which you were naturalized.
4. Q. IS MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL?
 - A. Yes. Your legal residence affects where your will is probated and the amount of state inheritance or estate tax that may be paid at death.
5. Q. WHAT IS MY ESTATE?
 - A. Your estate consists of all your property and personal belongings which you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobile, etc. Although,

the proceeds of insurance policies may be considered part of your estate, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy, although part of your estate for tax purposes in North Carolina, will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.

6. Q. TO WHOM SHOULD I LEAVE MY ESTATE?

A. A person who receives property through a will is known as a "Beneficiary." You may leave all of your property to one beneficiary, or you may wish to divide your estate among several persons. You may designate in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two levels of beneficiaries: "Primary beneficiaries: - those who will inherit your property in the event the "Primary beneficiaries" die before you. You may want to select a third level beneficiary in the event that both the primary and secondary beneficiaries die before you.

7. Q. MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY?

A. Almost, but not quite. For example, in North Carolina, a married person cannot completely exclude a spouse. Generally, you are free to give your property to whomever you desire. However, most states have laws which entitle spouses to at least part of the other spouse's estate. Some states, such as Louisiana, also provide shares of the estate to children of the decedent. Insurance proceeds and jointly owned property may be controlled by other provisions of the law. If you have questions concerning the statutory share law in your home state, you should ask a legal assistance officer.

8. Q. SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?

A. Yes, Usually the surviving spouse is designated as the guardian of any minor children. By so naming the spouse in the will, you can sometimes relieve him or her of any requirement to post bond through a court. You should also give serious consideration to naming a substitute guardian. This would provide for a guardian for your children in the event that your spouse dies before you or you and your spouse die at the same time. This substitute guardian need not be the same person in both your will and your spouse's will.

9. Q. WHAT IS AN EXECUTOR?

A. An executor (executrix, if female) is the person who will manage and settle your estate according to the will. You should also consider naming a substitute executor in the event that the named executor is unable or unwilling to act as the executor of your estate. By

the wording of your will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive this requirement, thereby saving expense to your estate. The choice is yours.

10. Q. WHAT IF I WANT TO SET UP A TRUST?
- A. The resources available in this office do not permit the drafting of trust agreements. To accomplish this, you should consult your bank's trust department or contact a civilian attorney.
11. Q. WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?
- A. Ask them while your legal assistance officer is preparing your will. Be sure that you convey accurately your wishes for the distribution of your property to him or her.
12. Q. HOW LONG IS A WILL GOOD?
- A. A properly drawn and executed will remains valid until it is changed or revoked. However, changes in circumstances after a will has been made, such as tax laws, marriage, birth of children or even a substantial change in the nature or amount of a person's estate, can affect whether your will is still adequate or whether your property will still pass in the manner you chose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will, with the help of your legal assistance officer.
13. Q. DOES A WILL INCREASE PROBATE EXPENSE?
- A. No. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills which take full advantage of the federal and state tax laws. Drawing a will can avoid the expense of posting bond or appointing a guardian for your children. A will can save money for you and your family if it is properly drafted.
14. Q. HOW LARGE AN ESTATE IS NECESSARY TO JUSTIFY A WILL?
- A. Everyone who owns any real or personal property should have a will regardless of the present amount of his estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real state, stocks and other securities, inheritances from relatives and other factors.

15. Q. WHAT HAPPENS WHEN YOU DON'T MAKE A WILL?

A. When a person dies without a will (or dies "intestate," as the law calls it) the property of the deceased is distributed according to a formula fixed by law. In other words, if you don't make a will, you don't have any say as to how your property will be divided. Take the case of a North Carolina resident dying without a will, for example. If this person dies without a will, leaving children, the surviving spouse would share the estate with the children. With no will, the surviving spouse receives the first \$15,000 in value and 1/3 of the remaining estate when there is only one child. Now usually a person would prefer that all of his estate, if it is not large, go to the surviving spouse. If there are any children under 18, the property cannot be delivered to them and a guardian must be appointed for them. A guardian will require considerable expense and could create legal problems that might have been avoided with a will. Most important for mothers and fathers, however, is not the disposition of their property after their death but rather the proper care and custody of their minor children. Grandparents, other family members and godparents do not automatically receive custody of children who do not have a surviving parent. Your will should specify the individual, as well as an alternate, you would like to designate as the guardian of your children. This decision on your part will be of great assistance to the court in determining who will receive the custody of your children.

16. Q. WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?

A. Joint bank accounts and real property held in the names of both husband and wife usually pass to the survivor by law and not by the terms of the deceased's will. There are many cases, however, in which it is not to your advantage to hold property in this manner.

17. Q. IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?

A. No. Life insurance is only one kind of property which person may own. If a life insurance policy is payable to an individual, the will of the insured has no effect on the proceeds. If the policy is payable to the estate of the insured, the payment of the proceeds may be directed by a will. The careful person will have a lawyer and a life insurance counselor work together on a life insurance program, as one important aspect of estate planning.

APPENDIX _____

TAKE-1

ALL ABOUT PROBATE

[A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel]. Revised by TJAGSA, ADA-LA, November 1993.

1. Q. What is probate?
 - A. Probate is the procedure of settling the estate of a deceased person. The estate of one who has died consists of the property of that person upon death.
2. Q. Who is responsible for probating my estate?
 - A. If you have made a will, you have probably named such a person, called Executor, in that document. If you have no will, the court will appoint someone, usually the next-of-kin, to be the Administrator of your estate for this purpose.
3. Q. What are the duties of my Executor?
 - A. The duties of the Executor are the same as those of the Administrator. They include the obligations to:
 - a. Safeguard the estate's property;
 - b. Inventory the property;
 - c. Submit accounts and inventories to the court as needed or required;
 - d. Pay the debts and expenses of the deceased (including funeral and burial expenses as well as costs of last illness or outstanding medical bills);
 - e. Pay any federal or state death taxes; and
 - f. Distribute the estate to those named in the will or, if no will exists, to the next-of-kin.
4. Q. Who pays for all this?
 - A. Your estate does. In general, your estate is responsible for all your debts, bills and expenses. These must be paid before any remaining assets in your estate can be given to your next-of-kin or your heirs under the will. Your Executor has no duty to pay these costs out of his or her own pocket and is not normally personally liable for your debts. Your Executor has the duty to release enough of your assets to allow the payment of expenses such as taxes, credit card balances and hospital bills.

5. Q. If I am appointed as someone's Executor, do I get paid?
- A. An Executor - or Administrator - can request the court to provide two types of compensation:
- a. Direct reimbursement for out-of-pocket expenses, such as postage stamps, bank charges and mileage; and
 - b. Payment for services rendered as an Executor or Administrator unless the will directs otherwise.

The amount of this latter payment will vary, of course, depending on the amount of work done, the time spent on the estate, the complexity of the work and the size of the estate.

6. Q. Does my Executor have to pay a fee or post a bond to settle my estate?
- A. There are various expenses necessary to settle an estate. Fees must be paid to the court upon filing and closing the estate. A bond is sometimes required, especially if there are minor children or an out-of-state Executor/Administrator involved. These costs are, of course, paid by the estate.
7. Q. Are my creditors notified of my death?
- A. Your Executor/Administrator must place a legal notice in the newspaper for your creditors after the court has appointed him or her to handle your estate. The notice must:
- a. Give the name of the deceased and the name and address of the Executor or Administrator;
 - b. Be published once a week for three weeks in a row in the locality where the deceased had his or her home; and
 - c. State that all claims of creditors must be made within six months of publication of the notice.

Once this is done, the publisher prepares an Affidavit of Publication and this is put in the court file. Any claims not presented to the Executor or Administrator within these six months need not be paid under most state laws.

Those claims which are valid and which are presented within the six-month period, including debts and expenses known to the Executor or Administrator, must be paid out of the available funds in the estate.

8. Q. What are the inventories and accounts I must file as an Executor or Administrator of someone's estate?
- A. Using North Carolina as an example, when you initially apply to the Clerk's Office for appointment, you will need to fill out an initial inventory. This is so you

can give a preliminary account or a rough estimate of the assets in the estate. Within the first three months after you are appointed, you must file the Ninety-Day Inventory, which is the first formal accounting of the assets in the estate of the deceased -- real estate, cars and trucks, furniture, pension benefits, bank accounts, jewelry and so on. If you have completely settled the estate within twelve months of qualifying as Executor or Administrator, you will then file the Final Inventory, listing the following:

- a. Amount of total assets as shown on the Ninety-Day Inventory you have already filed;
- b. Additional assets received by the estate since the filing of the Ninety-Day Inventory (with description and fair market value);
- c. Expenses, debts, taxes and bills paid by the estate; and
- d. Distribution of the estate to the heirs (how and to whom).

If you haven't completed settlement of the estate, you must file an Annual Inventory showing items a, b, and c, above. A simple estate can usually be closed in a period of 8-12 months.

9. Q. Can I get into the safe deposit box of the deceased?

A. Yes - the law provides that you can have access to the safe deposit box of the person whose estate you are settling, so long as you are accompanied by an official from the Office of the Clerk of Superior Court on your first visit. At that time, the official (usually a deputy or assistant clerk) will supervise the opening of the box, inventory the contents and turn the contents which belong in the estate over to you for safekeeping. The inventory is returned to the Clerk's Office for filing.

10. Q. How do I handle the money of the deceased?

A. You should immediately set up an "estate account" at a local bank as soon as you have been appointed Executor or Administrator. You can arrange this at any local bank, and there is a small charge for printing the checks showing your name, your title (Executor/Administrator), the name of the deceased and other information. Having a separate account is a step toward preventing the mixing or "commingling" of your own personal funds and those that belong to the estate. With the estate account set up, you can deposit or transfer the funds of the deceased into this separate account. Some items, such as paychecks, insurance premium refunds or employee death benefits, may be deposited directly into the estate account. In the case of other assets, such as bank accounts, certificates of deposit, stocks and bonds, you will need to obtain a tax waiver from the state Department

of Revenue (if the item is worth more than a specified sum under state law) to be able to transfer the asset into the estate account. The tax waiver application form is available from any local office of the Department.

11. Q. Are life insurance proceeds part of the estate?

A. For tax purposes, life insurance proceeds are counted as part of the taxable estate if the policy was owned by the deceased. You must account for the proceeds of such a policy on the tax return (state and, if necessary, federal) of the estate. On the other hand, only life insurance proceeds payable to the estate are listed on the inventory filed with the Clerk. Those policies and proceeds made payable to individual beneficiaries pass by contract, outside of the estate, directly to the named beneficiary.

12. Q. Once I have paid all the fees and expenses and accounted for all the property, how do I close the estate?

A. First you would prepare the applicable state Inheritance and Estate Tax Return if required and, if a large estate is involved, a Federal Estate Tax Return for the estate as well. A state tax return must usually be prepared, but federal law does not tax estates valued at less than \$600,000. The state Department of Revenue will furnish you with a form for estates in that state, upon payment of any taxes due, which certifies that the estate is cleared for closing. The next step is to distribute the estate among the heirs-at-law (if there is no will) or the designated beneficiaries (if a will has been admitted to probate). You should obtain a receipt from all heirs or beneficiaries stating that they have received their entire share of the estate of the deceased (signed, dated and witnessed). After you have distributed or divided the property, submit those receipts along with the Final Inventory to the Clerk's Office. You will also need cancelled checks or "paid receipts" for all expenses, fees and bills that have been paid. Once that Office is satisfied that you have accounted for all assets and expenses, the estate will be closed.

APPENDIX _____

SAMPLE DUAL REPRESENTATION LETTER
FOR NEW ESTATE PLANNING CLIENTS

Re: Your Estate Plan

Dear Mr. and Mrs. _____:

This will confirm the following:

1. You have requested that I represent each of you and advise you on certain estate planning matters.
2. It is contemplated that the matters to which my representation will extend will include the following: (Choose from the following or modify as appropriate.)
 - a. Analysis of your existing wills, codicils, trust agreements, and property agreements if any;
 - b. Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the nature in which title was then held;
 - c. Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, community, or quasi-community property;
 - d. Discussions about the manner in which you wish to dispose of any property over which you may have any power of disposition at the time of your death;
 - e. Analysis of the tax impact of such disposition and recommendations for alternative dispositions; and
 - f. Preparation of the documents necessary to accomplish the desired disposition, including the drafting of wills, trusts, property agreements, and other documents as may be required.
3. I have advised each of you that, during the course of the estate planning work, conflicts may arise between you with respect to the ownership of your property (separate, community, or quasi-community property) and its desired disposition during your lifetimes and at your deaths. Differences of opinion on the disposition of the property, under ethical rules, do not prevent me from continuing to represent both of you. However, during the course of the estate planning, conflicts of interest between you may arise, such as issues regarding the ownership of certain property.

Ordinarily, under such circumstances, one attorney cannot represent both of you. It may be better for each of you, under

such circumstances, to have separate independent counsel to avoid the possibility that my advice to one of you is influenced by my representation of the other. Nevertheless, you have requested, with a full understanding of your right to, and the advantages of, independent counsel, that I represent both of you in all of the above matters.

4. Although I doubt that it will happen, if conflicts do arise between the two of you of such a nature that I believe it impossible, in my judgment, for me to perform any obligations to either of you in accordance with this letter, I will withdraw from all further dual representation of both of you in this matter at that time and advise one or both of you to obtain independent counsel.

5. You have each agreed that there will be complete and free disclosure and exchange of all information that I receive from either or both of you in the course of my representation of you, and that such information shall not be confidential between you irrespective of whether I obtain such information in conferences with both of you or in private conferences with only one of you, including any conferences that may have taken place before the date of this letter.

Sincerely,

(Attorney's Signature Block)

APPROVED THE _____ day of _____, 19____.

(Signature of husband; typed name below)

(Signature of wife; typed name below)

ESTATE PLANNING CHECKLIST

1. General.

- (a) Has/Have the estate(s) wisely used the marital deduction and given adequate consideration to the use of trusts that will provide income for life to the surviving spouse, but enable maximum use of the unified credit by the estate of the first spouse to die? [Failure to qualify sufficient property for the marital deduction may result in an unnecessary tax burden at the estate owner's death. Over-qualification will tend to increase the federal estate tax due upon the surviving spouse's death.]
- (b) Would a gift program be advisable?
- (c) Is either the husband or wife the current or anticipated beneficiary of other estates or trusts? Has the effect of potential inheritances been considered in the planning process?
- (d) Are there any business interests or other assets which would require immediate attention following the estate owner's death?
- (e) Has a current inventory of estate assets been prepared to assist the executor?
- (f) Are the estate owner's wishes regarding burial and other personal matters (as opposed to binding dispositions of property) reflected in a letter or written memorandum kept with other important papers?
- (g) Are liquid assets available?
- (h) Are the names of all beneficiaries correct? [This is especially important with respect to charities.]
- (i) Has the corporate fiduciary, if any, been informed of its selection, reviewed the instrument, and accepted the instrument?
- (j) Have the settlor's insurance policy beneficiaries been changed in accordance with the estate plan, i.e., are policies made payable to the estate or the trustee if called for in the plan?

2. Wills and trusts.

Have current dispositive instruments been executed by both husband and wife?

- (a) Have the formalities of execution required by the state of domicile been met?

- (b) Will ancillary administration be required?
- (c) If an individual executor or trustee has been notified, has he or she agreed to accept this responsibility? Have an alternate and/or a successor been designated? Will the individuals named as executor and trustee, if any, qualify under the laws of decedent's domicile?
- (d) Has a guardian been appointed (or nominated) for minor children? Will the guardian qualify under the laws of decedent's domicile?
- (e) If a corporate fiduciary has been designated, will the corporate fiduciary qualify under the laws of decedent's domicile?
- (f) Is the fiduciary to be bonded?

3. Property ownership.

- (a) Is title to any property held in joint tenancy with right of survivorship? Does the estate plan contemplate the fact that joint tenancies may nullify certain testamentary dispositions and may result in unintentional over-qualification for the marital deduction?
- (b) Are any assets held as community property? One-half of each asset held as community property is "owned" by each spouse by operation of law. This fact is important in valuing the estates of community property state domiciliaries.
- (c) Do the estate owners hold a beneficial or reversionary interest in any property? Such interests are easily overlooked unless specific inquiries are made. Their effect on the potential estate tax and the liquidity requirements of the estates of both husband and wife should be considered.

4. Military, veterans, and social security benefits.

- (a) Has a schedule of potential benefits to survivors been prepared? [The nature, amounts, and eligibility requirements for these benefits are subject to frequent modification.]
- (b) Has a survivorship annuity been elected under the Survivor's Benefit Plan?
- (c) Are beneficiary designations for all military and veteran's benefits current?
- (d) Has the estate owner been reminded that eligibility for certain social security and veteran's benefits may be forfeited if the surviving spouse supplements other income by working?

- (e) Are any benefits available to the estate owner's survivors by virtue of any civilian employment in which he or she has engaged?

5. Life insurance.

- (a) Has the ownership of policies on the estate owner's life been ascertained? Are contingent owners designated? Would transfers of ownership be advantageous?
- (b) Does the estate owner hold any policies on the lives of others? Would contingent ownership be advisable to keep such policies out of the estate owner's probate estate?
- (c) Are all beneficiary designations current and properly designated?
- (d) Has the use of settlement options been considered? Even when the proceeds are to be paid in a lump sum, it is often advisable for the insured to elect to have the proceeds placed under the "interest only" option, giving the beneficiary full withdrawal rights and the right to elect other options. This gives the beneficiary maximum flexibility. It assures that interest will be credited from the date of death to the date of actual withdrawal, and gives the beneficiary time to obtain advice before being required to make any irrevocable decisions with regard to the ultimate disposition of the proceeds.
- (e) Do any settlement options elected by the insured include "spendthrift" provisions?
- (f) Do policy provisions and the provisions of state law regarding presumptions as to survivorship coincide with any presumptions established in the dispositive instruments? Has a "delay" clause been considered? "Delay" clauses provide for payment to the primary beneficiary only if such beneficiary survives the insured by a specified period of time. A clause of this type is frequently used to avoid adding to the costs of probating the beneficiary's estate when the beneficiary's death occurs shortly after that of the insured. Periods of 30 to 180 days are usually specified. The proceeds will not qualify for the marital deduction, however, if the survivorship requirement exceeds 180 days.
- (g) Will policy loans or collateral assignments interfere with the planned distribution of insurance proceeds?
- (h) Have any policies on the insured's life been transferred for valuable consideration? Such a transfer may cause part of the death proceeds to be taxed as ordinary income to the beneficiary. See I.R.C. § 101(a).

- (i) Do any policies include options, endowment features, conversion privileges, supplemental benefits, or other provisions that deserve special consideration or require action by the policy owner? An Automatic Premium Loan, for example, is included in many policies to prevent the policy from lapsing due to the insured's failure to make a scheduled premium payment prior to the expiration of the grace period. If it is not included in the policy at the time of issue, most companies will add it, without cost, at the policy owner's request.
- (j) Are policy dividends being applied under the most favorable dividend options? Which dividend option is "most favorable" will depend upon the insured's situation. If an individual's longevity is significantly impaired, he or she should consider having dividends applied toward the purchase of paid-up additional insurance.
- (k) Is additional insurance needed to ensure estate liquidity or to provide a guaranteed level of income for surviving family members? Have all aspects of the estate plan been coordinated (or reviewed) by an attorney who is thoroughly conversant with the laws of the jurisdiction in which probate proceedings will be carried out?

CHAPTER 4
THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

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MAJ Hostetter
FEB 1994

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Outline of Instruction

I. REFERENCES.

- A. 50 United States Code Appendix §§ 500-548, 560-593 (1990) (Supp. 1993).
- B. SSCRA Amendments of 1991, Pub. L. No. 102-12 (18 March 1991).
- C. The Judge Advocate General's School Publication JA 260, Soldiers' and Sailors' Civil Relief Act Guide (June 1993).
- D. LA Rev. Stat. 29: §§ 401-425, Military Service Relief Act (West 1993).
- E. State Unfair and Deceptive Acts and Practices Statutes; Federal Fair Credit Reporting Act.
- F. Reinold, "Use of the Soldiers' and Sailors' Civil Relief Act to Ensure Court Participation - Where's the Relief?" The Army Lawyer, June 1986, at 17.
- G. Switzer, "Mortgage Defaults and the Soldiers' and Sailors' Civil Relief Act: Assigning the Burden of Proof When Applying the Material Effect Test," Real Est. L. J. 171-184 (Fall 1989).
- H. Legal Assistance Note, "Soldiers' and Sailors' Civil Relief Act Protection for Active and Reserve Component Personnel," The Army Lawyer, October 1990, at 49.
- I. Legal Assistance Note, "Soldiers' and Sailors' Civil Relief Act: A Look at the Credit Industry's Approach to the Six Percent Limit on Interest Rates," The Army Lawyer, November 1990, at 49.
- J. Pottorff, "Contemporary Applications of the Soldiers' and Sailors' Civil Relief Act," 132 Mil. L. Rev. 115 (1991).
- K. Huckabee, "Operations Desert Shield and Desert Storm: Resurrection of the Soldiers' and Sailors' Civil Relief Act," 132 Mil.L.Rev. 141 (1991).
- L. Bradshaw, Byczek, and Buser, "Soldiers' Tort Claims and the Soldier's and Sailors' Civil Relief Act," The Army Lawyer, July 1991, at 40.

- M. Kay, "Material Effect: Shifting the Burden of Proof for Greater Procedural Relief Under the Soldiers' and Sailors' Civil Relief Act," 27 Tulsa L.J. 45 (Fall 1991).
- N. Servicemembers' Civil Relief Act [H.R. 4763, 102nd Congr., 2nd Sess. (introduced April 4, 1992)].
- O. Baron, "The Staying Power of the Soldiers' and Sailors' Civil Relief Act," 32 Santa Clara L.Rev. 137 (1992).
- P. McKonough, Huckabee, Gentile, "Crisis of the Soldiers' and Sailors' Civil Relief Act: A Call for the Ghost of Major (Professor) John Wigmore," 43 Mercer L. Rev. 667 (Winter 1992).
- Q. Legal Assistance Note, "Soldiers' and Sailors' Civil Relief Act Update: Section 525 Means What It Says," The Army Lawyer, June 1993, at 50.
- R. Legal Assistance Note, "Does the SSCRA Toll Statutes of Limitations for All Proceedings?" The Army Lawyer, October 1993 at 35.
- S. Switzer, "Benefits for Reserve and National Guard Members Under the Soldiers' And Sailors' Civil Relief Act," 110 Banking L. J. 517 (Nov-Dec 1993).
- T. Legal Assistance Note, Using the Soldiers' and Sailors' Civil Relief Act to Your Clients' Advantage, The Army Lawyer, Dec. 1993 at 34.
- U. Hatch Act Reform Amendments, Pub. L. 103-94, 107 Stat. 1001 (Oct. 6, 1993) (Section 9: provisions to treat federal pay the same as non-federal pay for garnishment purposes).

II. INTRODUCTION.

- A. The Act is divided into articles and includes, among other provisions, the following:**
 - 1. Article I - who is protected and in what courts the Act applies; exercise of rights not to affect certain future financial transactions.**
 - 2. Article II - limits on interest rates, stays of judicial proceedings; reopening default judgments; stays or vacation of execution of judgments, attachments; suspension of statutes of limitation.**
 - 3. Article III - protection from evictions; terminating pre-service leases; protection from mortgage foreclosure; rescission of installment contracts.**
 - 4. Article VII- stay of enforcement of obligations, liabilities and taxes; extension of powers of attorney; professional liability protection; health insurance reinstatement.**
- B. See SSCRA for additional areas of coverage not included in this teaching outline: Art. IV - Insurance; Art. V - Taxes and Public Lands; Art. VI - Administrative Remedies. There are also other provisions of Articles I, II, III, and VII which are not included herein.**
- C. Section numbers in the Act do not correspond to the 50 U.S.C. app. section numbers frequently cited.**
- D. The Act was pending revision during 1992. See H.R. 4763, 102nd Congr., 2nd Sess. (1992) ("Servicemembers' Civil Relief Act") which incorporates changes proposed by an inter-service working committee and reflects court interpretations over the years of the SSCRA. Proposed Act did not pass Congress in 1992; has not been reintroduced in 1993.**

III. ARTICLE I - GENERAL PROVISIONS (50 U.S.C. app. §§ 510-518).

- A. **Purpose** (50 U.S.C. app. § 510). To postpone/suspend certain civil obligations to permit service member to devote full attention to duty.

The Act should be read "with an eye friendly to those who dropped their affairs to answer their country's call." Le Maistre v. Leffers, 333 U.S. 1,6 (1948).

Practice Tip: The Act is open to interpretation. Practitioners should rely on case law, and, when applicable, argue to the court the "intent" of the Act when it is not clear whether their client is protected, but arguably could be.

B. Protected People.

1. "Persons in the military service," including members of the Army of the United States, the Air Force, the United States Navy, the Marine Corps, the Coast Guard, and Public Health Service detailed for duty with the Army or Navy.

a. "Military service" means Federal service on active duty (50 U.S.C. app. 511).

b. Includes members of the Army Reserve, Air Force Reserve, Fleet Reserve, Naval Reserve, Marine Corps Reserve, the Coast Guard Reserve, and the National Guard while in active federal service.

(1) Question: Are members of the Army National Guard performing full-time state duty covered?

(a) No, they are only covered by SSCRA when in active federal service. (See DAJA-AL 1991/1884 of 21 June 1991).

(b) But see, LA Rev. Stat. 29: §§ 401-425, Louisiana Military Service Relief Act (West 1993). State statute applies also to ANG in active state status. Additional protections, as well.

(2) Question: Are reservists performing annual 2-week training covered by the SSCRA? Arguably.

(a) The term "person in the military service" includes "... federal service on active duty with any branch of service heretofore referred to... (§ 511) "... and any member of a reserve component of the Armed Forces who is ordered to report for military service shall be entitled to such relief and benefits...." (§ 516).

(b) Proposed revision to SSCRA [H.R. 4763 (1992) which did not pass Congress] contained the following: Sec. 101(3) - the term "military service" means active federal service.... (4) - the term "active service" means military service other than for training. (Note: SSCRA in effect now does not contain such a limiting definition).

(c) See, Mouradian v. John Hancock, 1989 WL 225052 (1st Cir. 1989), remanded 751 F. Supp. 272 (D. Mass. 1990), aff'd 930 F. 2d 972 (1st Cir. 1991).

i) Though Circuit Court in 1989 did not specifically rule on the issue, it stated that a reservist plaintiff who argued that the statute of limitations should be tolled for the weekends and 2-week period he spent training may have been covered by the SSCRA.

ii) On remand, the District Court sidestepped the issue by stating that another statute of limitations (the armed services tolling provision in the Labor Management Relations Act which required a showing of material effect) applied in this collective bargaining case, instead of the general tolling provision of the SSCRA.

iii) Affirming in 1991, the Circuit Court said that the choice of which statute of limitations to apply would be dispositive in the case, because if the SSCRA applied, then the appellant would get relief.

2. Period of protection.

- a. Active duty. Protection from date of entering active service to date of discharge (50 U.S.C. app. § 511).
- b. Inductees. From date of receipt of notice of induction (50 U.S.C. app. § 516).
- c. Reserve Components. From date of receipt of orders to active duty receive protections under Articles I through III; upon reporting for active duty receive all SSCRA protections. (50 U.S.C. app. § 516).

3. Divestment of SSCRA protection due to misconduct.

- a. Mantz v. Mantz, 69 N.E.2d 637 (Ohio C.P. 1946) (court refused to stay a divorce proceeding when soldier could not appear because he was serving five year sentence in military confinement facility).
- b. Harriott v. Harriott, 511 A.2d 1264 (N.J. Super. Ct. Ch. Div. 1986) (court refused to reopen default judgment because soldier was AWOL at time of trial).

4. Dependents (in their own right) for Article III benefits (§§ 530-536), including rent, installment contracts, mortgages, liens, assignments, and leases (50 U.S.C. app. § 536).

Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under...[sections 530 to 536] [of the Act] ... unless [the court

finds] the ability of the dependent to comply with terms of obligation, contract, lease, or bailment has not been materially effected by reason of the military service of the person upon whom the applicants are dependent.

Note: The Act does not define "dependent." Cases have included parents who are financially dependent on the soldier [Reid v. Margolis, 44 N.Y.S. 2d 518 (1943) and Prather v. Clover Spinning Mills, Inc. 54 S.E.2d 529 (S.C. 1949)].

Question: What if a "dependent" spouse entered a financial obligation before he or she married and before the dependent's spouse entered the military?

See, Tuscon Telco Federal Credit Union v. Bowser, 451 P.2d 322 (Ariz. Ct. App. 1969) (single woman entered chattel mortgage on car, was subsequently married to civilian who was later drafted; car registered solely in her name and she alone made payments before repossession; court held that repossession without court order violated § 532, SSCRA. SSCRA applied because her ability to pay was impaired by husband's subsequent induction).

[§ 532 is in Article III; consequently, a dependent has protection in his or her own right - the soldier need not be jointly liable on the obligation for the dependent to receive protection].

5. Derivative protection for those with joint liability with a service member; applies any provision that stays, suspends, or postpones an obligation (50 U.S.C. app. § 513).

Question: Would woman in Bowser have been able to invoke the 6% interest cap pursuant to § 526?

No, because she was not "jointly" liable on the note with her military husband. [Dependents only have protection in their own right for Article III; other protections are derivative from the service member].

C. Waiver of Protection (50 U.S.C. app. § 517).

1. Written waiver,
2. Executed after effective date of SSCRA coverage,
3. As an instrument separate from the obligation or liability.
4. Note: Waiver of particular protections of SSCRA does not deprive military member of other protections available under Act. Harris v. Stem, 30 So.2d 889 (La. Ct. App. 1947) (military member waived requirement for court proceedings prior to repossession and sale of auto in event of default. This did not deprive him of invoking statute of limitations tolling provision in later action against lender for damages).

D. Jurisdictional Application (50 U.S.C. app. § 512).

1. The SSCRA applies in all federal, state, and territorial courts [generally interpreted to mean "civil" courts; see, § 510: "...provision is made to suspend enforcement of civil liabilities...of persons in the military...in order to enable such persons to devote their entire energy to the defense needs of the Nation...."]

See Shatswell v. Shatswell, 758 F. Supp. 662 (D. Kan. 1991). SSCRA does not empower district court to collaterally review, vacate or impede decisions of state court. See also Scheidt v. Dept. of Air Force, 715 F. Supp. 11 (D.N.H. 1989), aff'd, 915 F.2d 1558 (1st Cir. 1990). Rodriguez v. Westhab, Inc., 833 F. Supp. 425 (S.D. N.Y. 1993) - state courts empowered to hear SSCRA cases.

2. The SSCRA does NOT apply in foreign courts or usually in criminal courts.

But see, United States v. Bomar, 8 F.3d 226 (5th Cir. 1993) - United States prosecuted criminally this case on behalf of the soldier (see discussion of § 535 later in outline - some sections of SSCRA provide for criminal sanctions for violation).

(Regarding application to statutes of limitation to courts and other proceedings, see 50 U.S.C. app. § 525.) (Also see 50 U.S.C. app. § 513 re: criminal bail bonds).

Question: Is there a private cause of action available to the soldier for violations of the Act?

There is no provision in the SSCRA which expressly provides for a private cause of action to be bestowed upon a military plaintiff.

In McMurtry v. City of Largo, 837 F. Supp. 1155 (M.D. Fla. 1993), the reported case states that the issue was whether the SSCRA provides private cause of action under which a plaintiff soldier may sue in federal court. [Service member brought action against city, seeking to recover for city's condemnation and destruction of property while service member was involved in military action abroad].

Court, citing Tolmas v Streiffer, 21 So. 2d 387 (Ct. App. La. 1945), said "there is nothing in that [A]ct which contemplates conferring upon a soldier or sailor any privilege not enjoyed by a civilian. It is merely intended to secure him in his legal rights until he may return...." In this [McMurtry] case, soldier plaintiff had extended period to file appeal of board's action because statute of limitations tolled (§ 525). Court: It is unfortunate that the plaintiff, whether through lack of knowledge or conscious decision, did not avail himself of this remedy, the Court cannot now create a new cause of action for him to substitute for his unused remedy.

Does the McMurtry case, then, stand for the proposition that a soldier plaintiff has no cause of action for violations of the SSCRA? Not necessarily.

What about Crump v. Chrysler First Financial Services Corp, File No. 92 CVS 33, unpublished, (Sup. Ct. Caldwell County, N.C., 1992) (case discussed again under § 526 in this outline)?

The soldier plaintiff (and her husband) alleged violations of the SSCRA (failure to reduce loan to 6%), Fair Credit Reporting Act (willful and malicious conduct by reporting delinquency), and the North Carolina Unfair Trade Practices Act (fraudulent, deceptive, misleading practices).

In their Prayer for Relief, the plaintiffs asked the court for: actual and punitive damages, attorneys fees for violating the FCRA and the N.C. consumer protection statute (treble damages), and court costs, and that all adverse credit references be removed and they recover all affirmative relief afforded by the SSCRA.

Because the case was settled (15% refinancing loan recomputed at 12%; lender would clear reservist's credit report and pay her \$6,000), we do not know how the court would have addressed the SSCRA issues. It is interesting to note that the plaintiffs' attorney asked for equitable remedies for the SSCRA violations and monetary damages and costs under the other statutes which expressly provide for private causes of action.

It appears, at least in cases involving other private right of action statutes, that the soldier plaintiff should allege violations of the SSCRA and ask for equitable relief in conjunction with damages and costs allowed by the other statute(s). Even in a case involving only violations of the SSCRA, if it looks like a "winner" for the soldier - go for it.

Why wasn't McMurtry successful?

The plaintiff sued for damages alleging violation of the SSCRA, after he failed to use remedies already in place in the SSCRA which would have allowed him to appeal the board's decision after the normal appeal period expired (statute of limitations tolled). The court was not sympathetic that he failed to do so.

More importantly, the city's action in demolishing the building was not in itself a violation of the SSCRA! There appears the difference in McMurtry and Crump. The lender's actions in Crump were violations of the Act.

Note: The Department of Justice enforces the Act. (See end of outline for further discussion)

IV. FUTURE FINANCIAL TRANSACTIONS (50 U.S.C. app. § 518) (1991 Amendment).

- A. This provision prohibits retaliatory action against those who invoke the SSCRA.
- B. An application under the provisions of the SSCRA for a stay, postponement, or suspension of any tax, fine, penalty, insurance premium, or other civil obligation or liability cannot be the basis for certain actions. Specifically, lenders cannot then determine that the service member is unable to pay an obligation or liability.
- C. With respect to a credit transaction between service members and creditors, creditors cannot then deny or revoke credit, change the terms of an existing credit arrangement, refuse to grant credit in the terms requested, submit adverse credit reports to credit reporting agencies or, if an insurer, refuse to insure a service member.

Question: Could a creditor take adverse action based upon other criteria? (For example, failure to pay an obligation after the interest rate has been reduced to 6% pursuant to § 526?) Yes.

V. ARTICLE II - GENERAL RELIEF (50 U.S.C. app. §§ 520-527).

- A. Key concept: "material effect".

Many SSCRA protections require a showing that military service materially effects the service member's ability to appear and defend in the civil action or otherwise meet the obligation.

B. Limitation on Interest Payments Above Six Percent (50 U.S.C. app. § 526).

1. Prohibits creditors from charging in excess of 6% on all indebtedness incurred prior to active duty unless court finds no "material effect."
2. This cap is in effect for the period of military service.
3. Criteria for relief.
 - a. Obligation entered prior to service.
 - b. Soldier now on active duty.
 - c. Military service materially affects ability to pay.

Freddie Mac v. Sincoban (unpublished decision W.D. Wisc. 1993). Reserve doctor called to active duty has decreased employment income. Creditor refused to apply 6% (citing her ability to pay from other sources than military income). With authorization from DA-LA (Chief, Army Legal Assistance) pursuant to AR 27-3, Army Legal Assistance, reserve attorney represented her. Unusual facts surfaced in discovery: she and family had substantial investment wealth in millions (not previously disclosed to her attorney); consequently, court ruled in Freddie Mac's favor based on unique financial situation of reservist.

Question: Do you think the court would have ruled differently if the reservist had only moderate savings?

4. Triggering the protection of § 526.
 - a. When: Effective at the time the soldier enters active military service; not when the protection is invoked.
 - b. How: notify lender, provide copy of orders.
 - c. Burden on lender to seek relief in court by proving service does not materially effect ability to pay.

- d. Makes no difference whether someone volunteers or is involuntarily called to active duty.
- e. Protection applies not only to civilians who entered financial agreements before entering active service, but also to those in Reserve Component status, as long as not on active duty when obligation entered.

Question: What happens in situation where active duty service member enters obligation, then leaves active duty to join reserves - subsequently, the person is mobilized and called to active duty? Is the obligation pre-service for purposes of § 526? What periods of service count? There are no court cases on this issue, but similar questions have come from the "field."

5. Co-signing loans.

- a. Family members: If they have joint contractual liability with service member, they receive the 6% interest rate protection.

(1) Question: What if a married person joins active service and his or her income increases but, because his or her non-military spouse is forced to quit his or her job, the couple's joint income decreases? Could they invoke the 6% interest cap on a joint obligation?

- (a) 50 U.S.C. app. § 513 protects those primarily or secondarily liable on service member's obligation. The problem is "material effect." The creditor may try to argue that the military person's income has increased and because the spouse voluntarily gave up his or her former job, military service did not effect their income.

What would you (legal assistance attorney) argue on behalf of the couple?

(b) What if the obligation was only in the service member's name (no joint liability with civilian spouse)? Would that make a difference in your argument that the couple's joint income should be considered to show "material effect?" Would it make a difference if they were in a community property state?

(2) Question: Could the woman in the Bowser case have invoked the 6% interest cap of \$ 526? No. Her military husband was not a joint obligor on the car loan.... (Recall, however, she did have protection of §§ 530-536 in her own right - the lender had to go to court before repossessing the car).

b. Business partners: Legislative history indicates they should receive protection, but not explicit in Act.

6. Issue of difference between actual interest rate and six percent.

a. Act not clear, but DoD and DoJ position:

(1) The difference is to be forgiven, not accrued.

(2) Creditors should not simply apply more of the payment toward principal, while keeping monthly payments the same.

b. Crump v. Chrysler First Financial Services Corp, unpublished, Superior Court, Caldwell County, North Carolina, File No. 92 CVS 33, 1992 (case settled between parties; reservist's attorney: Mr. Samuel Gorham, Hickory, North Carolina)

(1) Reservist activated for Desert Storm requested reduction of real estate loan to 6%; lender reduced rate but did not reduce monthly payments.

- (2) Though continuing to make monthly payments, reservist missed balloon payment due after call to active duty and lender reported series of delinquencies to credit reporting agency.
- (3) Unable to obtain other low-cost financing because of resultant bad credit report, reservist refinanced with same lender at higher interest rate (15%) than normally extended to consumers.
- (4) Reservist's lawyer alleged violations of SSCRA (failure to reduce to 6%), Fair Credit Reporting Act (willful and malicious conduct by reporting delinquency), and the North Carolina Unfair Trade Practices Act (fraudulent, deceptive, misleading practices).
- (5) Case settled: 15% refinancing loan recomputed at 12%; lender will clear reservist's credit report and pay her \$6,000.

7. **Exception to 6 percent interest cap:** Department of Education (DOE) memorandum, dated 29 August 1990, subject: **GSL Borrowers Adversely Affected by the Recent U.S. Military Mobilizations.**

a. **Higher Education Act of 1965.**

- (1) 20 U.S.C. § 1078(d) states that no provision of any law that limits the interest rate on a loan will apply to the Guaranteed Student Loan (GSL) program.
- (2) DOE's position is that this renders ineffective the § 526 interest rate cap if the loan in question is a GSL.

(Now, GSL loans are called Stafford Loans, Supplemental Loans for Students (SLS), and PLUS Loans).

Note: This exception to the 6% interest cap does not apply to student loans which are not federally insured.

- b. DOE memo from Mr. Brian Siegel to Captain Bays (Camp Lejeune, NC) of April 1, 1993:
- (1) SSCRA interest limitation does not apply to FFELP loans made under Part B of the Higher Education Act, as amended (HEA). 20 U.S.C. § 1078(d)
 - (2) FFELP includes four types of student loans: Federal Stafford Loans (formerly GSL); Federal Supplemental Loans for Students (SLS); Federal PLUS loans; and Federal consolidation Loans.
 - (3) A loan with an interest rate greater than the statutory limit (20 U.S.C. § 1077a) is not considered a loan insured under Part B of the HEA and would not be excluded from coverage under SSCRA by 20 U.S.C. § 1078(d).
 - (4) Some guarantor agencies also operate state or private loan programs which are not subject to HEA and which would be covered by SSCRA.
 - (5) For more information write: U.S. Dept. of Education, Office of the General Counsel, 400 Maryland Ave., S.W. Washington, DC 20202-2110 Att: Mr. Brian Siegel, Attorney, Division of Postsecondary Education.
- c. Other SSCRA provisions, including stays of proceedings and reopening default judgments, remain available to GSL debtors.
- d. Deferments: Higher Education Amendments of 1992, Pub. L. 102-325, significantly changed deferments available to borrowers under FFELP. Under 20 U.S.C. § 1078(b)(1)(M), as revised, there is no longer an automatic deferment for military personnel. Borrowers receiving loans on or after 1 July 1993, entitled only to deferments on limited grounds (military: most likely ground to use is economic hardship). DOE is developing regulations to implement provision.

C. **Stay of Proceedings (50 U.S.C. app. § 521).**

Purpose - To permit delay of [civil] court proceedings where military service prevents a plaintiff or defendant in military service from asserting or protecting a legal right. [Note: This does not include civilian dependents].

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, ...

1. Both "plaintiffs and defendants" can request stays in civil proceedings "in any court."

- a. Question: What if a civilian plaintiff's or defendant's attorney is called to active service? May the civilian invoke protection and request a stay until the attorney can appear and represent him or her? What about a material witness who is called to active duty?

- (1) Salazar v. Rahman, 1993 WL 22085 (Tex. Ct. App. 1993) (§ 521 applies only to parties in a civil proceeding and does not provide for a stay based on an attorney's military service).

- (2) Ohio v. Gall, 1992 WL 217999 (Ohio App. 1992) ("party" does not include a material witness).

- b. Question: May a service member request a stay of proceedings pursuant to § 521 in a situation where they are "technically" neither a plaintiff or defendant? Perhaps.

See, In re Ladner (1993 WL 264925 (Bankr. D. Colo. July 15, 1993). Debtor service member requested postponement of debtor/creditor meeting (which required his presence) pursuant to § 521, SSCRA.

- (1) Purpose of § 521: To permit delay of civil court proceedings where military service prevents a plaintiff or defendant in military service from asserting or protecting a legal right.

- (2) Bankruptcy court: "The purpose of the (SSCRA) require(s) a liberal interpretation of the word defendant." Citing Shire v. Superior Court In and For Greenlee County, 162 P.2d 909 (Ariz. 1945), the court said the phrase referencing the appearance of the individual as either plaintiff or defendant should not be strictly construed but should apply to those who are "petitioners, respondents, movant, or intervenors." The Act speaks of "any action or proceeding...."
- (3) A debtor in a bankruptcy is protected by the Act. The stay was granted. The time for filing claims against the debtor, for filing objections to exemptions, and for filing complaints against debtor, shall be continued to run from date of debtor's first appearance at meeting of creditors. (in other words, the "limitations" periods appears to be tolled).

c. Question: May a service member request a stay of proceedings in administrative vice judicial proceedings?

- (1) With exception of § 525 (statutes of limitation), the Act makes no reference to administrative proceedings.
- (2) See, Polis v. Creedon, 162 F.2d 908 (Em. App. 1947). Proceeding before area rent director was not a proceeding before a court and military member landlord not entitled to SSCRA protection.
- (3) See also, United States v. Frantz, 220 F.2d 123 (3d Cir. 1954), cert. denied, 75 S. Ct. 883 (1955). § 521 provides for a stay of any action or proceeding in any "court." Standing alone, Government agencies whose determinations might affect the interests of military persons, do not fit that definition.
- (4) See also, McMurtry v. City of Largo, 837 F. Supp. 1155 (M.D. Fla. 1993). § 521 stay provisions not applicable to proceedings to abate public nuisances.

But court did say that § 525, statutes of limitations tolling provisions, would apply to board proceedings.

d. Request for a stay may be made at any stage of the court action or proceeding as long as the request is made during service or within 60 days thereafter.

e. Maximum duration of stay is the period of service plus 3 months after discharge. Following this period, defendant must appear in court (50 U.S.C. App. § 524).

It is important to be reasonable in requesting the stay.

f. Key element of the soldier's burden - proving that the soldier's military duty materially affected the soldier's ability to be present in court.

(1) The burden of proof.

(a) The Supreme Court has indicated that the burden of proof in these cases may shift, depending on the facts. Boone v. Lightner, 319 U.S. 561, 571 (1943).

(b) As a practical matter, the service member should assume he or she has the burden of proving that military service has materially affected the ability to appear in court.

(2) Possible factors showing material effect.

(a) Unsuccessful efforts to obtain leave.

i) Underhill v. Barnes, 161 Ga. App. 776, 228 S.E.2d 905 (1982) (in denying request for a stay, court took judicial notice of fact defendant had 50 days accrued leave).

ii) Palo v. Palo, 299 N.W.2d 577 (S.D. 1980) (where defendant and plaintiff were military couple and wife took excess leave and borrowed money in order to appear, court refused husband's request for a stay when he did not similarly take excess leave and borrow requisite funds to appear).

(b) Affidavits in support of unavailability. Lackey v. Lackey, 222 Va. 49, 278 S.E.2d 811 (1981) (court held affidavit from officer on ship sufficient to establish material effect).

2. If the court finds that there has been material effect, the court MUST order a stay.

Problem: Courts might not consider presence of service member necessary to the proceeding; thus, no stay is granted.

a. Bubac v. Boston, 600 So.2d 951 (Miss. 1992). Military father not necessary party in proceeding by mother challenging retention of kids by paternal grandmother.

b. Shelor v. Shelor, 383 S.E.2d 895 (Ga. 1989). As general rule, temporary modifications of child support do not materially affect rights of military defendant as they are interlocutory and subject to modification.

c. Riley v. White, 563 So.2d 1039 (Ala. Civ. App. 1990). Trial court did not abuse discretion in refusing putative father's request for stay, after father left with military unit for overseas duty without submitting to required blood test. Father was aware of proceedings, was represented by attorney, received previous delay and left for Germany without informing court.

d. Williams v. Williams, 552 So.2d 531 (La. Ct. App. 1989). Facts of each case determine whether trial court abused discretion in refusing stay request.

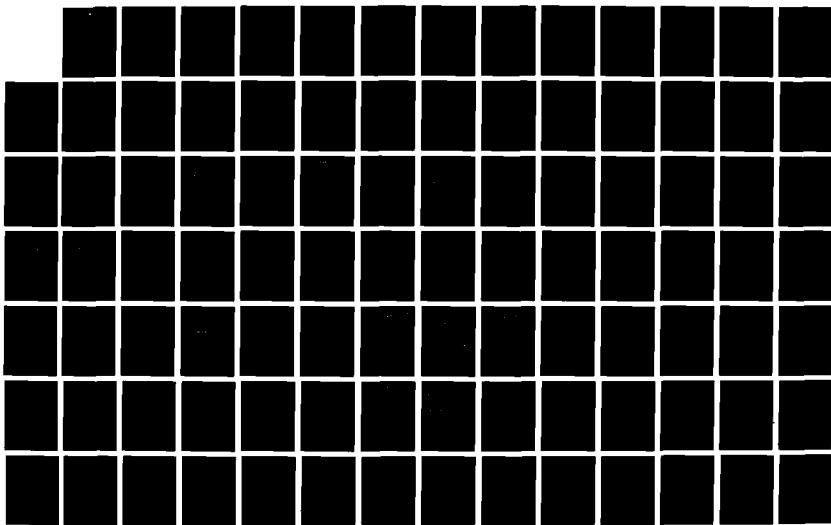
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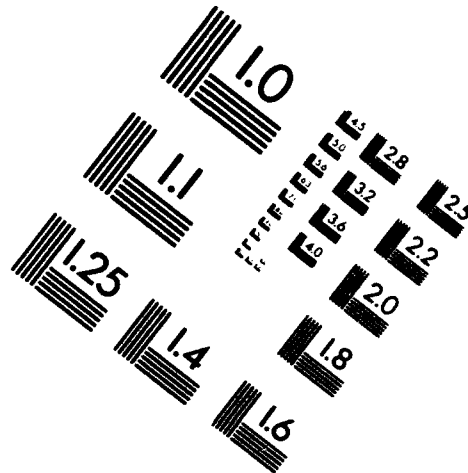
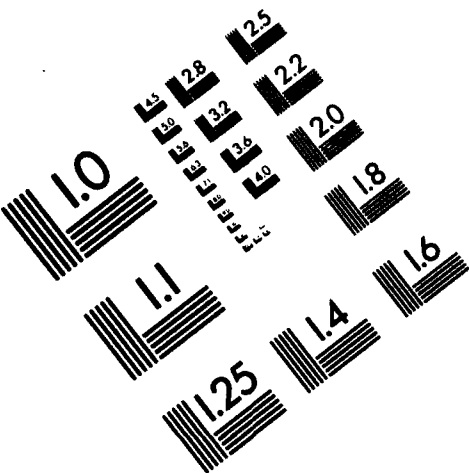


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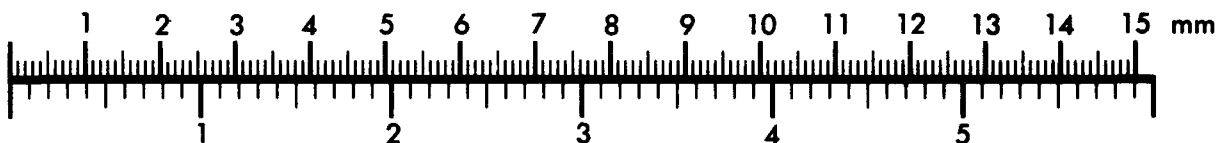
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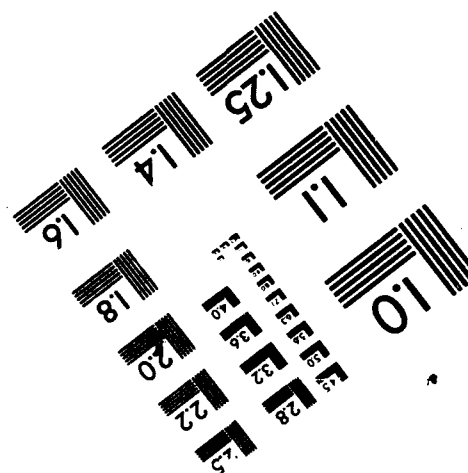
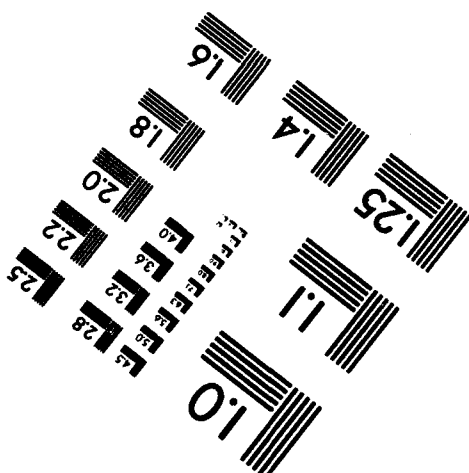
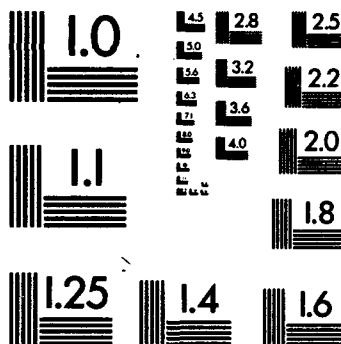
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- e. See also Jackson v. Jackson, 403 N.W.2d 248 (Minn. Ct. App. 1987) and Nurse v. Portis, 520 N.E.2d 1372 (Ohio Ct. App. 1987).

D. Default Judgments (50 U.S.C. app. § 520).

1. Purpose: to provide relief by affording the service member against whom a default judgment is entered a potential means to have the judgment reopened.

2. Plaintiff's affidavit.

- a. If there is default of any appearance by the defendant, before plaintiff can obtain a default judgment, plaintiff must submit an affidavit stating that the defendant is/is not in the military service or plaintiff does not know whether defendant is in the military service.

b. Effect of failing to file an affidavit.

- (1) There should be no entry of judgment unless the court so orders after ascertaining whether the defendant is in the military service and whether the defendant has requested a stay of the proceedings.

- (a) See, U.S. v. Hoag, 1992 WL 474651 (N.D. N.Y. Dec. 18, 1992) (In trying to recover tax monies mistakenly refunded Hoag, U.S. failed to file affidavit required by SSCRA. Court declined to enter default judgement.

- (b) But see, Chenausky v. Chenausky, 509 A. 2d 156 (N.H. 1986).

- i) "Appearance" obviating need for plaintiff's affidavit regarding military service is not necessarily the same as an "appearance" for purpose of appointment of counsel.

- ii) Soldier filed own responses setting out facts disputing permanent modification of child support. Soldier did not appear personally or through counsel. Default judgement entered and garnishment ordered for arrearages.
 - iii) Soldier's response made plaintiff's affidavit unnecessary. Purpose of § 520 is to protect service member who has no knowledge of proceedings.
 - iv) Soldier's duties, however, may hinder conduct of his defense so as to require appointment of counsel when soldier does not personally appear or have representation.
- (2) A judgment obtained without the affidavit is voidable upon defendant's showing that presentation of the defense was prejudiced by defendant's service. But see, Kirby v. Holman, 25 N.W.2d 664 (Iowa 1947) - Fraudulent, false affidavit requires no showing of material effect to reopen.

3. Court appointed attorney.

- a. The court MUST appoint an attorney if the defendant is in the service and does not have an attorney present in court or if the plaintiff does not know whether the defendant is in the service. (50 U.S.C. app. § 520(1)).
- b. The responsibility of the court appointed attorney is to ascertain whether the defendant is in the military and, if so, typically to request a stay of proceedings in the defendant's behalf.

Wakefield Mortgage Co. v. Keller, unpublished Cause No. 02C01-9204-CP-291 (Allen Circuit Court, Indiana, June 29, 1992) "The court having reviewed Plaintiff's application for appointment of attorney for defendant...due to his military service...(orders) that the Judge

Advocate General (Army) be appointed as the attorney for (PFC Keller)...(and confirm) whether or not (Keller) is in active military service.... (TJAG) is empowered to act on behalf of (Keller) ...in such a manner as to equitably conserve the interests of all parties (if Keller's ability to comply with the mortgage obligation) has not been materially effected by reason of his military service and the real estate appears to be abandoned."

Note: TJAGSA forwarded court order to, OTJAG, for response to court on behalf of TJAG!

- c. Compensation: See Barnes v. Winford, 833 P.2d 756 (Colo. App. 1991) (cert. denied Aug. 3, 1992) (costs payable by plaintiff). Redford v. Ramlow, 27 N.W.2d 754 (Wis. 1947), rehearing denied 28 N. W. 2d 884 (Wis. 1947) (in will contest, court appointed attorney paid from estate just like guardian ad litem is paid).
- d. Failure to appoint attorney.
 - (1) Smith v. Davis, 364 S.E. 2d 156 (N.C. Ct. App. 1988). Failure of trial court to appoint attorney for soldier, without more, did not require reversal but soldier entitled to reopen default judgement because he showed military service materially affected his ability to defend and that he had a meritorious defense.
 - (2) Ostrowski v. Pethick, 590 A.2d 1290 (Pa. Super. 1991). Judgement valid until properly attacked by service member.
 - (3) But see, Wilson v. Butler, 584 So. 2d 414 (Miss. 1991). (though Plaintiff failed to file required affidavit of military service and lower court failed to appoint an attorney for defendant, as required by SSCRA, the judgement would not be reopened because PVT Wilson failed to show existence of a meritorious defense to paternity action).

Remember: Violations of § 520(1) render judgments voidable, not void.

4. Application to reopen judgment.

- a. The judgment must have been entered during the service member's term of service or within 30 days thereafter.
- b. Application to reopen must be made during service or within 90 days thereafter.
 - (1) Application must be to same court that rendered the judgement (Davidson v. GFC, 295 F. Supp. 878 (N. D. Ga. 1968)). See also Shatswell v. Shatswell, 758 F. Supp. 662 (D. Kan. 1991).
 - (2) SSCRA does not empower district court to collaterally review, vacate or impede decisions of state court. Scheidigg v. Dept. of Air Force, 715 F. Supp. 11 (D.N.H. 1989), aff'd, 915 F. 2d 1558 (1st Cir. 1990).
- c. Service member must have made no appearance.

5. Relief is available only if the service member "defaults of any appearance" in court. 50 U.S.C. app. § 520 (1):

- a. Any act before the court by the defendant or by the defendant's retained attorney (as opposed to a court-appointed attorney) may constitute a disqualifying appearance.

Problem with obtaining relief: Some courts consider a request for a stay under the SSCRA to be an appearance that waives the right to reopen a subsequent default judgment.

- b. Situations in which courts have found an appearance.
 - (1) Personal letter from service member to court requesting a stay. Matter of Marriage of Thompson, 832 P.2d 349 (Kan. Ct. App. 1992) (however, child support order was voidable due to failure to give father requisite notice of default judgement).

- (2) Filing an answer through counsel or pro se.
- (3) In court request through counsel that complaint and service be quashed. Blankenship v. Blankenship, 263 Ala. 297, 82 So. 2d 335 (1955).
- (4) Contesting jurisdiction through court appearance of retained counsel. Reynolds v. Reynolds, 21 Cal. 2d 580, 134 P.2d 251 (1943).
- (5) Requesting postponement through motion by retained counsel. Vara v. Vara, 14 Ohio St. 2d 261, 171 N.E.2d 384 (1961).
- (6) Requesting a stay through letter from a legal assistance attorney.
 - (a) Skates v. Stockton, 140 Ariz. 505, 683 P.2d 304 (Ct. App. 1984) (even though court did not otherwise have personal jurisdiction, it determined that legal assistance attorney's letter requesting a stay constituted an appearance sufficient to give it personal jurisdiction).
 - (b) Artis-Wergin v. Artis-Wergin, 444 N.W.2d 750 (Wis. Ct. App. 1989) (legal assistance attorney requested a stay, but did not invoke SSCRA in request; court determined defendant had made an appearance and refused to reopen subsequent default judgment).
 - (c) But see: Kramer v. Kramer, 668 S.W.2d 457 (Tex. Ct. App. 1984) (appellate court held that defendant's letter invoking SSCRA and requesting a stay did not provide personal jurisdiction that was otherwise lacking).
- (7) State statutes may expressly deal with whether an appearance has been made. See K.S.A. 60-203 - "Written contact with the court by a defendant under the [SSCRA] shall not be deemed an entry of appearance by the court."

c. What is not an appearance?

(1) Letter from commander to court.

Cromer v. Cromer, 278 S.E.2d 518 (N.C. 1981). Lower court may not have been aware of Commander's letter and affidavit stating military defendant could not appear for modification of child support and garnishment proceedings. Though both were mentioned in attorney briefs, letter and affidavit missing from record. Case reversed and remanded in interest of justice.

(2) Letter to opposing counsel.

6. Criteria for reopening judgment.

- a. Material effect - Defendant could not be present in court to conduct a defense because of the defendant's service (service materially affected service member's ability to defend against the action).

AND

- b. Meritorious or legal defense - Defendant must reveal a defense to all or part of the original cause of action.

Note: A service member who makes no appearance and has a default judgment entered against him or her must still show material effect and a meritorious/legal defense to reopen.

7. Approaching the problem of requesting a stay.

- a. Review the status of the client's civil action and identify the risks of doing nothing.
- (1) If you fail to enter an appearance now, will you be able to reopen the case later? Do you have both material effect and a meritorious/legal defense?
- (2) If you fail to appear now, will adverse action (such as garnishment or involuntary allotment) be taken anyway?

- b. If a stay of proceedings is most likely to afford relief, how should you seek one?
- (1) Request a stay of reasonable duration.
 - (2) Have someone other than the service member request the stay (i.e. commanding officer); request the stay through the opposing counsel (who will then be obligated to inform the court of the service member's status) or contact the judge (rather than the court itself or the clerk of court) directly in a handwritten letter which contains no legalese.
 - (3) Assume that the burden is on the service member to prove material effect, even though this is not clearly established by the law.
 - (4) Remember, in this case formal pleadings prepared by the legal assistance officer are NOT helpful.
8. Impact of Pub. Law 103-94: Provision to treat federal pay in the same manner as non-federal pay for garnishment (signed 6 October 1993).
- a. As originally proposed and passed by the Senate, the garnishment bill (S. 253) was intended to apply the remedy of garnishment equally to all debtors, including military personnel.
- [This concerned DoD, as military members are subject to default judgments in the event they cannot appear for court proceedings and are not successful in getting stays pursuant to the SSCRA. This would open a heretofore unavailable avenue of collection for creditors, because historically there has been no waiver of sovereign immunity for garnishment of military wages except for child support and alimony].
- b. Subsequently, the garnishment proposal was incorporated into S. 185, The Hatch Act Reform Amendments, section 9.

- c. Recognizing the Clinton administration's concern that the approved language did not adequately address the unique position of military personnel, the Senate, on 14 July 1993, approved an amendment (No. 568) which would remove the military from the formal garnishment procedures and, instead, allow the Secretary of Defense to issue regulations authorizing involuntary allotments to satisfy commercial debt. [139 Congr. Rec. S8692-01 (daily ed. July 14, 1993) statements of Sen. Pryor and Sen. Craig]
- d. The regulations "shall" include:
- (1) Provisions for the involuntary allotment of pay of members of the uniformed services for indebtedness owed a third party as determined by the final judgement of a court of competent jurisdiction, and as further determined by competent military or executive authority to be in compliance with the procedural requirements of the Soldiers' and Sailor's Civil Relief Act; and
 - (2) Consideration for the absence of a member of the uniformed service from an appearance in a judicial proceeding resulting from the exigencies of military duty. [139 Congr. Rec. S8692-01 (daily ed. July 14, 1993)]
- e. The Hatch Act Reform Amendments passed the Senate on 20 July 1993. 139 Congr. Rec. S8950-04 (daily ed. July 20, 1993); 139 Congr. Rec. D803-02 (daily ed. July 20, 1993)].
- For text of the Senate version, see 139 Congr. Rec. S9169-03 (daily ed. July 21, 1993).
- f. On 21 September 1993, the House passed the Senate version of the bill (H.R. 20 - formerly the Federal Employees Political Activities Act of 1993). The bill was signed on 6 October 1993 and will become effective 120 days after that date (with limited exceptions). (Pub. L. 103-94, 107 Stat. 1001) DoD is now working on the implementing regulation for involuntary allotments - will probably be incorporated in debt complaint processing regulations.

E. Stay or Vacation of Execution of Judgments, Attachments (50 U.S.C. app. § 523).

1. When military service materially effects ability to comply with judgement or decree resulting from any action or proceeding commenced against service member before or during military service or within 60 days thereafter,
2. Court may stay execution of any judgement or order entered against service member, vacate or stay any attachment or garnishment of property, money, or debts in hands of another, whether before or after judgement.
 - a. Service member could request modification of child support or alimony. McGlynn v. McGlynn, 178 Misc. 530, 35 N.Y.S.2d 6 (Sup. Ct. 1942)
 - b. Courts have granted prospective relief, as well. McKinney v. McKinney, 50 N.Y.2d 8 (Sup. Ct. 1944) - husband initiated a proceeding to determine extent of his support obligation because of his change in circumstances when entered active duty.

F. Suspension of Statutes of Limitation (50 U.S.C. app. § 525).

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service...whether such cause of action...shall have accrued prior to or during the period of such service..., nor shall any part of such period be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

1. This provision tolls the running of statutes of limitation

- a. During the service member's period of military service
- b. With respect to any administrative or civil proceeding

See, Commonwealth v. Shimpino, 50 A.2d 39 (Pa. Super. Ct. 1946) - SSCRA provision suspending running of statute of limitations does not apply to prosecutions for criminal offenses. Case involved willful neglect to pay child support for child born out of wedlock.

- c. Involving a service member as either plaintiff or defendant [* includes his/her heirs, executors, administrators, or assigns]
- d. Except with respect to any period of limitation under internal revenue laws (§ 527)].

2. Question: Does "heir, executor, administrator or assign" include the United States when the service member at fault is acting within his or her scope of employment?

Carr v. United States, 422 F. 2d 1007 (4th Cir. 1970). Federal Tort Claims action untimely. Since Federal Drivers Act immunized Navy driver, plaintiff federal employee had no action against "any person in military service" and the government was not considered an "heir, executor, administrator, or assign" of the sailor. Therefore, statute of limitations not tolled.

3. Questions: Are the statutes of limitations tolled for the entire period of military service, even if the person is "career?" Must the service member show "material effect" to get protection?

While the SSCRA does not limit application of this provision to a single term of enlistment or to a specified period of career service, lower courts had interpreted this provision various ways with some requiring a showing of material effect for career personnel to invoke protection.

- a. On 31 March 1993, the Supreme Court settled the issue in Conroy v. Aniskoff 1993 WL 89113 (S.Ct. 1993), reversing Conroy v. Danforth, 599 A.2d 426 (Me. 1992). There is no requirement to show material effect.

The Maine court affirmed judgement that SSCRA did not protect Army Colonel on active duty from running of 18-month redemption period following statutory foreclosure of tax lien mortgage for nonpayment of taxes; ruled that career service member must prove material effect to toll redemption period, despite language of statute which does not require showing of material effect.

- b. Supreme Court held language of statute is clear: there is no requirement to show service materially effects service member.

4. Question: Does the tolling provision apply to all administrative and court proceeding?

- a. § 525 says it applies to "any action or proceeding in any court, board, bureau, commission, department, or other agency of government...."
- b. Despite the literal language of the Act and even after the Conroy case, there appears to be a difference among jurisdictions whether § 525 tolls statutes of limitations for all or just some administrative and civil proceedings involving service members, particularly when another statute containing time limitations also applies in the case.

- (1) See, Allen v. Card, 799 F. Supp. 158 (D.C. 1992) (pre-Conroy case) SSCRA does not toll 3-year period for filing complaints with BCMR. "Plain meaning of statute cannot be relied upon when it would yield clearly unintended result and there is clear evidence that this is not what Congress intended." When 2 statutes conflict, the more specific and recent one controls - here, BCMR statute of limitations supercedes SSCRA.

- (2) See also, Miller v. United States, 1993 WL 315025 (Fed. Cl. Aug. 13, 1993) (post-Conroy case) Failing to mention Conroy in its opinion, the Claims Court agreed with Allen, finding that the SSCRA tolling provision does not apply to actions before the BCMR, because to do so would have the opposite effect of that intended by Congress in enacting the SSCRA. The purpose of the SSCRA, in the court's opinion, was to protect service members from "civil liability" which might arise during their military service, not to weaken the military by limiting its "discretion to conduct its internal affairs."
- (3) See also, Mouradian v. John Hancock, 1989 WL 225052 (1st Cir. 1989), remanded 751 F. Supp. 272 (D. Mass. 1990), aff'd 930 F. 2d 972 (1st Cir. 1991) (the armed services tolling provision in the Labor Management Relations Act, which required a showing of material effect, applied in this collective bargaining case, instead of the general tolling provision of the SSCRA).
- (4) But see, Davis v. Dept. of the Air Force, 51 M.S.P.R. 246 (1991). Time for filing employee's appeal to Merit Systems Protection Board tolled during his military service pursuant to § 525, citing Stemmer v. Dept. of the Army, 3 M.S.P.R. 352 (1980).
- (5) See also, Mai v. United States, 22 Cl. Ct. 664 (1991). AFBCMR case wherein court held that SSCRA tolled applicable limitations period. [After plaintiff's involuntary discharge, he petitioned AFBCMR for retroactive reinstatement and back pay; 14 years after claim accrued, he filed suit in Claims Court (there was a 6 year statute of limitations in the Claims Court)].
- (6) See also, In re Robins Co., Inc. v. Dalkon Shield Claimants Trust, 1993 WL 217492 (4th Cir. June 22, 1993) (post-Conroy case) ["Plain language of (SSCRA) requires that time periods such as that fixed by

the bar date (for filing claims against A.H. Robins as part of the Chapter 11 reorganization plan) be tolled in favor of military personnel.... the statute on its face applies to toll the claim filing period in favor of Major Anderson. (It) contains no exceptions and is drafted in extraordinarily broad terms.... section 525 itself contains no hint of an exception for bankruptcy or any other type of proceeding...."]].

- (7) Also, McMurtry v. City of Largo, 837 F. Supp. 1155 (M.D. Fla. 1993). City declared building public nuisance. Soldier owner's 30 day statute of limitations period for appeal of code enforcement board's action tolled by SSCRA.

- c. In an arbitration award stemming from a cohabitation case, the court applied the New Mexico Arbitration Act in deciding that a hearing should have been postponed due to one party's inability to appear because of military commitments. In so doing, the court did not reach the issue of whether the SSCRA was violated. Jaycox v. Ekeson, 1993 WL 288632 (N.M. 1993).
- d. Peculiar Cases: Court held that 1-year reunification period (for putative father and child prior to termination of parental rights) was not tolled by SSCRA because father had failed to request stay of proceedings (even though father unaware of proceedings) In re Sarah C. v. Paul D., 11 Cal. Rptr.2d 414 (Cal. 4th 1992). See also In re Melicia L. v. Raymond L., 254 Cal. Rptr. 541 (Cal. 4th 1988). Did they mix apples and oranges here? The tolling provisions of the SSCRA are automatic - requesting a stay of proceedings is not a prerequisite.

5. In addition to statutes of limitation, the equitable principle of "laches" may bar suit after a significant period of time.

a. "Laches" is the theory that if a party waits too long to bring an action, the party may be barred from bringing the action even though the statute of limitations has not yet run.

b. Estoppel by laches requires proof of:

(1) Inexcusable delay.

(2) Combined with prejudice to the opposing party.

Deering v. United States, 620 F.2d 242 (Ct. Cl. 1980) (suit for back pay six years after cause of action arose was not barred by statute of limitations, but by laches because of delay and prejudice and expense to government). See also Allen v. Card, 799 F. Supp. 158 (D.C. 1992) and Mai v. United States, 22 Cl. Ct. 664 (1991) regarding laches and BCMR cases.

VI. ARTICLE III - RENT, LEASES, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS (50 U.S.C. app. §§ 530-36).

A. Protected People. For purposes of Article III, protected people include not only those on active duty (50 U.S.C. app. § 511) but also dependents, in their own right (50 U.S.C. app. § 536).

B. Protection from Eviction from Leased Housing (50 U.S.C. app. § 530).

1. Purpose - to prevent eviction of a service member or dependents for nonpayment of rent without a court order.

2. Criteria for relief.

a. The premises were occupied as a dwelling by the dependents of a service member.

- b. The rent does not exceed \$1200 per month.
 - (1) \$1200 rent ceiling retroactive to evictions commenced after 31 July 1990 (SSCRA Amendments of 1991).
 - (2) For evictions prior to 31 July 1990, see Balconi v. Dvascas, 133 Misc.2d 685, 507 N.Y.S.2d 788 (Rochester City Ct. 1986) (1966 amendment to SSCRA set maximum rent at \$150; tenant was protected from eviction even though rent was \$340 because rental value was less than \$150 in 1966 dollars, when adjusted for inflation).

3. Judicial relief available.

- a. Court shall (upon application of service member) and may on its own motion, grant
 - (1) Stay of eviction proceedings for up to 3 months, or
 - (2) "[S]uch other order as may be just"
- b. Unless the court determines that the tenant's ability to pay the rent is not materially affected by such military service.

Note: material effect is not a prerequisite for protection...the owner of the premises must go to court to initiate eviction; the court may allow eviction unless there is material effect shown).

- 4. Criminal sanctions including 1 year confinement and fine provided in title 18, U.S.C. for taking part in an eviction in violation of this section.
- 5. Secretary of Defense empowered to order allotment of pay from service member in reasonable proportion to discharge rent of premises occupied by dependents.

C. **Termination of Pre-service Leases of Premises (50 U.S.C. app. § 534).**

1. **Purpose** - to permit lawful termination of a pre-service lease of premises by a service member entering active duty [or by his or her dependent in their own right (see § 536)].
2. **Criteria for relief.**
 - a. The service member need NOT show material effect.
 - b. The service member need only show:
 - (1) The lease was entered into prior to entry into military service,
 - (2) The lease was executed by or on behalf of the service member,
 - (3) The leased premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the service member or the service member and his or her dependents, and
 - (4) The service member is currently in military service.
3. **Question:** If a pre-service lease was signed only by non-military spouse, could he or she terminate the lease?

Yes. Dependents have protection in their own right even though § 534 says the lease must be executed by or on behalf of the service member.... (use § 536 to insert "by or on behalf of the dependent.")

4. **Question:** What if the non-military person signed the lease before marrying a person who enters military service..... could the non-military spouse terminate the lease?

Arguably, yes. See, Tuscon Telco Federal Credit Union v. Bowser, 451 P.2d 322 (Ariz. Ct. App. 1969) (single woman entered chattel mortgage on car, was subsequently married to civilian who was later drafted; car registered solely in her name and she alone made payments before repossession; court held

that repossession without court order violated § 532. SSCRA applied because her ability to pay was impaired by husband's subsequent induction.

5. Question: What if a lease for premises was signed before the person came on active federal service and the lease contained a "military clause" allowing termination with liquidated damages? Would the military clause effectively waive protections of § 534 which allows termination with no "penalty" for persons entering active service? Pursuant to § 517, the "military clause" would not be an effective waiver.

[Military clauses discussed in landlord/tenant outline of instruction].

6. Question: If the service member or dependent enters a lease for premises after entering active service, may he or she terminate under provisions of § 534?

No. To terminate, the lease must provide for such termination or there must be a governing state statute containing a "military clause" (or negotiate with the landlord).

[Note: On 1 January 1993, H.R. 552 was proposed to amend § 534 of the SSCRA to provide relief for service members who execute leases while in service and receive unanticipated new orders. The bill was referred to the Committee on Veterans' Affairs on 21 January 1993.

7. Procedure to terminate.

- a. Provide to the landlord written notice.
- b. Delivered to the landlord after the service member's entry on active duty or receipt of induction orders.
- c. Requesting immediate termination of the lease.

8. Termination under the SSCRA.

- a. Termination of lease with monthly rental payments effective 30 days after first date on which next rental payment due after date notice

mailed or delivered.

- b. Other leases, termination effective last day of month following month notice mailed or delivered.

9. Judicial Relief:

Prior to termination period provided in this section, lessor may apply to court for equitable relief.

Problem: A reserve doctor leased office which lessor modified at substantial costs to meet doctor's needs. The doctor was activated by Public Health Service and canceled lease pursuant to § 534, may lessor sue to recover costs lessor incurred in modifying the office? Yes, the lessor could apply for equitable relief.

10. Any person who seizes or attempts to seize the protected person's personal effects or property after lawful termination or interferes with its removal for purposes of subjecting it to a claim for rent accruing after termination, shall be fined as provided under title 18, U.S.C., and/or imprisoned up to 1 year.

D. Installment Contracts for Purchase of Property (50 U.S.C. app. § 531).

1. Prohibits creditors - without "action in a court" - from terminating certain installment contracts and repossessing the property for nonpayment or breach occurring prior to or during military service.

See, Hanson v. Crown Toyota Motors, Inc., 572 P.2d 380 (Utah 1977). Bank, with knowledge of Hanson's military status, repossessed auto and sold it without first filing a lawsuit, thus violating § 531.

2. Criteria for relief.

- a. Contract for purchase of real or personal property or lease or bailment "with a view to purchase" real or personal property,

- b. Contract entered before entry into military service

But see, S&C Motors v. Carden, 264 S.W.2d 627 (Ark. 1954) - pre-service contract renegotiated after entry into military did not preclude SSCRA applicability. [Cited and distinguished in Jenkins & Co. v. Lewis, 130 S.E. 2d 49 (N.C. 1963) - S&C Motors correct because obligation in its entirety originated pre-service; SSCRA not applicable where obligation originated after entry into military.]

- c. Deposit or installment payment paid before entry into military service,

- 3. If the criteria are met, no person may rescind or terminate the contract or repossess the property for nonpayment or any other breach occurring prior to and during military service - except by court action.

- 4. Question: May service member who leased automobile prior to military service use this section to cancel the lease because he or she got orders overseas?

No. This provision prohibits creditors from terminating certain contracts, it does not allow the military member to cancel the agreement. (But see § 590 re: requests for stays of enforcement of obligations).

- 5. Question: What if the lessor of the auto seeks to repossess for service member's breach, does this section apply?

Contract to lease must be with "view to purchase"..... Depends on contract.

- 6. Judicial relief.

- a. Court may condition termination and resuming possession of property on repayment of prior installments or deposits, or

b. Court shall (on application by service member) and may (on its own motion) order stay unless ability of service member to comply with terms of contract is not materially affected by service, or

c. Make other equitable disposition to conserve interests of all parties.

7. Note: The creditor must go to court to terminate or repossess regardless of "material effect." (See, Hanson v. Crown Toyota Motors, Inc., 572 P.2d 380 (Utah 1977) - when bank repossessed and sold auto without filing lawsuit first, "material effect" irrelevant. A showing of material effect is required only in those instances where repossession is an issue in "pending litigation.")

See, S&C Motors v. Carden, 264 S.W.2d 627 (Ark. 1954) - Repossession should take place. "There is nothing in the record, other than a failure to pay, showing that undue hardship would result from enforcement of the contract; and while the court procedure is imperative, § 531, the law gives relief only in cases of disclosed hardship... Trial court should proceed under § 533."

E. Mortgages, Trust Deeds, etc. (50 U.S.C. app. § 532).

1. In court actions to enforce mortgage obligations, court shall (upon application by service member) and may (upon its own motion) grant relief to service member [or dependent pursuant to § 536] unless military service does not materially effect ability to comply with obligation.

2. Criteria for relief.

a. Obligation is secured by a mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property,

b. Obligation entered before entry into military service,

- c. Property owned by service member [or dependent] before entry into military service
- d. Property is still owned by service member or dependent at time relief is sought, and
- e. Military service materially affects ability to comply with terms of obligation, such breach occurring prior to or during period of such military service.

But see Franklin Soc. for Home-Building & Savings v. Flavin, 40 N.Y.S.2d 582, aff'd 50 N.E.2d 653, cert. denied, 320 U.S. 786 (1943). Mortgagor who defaulted long before entry onto active duty not entitled to stay of foreclosure proceedings.

3. Judicial relief:

- a. Court shall (upon application by service member) and may upon its own motion,
 - (1) Stay proceedings, and/or
 - (2) Grant other equitable relief to conserve interests of all parties (i.e., reduce or suspend installment payments)
- b. unless there is no "material effect."

- 4. No sale, foreclosure, or seizure of property shall be valid if made during the period of military service or within 3 months thereafter, except pursuant to an agreement (§ 517), unless upon an order previously granted by the court and a return thereto made and approved by the court.

F. Settlement of Cases Involving Stayed Proceedings (50 U.S.C. app. § 533).

Where a proceeding to foreclose a mortgage upon or resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed (pursuant to SSCRA), the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based on the

report..., order such sum, if any, as may be just, paid to the person in military service or his dependent, ..., as a condition of foreclosing....

G. Enforcement of Storage Liens (50 U.S.C. app. § 535).

No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. [para.(2)]

1. Judicial Relief.

a. Court shall (upon application by service member) and may upon its own motion,

(1) Stay proceedings, or

(2) Grant other equitable relief to conserve interests of all parties.

b. unless there is no "material effect" (i.e. the service member's ability to pay the storage charge is not materially effected by service).

2. Any person who knowingly takes any action contrary to this section, or attempts to do so, shall be fined as provided in 18 U.S.C., or imprisoned for not to exceed one year, or both.

United States v. Bomar, 8 F.3d 226 (5th Cir. 1993).
[Note that the United States prosecuted criminally this case on behalf of the soldier]

Garageman violated SSCRA by enforcing and attempting to enforce, without seeking court approval, lien for storage of vehicle owned by soldier.

Act does not require that lien be solely for "storage," rather, "any lien for storage" includes mechanics lien in this case. To fall within the Act, a lien must include charges for storage, but the lien need not be limited to

such fees. A soldier's car is within Act's coverage.

Background: Soldier called for Desert Storm left car at auto repair, told them not to do work on it, but they went ahead and disassembled transmission. Said could reassemble for \$400....disagreement over what was said, with repairman asking for more money, which soldier did not have...soldier got police, but shop closed when he returned...left for Saudi. Garageman put lien on car and demanded \$2000 (\$195 repairs; rest for storage). While soldier (and others) tried to get car back, garageman tried to perfect lien. Conduct egregious.

Verdict: Guilty - \$4000 restitution; 3 years' probation; 6 month's home detention; 250 hours community service. Affirmed.

VII. ARTICLE VII - FURTHER RELIEF.

A. Stay of Enforcement of Obligations, Liabilities, Taxes (50 U.S.C. app. § 590).

1. Person may, at any time during military service or within 6 months thereafter, apply to court for relief of any obligation or liability incurred by such person prior to active service or in respect to any tax or assessment whether falling due prior to or during active military service.
2. Court may grant stays of enforcement during which no fine or penalty shall accrue if service materially affected ability to comply with obligation or pay tax or assessment.
 - a. There need be no default or legal action pending to get protection, but applicant must prove "material effect." Application of Marks, 46 N.Y.2d 755 (1944).
 - b. Dependents receive protection. Morris Plan Indus. Bank of N.Y. v. Petluck, 60 N.Y.2d 162 (1946).

Problem: Reserve soldier had pre-service BMW auto lease he could not afford while on active duty during Desert Storm. He voluntarily gave it back to the dealer. After he returned from Desert Storm, the dealer sued him for \$31,000 deficiency. What should the soldier have done to try and prevent this? He should have used \$ 590 to get prospective relief from the lease obligation. (Case pending as of mid-Jan. 1994 in San Antonio, Texas; soldier's attorney, Mr. Joe Cumpian 210-225-5751).

VIII. SSCRA ENFORCEMENT.

A. Dept. of Justice.

United States ex rel. Bennett v. American Home Mortgage (6% interest cap case that was settled) -Mortgage company in New Jersey agreed to reduce interest to 6%, but required continued payments at the pre-active-service total. When U.S. Attorney explained legislative history of \$ 526, company entered consent agreement complying with 6%.

United States v. Bomar, 8 F.3d 226 (5th Cir. 1993). [United States prosecuted criminally this case on behalf of the soldier; prosecutor - Abe Martinez (713-238-9445); on appeal - Paula Offenhauser (713-229-2621) U.S. Attorney's Office, Houston, Texas]

Recommended steps to forward case to U.S. Attorney for possible prosecution: JAG attorney forward case to DoD Criminal Investigative Service regional office for investigation. They will investigate and forward case to U.S. Attorney, who will assess whether to proceed with prosecution. In Bomar case, facts were so egregious as to warrant criminal prosecution (\$ 535 provides for criminal penalties for violation).

B. Dept. of Defense.

Armed Forces Disciplinary Control Board (AFDCB) -If AFDCB determines business violating law, can declare off-limits. If wide-spread violations, military services may place business off-limits world-wide.

IX. CONCLUSION.

APPENDIX
SAMPLE FORMS

SAMPLE LETTER TO CREDITOR

(date)

(LA office)

(creditor's address)

Re: (client's name)
(account number)

Dear Sir or Madam:

(Client's name) has requested my assistance as a Legal Assistance Attorney concerning the above referenced debt.

Pursuant to the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. app. § 526), hereinafter referred to as the SSCRA, (client's name) requests that interest be reduced to 6%. (Client's name) entered active duty on (date) and is presently on active duty assigned to (unit).

I understand that (client's name) incurred this debt prior to (his or her) entry into the Armed Forces, at a time when (he or she) was earning substantially more than (he or she) is now. (Client's name) entry into military service has substantially affected (his or her) ability to meet this obligation at the original interest rate.

The SSCRA sets a 6% per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a service member's military service for obligations made prior to the date of entry onto active duty when the active duty materially affects the ability to pay. Since entering active duty, (client's name) has experienced a decrease in salary, adversely affecting (his or her) ability to pay. Thus, the balance of (client's name) obligation may not have interest charged at a rate greater than 6% per annum. Interest above 6% must be forgiven and

not accrued. Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn.

Please be further advised that you may not repossess for nonpayment of an installment obligation without first complying with the provisions of § 531 of the SSCRA.

Sincerely,

SAMPLE LETTER TO OPPOSING ATTORNEY
REQUESTING STAY OF PROCEEDINGS

(date)

(LA office)

(attorney's address)

Re: (client's name)
(case name)

Dear (attorney's name):

I am writing on behalf of (client's name), who is the defendant in the action you filed on behalf of (opposing party) in (identity of court). (Client's name) recently consulted me about the action in my capacity as a military Legal Assistance Attorney. Accordingly, I am furnishing (client's name) only preliminary legal counseling and I am not an attorney of record for purposes of representing (him or her) in this civil matter. It is the function of this office to assist and advise service members concerning the taking of necessary steps to protect their interests initially, and to refer them to civilian counsel, if and when necessary.

(Client's name) is presently on active duty in the Armed Forces of the United States and is assigned to (unit). As such, (client's name) is afforded certain rights under the Soldiers' and Sailors' Civil Relief Act, as amended, 50 U.S.C. Appendix, Sections 501-548, 560-591 (1990). Section 521 of the Act requires the court to grant a stay of the proceedings when the defendant's military service materially affects (his or her) ability to conduct a defense. In this case, (client's name) informs me that (he or she) will be unable to attend any proceedings of the court in this matter as a direct result of (his or her) military service because (reasons).

(Client's name) will be unable to appear and protect (his or her) interests in this case until (date). Therefore, a stay of all proceedings is requested until such time as (client's name) ability to present a defense is not longer materially affected by (his or her) military service.

Because (client's name) cannot appear at this time, I request that you advise the court of (his or her) military status and request a stay until (date).

This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of (client's name). Neither is it to serve as any form of answer to any petition filed by the plaintiff. I reiterate that my involvement in this case extends only to the preliminary counsel and assistance customarily afforded to service members by legal assistance attorneys under the provisions of applicable military regulations. I will not be the attorney of record for the defendant in this civil matter.

(Client's name) mailing address is (address). I request that you advise (him or her) of any action you take concerning this case.

Sincerely,

**SAMPLE LETTER TO CLERK OF COURT REQUESTING
STAY OF PROCEEDINGS**

(Be cautious in using letters to court - check with jurisdiction
to see if this will be construed as an appearance)

(date)

(LA office)

(CLERK OF COURT)
(court address)

Re: (client's name)
(case name/number)

Dear Sir or Madam:

I am writing on behalf of (client's name), who is the defendant in an action now pending in your court. (Client's name) recently consulted me about the action in my capacity as a Legal Assistance Attorney. Accordingly, I am furnishing (him or her) only preliminary legal counseling and I am not representing (him or her) in this civil matter. It is the function of this office to assist and advise service members concerning the taking of necessary steps to protect their interests initially, and to refer them to civilian counsel, if and when necessary. (Client's name) is presently on active duty in the Armed Forces of the United States and is assigned to (unit). As such, (client's name) is afforded certain rights under the Soldiers' and Sailors' Civil Relief Act, as amended, 50 U.S.C. Appendix, Sections 501-548, 560-591 (1990).

Section 520(1) of that Act requires that if there is a default of any appearance by the defendant, the plaintiff must file an affidavit stating the military status of the defendant before any default judgment may be taken. In this case, the defendant is in the military service.

Section 521 of the Act requires the court to grant a stay of proceedings when the defendant's military service materially affects his or her ability to conduct a defense. In this case, (client's name) informs me that (he or she) will be unable to attend any proceedings of the court in this matter as a direct result of (his or her) military service because (reasons).

(Client's name) will be unable to appear and protect (his or her) interests in this case until (date). Therefore, a stay of all proceedings is requested until such time as (client's name) ability to present a defense is no longer materially affected by (his or her) military service.

This request is not intended to work oppressively against the prosecution of the plaintiff's case; rather, it stems from (client's name) belief that there are contested issues to be litigated and that (his or her) presence will be required to adequately protect (his or her) interests. Attached hereto is (client's name) Affidavit in support of this stay request. It should not be construed as a submission to jurisdiction which may otherwise be lacking. It does not constitute an answer to the plaintiff's complaint nor an appearance by myself on behalf of (client's name).

This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of (client's name). Neither is it to serve as any form of answer to any petition filed by the plaintiff. I reiterate that my involvement in this case extends only to the preliminary counsel and assistance customarily afforded to service members by legal assistance attorneys under the provisions of applicable military regulations. I will not be the attorney of record for the defendant in this civil matter.

(Client's name) mailing address is (address). I request that you advise (him or her) of any action you take concerning this case.

Sincerely,

SAMPLE AFFIDAVIT IN SUPPORT OF
STAY REQUEST

AFFIDAVIT

(State and county of
proceedings)

1. I, _____, being first duly sworn on oath, depose and say:

a. That I am presently on active duty in the Armed Forces of the United States, holding the rank of _____, and assigned to (unit).

b. That I am the defendant in (case ID), in (court ID).

c. That I have made no appearance in the above-titled case, now scheduled for hearing on (date), and do not, by the making of this affidavit, appear or submit to the jurisdiction of the court.

d. That I am not presently represented by counsel.

e. That my ability to appear and protect my interests in this action is materially affected by reason of my military service, specifically (reasons).

2. I therefor request, under the provisions of the Soldiers' and Sailor's Civil Relief Act, as amended, 50 U.S.C. Appendix, Sections 501-548, 560-591 (1990), that the court grant a stay of proceedings against me until such time as my ability to present a defense is not longer materially affected by my military service.

(date)

(client's name)
(social security number)

IN WITNESS WHEREOF, I have hereunto set my hand and affix my official seal on _____, 19__.

Notary Public

My Commission Expires: _____

SAMPLE LETTER FROM COMMANDER
REQUESTING A COURT STAY

(Date)

(Unit Address)

(Clerk of Court)
(court address)

Re: _____

Dear Sir or Madam:

_____ is a member of my command and has advised me that (he or she) has received a notice and summons in the above-referenced matter. _____ is currently on active duty in the US (branch of service) stationed at _____. (His or her) present duties will not allow (him or her) to take leave away from the unit to secure an attorney, appear and defend or otherwise respond in the case. Since the ability of _____ to appear and defend in this matter is materially affected by reason of (his or her) military service, please grant (him or her) a stay under the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. app. § 521).

The circumstances which materially affect (his or her) ability to appear and defend are:

(give specific reasons)

Please advise me of your action on this matter.

Sincerely,

CF:
SM
Opposing Counsel

T A K E - 1

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

[A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel]. Revised by TJAGSA, ADA-LA, November 1993

INTRODUCTION:

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended, was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard (when in active federal service) are also protected under the SSCRA. The protection begins with the date of entering active duty service and terminates upon release from active duty.

QUESTIONS AND ANSWERS:

1. Q. Can a service member get out of a lease or rental agreement?
 - A. Yes - a lease covering property used for dwelling, professional, business, agricultural or similar purposes may be terminated by a service member. Two conditions must be met:
 - a. The lease/rental agreement was signed before the service member entered active duty; and
 - b. The leased premises have been occupied for the above purposes by the service member or his or her dependents.
2. Q. How does the service member go about terminating the lease?
 - A. To terminate the lease, the service member must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:
 - a. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on

1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination.

- b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

3. Q. Can I get a refund of security deposit or prepaid rent?

- A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the service member upon termination of the lease (however, if the premises were damaged by the service member, an appropriate amount of the deposit may be withheld for repairs). The service member is required to pay rent only for those months before the lease is terminated.

4. Q. Can I stop an eviction action by my landlord?

- A. If the property is rented for \$1,200 per month or less, you may ask the court to delay the eviction action for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by either your military service or your spouse's military service.

5. Q. Does the SSCRA apply to time payments or installment contracts?

- A. Service members who signed an installment contract before active duty for purchase or lease with intent to purchase real or personal property will be protected if their ability to make the payments is "materially affected" because of active duty service. Remember-

- a. The service member must have paid, before entry into active duty, a deposit or installment payment under the contract.
- b. If the service member is not able to make payments because of his or her military duty, the SSCRA applies.
- c. The vendor (seller) is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court

order.

- d. The court may determine whether a service member's financial condition is "materially affected" by comparing the service member's financial condition before entry on active duty with his or her financial condition while on active; other factors may also be considered.

- 6. Q. What about my credit cards - can I stop paying on them?
 - A. No - you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.
- 7. Q. What about the interest rates on my debts and mortgage payments - do they go down when I enter military service?
 - A. Yes. When an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The terms "interest" includes service charges.
- 8. Q. Are there protections against mortgage foreclosures?
 - A. The SSCRA protects service members against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:
 - a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
 - b. The obligation originated prior to entry upon active duty;
 - c. The property was owned by the service member or dependent before entry on active duty status;
 - d. The property is still owned by the service member or dependent at the time relief is sought;
 - e. The ability to meet the financial obligation is "materially affected" by the service member's active duty obligation.
- 9. Q. Can judicial proceedings be delayed?
 - A. A service member who is involved in civil (not criminal) judicial proceedings as either a plaintiff or defendant

is entitled to a stay of these proceedings if the court finds that his or her ability to prosecute or defend an action is "materially affected" by reason of his or her active duty service. Courts are reluctant to grant long-term stays of proceedings and tend to require service members to act in good faith and be diligent in their efforts to appear in court. A service member's ability to prosecute or defend a civil suit is shown to be "materially affected" when it can be satisfactorily demonstrated to the court that his or her military duties prevent him or her from appearing in court at the designated time and place. An affidavit setting out all the facts and circumstances is usually required.

10. Q. If a service member is sued, can a default judgment be entered against him or her in his or her absence?

A. When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the service member's response. When no response is filed on time, a default is usually entered against the defendant. The SSCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service before a default can be taken. When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent, in a very limited capacity, the service member defendant. The court appointed attorney will only represent the service member's SSCRA interests by determining if a request for a stay of proceedings should be made to allow the service member an opportunity to appear and defend. It will be up to the service member to retain an attorney to represent him or her during the trial. The filing of a false affidavit subjects the filer to a misdemeanor prosecution. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as the service member's civilian attorney.

11. Q. What if I cannot pay my income taxes because of a call to active duty?

A. The service member's ability to pay the tax must be "materially affected" (impaired) by reason of the active duty service. If this is the case, the SSCRA defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

12. Q. Are there other protections for service members under the SSCRA?

A. Yes. You should address your questions to a legal assistance attorney.

CHAPTER 5

SURVIVOR BENEFITS

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LEGAL ASSISTANCE

SURVIVOR BENEFITS

Outline of Instruction

I. REFERENCES.

- A. DA Pamphlet 360-526, The Transition to Civilian Life (Rev. 1992).
- B. DA Pamphlet 360F-539, SBP Made Easy (Rev. 1992) (originally published by The Retired Officers Association, 201 North Washington St., Alexandria, VA 22314-2529)
- C. DA Pamphlet 608-4, A Guide for the Survivors of Deceased Army Members (23 February 1989).
- D. DA Pamphlet 608-33, Casualty Assistance Handbook (November 1987).
- E. Army Reg. 37-104-1, Payment of Retired Pay to Members and Former Members of the Army (15 September 1990).
- F. Army Reg. 600-8-1, Army Casualty and Memorial Affairs and Line of Duty Investigations (18 September 1986).
- G. Army Reg. 608-2, Servicemen's Group Life Insurance (SGLI) -- Veterans' Group Life Insurance (VGLI), 15 September 1989.
- H. Army Reg. 930-4, Army Emergency Relief (24 Nov. 1986).
- I. Veterans Benefits Manual (Vols. I and II, 1991), The National Legal Services Project, 2001 S Street NW, Suite 610, Attn: Publication Sales, Washington, DC 20009.
- J. Reserve Retirement Benefits (1992), The Retired Officers Association.
- K. 1991 AFBA Financial Planning Guide, Armed Forces Benefit Association, 909 N. Washington Street, Alexandria, Va 22314-1556.
- L. Army and Air Force Mutual Aid Association, Fort Myer, Arlington, VA 22211-5002.

- M. Survivor Benefit Plan Computer Programs prepared by the DoD Office of the Actuary. See LAAWS Bulletin Board System, Legal Assistance Conference (Filenames: SBPLIFE.ZIP, SBPOS.ZIP, SBPPREM.ZIP, SBP1993.ZIP, SUPSBP93.ZIP) (accessible by local legal assistance offices).
- N. U.S. Army Reserve Personnel Center, 9700 Page Blvd., St. Louis, Missouri 63132-5200.
- O. Life Insurance, Consumer Reports Magazine (July, August, and September 1993)(A three part overview of commercial life insurance).

II. THE RELEVANCE OF SURVIVOR BENEFITS.

A. What are Survivor Benefits?

B. Situations requiring an understanding of Survivor Benefits.

1. Lifetime Planning.

a. Insurance needs. Survivor benefits should be considered when determining whether family needs after death will be met. Other sources of benefits (e.g., Army Emergency Relief (AER) and Red Cross) should also be considered.

b. The Survivor Benefit Plan.

2. Deathbed Planning.

3. Casualty Assistance. See Beneficiary Checklist (Attachment 1).

C. The Army Casualty System.

1. DA issues report of casualty (DD Form 1300).

2. Casualty Area Commands (CAC) appoint Casualty Assistance Officer (CAO).

3. CAO's assist next of kin.

4. Legal assistance attorneys render legal advice to CAOs. Legal assistance attorneys will assist next of kin in obtaining benefits. See ATTACHMENT 1.

D. References.

1. Publications - current?

2. Survivor Benefit Plan computer programs - on LAAWS Bulletin Board System.

III. DEPENDENCY AND INDEMNITY COMPENSATION (DIC) 38 U.S.C. §§ 1301-1322; 38 CFR Part 3; Veterans' Benefits Act of 1992, 138 Cong. Rec. S17364-01 (enacted 29 Oct 92).

A. Conditions For Payment.

1. Active Component.

- a. Death on active duty by injury or disease not due to member's willful misconduct.
- b. Death after active duty from service-connected causes, not due to member's willful misconduct.
- c. Death after active duty not due to service-connected causes and not due to member's willful misconduct if decedent held a total service-connected disability rating.

2. Service Connection. If death occurs on active duty, a presumption arises that death was service-connected.

3. Reserve Component.

Beneficiaries receive DIC (or any other VA benefits) only if soldier dies of service-connected illness or injury not due to member's willful misconduct and resulting from having served on:

- a. Active duty (AD),
- b. Active duty training (ADT), or
- c. Inactive duty training (IDT)(death from illness does not create eligibility). See 38 C.F.R. Sections 3.6(c) and 3.6(d).

4. Death or Injury Can Not Be Due to Member's Willful Misconduct.

- a. Willful misconduct involves deliberate or intentional wrongdoing with knowledge of or wanton disregard of consequences.
- b. Requires proximate cause to injury, disease, or death to prohibit payments.

5. The Department of Veteran's Affairs makes the ultimate determinations on service-connection and "willful misconduct" for purposes of DIC. Appeal may be had to the Court of Veteran's Appeals.

B. Beneficiaries.

1. DIC to widow(er).

- a. Spouses must have continuously cohabited since date of marriage.
- b. Any separation not due to fault of surviving spouse; temporary separations disregarded. 38 C.F.R. Parts 3.52 and 3.53.
- c. Fraudulent marriages. Generally, for soldiers that separate from active duty, subsequently marry, and then die under circumstances described in paragraphs A.1.b and A.1.c above, the marriage must:
 - (1) have begun within 15 years after separation from active duty;
 - (2) have existed for at least one year; or
 - (3) produced a child; 38 CFR 3.54.
- d. DIC is paid for life unless remarriage occurs.
 - (1) A widow(er) loses entitlement to DIC upon remarriage regardless of age.
 - (2) DIC will not be reinstated if second marriage is terminated through divorce or through death of second spouse.

- e. For deaths occurring before 1 January 1993, monthly spousal payment depends on the rank of deceased at death:

		W4 - \$911	O10 - \$1,627
E9 - \$866		W3 - 860	09 - 1,483
E8 - 829		W2 - 835	08 - 1,383
E7 - 785		W1 - 803	07 - 1,262
E6 - 749			06 - 1,168
E5 - 732			05 - 1,035
E4 - 714			04 - 939
E3 - 672			03 - 888
E2 - 654			02 - 829
E1 - 634			01 - 803

- f. For deaths occurring on or after 1 January 1993, the Veterans' Benefits Act of 1992 mandates a flat monthly payment of \$750 per spouse. \$ 102.

2. DIC to widow(er) with children.

- a. Children are broadly defined: Legitimate, adopted, stepchildren in household or illegitimate if acknowledged or judicially decreed. 38 CFR 3.57.
- b. Unmarried and under age 18, or under age 23 if in school.
- c. Active component payment categories.
 - (1) Under age 18 - \$100 per child; increases to \$150 on 1 October 1993 and to \$200 on 1 October 1994. (Veterans' Benefits Act of 1992)
 - (2) Age 18 to under age 23 (in school) - \$157.00 unless child is receiving Chapter 35 benefits (Dependent's Educational Benefits).
 - (3) Disabled child - \$310.00.

3. DIC to children (If no surviving or eligible spouse).

- a. If there is no surviving (or eligible) spouse, DIC will be paid to children.

b. Active Component table of monthly amounts:

- (1) 1 child - \$310.00
- (2) 2 children - \$447.00
- (3) 3 children - \$578.00
- (4) Each additional child add \$114.00.
- (5) Additional sum will be paid for a disabled child.

4. DIC to parents. 38 U.S.C. § 1315.

- a. Parent(s) must be below income levels.
- b. Amounts paid based on number of parents surviving.

C. Tax Consequences.

- 1. Not includable in decedent's gross estate.
- 2. Not taxable income to the recipient.

D. Application.

- 1. Apply to VA within 12 months to receive full payment from date of death (VA Form 21-534, Application for DIC from the Department of Veteran's Affairs).
- 2. If application is received by VA more than 12 months after death, payments are retroactive to date of application only. 38 C.F.R. §3.400.

IV. SURVIVOR BENEFIT PLAN (SBP) 10 U.S.C. §§ 1447-1460b.

A. Eligibility to Participate.

1. Active duty retired.
2. Active duty and eligible to retire.
3. Retired with 30% or more disability.
4. Reservists eligible to retire (includes Army National Guard). See Pub. L. 95-397, 1 Oct. 1978, which extended coverage (RC-SBP) to reserve soldiers completing 20 years, but not yet 60 years of age.

B. Eligible Beneficiaries for SBP and RC-SBP.

1. Widow(er). 10 U.S.C. §§ 1447(3) and 1450(a).
 - a. Defined. A spouse who survives retiree's death where the marriage either
 - (a) was in effect when soldier became eligible to receive retirement pay,
 - (b) was in effect for at least one year immediately before retiree's death, or
 - (c) produced issue.
 - b. Remarriage before age 55 terminates the SBP annuity. Annuity may be reinstated if widow's second spouse dies or there is a divorce.
2. Former Spouses.
 - a. Pub.L. 99-661, Section 641 authorized courts to order former spouse or former spouse and child as beneficiaries. Applies to court orders issued after November 13, 1986.
 - b. Active and Reserve Components eligibility to elect former spouse coverage:
 - (1) Those having a former spouse upon becoming

eligible to participate in SBP.

- (a) Election precludes coverage of present spouse or child, unless child resulted from marriage of member and former spouse.
 - (b) Must choose between multiple former spouses.
 - (c) If elect to cover former spouse and/or child of the former marriage, must notify present spouse of the election.
 - (d) Revocable in accordance with 10 U.S.C. § 1450(f).
- (2) Retired members who are providing SBP coverage to spouse or spouse and child:
- (a) Former spouse must not have been retired member's former spouse when member became eligible to participate in SBP.
 - (b) Election terminates any previous SBP coverage.
 - (c) Written election, signed by retiree and former spouse, received by service within 1 year after date of decree of divorce, dissolution, or annulment.
 - (d) Beneficiary may not be a former spouse whom member married after becoming eligible for retired pay unless: (1) member was married to former spouse at least 1 year, or (2) former spouse is the parent of a child from that marriage.
 - (e) If member is married, present spouse must be notified of election to cover former spouse.
 - (f) May revoke election under 10 U.S.C. § 1450(f).

- c. Active and Reserve Component revocation of former spouse SBP coverage. 10 U.S.C. § 1450(f)
 - (1) If election was court ordered, member must have valid modification to court order allowing revocation.
 - (2) If election was pursuant to voluntary written agreement, but agreement not incorporated in, or ratified or approved by court order, member must have former spouse's written agreement to change the election.
- d. "Deemed election" of SBP coverage. 10 U.S.C. §1450f(3).
 - (1) Means for former spouse to enforce previous written agreement or court order when member fails to make the required election.
 - (2) Former spouse sends written request to service with certified copy of court order or clerk's statement agreement is filed with court.
 - (3) Must make request within 1 year of date of court order or filing.
- 3. Widow(er) and Children. Full payment made to widow(er) as long as eligible; then full payment made to remaining eligible children as a group. Child eligibility:
 - a. Child under age 18 and unmarried.
 - b. Unmarried and under 22 if a full time student.
 - c. Incapacitated before 18 or 22 - paid for life.
- 4. Children Only. Usually elected when there is no eligible spouse.
- 5. Natural Person with an Insurable Interest.
 - a. Any person with a financial interest in survival of the soldier.

- b. This option may not be elected by eligible participants who are married or have children.
- C. Payment of SBP Annuity to Representative of Legally Incompetent Person. 10 U.S.C. § 1455b.
 - 1. P.L. 102-190 (National Defense Authorization Act for FY 1992-1993) calls for DOD regulations to implement payment of annuity to representative.
 - 2. Regulations shall provide procedures for payment in the case of:
 - a. a person for whom a guardian or other fiduciary has been appointed; and
 - b. a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.
 - 3. Regulations may include:
 - a. Payment to an appointed guardian or other fiduciary, or
 - b. When one has not been so appointed, to any person who, in the judgement of the Secretary concerned, is responsible for the care of the annuitant.
 - c. A requirement for the payee to spend or invest payments for the benefit of the annuitant.
 - d. Authority to allow payment of a reasonable fee to the payee not to exceed 4% of the annuity.
 - e. Authority to require the payee post a surety bond to protect the annuitant's interest.
 - f. A requirement for the payee to maintain and, upon request, provide to the service Secretary an accounting.
 - g. Procedures for determining incompetency and selecting a payee to include procedural due process.

D. Annuity Amount.

1. If soldier elects to participate in SBP, soldier then selects a "base" amount. The base amount can be anything from \$300 to the full amount of soldier's retired pay. The soldier also selects a beneficiary (discussed later), which in most cases will be the spouse. The soldier then has a premium deducted from each retirement check, and if the soldier dies before the spouse (or other eligible beneficiary), the beneficiary will begin receiving the monthly SBP payments.
2. If deceased became retirement eligible after 1 October 1985, the widow(er) receives an annuity calculated under a two-tiered system.
 - a. Payments 55% of base.
 - b. Payments reduced to 35% when widow(er) reaches 62, unless supplemental coverage also is chosen.
 - c. Example:
$$55\% \times \$2000 = \$1,100 \text{ before age 62}$$
$$35\% \times \$2000 = \$700 \text{ age 62 \& after}$$
3. If deceased was eligible to retire before 2 October 1985, SBP payments to a widow(er) will also be reduced. Widow(er) may elect to have the reduction calculated under either the new two-tier system or under the old "social security offset."
4. Supplemental SBP (SSBP).
 - (1) A retiree may elect to pay an additional premium to raise annuity payments above 35% of the base amount when widow(er) reaches age 62. Under SSBP, payments may be made at 40%, 45%, 50%, or 55% of base amount.
 - (2) The additional amount is determined in accordance with actuarial principles.

5. Payment to all other beneficiaries (non-spouses) is at 55% of base for as long as they maintain eligibility.

E. Active Component Cost for SBP Coverage.

1. Determine desired base.

- a. Minimum = \$300.00.
- b. Maximum = full retired pay.
- c. Any amount in between.

2. Determine type of coverage.

a. Widow(er)-only coverage.

(1) Formulas:

- (a) 2 and 1/2% of first \$392, plus 10% of selected base over \$392 (OLD Formula); or
- (b) Flat 6.5 % rate of full base amount (NEW Formula).

(2) Example: Base = \$2,000.00

(a) Old Formula:

2 1/2% of \$ 392 =	\$ 9.80
10% of \$ 1608 =	<u>\$160.80</u>
monthly cost =	\$170.60

(b) New Formula:

\$2,000 x 6.5% = \$ 130.00

- (3) The formula producing the least amount of cost will be used. In the example, the new formula produces the least cost. As a rule of thumb, if the base amount exceeds \$840.00 then the new formula is

used; if the base amount is less than \$840 the old formula is used.

- (4) For those entering the service on or after March 1, 1990, only the new formula (flat 6.5% of base) will be used.

b. Widow(er) plus children coverage.

- (1) Cost of widow-only coverage, plus
- (2) Actuarial amount that accounts for the difference in age between the retiree and the spouse and the age of youngest child.

c. Children-only coverage. Cost is based upon actuarial tables comparing the ages of the retiree and the youngest child. If married at time of election, spouse must approve in writing.

d. Natural person with insurable interest. 10 U.S.C. § 1448b(1).

- (1) Can only be elected if retiree has no spouse or dependent children.
- (2) Cost is 10% of base amount plus 5% of base amount for each five years beneficiary is younger than retiree (to a maximum of 40% of base amount).

3. Withholding stops if the beneficiary dies or otherwise loses eligibility. Must notify finance office.

F. Election.

1. Soldiers who are on active duty and have completed 20 years of active federal service are automatically enrolled in SBP without any affirmative election. Enrollment is at the full base amount of retired pay calculated as if the soldier had been retired on the day of death. Both widow and children are covered. 10 U.S.C. § 1448(d). Retirees, however, must make an election to participate in SBP.

2. Active Component: Retired soldiers must elect type and amount of coverage within 30 days of retirement.
3. Reserve Component: Retirement eligible reservists have 90 days to elect, with the period running from receipt of their letter of notification of eligibility for retired pay at age 60 ("20-year letter").
4. RESERVE COMPONENT SBP (RC-SBP). Upon receipt of 20-year letter, must choose option A, B, or C:
 - a. Option A: "I decline to make a decision at this time. However, I will remain eligible to make a decision for coverage at age 60."
 - (1) No SBP coverage if death occurs in years between member becoming retirement eligible and attaining age 60. Coverage beyond age 60 remains subject to retiree's election made when entitled to receipt of retired pay. If retiree does not reach age 60, there is no annuity.
 - (2) If no election is made within 90 days of receipt of the 20-year letter, Option A is exercised by default.
 - b. Option B: "I elect to provide an annuity beginning on my 60th birthday should I die before that date or on the day after the date of death should I die on or after my 60th birthday." More extensive (and expensive) coverage.
 - c. Option C: "I elect to provide an immediate annuity beginning on the day after my death whether before or after age 60." The most extensive (and expensive) coverage.
 - d. Premium payments do not begin for reservists until age 60 and receipt of retired pay. At that time, costs are deducted from retired pay.
 - (1) Under Option A, where the member elects at Age 60 to take SBP, the active duty system of calculating costs (lesser of formula A or formula B) and benefits (55% of base amount) applies.

(2) Cost of electing any coverage before age 60 (Options B or C) is shared by the retiree (through increased premiums subtracted from retired pay, if any, after 60) and the potential beneficiary (through reduced benefits). The cost is based on a complicated calculation involving:

- i) the option elected;
- ii) retiree's age at election;
- iii) difference in age of retiree and beneficiary at election; and
- iv) actuarial tables.

e. Cost examples calculated under the two-tier system (spouse 0 to 4 years younger; \$500 base approximates retired pay of 0-4 with twenty years and no significant active duty time):

AGE AT	<u>OPTION</u> <u>AMOUNT</u>	BASE	<u>COST</u>	<u>PAYMENT</u> <u>(AT 62)</u>	<u>PAYMENT</u> <u>ELECTION</u>
60	A	\$500	\$22.75	\$275	\$175
55	A	N/A	-----		
	B	\$500	\$31	\$270	\$172
	C	\$500	\$33	\$269	\$171
50	A	N/A	-----		
	B	\$500	\$37.25	\$266	\$169
	C	\$500	\$41.70	\$264	\$168
45	A	N/A	-----		
	B	\$500	\$40.30	\$265	\$168
	C	\$500	\$47.40	\$261	\$166

* Source: Reserve Retirement Benefits, The Retired Officers Association, p. 12 (1992).

f. As a group, reservists electing into RC-SBP can expect a 66 percent federal subsidy (i.e., for every dollar paid in benefits, 66 cents comes from the federal government and 34 cents from retiree premium payments). In comparison, active component SBP is only 40 percent

subsidized.

5. An election of no coverage, less than full coverage for a widow, or children only coverage requires written spousal concurrence.

- (1) If choose Option A by declining to participate at the time of retirement eligibility, soldier has opportunity to choose coverage when applying for retirement pay at age 60; however, if he or she then declines maximum spousal coverage spouse must concur.

- (2) If spousal concurrence not received by 60th birthday, Defense Finance and Accounting (DFAS) will initiate full coverage under SBP until spousal concurrence received and accepted.

6. If a soldier is married at the time of retirement, the election made is generally irrevocable. However:

- a. An unmarried soldier who later marries and/or acquires dependent children may opt into the plan after retirement or retirement eligibility.
 - b. An eligible participant need not continue premium payments if beneficiaries are no longer eligible.
 - c. An eligible participant who becomes permanently and totally disabled may withdraw.
 - d. An eligible participant who has spousal coverage and loses spouse to death or divorce may withdraw after remarrying. Finance must be notified of intent to withdraw, however, before second marriage produces issue or reaches its first anniversary.

G. Spousal SBP Reduction Due to DIC Offset.

1. Any SBP or RC-SBP annuity to which surviving spouse is entitled will be reduced by amount of spousal DIC entitlement. See Attachment 3.

2. Any SBP or RC-SBP annuity payable to other beneficiaries is not reduced, even if that beneficiary is also eligible for DIC.

H. SBP Tax Consequences (Federal).

1. Amounts withheld (premium payments) are not reportable as income for tax purposes. I.R.C. § 122.
2. Payments to beneficiaries are ordinary income.
3. The value of the annuity passing solely to the decedent's spouse is not subject to federal estate tax, because of the marital deduction. See: Reserve Retirement Benefits, The Retired Officers Association, for additional discussion of tax implications for other beneficiaries.

I. Advantages of SBP (in comparison with commercial life insurance). There are basically three commercial insurance alternatives to SBP: annuities, term life insurance, and universal/whole life insurance. For various reasons, commercial insurers do not pitch annuities as replacements for SBP. Rather, they recommend term, whole life, or some combination of the two. Upon the retiree's death, the surviving spouse is supposed to collect the lump sum insurance proceeds, invest them, and draw a monthly check from the investment. (See reference K for computer program comparing term life to SBP). This paragraph contains a list of factors that might favor SBP in such an analysis.

1. Government subsidized; no administrative costs or commissions.
 - a. Premium costs for children coverage and small amounts of widow(er) coverage are particularly low. A fantastic bargain if child is incapacitated - child paid for life.
 - b. SSBP and natural persons with insurable interests not so subsidized.
2. SBP premiums are not taxable income to the retiree.

3. SBP payments to beneficiary increase with cost of living adjustments to retired pay. A significant factor if significant inflation returns anytime in the next 40+ years.
4. Guaranteed insurability.
5. Commercial insurer more likely (?) to go out of business than the government.
6. Value of SBP increases when factors exist which increase the probability retiree will not outlive spouse. Some factors include:
 - a. retiree is older than spouse;
 - b. retiree is a smoker, has a specific health problem, or some genetic condition that makes it more likely retiree will not live average life span; and/or
 - c. retiree is male (vs. female).

J. Disadvantages of SBP.

1. Irrevocable.
2. Subject to change by Congress.
3. Reduction in spousal SBP (e.g., 55% to 35%) at age 62 (but see SSBP discussed above).
4. If spouse may be entitled to DIC, need not be concerned about possible offset that may impact spouse's SBP entitlement.
5. Factors exist that increase likelihood retiree will outlive spouse (e.g., retiree is female).

K. Participation statistics.

1. Officers.
2. NCOs.
3. Maximum base amount vs. minimum base amount.

V. GOVERNMENT INSURANCE PROGRAMS.

A. Servicemen's Group Life Insurance (SGLI) 38 U.S.C. §§ 1965-1976; 38 C.F.R. Part 9; Veterans' Benefits Act of 1992 §201.

1. Group term life insurance for members of the armed forces, purchased by the government from private insurers, and partially subsidized by the government.
2. Active Component.
 - a. Active duty soldiers are automatically insured for \$100,000 unless they opt out in writing.
 - b. Soldier can elect lower coverage or no coverage by completing VA Form 29-8286. In addition soldiers can elect additional coverage up to a maximum of \$200,000.
 - c. Insurability is guaranteed when first given the opportunity to elect SGLI. Thereafter, soldiers who desire to increase coverage may be subject to insurability determinations.
 - d. Provides protection on active duty and for 120 days following separation. No premiums are required during this additional 120 day period.
 - e. Soldiers may lose entitlement to SGLI based on:
 - (1) their duty status at time of death (e.g., if death occurs during extended AWOL or while serving term of confinement); or
 - (2) other miscellaneous factors (e.g., following refusal to serve due to conscientious objector status or following conviction of certain serious crimes). See AR 608-2, para. 2-5 and 2-7.
 - f. Cause of death, however, is irrelevant to SGLI coverage.
 - g. Soldier may convert to Veteran's Group Life Insurance (VGLI) within 120 days of separation.
 - h. Amount is included in decedent's estate for purposes of Federal estate tax but generally

exempt from the claims of creditors and other taxes, including federal income tax. Compare 38 U.S.C. § 1970g (1991) with United States Trust Co. v. Helvering, 307 U.S. 57 (1939) and United States v. Wells Fargo Bank, 485 U.S. 351, 355 (1987).

1. No loan, cash, paid-up, or extended insurance value.
3. Reserve Component. Certain reservists are eligible for coverage.
 - a. A person who qualifies for assignment to the Ready Reserve and is assigned to a unit or position in which he or she may be required to perform active duty or active duty for training, and each year will be scheduled to perform at least 12 periods of inactive duty training that is creditable towards retirement. SGLI eligibility extends out 120 days from termination of such an assignment.
 - b. Retirees who have completed 20 qualifying years of service, have received their "20 year letter" and are no longer in an active status may apply for Retired Reserve SGLI coverage under SGLI. 38 C.F.R. Part 9.3(b).
 - (1) Should apply within 120 days of retirement eligibility. If apply after 120 days, proof of good health required.
 - (2) Entitlement to coverage lapses if fail to apply within 1 year and 120 days from assignment to US Army Reserve Control Group (Retired).
 - (3) Coverage ceases upon reaching age 61 or receipt of first retired pay.
 - c. Other reservists are eligible for coverage during periods of AD, ADT, and IDT - but coverage ends at midnight of last day of title 10 status.
 - d. Only reservists on AD or ADT for 31 or more days eligible for conversion to VGLI.
 - e. Premiums paid directly to Office of

Servicemen's Group Life Insurance, Newark, New Jersey.

4. Eligible beneficiaries.

- a. Any person designated by the soldier on appropriate VA form (Active Component: VA Form 29-8286). SGLI Act gives service member absolute right to choose beneficiary. Ridgway v. Ridgway, 102 S.Ct. 49 (1981).
- b. If no designation, or "By Law" designation then proceeds paid according to SGLI statute:
 - (1) All to spouse, but if none, then
 - (2) All to surviving children in equal shares (and descendants of deceased children, by representation), but if none, then
 - (3) All to parents (equally divided), but if none, then
 - (4) All to executor of soldier's estate, but if none, then
 - (5) Next of kin under state law.
- c. SGLI rules governing payments of proceeds are rules of substance, not procedure. Prudential v. Moorhead, 916 F.2d 261 (5th Cir. 1990).
- d. Importance of Proper Designation.
 - (1) Avoid "By-Law" designation. "By Law" designations are no longer authorized within the Army. Message, Total Army Personnel Command, TAPC-PEC, subject: Servicemen's Group Life Insurance (SGLI) Program Change (021131Z Mar 93). See Lanier v. Traub, 934 F.2d 287 (11th Cir. 1991) (Despite fact service member raised by stepfather, "by law" designation precluded stepfather from sharing in SGLI proceeds, which went to natural father and mother).
 - (2) But ensure soldier keeps designation current. See Ridgway v. Ridgway, 102 S.Ct. 49 (1981) (A spouse was designated by name

on SGLI election form. Soldier did not change election following subsequent divorce; ex-spouse was entitled to all the proceeds.). See also Zawrotny v. Brewer, 978 F.2d 1204 (10th Cir. 1992), cert. denied -- U.S. -- (March 8, 1993)(Oklahoma statute stated that, by operation of law, divorce causes ex-spouse to lose all entitlement to life insurance proceeds on life of previous spouse. Court of Appeals held Oklahoma statute ineffective to change ex-spouse designation on SGLI form.)

- (3) Consider trustee (living or testamentary) or custodian under Uniform Gifts (Transfers) to Minors Act (UGMA/UTMA) as designated beneficiary for minor children. Such designation may avoid delay and expense in the payment of proceeds.

5. Settlement options.

- a. Soldier may elect lump-sum or 36 monthly installments.
- b. If no election, beneficiary may elect type of settlement.

6. Apply for benefits by submitting VA Form 29-8283, Claim for Death Benefits, to OSGLI, 212 Washington Street, Newark, N.J. 07102-2999.

B. Veterans' Group Life Insurance (VGLI) 38 U.S.C. §§ 1977-1979.

1. Renewable group term life insurance available after soldier leaves active duty. The term is for 5 years.
2. Up to \$200,000 in coverage available.
3. Active Component soldiers should apply for VGLI within 120 days of leaving the service.

4. **VGLI Rates (Per \$100,000 coverage - effective 1 September 1993):**

<u>AGE</u>	<u>MONTHLY RATE</u>
(through) 29	\$12
34	20
39	26
44	34
49	44
54	65
59	88
64	113
69	150
74	225
(over) 75	450

5. Certain reservists may also be eligible.

VI. DEPENDENTS' EDUCATIONAL ASSISTANCE (DEA) 38 U.S.C. § 3500-3566; 38 C.F.R. Part 21.

- A. Death of member must be under same circumstances that qualify dependents for receipt of DIC. Additionally, dependents of a totally disabled, but living, veteran may qualify.
- B. School must be approved for Department of Veteran's Affairs (DVA) benefits. See 38 U.S.C. § 3523 and § 3672; 38 C.F.R. Part 21.7120.
 - 1. Each state establishes an agency that certifies educational programs according to standards established by the DVA.
 - 2. Generally, DVA will not allow approval of courses that are primarily avocational or recreational in nature. The statute and regulation contain a list of specific courses which are either prohibited or discouraged.
- C. Eligible recipients.
 - 1. Surviving spouses.
 - a. Period of eligibility for a spouse extends to

10 years from the date of the veteran's death;
extension is possible.

- b. Will not be reduced by DIC payments.
- c. Remarriage permanently terminates DEA payments.

2. Children.

- a. Eligibility for child ends at age 26 (unless extended under certain conditions).
- b. Children must elect between DEA and DIC. Election of educational benefits is irrevocable and DIC may not be received once educational benefits begin. See attachment 4. (Can receive DIC until age 23 and educational benefits to age 26)
- c. Marriage does not bar payments.

D. Amounts available. 38 U.S.C. §3532.

- 1. DVA will pay the eligible recipient \$404 per month if the schooling is full time. Lesser amounts are available for part time schooling.
- 2. Total of payments cannot exceed \$3,636 per school year.
- 3. Payments made for a maximum of 45 school months.

VII. SOCIAL SECURITY BENEFITS.

A. General types of benefits.

B. Eligibility. For an individual (or his/her survivors) to qualify for social security benefits, the individual will have to be either fully insured or currently insured, or both, depending on the benefit (but see para. C.2.d below).

1. An individual is fully insured upon receipt of 40 quarters of social security work credits. If an individual dies before age 62, he/she may be considered as "fully insured" with less than 40 credits. The actual number of credits needed depends on age at time of death.
2. An individual is currently insured if the individual has at least 6 quarterly work credits in the past 13 quarters.
3. Generally, one social security work credit is awarded for each \$600 of wages upon which FICA taxes are paid. A maximum of four credits can be earned in a year (hence, "quarterly credits").

C. Available Benefits for Survivors.

1. Lump sum death benefit of \$255 (deceased must have been either fully or currently insured at time of death).
2. Monthly survivor benefit payments.
 - a. Children under age 18 (deceased fully or currently insured).
 - b. Widow(er) with children under 16 (deceased fully or currently insured).
 - c. Widower age 60 and over (deceased must have been fully insured at time of death).
 - d. If the death was service-connected, but the soldier was not either fully or currently insured, the VA will make up any of these social security payments that the soldier's survivors do not qualify for. 38 U.S.C. § 1312(a).

- e. Amount of monthly benefits depends on work history of insured and family situation. Generally, the more social security (FICA) taxes paid by the insured, the greater the benefits available to the survivors. When calculating the amount of FICA taxes paid by an active duty soldier, most soldiers will qualify for an additional \$1200 annual credit above the actual amount of FICA taxes paid.
- 3. Social Security benefits may be reduced if surviving spouse has earned income.
- 4. Apply for benefits by submitting SS Form DA-C24, Application for Survivor Benefits from Social Security Administration to SS Office.
- 5. More specific information on social security entitlements can be obtained by calling 1-800-772-1213.

VIII. OTHER PAYMENTS AND BENEFITS TO SURVIVORS OF DECEASED MEMBERS.

A. Death Gratuity. 10 U.S.C. § 1475

1. Conditions of payment.

- a. Soldier died on active duty, or**
- b. 120 days after release if death resulted from disease or injury incurred while on active duty.**

2. Amount.

- a. Lump sum payment of \$6000 made by the local finance office.**
- b. The lump sum payment amount does not depend on the rank or years of service of the deceased. (National Defense Authorization Act for FY 1992-1993).**

3. Beneficiaries.

- a. By law, to surviving spouse.**
- b. If no surviving spouse, to children equally without regard to age or marital status.**
- c. If no spouse or children, by designation between parents, brothers, and sisters. DD Form 93.**
- d. If no spouse or children and no designation - then to parents (if any survive), otherwise to brothers and sisters. If there are no parents, brothers, or sisters, the death gratuity is not payable (to the estate or otherwise).**

4. Tax consequences.

- a. Not income to recipient.**
- b. Not included in decedent's gross estate.**

5. Apply by submitting DD Form 397, Claim Certification and Voucher for Death Gratuity Payments to local finance office.
- B. Unpaid Pay and Allowances. Chap. 5, para. 40511, DOD Military Pay and Allowances Manual.
1. Amount.
 - a. All pay due soldier at death, including allowances.
 - b. Accrued leave not to exceed 60 days.
 2. Beneficiaries.
 - a. Designated by soldier.
 - b. If no designation, to spouse, children, parents, or the estate (in that order).
- C. Burial Benefits. 10 U.S.C. §1482; 38 U.S.C. §§ 2301-07. 38 C.F.R. Part 3.1600.
1. All active duty, personnel discharged from active duty (with other than dishonorable characterization), and reservists who die on active duty or as a result of service connected injuries.
 - a. A United States Flag.
 - b. A headstone (monetary reimbursement no longer available).
 - c. Burial in a National Cemetery.
 - d. A graveliner, if buried in a National Cemetery.
 2. All active duty soldiers.
 - a. At the request of the next of kin, the Army will assume responsibility for the recovery, preparation, casketing, and transportation of the body. The family may receive reimbursement for additional approved funeral expenses in the form of:

(1) An internment allowance. The maximum amount of reimbursement ranges from \$110 to \$3100 depending on whether the soldier is buried in a private cemetery or a national cemetery and whether a funeral home service is used.

(2) Reimbursement for next of kin travel to the burial site.

b. Survivors may make their own arrangements for recovery, preparation, casketing, and transportation of the body. In addition to the internment allowance and travel reimbursement, survivors are authorized a primary burial expense allowance up to \$1750 for these expenses.

3. Certain veterans.

a. A burial allowance not to exceed \$1500 is available if death is service-connected.

b. An allowance not to exceed \$300 is available for preparation and transportation of remains and other funeral and burial expenses if death is not service-connected but veteran was eligible for VA pension or compensation (i.e., the veteran was rated partially or totally disabled). An additional \$150 plot or internment allowance is available to these veterans if burial is in a private cemetery.

D. VA Death Pension. 38 U.S.C. § 5112(b)(4); 38 C.F.R. 3.660(d)(1990); DA Pam. 360-526, p. 16. This benefit is designed for surviving spouses and children of wartime veterans (i.e., those who served at least 90 days during designated war periods) whose deaths are not service connected but whose survivors have limited income. Service during Desert Storm qualifies. Property holdings and date of marriage to the veteran also effect eligibility.

E. Other Military Benefits. See DA Pam. 608-4.

1. Travel of dependents and shipment of household goods and personal effects.

2. Emergency financial assistance (Army Emergency Relief and/or American Red Cross).
3. Continued service benefits and privileges for dependents of soldier dying on active duty.
 - a. Commissary.
 - b. Post Exchange.
 - c. Medical care.
 - d. Legal assistance.

IX. TERMINAL CONDITION: IS MEDICAL RETIREMENT APPROPRIATE?

A. Factors favoring retirement.

1. Availability of Survivor Benefit Plan.
 - a. DIC Offset?
 - b. Child only SBP?
2. Availability of Service Disabled Veteran's Life Insurance (38 U.S.C. § 1922).
 - a. \$20,000 of life insurance available to disabled retirees who are otherwise uninsurable.
 - b. Must be applied for within one year of retirement.
 - c. If retiree is mentally competent at any time between injury and death, the retiree must sign the insurance application (VA Form 29-4364 (NSLI-RH insurance)). If serviceman is mentally incompetent for the entire period prior to death, the insurance (NSLI-ARH insurance) may be applied for retroactively after the death of the retiree.

B. Factors favoring continued active duty.

1. Is family at risk for extensive medical costs?
 - a. How long might soldier continue to live?

- b. If retired, when will soldier be removed from military medical care?
 - c. If retired, will care be available in a VA facility?
2. Eligibility for the Death Gratuity expires if death occurs more than 120 days after retirement.
 3. Some commercial life insurance policies issued by companies which deal with the military provide for automatic termination or reduction of coverage upon retirement. Does the soldier have such a policy?
 4. Survivors may have to pick up some additional burial expenses if soldier is retired vice remaining on active duty.

X. CONCLUSION

ATTACHMENT 1 - BENEFICIARY CHECKLIST

The following steps should be taken by the survivor of a deceased soldier or veteran. See also DA Pam. 608-4.

1. Contact all insurance companies. They will require:
 - a. Policy Numbers, and/or;
 - b. Full name of the decedent.
2. Request approximately 10 certified copies of the Death Certificate.
3. Contact the Department of Veterans Affairs for burial payment. They will require:
 - a. Full name of the deceased
 - b. Social Security Number and Branch of Service
4. Contact the Department of Veterans Affairs for possible benefits for next of kin if soldier died while on active military duty. They will require:
 - a. Certified copy of the Death Certificate
 - b. Copy of Marriage Certificate
 - c. Copies of the Birth Certificates of all dependent children
5. If soldier retired from military service after September 21, 1972, contact respective branch of service for Survivors Benefit Plan (SBP). They will require:
 - a. Full name of the deceased
 - b. Social Security Number
6. Contact soldier's respective branch of service for Retired Serviceman's Family Protection Plan (RSFPP). They will require:
 - a. Full name of the deceased
 - b. Social Security Number
7. Contact nearest Social Security Office. They will require:
 - a. Certified copy of Death Certificate
 - b. Social Security Number of deceased
 - c. Social Security Numbers for spouse and dependent children
 - d. Birth Certificates for spouse and dependent children
 - e. Approximate earnings of deceased in the year of his death, and present employer's name
8. Contact veteran's present employer for possible insurance.
9. Contact your veteran's present employer for funds possibly due from Credit Union participation.

10. Contact Bank for possible mortgage insurance.
11. Notify all creditors of death; there may be Credit Life Insurance on installment loans.
12. Contact any fraternal organization to which the deceased may have belonged for possible life insurance.
13. Contact Civil Service if deceased was employed for more than 18 months in Civil Service.
14. Search for a Will. It may explain how the deceased wanted to disburse the funds and to determine if there are trust funds in existence.
15. Look for check stubs or any cancelled checks for payments to an insurance company. Check for securities, real estate and a safe deposit box.
16. Check for past enrollment in the Veteran's Education Assistance Program and/or payroll purchase plan for Savings Bonds.
17. If death occurred on a common carrier, survivors may be able to collect damages from the carrier (for fault or negligence) and/or insurance proceeds from the relevant travel agent/credit card issuer (no fault or negligence required).
18. If death occurred due to combat there may be federal tax breaks, both on income tax (I.R.C. § 1692) and estate tax (I.R.C. § 2201).
19. Contact DVA for information on possible state benefits, including bonuses, educational assistance, employment preferences, and tax exemptions.

ATTACHMENT 1 - STATE TAX CONSEQUENCES

(not included)

ATTACHMENT 2 - RECOMMENDED SGLI LANGUAGE

* OTJAG Legal Assistance recommends that soldiers who wish to have a trustee receive SGLI proceeds for the benefit of minor children use the following words of beneficiary designation: "My trustee, (Name of trustee), to fund a trust established (for the benefit of my minor children)(for the benefit of (name))(under my last will)(under trust agreement dated (date))."

* If a testamentary guardian is the desired recipient, the OSGLI office recommends the following language: "(Name of guardian), testamentary guardian under the provision of my last will and testament." If there is a trust established or guardianship designated in the will, the OSGLI should have a copy of the trust or will for its files.

* All fifty states allow for transfer of life insurance proceeds into a custodianship. If a custodian under UGMA/UTMA is desired, the following language would be appropriate: "(name of custodian), as custodian for (name of child) under the (name of state of custodian) Uniform Transfers to Minors Act." Substitute the word "Gifts" for "Transfers" in the eight states (i.e., Connecticut, Delaware, Michigan, Mississippi, New York, South Carolina, Texas, and Vermont) which still utilize UGMA. The remaining forty-two states are UTMA states.

ATTACHMENT 3 - SURVIVOR BENEFITS OFFSETS

**Receipt of spousal DIC reduces
spousal SBP dollar for dollar.**

DIC

SBP

**Children must
elect between
receipt of DEA
payments and
receipt of DIC
payments.**

**A surviving spouse
who reaches age
62 will have SBP
reduced under the
"offset" or "two-
tier" system.**

DEA

**SOCIAL
SECURITY**

Proposed Formats for
SGLI Beneficiary Designations
for Part 2, Form SGLV-8286, Nov 1992

1. **Relatives.** If you designate beneficiaries in the following manner you do not need to list the name, address, social security number, or relationship of the beneficiary to the insured on the Form SGLV-8286:

- a. My mother.
- b. My father.
- c. My children, per stirpes.
- d. My children, per capita.
- e. My children from my marriage to _____,
(per stirpes) OR (per capita).
- f. My children, including my adopted children, from my
marriage to _____, (per stirpes) OR (per
capita).
- g. My children (excluding) OR (including) my step-children
from my marriage to _____, (per stirpes)
OR (per capita).
- h. My siblings, (per stirpes) OR (per capita).

2. **Custodians.** If you designate beneficiaries under the Uniform Gift to Minors Act (UGMA) or the Uniform Transfer to Minors Act (UTMA) you must list the name, address, social security number and relationship of the custodian to the insured on the Form SGLV-8286. An example of an approved wording of a UGMA/UTMA designation follows:

My friend, John A. Doe, as custodian for my children, pursuant to the UGMA/UTMA.

Court action is not required in order to distribute proceeds under UGMA/UTMA if the designated custodian is alive at the time SGLI proceeds are distributed. The UGMA/UTMA are not recognized in the Virgin Islands.

3. **Trustee under inter vivos (living) trust.** If you designate a trustee as beneficiary for an inter vivos (living) trust you must list the name, address, social security number, and relationship of the trustee to the insured on the Form SGLV-8286:

My brother, Joe B. Brown, as trustee to fund a trust established for the benefit of my children.

An inter vivos (living) trust must be in writing and in existence when the service member dies. Otherwise, SGLI proceeds cannot be distributed to the designated trustee.

4. **Trustee under testamentary trust.** If you designate a trustee

as beneficiary for a trust created in your will you do not need to list the name, address, social security number, and relationship of the trustee to the insured on the Form SGLV-8286.

An example of an approved wording of a trustee designation follows:

My trustee to fund a trust established for the benefit of my children under my will.

The will must be probated in court and letters of trusteeship must be obtained from the court before the SGLI proceeds can be distributed to the trustee named in the will. This beneficiary designation may also require that a will be admitted to probate that otherwise might not have required probate.

5. You cannot make a designation "By Will" on the Form SGLV-8286.

Notes:

1, 2. Where the insured has step-parents, parents by adoption, or a father who has never been married to the insured's mother the name of the parent should be indicated (e.g., my father, John M. Doe.)

3. Each living child shall take one share, and the share of each deceased child shall be divided among the deceased child's then living children.

4. Equal shares only living children; the share of the deceased child does not pass to the deceased child's children.

5. Insert the name of the spouse or former spouse who is the other parent of these children. You should use a designation for children that names your spouse or former spouse when you wish to exclude children born outside that marriage.

SAMPLE DESIGNATION OF BENEFICIARIES

BY-NAME

Single Principal Beneficiary - "My Wife, Mary A. Doe, 123-45-6798, 101 Coe St., Port Ord, California, 100%, Lump Sum."

Two Principal Beneficiaries - "My Father, John E. Doe, 123-45-6789, 100 Main Street, Monterey, California, 50%, Lump Sum; and to my Mother, Mary A. Doe, 123-45-6789, 100 Main Street, Monterey, California, 50%, Lump Sum."

Multiple Principal Beneficiaries - "My sister, Ann E. Doe, 123-45-6789, 100 Main Street, Monterey, California, 33 1/3%, 36 payments; my brother, James E. Doe, 123-45-6789, 100 Main Street, Monterey, California, 33 1/3%, 36 payments; and my friend, Jerry Smith, 123-45-6789, 444 Way Out, Salinas, California, 33 1/3%, 36 payments."

Do not place Principal Beneficiaries on the Contingent Beneficiary lines.

When designating Contingent Beneficiaries, the designation is done in the same manner as explained above for Principal Beneficiaries.

LIVING TRUST

Trust for Minor Children - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my children, under Trust Agreement dated 1 April 1993. 100% Lump Sum."

Trust for an Individual Child - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Son, Jerry A. Doe, under Trust Agreement dated 1 April 1993. 100% Lump Sum."

Trust for an Adult - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Mother, Mary A. Doe, Under Trust Agreement dated 1 April 1993. 100% Lump Sum."

TESTAMENTARY TRUST

Trust for Minor Children - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my children, under my Last Will and Testament dated 1 April 1993. 100% Lump Sum."

Trust of an Individual Child - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Son, Jerry A. Doe under my Last Will and Testament dated 1 April 1993. 100% Lump Sum."

Trust for an Adult - "My Trustee, John A. Doe, to fund a Trust established for the benefit of my Mother, Mary A. Doe, under my Last Will and Testament dated 1 April 1993. 100% Lump Sum."

CONTINUATION SHEET FOR FORM SGLV-8286

LAST NAME, FIRST NAME, MIDDLE NAME: _____

RANK/GRADE: _____ SOCIAL SECURITY NUMBER: _____

BRANCH OF SERVICE: _____

PRINCIPAL BENEFICIARIES: (Completed per sample designations)

Name/Address	SSN	Relationship	Shares	Payment/ Lump Sum

CONTINGENT BENEFICIARIES: (Completed per sample designations)

DATE _____

FULL SIGNATURE OF SOLDIER

SIGNATURE OF WITNESS

CHAPTER 6

OATHS, NOTARIZATIONS, AND POWERS OF ATTORNEY IN THE MILITARY

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OATHS, NOTARIZATIONS, AND POWERS OF ATTORNEY IN THE MILITARY

Outline of Instruction

I. REFERENCES.

- A. JA 268, Notarial Guide, TJAGSA (June 1992).
- B. 10 U.S.C. §§ 936 and 1044.
- C. AR 27-55, Notarial Services (to be distributed February 1994) (its provisions are not included in this outline).
- D. National Defense Authorization Act for FY 1994, Section 574: Recognition by States of Military Powers of Attorney.

II. AUTHORITY OF U.S. MILITARY PERSONNEL TO ADMINISTER OATHS AND PERFORM NOTARIAL ACTS.

- A. 10 U.S.C. § 1044a grants named individuals general powers of a notary public and of a consul of the United States.
- B. Newly enacted Section 574 of the Defense Authorization Act will add 10 U.S.C. § 1044b which is intended to enhance the acceptability of general and special powers of attorney prepared by legal assistance attorneys on behalf of their clients. (see below)
- C. 10 U.S.C. § 936 grants named individuals power to administer oaths necessary for military administration (to include military justice) and necessary in the performance of their duties.

III. GENERAL OVERVIEW.

- A. Authority to administer oaths and perform notarial acts may be based on state or federal law.
- B. The authority granted by federal statutes (10 U.S.C. § 1044a and § 936) to administer oaths and perform notarial acts is
 - 1. Separate and apart from, and additional to,
 - 2. Any authority provided by state law.

- C. Oaths administered pursuant to 10 U.S.C. § 936 are legally effective for the purposes for which the oaths are administered (e.g., military administration).
- D. Notarial acts performed under 10 U.S.C. § 1044a are legally effective as notarial acts for all purposes in all states (pursuant to the Supremacy Clause). In the past, however, not all states agreed; consequently, the following change to § 1044 was incorporated in the FY 94 DoD Authorization Bill:

Section 574: Recognition by States of Military Powers of Attorneys (to be codified at 10 U.S.C. § 1044b)

- (a) **INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW. -- A military power of attorney -**
 - (1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and
 - (2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.
- (b) **MILITARY POWER OF ATTORNEY --** For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal Law.
- (c) **STATEMENT TO BE INCLUDED. --** (1) Under regulations prescribed by the Secretary concerned, each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).
 - (2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.
- (d) **STATE DEFINED. --** In this section, the term 'STATE' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

ENACTED

* Note (from COL Arquilla): "The definition of a military power of attorney in subsection (b) is rather broad; it would include any general or special power of attorney prepared anywhere for any purpose. That certainly was not the intent of Congress. The legislation initially proposed by the Army, and later by DoD, would have limited military powers of attorney to those prepared and executed 'by a person authorized to receive legal assistance.....' Section 574 gives effect not only to powers of attorney notarized pursuant to 10 U.S.C. § 1044a, but also those notarized pursuant to 'other applicable State or Federal law.' This clause, which, in effect, also gives section 574 its broad and unintended coverage, was included to cover the many powers of attorney executed in the military by state-licensed notaries public....." (DAJA-LA memo from COL Arquilla of 23 Nov 93, Subject: National Defense Authorization Act for Fiscal Year 1994, Section 574: Recognition by States of Military Powers of Attorney).

PRESCRIBED PREAMBLE FOR MILITARY POWERS OF ATTORNEY

(insert at beginning of each general and special power of attorney in capital letters)

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

[Foregoing preamble proposed and agreed upon by the Chiefs of Legal Assistance for all services during December 1993].

IV. OATHS.

- A. Oaths and affirmations are pledges whereby the individual making the oath swears or affirms the truth of statements made by them. Oaths and affirmations are used when taking affidavits or sworn instruments.
- B. Under 10 U.S.C. § 936(a), the following U.S. Armed Forces members on active duty, reservists serving on active or inactive duty for training, and Army National Guard members when serving on active duty under Title 10 U.S.C., may administer oaths for purposes of military administration, including military justice under the UCMJ:

 - 1. All JAs and legal officers of the Army.
 - 2. All summary courts-martial.
 - 3. All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
 - 4. All commanding officers of the Navy, Marine Corps, and Coast Guard.
 - 5. Persons empowered to authorize searches pursuant to MRE 315(d), MCM, 1984, for any purposes relating to search authorizations.
 - 6. All other persons designated by Armed Forces regulations or by statute.
- C. Under 10 U.S.C. § 936(b), the following U.S. Armed Forces members on active duty, reservists serving on active or inactive duty for training, Army National Guard members when serving on active duty under Title 10 U.S.C., may administer an oath to any person when it is necessary in the performance of their duties:

 - 1. President, military judge, trial counsel and assistant trial counsel, for all general and special courts-martial.
 - 2. President and counsel for any court of inquiry.
 - 3. All officer designated to take a deposition.
 - 4. All personnel designated to conduct an investigation.
 - 5. All recruiting officers.

6. All other persons designated by regulations of the armed forces or by statute.

D. Oaths administered under other statutes. Any U.S. Armed Forces commissioned officer of any Regular or Reserve component, whether or not on active duty, may administer:

1. Oath of enlistment (10 U.S.C. § 502).
2. Oath required for the enlistment or appointment of any person in the Armed Forces (10 U.S.C. § 1031).
3. Any other oath required by law in connection with enlistment or appointment of any person in the Armed Forces (10 U.S.C. § 1031).

V. NOTARIAL ACTS.

A. Under the authority of 10 U.S.C. § 1044a, the following persons have the general powers of notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the individuals listed in paragraph B:

1. Civilian attorneys serving as legal assistance officers.
2. The following persons while on active duty or performing inactive duty training :
 - a. All judge advocates;
 - b. All adjutants, assistant adjutants, and personnel adjutants;
 - c. All other persons who are designated by regulations of armed forces or by statute to have those powers.

B. Individuals listed in paragraph A above may perform notarial acts for the following:

1. Members of any armed forces;
2. Other persons eligible for legal assistance under the provisions of section 1044 of this title, AR 27-3, or regulations of the Department of Defense;

3. Persons serving with, employed by, or accompanying the armed forces outside the U.S. and outside the commonwealth of Puerto Rico, Guam, and the Virgin Islands;
4. Other persons subject to the UCMJ.

VI. NOTARIAL CERTIFICATIONS AND CONTENTS OF OATH.

- A. 10 U.S.C. § 936: The signature of the officer taking acknowledgements or sworn instruments, together with the title of his or her office, is prima facie evidence of the officer's authority, and an impressed or raised seal is not required.
- B. 10 U.S.C. § 1044a: The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

VII. CONCLUSION.

APPENDIX A

What Notaries May Do ... And Other Considerations.

Clients often misunderstand what a notary can and cannot do. A notary public can administer oaths, take sworn statements, and receive acknowledgments of certain written instruments. A notary public cannot authenticate a document--that is, he or she cannot put a notary seal on a copy of a birth certificate and make it "genuine." However, a client may make a statement under oath, in writing, that a certain document is a true and accurate copy of the original. In that case, the notary may take the oath, write the prescribed words below the statement, and thereby attest to the fact that an oath was administered. The notary may then put a notary seal to that statement. The notary does not vouch for the authenticity of the copy, but rather attests that the declarant stated under oath that such copy is a true copy of the original.

Please note that, in many instances, an organization which has requested a service member to provide a document requires an original or certified copy. If so, the "oath" procedure described in the previous paragraph will not be satisfactory, and an authenticated copy must be requested from the issuing authority.

Additionally, clients should understand that a sworn instrument is a written declaration, signed by a person who declares under oath, before a properly authorized official (notary public), that the facts set forth are true and accurate to the best of her or his knowledge and belief. Examples of sworn instruments are affidavits, sworn statements, certificates, and depositions. On the other hand, an acknowledgment is merely a formal declaration or admission before a properly authorized official (notary public), by a person who has executed an instrument, that such instrument is that person's act and deed--that he or she executed the document of his or her own free will.

Practical Considerations

The practice of issuing powers of attorney to service members and their family members varies from installation to installation. Some installations have made the more common special powers of attorney and a general power of attorney local installation forms and have these forms printed as needed by the installation printing plant. Other installations have the forms or clauses in their office word processing systems and produce the powers of attorney as needed. If the forms are printed at the installation printing plant, it would be advisable to request that a specific number be printed and delivery taken of all forms

printed, rather than having the forms remain in open stock. This will help preclude the possibility that an uninformed service member may come into possession of a blank power of attorney form which the service member may believe is proper for the service member's needs or circumstances, but which actually, if executed without legal advice, would lead to unfortunate consequences for the soldier.

It has also been common practice at some legal assistance offices to routinely issue general powers of attorney on printed forms. As indicated above, this should only be done after counseling by a legal assistance officer. If such forms are used, legal assistance officers should have the client strike out clearly inapplicable or unnecessary clauses from the general power of attorney form. The client should initial and date any provisions eliminated from the standard form.

Legal assistance attorneys should consult local banks or financial institutions to determine their requirements for powers of attorney. In many cases, a state or local bar association may have compiled a form book which contains power of attorney clauses and forms acceptable for use in the state or local jurisdiction. These forms are commonly available in bulk from local business supply firms. Maintaining a list of local financial institutions and their requirements, keeping it current, and using forms or clauses used by local civilian attorneys may save a client needless expense or waste of time.

APPENDIX B

TAKE-1

POWERS OF ATTORNEY

A project of the North Carolina State Bar's Special Committee on Military Personnel, in conjunction with the American Bar Association's Standing Committee on Legal Assistance for Military Personnel. (Revised by TJAGSA, ADA-LA, October 1993).

1. Q. What is a power of attorney?

A. A power of attorney is a document that allows someone else to act as your legal agent. Thus, a power of attorney can be used to allow a friend to sell your car, to let your spouse ship your household goods or to authorize a relative to take your child to the hospital. It can also be used to sell or buy property. It can create valid and legal debts in your name or it can authorize a person to pay off your debts.

2. Q. Are there different kinds of powers of attorney?

A. Yes. The two types are general and special powers of attorney. A general power of attorney allows the person you name (or your agent) to do any and all things that you could legally do, from registering a car to selling a house. A special (or limited) power of attorney lists a particular act that the agent is authorized to do and limits the agent to that act. The agent can, of course, be authorized to do more than one legal act in a single special power of attorney.

3. Q. When does a power of attorney expire?

A. A power of attorney should never be made indefinite or permanent. The best course is to set a date for the power of attorney to expire, and this can be written into the power of attorney. That way, the power of attorney will be no good after the expiration date that you set unless, of course, you renew it by preparing a new power of attorney.

4. Q. What are some of the things a special power of attorney can do?

A. You can use a special power of attorney to allow someone to do almost all legal actions that you can do yourself. Thus, for example, you could prepare a

special power of attorney that lets your designated agent:

- a. Buy or sell real estate;
- b. Purchase a car or sell your furniture;
- c. Sign your paycheck or withdraw money from your bank account;
- d. Admit your child to the hospital for necessary medical care;
- e. Ship or store your luggage and household goods;
- f. Sign your name to a lease or an agreement to connect utilities, such as electricity, gas, oil or telephone service;
- g. Cash or deposit tax refund check or transfer stocks and bonds.

These are just a few of the many things that can be done with a special power of attorney. All you have to do is prepare the special power of attorney with a specific description of what is the particular act or deed to be done (and who is the agent that you authorize to do it).

5. Q. Are there any things a power of attorney cannot do?
- A. While a power of attorney will be accepted as valid for most purposes, in many states there are some items that cannot be accomplished by using a power of attorney because these actions are so personal in nature that they cannot be delegated to another. Thus, for example, a marriage ceremony or the execution of a will cannot be done by power of attorney. In addition, there are times when a certain form of power of attorney is required and none other will be accepted - an example is the special form of power of attorney used by the Internal Revenue Service when a person allows a friend or relative to cash an IRS refund check.
6. Q. All this sounds like a good deal - why doesn't everyone have a power of attorney?
- A. A power of attorney can be very useful if you have one in effect when you need it. But a power of attorney can be abused as well as used; there can be disadvantages to having one as well as advantages. A husband who just separated from his wife might use the power of attorney she gave him to clean out her individual bank account. A well-meaning older person might give a power of attorney to a younger relative, only to discover that the relative squandered and spent the assets of the older person. A power of attorney always has the potential for being a very helpful or a

very dangerous document for those reasons. The important thing to remember is that you are going to be legally responsible for the acts of your agent. Therefore, you must exercise great care in selecting the person to be your agent.

7. Q. What steps can I take to prevent improper use of my power of attorney?
- A. There is no way to guarantee your power of attorney will not be misused. Here are some guidelines and precautions that will help prevent abuse:
- a. Never have a power of attorney unless you need one.
 - b. If you feel you might need a power of attorney, have one prepared but don't sign it until you need it.
 - c. Always put an expiration date on your power of attorney; never make a power of attorney that lasts indefinitely.
 - d. Make sure your expiration date is for a fairly short period of time. While this will vary from one person to another, periods of one, two or three years are not uncommon on powers of attorney. Check the policy of the legal assistance office is to determine its policy on limiting durations of powers of attorney.
 - e. Never use a general power of attorney when a special one will do.
 - f. If you want to cancel or terminate a power of attorney before it expires, you can prepare and execute a Revocation of Power of Attorney. Give a copy of the revocation to any person that might deal with the person to whom you gave your power of attorney. In some states you may also record the revocation in the county register of deeds office where the original power of attorney was recorded or was to be used. Just remember that it is usually impossible to cancel effectively a power of attorney, since the safest way to do this is to get back all the copies and originals you have given to your agent, as all as all the photocopies that may have been made by banks, realtors, merchants, landlords and other people who are relying on the power of attorney you have signed.

8. Q. Are there any special requirements for powers of attorney?
- A. A power of attorney must always be signed in front of a notary public. If you wish, it can be recorded at the county register of deeds office in location where it is to be used. As a general rule, however, a power of attorney does not need to be recorded in order to be effective.
9. Q. Does every business or bank have to accept my power of attorney?
- A. No. Every business or bank is free to accept or not to accept a power of attorney. Some businesses or banks require that the power of attorney be recorded while others do not. Some banks will accept only a special power of attorney. The bottom line is you should check with the business or bank before obtaining or using a power of attorney to be sure that it will be accepted.
10. Q. Does a power of attorney expire upon my death or mental incapacity?
- A. A power of attorney expires on the death of the grantor (the person signing it) or of the agent named in it. Many people choose to have an additional clause in a power of attorney that makes provision for mental incapacity. In such a case, the power of attorney would usually state that it would survive beyond any mental incompetence of the grantor. In many states, such a power of attorney must be recorded at the county register of deeds if the grantor later becomes mentally incapacitated. You should remember, however, that a valid power of attorney must be signed while the grantor is sane and mentally competent.
11. Q. What if I have other questions or specific problems I want help in solving?
- A. See a legal assistance attorney or a private attorney as soon as possible. Seeing a lawyer early may not only solve a problem you have; it may also resolve or avoid a problem in the future, on this or other unrelated subjects. Seeing your lawyer early is practicing "Preventive Law."

APPENDIX C

Checklist for Preparing a Power of Attorney

The practitioner should watch for the following matters when counseling clients concerning a power of attorney:

1. What specifically does the service member wish to accomplish?
2. Does the service member really need a power of attorney to accomplish this task?
3. How long a period is reasonably needed to accomplish the task? Note that some states limit the length of time a power of attorney may be effective.
4. Is the agent or attorney-in-fact an individual who can be trusted to carry out the task?
5. Is the principal clearly identified in the power of attorney?
6. Is the agent clearly identified in the power of attorney?
7. If a bank or company is to be appointed as agent and an individual employee is named as the bank or corporate representative, is the individual named as agent on behalf of the bank or corporation clearly named in a representational capacity?
8. Are all appropriate account, serial, or registration numbers set forth accurately?
9. Are all conditions and restrictions on the agent clearly described?
10. What conditions, other than revocation date, will terminate the power of attorney? Note that in some states a power of attorney will terminate when the principal becomes mentally incompetent, unless specific language is placed in the power of attorney to have its effectiveness continue despite the mental incapacity of the principal.
11. Is the document signed and notarized? Notarization is not a legal requirement for all types of powers of attorneys in some states or for the transaction of business involving the government; however, businesses and agencies need not accept any powers of attorney, and even where notarization is not required by state law, the businesses will find it easier to refuse to accept powers of attorney if they are not notarized.

12. Does the power of attorney need to be recorded? Proper recordation will create a permanent record, facilitate revocation at some future time, and serve as a source from which certified copies can be obtained if necessary. Recordation of the power of attorney, however, makes it a matter of public record that the service member has given a power of attorney to a named agent. Note that in some states it is necessary to record the power of attorney if the agent will engage in transactions involving real property standing in the grantor's name. Also, some banks may require that the power of attorney be filed for record before they will honor it. If recordation is desirable or necessary, the power of attorney should be recorded in the county or counties where the service member owns real property, or, if the service member does not own real property, in the county where the service member or the agent is a permanent resident or, in the county where the power will be exercised. If the power of attorney is recorded and the service member subsequently executes a revocation of the power, the revocation should be recorded in the same place as was the power.
13. Does the execution of the power of attorney require subscribing witnesses in addition to acknowledgment before a notary public? In cases where the power of attorney is to be used in conjunction with real estate transactions or in other matters where subscribing witnesses ordinarily are required, the power of attorney will likewise have to be witnessed.
14. How many executed copies does your client need? Anyone dealing with the grantor's agent may demand an executed (or certified) copy of the instrument. Some banks may keep a copy of the power of attorney on file. If it appears that additional copies will be needed and the service member will be unavailable to execute them, the power of attorney can be recorded in the office of the appropriate county recorder or county clerk and certified copies obtained for use in place of executed copies.
15. A power of attorney is effective only while the grantor is alive. Upon the grantee's death, the power of attorney terminates.

APPENDIX D

Client Instructions for Power of Attorney

1. It is the policy of this office that you understand the meaning and effect of your power of attorney. A power of attorney is one of the strongest legal documents that an individual can give to another person. The person you give the power of attorney to is called your "agent." The power of attorney authorizes your agent to act on your behalf and carry on your business in your absence. Acts performed by the agent that are authorized by the power of attorney are legally binding on you. PLEASE NOTE that third parties (banks, businesses, etc.) do not have to accept or acknowledge your power of attorney; it is totally within their discretion to do so.
2. A GENERAL POWER OF ATTORNEY authorizes your agent to act with respect to any matter, such as sell or mortgage your home, withdraw your savings, borrow money, and sign contracts. In other words, an agent who has been given a general power of attorney can do anything that you could do personally, and his or her actions will be legally binding on you.
3. A SPECIAL POWER OF ATTORNEY authorizes your agent to do one or more certain specified acts, such as sell your car, ship household goods, or cash a paycheck.
4. You should grant no greater power than is absolutely necessary. In addition, your agent should be someone in whom you have absolute trust and confidence.
5. You will be formally executing two copies of your power of attorney. You should give one copy to your agent and keep the second copy for yourself. Photocopies of your power of attorney are generally unacceptable because they do not contain original signatures or the notary seal. If it appears that additional executed copies of your power of attorney are required, please discuss this with your legal assistance officer.
6. Your power of attorney will automatically terminate with the death of either yourself or your agent. Otherwise, it will terminate on the date that you specified on the document unless you revoke it earlier or there are limitations imposed by state law. You should not make a power of attorney last longer than is necessary. In some states, the length of time a power of attorney may be effective is limited by law. This has two aspects. For example, state law may provide that a power of attorney may last for no longer than a year. Or, state law may provide that if the grantor of the power becomes mentally or physically incapacitated, the power of attorney will terminate.

You should check with your legal assistance officer if you have questions concerning the law in your state.

7. You may revoke your power of attorney at any time by taking appropriate legal action to revoke the document. Should you need to revoke your power of attorney before the termination date, please contact your legal assistance officer for further guidance.

8. All endorsements and instruments made by your agent pursuant to the power of attorney should be executed by his or her signing your name, followed by his or her name and the words "attorney-in-fact."

9. If you have questions concerning your power of attorney, please contact your local legal assistance office.

APPENDIX
(copy of released message)

04 031400Z MAY 93

HQ DA WASH DC//DAJA-LA//

FOR SJA/LEGAL COUNSEL: PASS TO ALL ATTORNEYS PROVIDING LEGAL ASSISTANCE

SUBJECT: USE OF A POWER OF ATTORNEY IN FINANCIAL TRANSACTIONS INVOLVING U.S. TREASURY CHECKS AND THE DEPARTMENT OF DEFENSE FINANCE AND ACCOUNTING SERVICE [DFAS]

1. REFERENCES:

A. MEMORANDUM FROM DEFENSE FINANCE AND ACCOUNTING SERVICE [INDIANAPOLIS CENTER] ATTN: DFAS-IN-DG, DATED 26 APR 92, SUBJECT: SAME AS ABOVE.

B. AR 37-103, DISBURSING OPERATIONS FOR FINANCE AND ACCOUNTING OFFICES [4 DEC 87].

C. DEPARTMENT OF DEFENSE PAY MANUAL [1 JAN 93].

2. THE FOLLOWING CONSTITUTES PROCEDURAL AND LEGAL GUIDANCE TAKEN ALMOST VERBATIM FROM REF A. THIS GUIDANCE IS APPLICABLE TO SITUATIONS WHERE A SOLDIER'S AGENT, APPOINTED UNDER A POWER OF ATTORNEY [POA], WISHES TO CONDUCT SOME TYPE OF FINANCIAL TRANSACTION.

A. A POA MAY BE USED IN THE FOLLOWING TRANSACTION:

1. A DESIGNATED AGENT APPOINTED UNDER A POA MAY OBTAIN A TREASURY CHECK FOR THE PERSON GRANTING THE POA. THIS IS AUTHORIZED UNDER REF B, PARA 5-2C[3]. EITHER A GENERAL OR SPECIAL POA IS SUFFICIENT. HOWEVER, THE POA MUST CONTAIN LANGUAGE WHICH SPECIFICALLY AUTHORIZES OR NECESSARILY IMPLIES AUTHORITY ON BEHALF OF THE AGENT TO RECEIVE THE CHECK.

2. LEAVE AND EARNING STATEMENTS [LES'S] MAY BE RELEASED TO A FAMILY MEMBER OF A SOLDIER WHO IS APPOINTED AS THE SOLDIER'S AGENT UNDER A POA. EITHER A GENERAL OR SPECIAL POA MAY BE USED. HOWEVER, THE POA MUST CONTAIN LANGUAGE WHICH SPECIFICALLY AUTHORIZES OR NECESSARILY IMPLIES AUTHORITY ON BEHALF OF THE AGENT TO OBTAIN THE LES.

3. AN AGENT APPOINTED UNDER A POA MAY FILE A TRAVEL CLAIM. AGAIN, ALTHOUGH EITHER A GENERAL OR SPECIAL POA MAY BE USED, THE POA MUST CONTAIN LANGUAGE WHICH SPECIFICALLY AUTHORIZES

OR NECESSARILY IMPLIES AUTHORITY ON BEHALF OF THE AGENT TO FILE THE TRAVEL CLAIM.

B. A POA MAY NOT BE USED IN THE FOLLOWING SITUATIONS:

1. PURSUANT TO REF C, PARA 6018D, A POA IS NOT ACCEPTABLE TO ESTABLISH, CHANGE, OR STOP AN ALLOTMENT.

2. PAYMENTS TO A MENTALLY INCOMPETENT SOLDIER MAY NOT BE MADE TO AN AGENT APPOINTED UNDER ANY TYPE OF POA. IAW 37 U.S.C. SEC. 602, PAYMENTS DUE A MENTALLY INCOMPETENT SOLDIER MUST BE PAID TO A PERSON DESIGNATED BY THE SECRETARY CONCERNED OR BY ANY PERSON TO WHOM HE DELEGATES AUTHORITY. UNDER REF C, RULE 1, TABLE 4-2-1, THIS AUTHORITY HAS BEEN DELEGATED TO THE DIRECTOR, DFAS-IN. REF C, CHAPTER 2, PART 4, ALSO AUTHORIZES PAYMENT TO A COURT-APPOINTED LEGAL REPRESENTATIVE. HOWEVER, THERE IS NO AUTHORITY FOR PAYMENT TO THE HOLDER OF A POA.

3. WHERE A SOLDIER IS MISSING IN ACTION OR INTERNED, PAYMENTS MAY NOT BE MADE TO A PERSON HOLDING A POA. IN THESE CASES, THE SECRETARY CONCERNED OR THE SECRETARY'S DESIGNEE HAS THE AUTHORITY UNDER REF C, PARA 40304, TO INITIATE, SUSPEND, RESUME, INCREASE, DECREASE, OR DISCONTINUE AN ALLOTMENT. HOWEVER, THERE IS NO AUTHORITY WHICH WOULD ALLOW AN AGENT APPOINTED UNDER POA TO TAKE THIS ACTION.

4. AN AGENT APPOINTED UNDER A POA MAY NOT CHANGE A SOLDIER'S PAY OPTIONS OR A SOLDIER'S INSTRUCTIONS CONCERNING DIRECT DEPOSIT. THESE LONG STANDING POLICIES ARE DESIGNED TO PROTECT SOLDIERS FROM HAVING THEIR PAY DIVERTED IN A MANNER THAT IS CONTRARY TO THEIR WISHES. FURTHERMORE, SOLDIERS WHO WANT TO CHANGE THEIR PAY OPTIONS OR THEIR DIRECT DEPOSIT INSTRUCTIONS HAVE ACCESS TO FINANCE FACILITIES AT THEIR DUTY STATIONS. AS AN ADDITIONAL MATTER, THE EXPLICIT PROHIBITION CONTAINED IN REF C CONCERNING THE CHANGING OF AN ALLOTMENT BY USE OF A POA WOULD BE MEANINGLESS IF A POA COULD BE USED TO CHANGE A SOLDIER'S PAY OPTIONS OR DIRECT DEPOSIT INSTRUCTIONS.

3. POC THIS HEADQUARTERS IS COL ARQUILLA [COM] 703-697-3170 OR [DSN] 227-3170.

APPENDIX E

POWER OF ATTORNEY FORMS

(include preamble for special and general powers of attorney)

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY, OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

Sample Forms for Special Powers of Attorney

Basic Special Power of Attorney

The following sample is a streamlined and updated version of a special power of attorney form that is commonly used in Army legal assistance offices. This is, of course, only one way to draft the basic form. Practitioners are encouraged to develop basic forms that more closely conform with local preferences.

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned _____,
SSN _____, a legal resident of the State of _____,
United States of America, now in the military
service of the United States Army, currently assigned to _____,
by this document do make and appoint
_____, SSN _____, whose present address is
_____, as my true and lawful attorney to do
and execute (or to act with persons jointly interested with
myself therein in the doing or execution of) any or all of the
following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after _____,
19__.

Special Power of Attorney With "Durable" Clause

Some states and federal agencies require a "durable" power of attorney clause if the power of attorney is to continue to be effective in the event the principal becomes mentally incompetent.

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned _____, SSN _____, a legal resident of the State of _____, United States of America, now in the military service of the United States Army, currently assigned to _____, by this document do make and appoint _____, SSN _____, whose present address is _____, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

This Power of Attorney shall continue to be effective should I become disabled, incompetent or incapacitated prior to the below-stated expiration date.

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after _____, 19__.

(Add appropriate notarial clause.)

Special Power of Attorney With POW/MIA Extension Clause

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned _____, SSN _____, a legal resident of the State of _____, United States of America, now in the military service of the United States Army, currently assigned to _____, by this document do make and appoint _____, SSN _____, whose present address is _____, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after _____, 19__.

Notwithstanding my inclusion of a specific expiration date herein, if on the above specified expiration date, or if at any time immediately preceding that specified expiration date, I should be, or have been, carried in a military status of "missing," "missing in action" or "prisoner of war," then this Power of Attorney shall automatically continue to remain valid and in full effect until _____ days after I have returned to the United States military control following termination of such status UNLESS OTHERWISE REVOKED OR TERMINATED BY ME.

(Add appropriate notarial clause.)

Special Power of Attorney With
"Durable" and POW/MIA Extension Clauses

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the undersigned _____, SSN _____, legal resident of the State of _____, United States of America, now in the military service of the United States Army, currently assigned to _____, by this document do make and appoint _____, SSN _____, whose present address is _____, as my true and lawful attorney to do and execute (or to act with persons jointly interested with myself therein in the doing or execution of) any or all of the following acts or things:

(specific clause)

I HEREBY GIVE AND GRANT TO my said attorney full power and authority to perform every act and thing whatsoever that is necessary or appropriate to accomplish the purposes for which this Power of Attorney is granted, as fully and effectually as I could do if I were present; and I hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of this document.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

This Power of Attorney shall continue to be effective should I become disabled, incompetent or incapacitated prior to the below-stated expiration date.

UNLESS SOONER REVOKED OR TERMINATED BY ME, this Power of Attorney shall become NULL and VOID from and after _____, 19__.

Notwithstanding my inclusion of a specific expiration date herein, if on the above specified expiration date, or if at any time immediately preceding that specified expiration date, I should be, or have been, carried in a military status of "missing," "missing in action" or "prisoner of war," then this Power of Attorney shall automatically continue to remain valid and in full effect until _____ days after I have returned to the United States military control following termination of such status UNLESS OTHERWISE REVOKED OR TERMINATED BY ME.

(Add appropriate notarial clause.)

Special Powers of Attorney for Deployment

Instructions for Execution

1. The special power of attorney for deployment is designed to be used by the service member only under deployment conditions. This power of attorney may be kept in the service member's SRP packet and will be put into use only when an actual deployment occurs. This power of attorney is not a general power of attorney. If the service member desires a power of attorney of any sort, for any reason, (s)he should visit the legal assistance office during normal duty hours.

The special power of attorney for deployment can give the designated attorney (agent or person acting for the service member) various limited powers, including the power:

- a. To operate, register, and insure vehicles.
- b. To cash government checks issued to the service member.
- c. To take possession of and to ship the service member's personal property and household goods.
- d. To exercise temporary guardianship over children.
- e. To authorize medical care for dependent children.
- f. To obtain identification cards for the spouse and dependent children.
- g. To arrange for the travel of the spouse and dependent children.
- h. To sign for, accept, and clear government quarters.

2. If you **DO NOT** desire to give your agent one or more of these powers, you should line through that specific power and place your initials next to the beginning and ending of the line at the time you sign the power of attorney.

3. **DO NOT SIGN THIS POWER OF ATTORNEY UNLESS YOU ARE ACTUALLY BEING DEPLOYED.**

THIS DOCUMENT IS INTENDED FOR USE IN CONJUNCTION WITH AN ACTUAL DEPLOYMENT OF FORCES AND NOT FOR USE DURING TRAINING EXERCISES.

4. **DO NOT SIGN THIS DOCUMENT UNTIL YOU ARE ACTUALLY IN THE PRESENCE OF A PERSON DESIGNATED TO ACT AS A NOTARY PUBLIC.**

To have this document properly notarized, you must present your Armed Forces Identification Card to the notary and actually sign the document in his or her presence. Only a commissioned member of the Judge Advocate General's Corps or a commissioned officer who has been designated as an Adjutant or an Assistant Adjutant may act as a notary public. After you sign the power of attorney, the notary will sign the document, and place his or her seal, if any, on the document.

5. A person acting in a notarial capacity should not place his or her rank on the document, but will place the notarial authority (adjutant, assistant adjutant, or judge advocate) in the space provided.

Special Power of Attorney for Deployment - Fort Lewis Model

GRANTOR'S NAME

GRADE

SSN.

RESIDING AT

NAMES AND AGES OF CHILDREN

KNOW ALL PERSONS BY THESE PRESENTS, that I, _____ (Name of Grantor) _____ do make, constitute, and appoint _____ (Name of Grantee) _____ my true and lawful attorney-in-fact to:

(1) use, operate, insure, license, and register with any state or government agency any and all vehicles of which I am presently the registered or legal owner;

(2) receive, endorse, cash, or deposit checks payable to the undersigned drawn on the Treasurer or other fiscal officer or depository of the United States, or of any sovereign state, authority, or instrumentality thereof;

(3) take possession and order the removal and shipment of any of my personal property wheresoever located;

(4) have custody, care and control over my child(ren), and to authorize and order all necessary items or services for my child(ren)'s welfare and benefit, to include, but not limited to, medical, dental, and surgical care, schooling, clothing, housing, food, and other necessities of life and to otherwise act as temporary guardian;

(5) obtain medical care and treatment at any hospital for my child(ren), and to execute any consent and release of waiver of liability required by the hospital authorities incident to medical care and treatment for my child(ren);

(6) perform any and all acts and to sign, execute, and endorse any instrument necessary for the issuance or reissuance of Dependent Identification cards for any of my legal dependents as defined by Army Regulation;

(7) perform any and all acts and sign, execute, and endorse any instrument necessary to arrange for travel, at government expense or otherwise, for my legal dependents as defined under Army Regulation;

(8) prepare, execute, and file income and other tax returns as may be required;

(9) sign for quarters, arrange for final inspection, clear quarters, and accept responsibility for the property therein; and

(10) sign in my name, place, and stead any document whatsoever necessary under the law to accomplish the above listed powers and to make, sign, endorse, act, receive, or accept any

instrument of any kind or nature as may be necessary or proper to accomplish any of the above said powers.

This power of attorney shall not be affected by disability of the principal.

And I hereby declare that if I shall be reported or listed as "missing in action" as that phrase is used in military parlance, such designation shall not bar my attorney from fully and completely exercising and continuing to exercise any and all powers granted, and that such report of "missing in action" neither shall constitute or be interpreted as constituting notice of my death nor shall operate to revoke this instrument.

And I hereby declare that unless sooner terminated by me, all powers granted herein to my attorney shall terminate on the _____ day of _____, nineteen hundred and _____.

(Add appropriate notarial clause.)

ACKNOWLEDGED
WITH THE UNITED STATES ARMED FORCES
AT _____
STATE OF _____

I, the undersigned officer, adjutant, assistant adjutant, or judge advocate, do hereby certify that on the aforementioned date personally appeared the aforementioned active duty service member, to me known to be the person who is described in and who executed the foregoing instrument, and having first made known to him/her the contents thereof, he/she personally acknowledged to me that he/she signed the same as his/her free and voluntary act for the uses and purposes therein set forth. And I do further certify that I am, at the date of certification, a commissioned officer, adjutant, assistant adjutant, or judge advocate of the branch of service and organization stated below on active duty with the United States Armed Forces, and that by statute no seal or stamp is required on this document.

Signature of Certifying Official

Printed Name and Notarial Title
of Certifying Official

With the Power of a
Notary Public under
the Law of the United
States (Art. 136, UCMJ;
10 U.S.C. § 936 and 1044).
NO SEAL OR STAMP IS
NECESSARY.

Branch of Service and
Organization

Special Power of Attorney for Deployment - Fort Stewart Model

PRIVACY ACT STATEMENT (5 USC 552a)

AUTHORITY: Title 10 USC, Section 3012.

PRINCIPAL PURPOSE: To assist the attorney with the preparation of legal documents for client.

ROUTINE USE(S): To provide basic information necessary in preparation of such documents. When completed, one copy of the document will be given to client and the original will be placed in client's Personnel Readiness Folder.

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION: Voluntary. Failure to disclose the requested information will result in the attorney not being able to prepare the document for the individual.

KNOW ALL PERSONS BY THESE PRESENTS: that I, _____, have made, constituted, and appointed, and by these presents do make, constitute, and appoint _____, whose present address is _____ my true and lawful attorney to act as follows, **GIVING AND GRANTING** unto my said attorney full power to:

_____ 1. Exercise all rights and powers incident and pertaining to ownership of my motor vehicle, including the power of sale, possession, operation, and registration of the following motor vehicle:

(YEAR)	(MAKE)	(IDENTIFICATION NUMBER)

_____ 2. Authorize and request, in my behalf and name the shipment and storage of household goods, personal baggage, automobile, and any and all of my other personal property.

_____ 3. Authorize any and all medical, dental, and hospital care and treatment, either preventive or corrective, including major surgery, deemed necessary by a duly licensed physician or dentist for the health and well-being of my child(ren):

NAME	AGE	RELATIONSHIP
_____	_____	_____
_____	_____	_____
_____	_____	_____

- _____ 4. Pick up government treasury checks from the unit first sergeant, mail clerk, commander, or anyone designated by the commander to release said checks. Also, the above attorney-in-fact can cash said checks or deposit said checks in my account.
- _____ 5. Effect the assignment or termination of U.S. Government quarters and to procure or return any and all U.S. Government property used in or for such quarters, and to execute all necessary documents, instruments, and papers therewith.

I DECLARE THAT THIS POWER OF ATTORNEY SHALL BECOME VALID AND EFFECTIVE ONLY AT AND FROM THE DATE THAT A COMMISSIONED OFFICER IN THE UNITED STATES ARMED FORCES AT _____ ATTESTS, BY HIS OR HER NOTARIZED SIGNATURE IN THE DEPLOYMENT CLAUSE BELOW, THAT I HAVE DEPLOYED FROM

_____ IN THE ARMED SERVICE OF THE UNITED STATES. I ALSO DECLARE THAT SUCH NOTARIZED SIGNATURE OF AN OFFICER SERVING AT _____ SHALL ITSELF ALONE BE SUFFICIENT TO MAKE THIS POWER FULLY VALID AND EFFECTIVE. I HEREBY REQUEST AND AUTHORIZE THAT AS SOON AS POSSIBLE AFTER MY DEPLOYMENT THE SAID DEPLOYMENT CLAUSE BE COMPLETED AND SIGNED BY A COMMISSIONED OFFICER SERVING AT _____ AND THEN NOTARIZED.

FURTHER, I do authorize my aforesaid Attorney-in-Fact to sign for me all forms, papers, affidavits, statements of ownership, certificates, and receipts necessary to carry out the aforesaid authorizations and to perform any and all necessary acts in the execution of the aforesaid authorizations with the same validity as I could effect if personally present. Any act or thing lawfully done hereunder in my said attorney shall be binding on myself and my heirs, legal and personal representatives, and assigns.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "Attorney-in-Fact."

I FURTHER DECLARE that this power shall remain in effect even though I am reported or listed, officially or otherwise, as "missing," "missing-in-action," or "prisoner-of-war," it being my intention that the designation of such status shall not bar my said attorney from fully and completely exercising and continuing to exercise any and all powers and rights herein granted until this Special Power of Attorney is revoked by my death or as otherwise provided herein.

Notwithstanding my insertion of specific expiration date herein, if on the below specified expiration date, or if at any time within thirty (30) days immediately preceding that specified expirations date, I should be, or have been, carried in a military status of "missing," "missing-in-action," or "prisoner-of-war," then this Power of Attorney shall automatically continue to remain valid and in full effect until sixty (60) days after I have returned to United States military control following termination of such "missing," "missing-in-action," or "prisoner-of-war" status.

FURTHER, UNLESS SOONER REVOKED OR TERMINATED by me, this Power of Attorney shall become NULL and VOID from and after _____, nineteen hundred _____.

(Add appropriate notarial clause.)

DEPLOYMENT CLAUSE

STATE OF _____)
COUNTY OF _____)

I, _____
(NAME) (RANK) & (ARMED FORCE)

being duly sworn, do hereby certify that I am a commissioned officer in the Armed Forces of the United States, that I am presently serving at _____, and that the aforementioned _____, the grantor of the Power of Attorney, is a member of the United States Armed Forces and has deployed from _____ in the Armed Service of the United States.

(Signature of Certifying Officer)

(Duty Position of Certifying Officer)

(Add appropriate notarial clause.)

Sample Clauses for Special Powers of Attorney

The following sample clauses are merely examples. The practitioner should take care to tailor these special power of attorney clauses to meet the specific needs of individual clients.

Banking Transactions

Many banks require that any authorizations given to third parties be made on special forms that are provided by the banks themselves. Clients should always check first with their bank to find out if the bank requires the use of a special form to transact the desired business. Also note special rules regarding treasury checks, savings bonds, and tax refund checks, below.

Depositing Funds in a Bank Account

To deposit in my name and for my account with any bank, banker, or trust company or other banking institution, all monies which may come in the hands of my said attorney as such attorney and all bills of exchange, drafts, checks, promissory notes and other securities, including but not limited to, such instruments as issued by or drawn by the Treasurer or other fiscal officer or depository of the United States, for money payable or belonging to me and for that purpose to sign my name in the manner provided herein, and indorse the same for deposit or collection.

Withdrawing Funds from a Bank Account

For me and in my name to draw (a check) (checks) against my account numbered _____, in the _____ Bank, in _____ (city, _____ state), (in the amount of _____ dollars) (up to _____ dollars), (for the purpose of: _____).

Depositing and Withdrawing Funds From a Bank Account

For me and in my name to deposit in my (checking) (savings) account numbered _____, in the _____ Bank in _____ (city, state) (all funds including, but not limited to checks drawn on the Treasurer of the United States) (my monthly pay check issued by _____ employer) (other) which shall come to (him)(her) for such purpose, and to sign my name and to endorse (all) (those specific) checks, drafts, or other securities for money payable to me, for the purpose of deposit only in the above-described account (and from time to time withdraw monies deposited in the said account, with the following limits: _____)

Endorsing Negotiable Instruments

To endorse and negotiate for any and all purposes all promissory notes, bills of exchange, checks, drafts or other negotiable or nonnegotiable paper payable to me or to my order including but not limited to checks drawn on the Treasurer of the United States; to endorse for transfer all certificates of stock, bond, or other securities; to endorse and cash United States savings bonds and notes.

Endorsing Paychecks

To receive, sign for, endorse, and cash my monthly paycheck (drawn on the Treasurer of the United States) for the month(s) of _____ (month(s)), 19____.

Special Rules for Treasury Checks

Any check drawn on the Treasurer of the United States may be negotiated under a specific power of attorney executed after the issuance of the check and describing it in full (31 C.F.R. § 240.15(a) (1991)). Checks issued for the redemption of currencies or for principal or interest on U.S. securities, tax refunds, or payments for goods and services may be negotiated under a general or special power of attorney in favor of an individual, financial organization, or other entity (31 C.F.R. §§ 240.14(a), (b) and (c) (1991)). This includes military pay checks. Other Treasury checks, such as recurring V.A. benefits checks, may be negotiated under a special power of attorney which names a financial institution as attorney-in-fact and recites that it is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person (31 C.F.R. § 240.15 3(c) (1991)).

Special Rules for IRS Refund Checks

The IRS requires that the power to receive refund checks be specifically granted to the agent. 26 C.F.R. § 601.504 (1992). Department of the Treasury, IRS Form 2848 may be used for this purpose. The principal may grant the agent authority to receive refund checks without using Form 2848, but the power of attorney must reflect the information that would be provided by using Form 2848.

Note that 26 U.S.C. § 6695(f) (West Supp. 1992) provides that any income tax preparer who endorses or otherwise negotiates a check payable to a taxpayer shall pay a penalty of \$500.

The U.S. Treasury standard forms can authorize an agent to endorse and collect checks drawn on the Treasurer of the United States. These forms may be used where appropriate, but are not

required. These forms may be ordered in bulk from your servicing publications center.

Special Rules for Redemption of United States Savings Bonds and Notes

A request for payment of a United States savings bond or note may be signed by an attorney-in-fact who is authorized to sell or redeem the principal's Treasury securities. 31 C.F.R. §§ 315.40(d) and 353.40(d) (1991). However, only Federal Reserve Banks or Branches, not local commercial banks, have authority to redeem bonds or notes if the presenter is acting under a power of attorney. 31 C.F.R. § 321.9 (1991). If the agent is acting on behalf of an incompetent or physically disabled principal, the power of attorney must provide that the principal's subsequent incapacity will not affect the authority granted. 31 C.F.R. §§ 315.65 and 353.65 (1991).

Worksheet for Power of Attorney for
Child Custody & Care

1A. Personal Identification

Name _____

SSN ____-____-____

Address _____
(Street)

City/State/Zip

(____) _____

Telephone No.

**1B. Person you wish to give
Power of Attorney to**

Name _____

SSN ____-____-____

Address _____
(Street)

City/State/Zip

(____) _____

Telephone No.

2. Marital Status: Single Separated Divorced Married
(Please circle)

3. If separated or divorced, please bring certified copy of final decree.

Children you wish to be covered by emergency power of attorney for Child Custody

	Name	DOB	SSN
1-	_____	_____	_____
2-	_____	_____	_____
3-	_____	_____	_____
4-	_____	_____	_____
5-	_____	_____	_____

4. Please indicate if each child is yours by birth or adoption.

5. If child(ren) are in joint custody, please describe the arrangement and/or any child custody/support court ordered modifications.

6. Are you responsible for any other minor or adult as a guardian or conservator?

Name	DOB	SSN
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

7. Do you wish to nominate the agent to continue if you cannot or do not act after statutory periods?

____ Yes ____ No

8. Do you wish the standard prohibitions against giving your agent the power to consent to marry or adopt?

____ Yes ____ No

9. Do you wish to give your agent the power to consent to an abortion for your minor child?

____ Yes ____ No

10. What financial payments or arrangements have you made to ensure the agent has sufficient funds to care for the child?

Explain. _____

11. Has the agent agreed to act under the power of attorney without pay for him/herself?

____ Yes ____ No

DURABLE POWER OF ATTORNEY FOR CHILD CUSTODY AND CARE UPON MOBILIZATION

GENERAL FORM

Agreement made this [DAY-MADE] day of [MONTH-MADE], [YEAR MADE], between [PARENT1], [PARENT2], of [ADDRESS], [CITY], [STATE], [ZIP CODE] herein referred to as parents, and [CUSTODIAN/AGENT] of [ADDRESS], [CITY], [ZIP CODE] herein referred to as custodian. INSERT STATE CLAUSE HERE.

RECITALS

1. Parent(s) are the father and/or mother and sole legal custody of the following children:

	Children	DOB	SSN
1-	_____	_____	_____
2-	_____	_____	_____
3-	_____	_____	_____
4-	_____	_____	_____
5-	_____	_____	_____

2. Custodian/agent desires to care for the child(ren) for the parent(s) upon mobilization of the parent(s) unit of the _____ Army National Guard.
3. The parent wishes to form a durable power of attorney between the parent as principal and the agent/custodian. The parent wishes to appoint the agent immediately but limit his power to act upon either of the following contingencies:
- a. When the custodian/agent is provided with a copy of the principal's mobilization orders.
 - b. When the custodian/agent is provided with a signed statement by the principal certifying he has been called to active duty.

4. The minor child shall become a member of the family of the custodian/agent upon the date of the contingencies outlined in 3A and 3B above, wherein the child shall be properly educated, cared for according to the laws of the State of _____.
5. The parents also delegate all of their powers regarding care, custody, and or property to the minor child, including consent for emergency medical treatment excepting their power to consent to marriage or adoption of the minor child(ren).
6. That pursuant to this durable power of attorney the custodian/agent agrees to serve without compensation to themselves.
7. That pursuant to this durable power of attorney I hereby give the power to the custodian/agent to endorse any check, money order, draft or similar article and to deposit the proceeds into my checking account at [NAME OF BANK], [ADDRESS], [CITY], [STATE], [ZIP CODE]. These monies would be to benefit the child(ren) and not inure to the benefit of the custodian/agent.
8. This durable power of attorney is to be effective in all other jurisdictions in all 50 states, the District of Columbia, U.S. Commonwealth and Territories and may be given the most liberal interpretation available for purposes of granting my agent the fullest amount of discretion in making medical decisions on my children's behalf. I also intend the laws of the State of _____ to apply to interpret the validity of this instrument.
 - a. I do ___ I do not ___ consent to give my agent/custodian the right to consent to my minor daughter to have an abortion.
9. That I as principal hold any third party harmless for any action taken at the request of the agent.
10. That the custodian/agent acting under this durable power of attorney shall not be held liable for an act upon the ground that the principal was not alive if the act was performed in good faith and without actual knowledge of the death of the principal. The fact that any principal has been reported as "missing" or "missing-in-action" or other similar status shall not in itself be considered as indicating the death of the principal. [See State Statute if applicable, e.g., WY, IA.]
11. Consent of minor if over 14 years of age

Signature of Minor

Typed Name of Minor

IN WITNESS WHEREOF, the parties to this agreement have hereunto signed.

SEPARATE WITNESSES TO AGREEMENT

GENERAL FORM

STATE OF _____)
COUNTY OF _____) ss

The foregoing instrument was acknowledged before me in person on the [DAY MADE] day of [MONTH MADE], [YEAR MADE], by [PARENT1], [PARENT2], and [CUSTODIAN/AGENT] each stating it to be their voluntary act and deed.

Notary Public

Seal

For States of:

SELF CERTIFICATION OF MOBILIZATION

I _____ of the _____
Name (Print) SSN

National Guard Reserves have been called to active duty pursuant to a general mobilization/individual mobilization order. I hereby order that my Durable "Springing" Power of Attorney for Child Care and Custody go into effect.

Signature

Date

Credit Transactions

Borrowing Funds From a Financial Institution

To contract for a loan (not to exceed _____ dollars) from a bona fide financial institution in my name and on my behalf under such terms as my said attorney shall see fit and to execute in my name applications or other documents which may be required by law or regulation to effect such loan; to receive, endorse and collect checks payable to me pursuant to this loan.

Borrowing Funds From Army Emergency Relief

To contract loans and to borrow any sums of money or to apply for grants from Army Emergency Relief in my name and upon such terms as my said attorney shall see fit and to execute in the name of the undersigned a DD Form 139 and such other indemnities, applications or other documents which may be required by law or regulation to effectuate such loan or grant; to receive, endorse, and collect checks payable to the order of the undersigned obtained pursuant to such loans or grants.

Obtaining a Credit Card

To contract for a line of credit or open charge account from a bank, financial institution, credit company, or department store in my name and on my behalf under such terms as my said attorney shall see fit and to execute in my name applications or other documents which may be required by law or regulation to obtain such credit status; to receive credit cards and hold them or forward them to me on my behalf.

Real Estate Transactions/Management

It is particularly important for the attorney to be familiar with state law peculiarities in the drafting of powers of attorney pertaining to real estate transactions. Some states require that such authorizations be recorded with local governmental authorities before the agent's transactions are valid. In certain localities, if the parties are purchasing real estate jointly and one will be absent at closing, a power of attorney may be required authorizing the party who will be present to close on behalf of the absent party. In a volatile real estate market, where interest rates are subject to sudden increases, this can be especially important. In addition, practices and preferences as to effective language vary among the states.

Buying Real Property

To buy and accept by deed of general warranty, with the customary covenants, that house and parcel of land being in _____ (county)(state) _____, more particularly described as (full address and/or legal description), to make payment of the purchase money in the amount of \$_____ for the premises in any manner in which my said attorney in fact shall deem wise; and to sign, seal, execute and accept any and all deeds, contracts, or other documents necessary to carry out the foregoing.

(or)

To make, indorse, accept, receive, sign, seal, execute, acknowledge, and deliver any documents, instruments or paper necessary or convenient to purchase in my name and for my use the below-described real property in the city of _____, county of _____, state of _____, and to enter into (a contract) (a mortgage) for such price, at such rate of interest and upon such terms as to him (her) shall seem best (but not to exceed _____) (within these limits: _____) (further, to record this Power of Attorney in the _____ office of the _____ county, state of _____ prior to engaging in any of the above-authorized transactions.)

(or)

For me and in my name to purchase real property, including a house and lot in _____ (place, address) _____ and for that purpose to borrow the necessary money to effect said purchase through a type of loan _____ giving said property as security for the loan; also, to sign, seal and deliver as collateral thereto, a mortgage or deed of trust upon said real estate, with the usual power of sale, and interest and insurance, and other usual or customary provisions and covenants, and further to execute and deliver any application forms or other documents necessary to obtain a (type of loan) _____ for the purpose of purchasing such property.

Selling Real Property

To bargain, seal, set over, assign and convey, using the standard of a reasonable seller under no compulsion to sell and engaging in an arms length bargaining transaction, unto any person of his/her choice, all my right, title and interest in any or all of that house and tract or parcel of land located in _____ (county)(state) _____, more particularly described as _____ (full address and or legal description) _____, and to convey by (deed of general warranty with the customary covenants) (other); to receive payment of the purchase money on my behalf for the premises in any manner in which my said attorney in fact shall deem wise (to transmit said monies to me at _____), and to sign, seal, execute and deliver any and all deeds, contracts, or other documents necessary to carry out the foregoing.

Renting/Leasing a Dwelling

To do and perform any and all acts necessary or appropriate to rent or lease and to maintain as rental property the dwelling I own at _____ (full address) _____ to persons to be determined by my said attorney for a sum in the amount (previously agreed upon by myself and my attorney) (of \$ _____ per month) until the _____ (date) _____, and to enforce any and all lawful rights and claims I may have against any former, present, or future tenant or lessee thereof. Further, that my said agent is required and empowered to enter into a lease on my behalf for said premises, subject to such terms and conditions as I may hereinafter describe.

Obtaining Civilian Living Quarters

For me and in my name to rent, lease, receive, accept or otherwise acquire in my place and for my account property suitable for living quarters located in _____ place _____ for a fixed period of time upon such terms, considerations, and conditions as my said attorney shall think proper. Said attorney is empowered to take possession of and to enter into such property; also, to guard, defend, possess and otherwise secure all property, be it personal or mixed, contained in or attached to said premises. (To deposit in my name any amount of funds or property not to exceed _____ amount _____ to effectuate a security deposit for said premises.) In the event of damage to said property, intentionally or otherwise, to initiate, maintain, compromise or otherwise dispose of any legal or equitable suit or claim against the other party causing the damage for the loss, and to receive payment in reimbursement for said loss.

Managing Real Property

To take, hold, possess, lease, let, or otherwise manage my below-described real property; to charge adequate fees and/or rent (to cover mortgage payments); to deposit all income and proceeds in the account number _____ of _____ Bank in _____ (city, state) _____, and to draw from such account \$ _____ each and every month, on or before the _____ day of the month in order to make the mortgage payment to _____ at _____ (bank/mortgage company) _____ in _____ (city, state) _____; to draw from such account any monies necessary to maintain insurance, make minor repairs and conduct general maintenance on said property (and to make improvements thereon to increase the value of the property); to draw from such account any monies necessary to pay all taxes and assessments on said property as they come due; to eject or remove tenants or other persons from and recover possession of such property by all lawful means.

Shipment of Goods Pursuant to Orders

Weapons can be shipped only in accordance with federal firearms restrictions and customs limits; other items may similarly be subject to such legal limitations that powers of attorney may be precluded. The

attorney should make sure that a client who wants to ship restricted items understands the legal difficulties and legal prohibitions on such shipments by power of attorney.

Shipping Household Goods

To take possession and order the removal and shipment of my household goods, personal baggage, or other personal property and to cause such property to be removed from its present location at _____ and to cause it to be shipped on Government orders (to such place or places as my attorney in his/her discretion may deem appropriate) (to such military quarters as are designated and assigned to me by the Housing Office at _____) (to the following residential address: _____, (city, state)) or to any warehouse, depot, dock, or other place of storage or safekeeping, governmental or private directed by orders of appropriate U.S. Army transportation officials, and to execute and deliver all necessary forms, papers, certificates and receipts to carry out the foregoing.

Shipping Hold Baggage

To take possession, and to order the removal and shipment of any of my property from _____ to _____, or any warehouse, depot, dock, or other place of storage or safekeeping, governmental or private, directed by orders or otherwise orally or in writing by appropriate U.S. Army transportation officials, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate, or other instrument necessary or convenient for such purpose.

Removing, Shipping, and Receiving an Automobile

While the client may desire that the agent register and license his car in a particular state, the state of desired registration may be unwilling to do so under power of attorney. This matter should be resolved before the client attempts to rely upon this power of attorney.

To take possession of my _____ (type car) _____, identification number _____, for the purpose of its removal and shipment from _____ (dealer/place of storage) _____, and to transport and deliver said automobile to the proper military terminal for government shipment to _____, and to execute any release, voucher, receipt or any other instrument necessary or convenient for such purpose (further to execute and deliver to the proper persons and authority in the state of _____, any and all documents, instruments and papers necessary to effect proper registration, insurance and license, in my name, of said car).

To take possession of my _____ (type car) _____, identification number _____ following its delivery after shipment and delivery to any port, warehouse, depot, dock, or other place of storage or safekeeping, governmental or private; to execute and deliver

any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such purpose (further to execute and deliver to the proper persons and authority in the state of _____, any and all documents, instruments and papers necessary to effect proper registration, insurance and license, in my name, of said car) (and to transport said automobile to me at _____(city, town)_____.)

Purchase, Use, and Sale of Personal Property

While these powers of attorney forms may seem to be the most simple to utilize and execute, there are matters which should be considered by the client -- with the attorney's assistance -- such as insurance coverage, responsibility for wear and tear, loans to third parties by the agent, and so on. Drafting should be conservative and clearly designed to authorize only that which the client specifically intends.

Using and Maintaining Personal Property

To hold, use, register, license, maintain, service, insure and perform any other function except (sale) (rental, lease or sale) (loaning to uninsured third parties) of my _____(property)_____, serial number _____.

Using, Maintaining, and Selling Personal Property

To hold, use, register, license, insure, maintain, service, and perform any other function necessary including the sale (at not less than \$_____) (at fair market value) (at whatever price my above-appointed attorney considers fair and reasonable) of my _____(property)_____, serial number _____; and to do all acts necessary to transfer legal title to said property upon sale.

Attempting to Sell Personal Property

To bargain and sell my _____(property)_____, serial number _____, for such price and upon such terms as to my above-appointed attorney shall deem satisfactory (within these guidelines: _____), and to execute and deliver any and all documents, instruments and papers necessary to effect the transfer of legal title thereto as required by law, and to collect and give receipt for all monies paid in consideration of such transfer, and to deposit said monies in my account numbered _____ in the _____ Bank in _____(city, state)_____.

Purchasing Furniture or Other Household Items

This authorization may create many difficulties which should be discussed with the client before executing this power of attorney. The

client must be very clear as to what he or she wants purchased: what brand or brands, what price range, and so on. The discretion on the part of the agent should be limited. Furthermore, there should be clear arrangements as to reimbursement of the agent by the principal and delivery of the item. Who will bear the risk of damage? Will the item be insured while it is in the hands of the agent? Also, be mindful that businesses may not honor the power of attorney for financing purposes if the agent is not the principal's spouse.

To act for me and purchase a/an _____, the price of which shall not exceed \$ _____. (To borrow for and finance the purchase of said _____ in the amount of \$ _____ and to pledge the said purchased _____ as security for said loan.)

Registering, Licensing, and Insuring an Automobile

Procedures of the state in question should be checked before the client relies on this clause. The state may have special requirements for an absentee owner to register his or her automobile and the power of attorney may not be effective.

To execute and deliver to the proper persons and authority in the state of _____ all documents, instruments, and papers necessary to effect proper registration, insurance, and license, in my name of my _____ (type car) _____, serial number _____.

Purchasing an Automobile

To purchase a _____ (type car) _____ in my name and upon such terms, considerations and conditions as my said attorney shall think proper, within these limitations: _____. Further, to execute and deliver to the proper persons and authority all documents, instruments, and papers necessary to effect proper registration and licensing of the _____ (type car) _____. (To further execute any documents necessary to have any repairs my attorney deems necessary made on said automobile before I am able to take possession of the automobile.) To take possession of, operate, and maintain said automobile and to execute and deliver all necessary forms, papers, statements of ownership, and receipts to carry out the foregoing.

Selling an Automobile

If the sale is to occur overseas, the power of attorney should contain sufficient language to ensure that the principal is authorizing the agent to act only insofar as the agent complies with applicable customs restrictions.

To sell and to execute and deliver to the proper persons all documents, instruments, and papers necessary to effect the sale of my

(type car), serial number , and to effect the transfer of legal title thereto as required by law, and to collect and give receipt for all monies paid in consideration of such sale and transfer (and to deposit such monies in my account numbered in the Bank, (city, state)) (and to hold such monies in my name for safekeeping until delivery of said proceeds is made to me, my agent, or assigns as I may designate); to have the power of control, use and possession of said car that may be incident to the sale, and to do any acts necessary to renew or cancel, in my name, the registration and/or insurance of said car.

Obtaining and Cancelling Insurance

To effect insurance on (item), with (the name (any) insurance company licensed and authorized to do business in any state in which the property may be located, on such terms as my attorney shall deem proper; to sign any application for such insurance, any representation of the condition and value of said property, articles of agreement, promissory or premium note, and all other papers that may be necessary to effect such insurance; and also to cancel and surrender any policy that he may obtain, and on such cancelling or the expiration thereof to receive any dividends, with return premium, or deposit that may be due, and on such receipt to give full discharge therefor.

Signing for and Clearing Military Quarters

These forms utilize general language which should be altered to make the responsibilities more specific.

Signing for Quarters

To accept military quarters assigned to me at (address - if available - and post) and to sign for and take possession of such quarters in my name; and to sign for and take possession of any and all furniture, appliances, and equipment that may be authorized for use in or with such quarters as I may be assigned; and to execute all necessary documents, instruments or papers and perform all acts necessary to carry out the foregoing.

Clearing Quarters

To effect the termination of U.S. government quarters at (address, post); and to procure or return any and all U.S. government property used in or for such quarters, and (to execute all necessary documents, instruments, and papers pertinent to the above-stated transaction) (to sign any and all documents and do all acts necessary and proper for me to be cleared by Family Housing Section of said quarters).

Making Claims Against the Government

31 U.S.C. § 3727 (1982) prohibits assignment of a claim against the government. Therefore, when drafting a power of attorney authorizing a third party to make a claim on behalf of a service member, be sure to include language specifying that the principal is the one who will be ultimately receiving any monies paid by the government. It will therefore be clear that the third party is an agent and not an assignee. Be careful to include sufficient powers to do all the things that may be incidental to filing the claim. Examples which will work for some situations follow.

Making Claim Where Agent Did Not Receive Shipment of Goods on Behalf of Principal

To make, process, and perform all acts necessary to make a claim against the United States government for my below-identified household goods which were lost/damaged/ destroyed/stolen as a result of _____. Further to have possession of said items for the purposes of permitting claims inspections and obtaining required bids or assessments; and to turn over such items and sign such releases as are necessary to effectively process the claim; to receive on my behalf all monies paid pursuant to this claim and to (deposit same in my account numbered _____ in the _____ Bank of _____ (city, state) _____) (forward same to me at this address: _____). (List items.)

Making Claim Where Agent Will Receive Principal's Shipment of Goods

To receive, inspect, take exception to, and sign for my household goods shipped from _____ to _____, and to make, process and perform all acts necessary for the filing of any claims on my behalf against the U.S. Government on account of loss or damage to any or all of the goods; to have possession of said items for the purposes of permitting claims inspections and obtaining required bids or assessments; and to turn over such items and to sign such releases as are necessary to effectively process the claim; to receive on my behalf all monies paid by the U.S. Government as a result of the processing of the claim, and to (deposit same in my account numbered _____ in the _____ Bank in _____ (city, state) _____) (forward same to me at the following address: _____).

Making Claim for Loss, Destruction, or Theft of Personal Property

To execute vouchers in my behalf for any and all allowances, compensation, and reimbursements properly payable to me by the

Government of the United States or any department or agency thereof for the loss, destruction or theft of _____ (fully describe the article) _____ and to receive on my behalf all monies paid by the U.S. Government as a result of processing this claim and to deposit same in my account numbered _____ in the _____ Bank in _____ (city/state) _____ (forward same to me at the following address: _____).

Child Care, Evacuation of Dependents, and Related Matters

The most common requests by clients in this area will be for documents that give baby-sitters and child care facilities authority to consent to emergency medical treatment for the child. While the special power of attorney form (with an appropriate parental consent clause) can be used, that form is certainly not necessary to accomplish the intended purpose and may be somewhat confusing. A simple form with straightforward language is preferable for most temporary child care arrangements; however, if a semi-permanent or permanent arrangement is envisioned -- such as the service member leaving the child with a grandparent or friend while he or she performs extended military service elsewhere, then a more formal document with more extensive terms is recommended to assist the guardian in doing such things as enrolling the child in school where the authority of the agent to enroll children in school is desired, the specific policy of the particular school district must be examined. Some will accept a power of attorney; others require a court order. Examples below include simple authorization forms as well as clauses that can be inserted into special power of attorney forms. Where "guardianship"-type child care arrangements are to be made, the attorney should be prepared to alert the parent-client to other legal considerations and obligations, such as the need for the parent to provide continuing support for the child, and to have continuing contact with the child lest, in extended separation circumstances, an action to terminate parental rights is instituted under applicable state law. Of course, more specific language should be used to meet any unique needs of the client.

Powers of attorney prepared to ensure that children are properly cared for should typically begin with the following language:

(We)(I), _____, the parent(s))
(legal (guardian(s)) of the following minor child(ren):
_____, age(s) _____,
(respectively,) do hereby state that it is necessary to leave said
child(ren) in the care of _____ (full name) of _____ (address),
phone number _____, from the _____ day of
_____, 19____, until the _____ day of _____, 19____.
The said _____ shall have (our) (my) full permission and
consent:

GIVING AND GRANTING unto my Guardian and Attorney full power and authority to do and perform every act, deed, matter and thing necessary, desirable or expedient to accomplish the foregoing specified purposes, including the execution of all documents, as fully to all intents and purposes as I might or could do if personally present.

Authorize Agent to Act "In Loco Parentis"

To perform any and all parental acts, as fully to all intents and purposes as I might or could if personally present, to include but not limited to discipline, maintenance, supervision, arbitration of disputes, enrollment in school, sports or other activities, and consent to any and all medical care and treatment necessary and appropriate for the general health and welfare of said child(ren).

Evacuation of Dependents

In the event of official orders or directives for the evacuation of military dependents from (the Republic of Korea) (the Federal Republic of Germany) (other), to perform any acts or functions and execute any documents necessary to accomplish the prompt and safe evacuation of my (children), _____ (names) _____ aged _____ from (the Republic of Korea) (the Federal Republic of Germany) (other) to _____ or to any other place in accordance with directions of proper evacuation authority or otherwise in the best interests of my said children.

Medical and Dental Care for Children

To authorize medical, dental and hospital care and treatment including but not limited to, the administration of examinations, diagnostic tests, and medications (including anesthetics), and the performance of surgery and any and all other medical and dental care or treatment deemed necessary or desirable by a duly licensed physician for the health and well-being of said child(ren), and to execute all such consents, authorizations, forms, releases, and other papers as may be necessary in connection therewith.

Temporary Custody Where the Principal Is Currently the Non-custodial Parent

To act for me and in my name to take temporary custody of the following minor child(ren), _____, in the event the present custodian, _____, is for any reason unable to exercise custody of said child(ren), and to continue such temporary custody until such time as I am physically able to appear and take said child(ren) into my personal custody. (Name of temporary custodian) shall have my full permission and consent to authorize all necessary medical treatment, including surgery or hospitalization for said child(ren) while within the custody and care of _____. Further, _____ is authorized

to take any and all other necessary actions to provide for the safety, education, and welfare of said child(ren), including the taking of all steps necessary for enrollment in a public school and the signing of all documents in connection with the care, maintenance, medical treatment, education, and activities of said child(ren).

Tax Matters

Where a taxpayer wants to authorize an attorney-in-fact to sign an individual or joint return or to represent the taxpayer before any office of the Internal Revenue Service, Form 2848 should be used. Optional power of attorney forms for use in certain other internal revenue matters are also available from the Internal Revenue Service. Local law should be consulted before using special power of attorney forms for local tax matters.

Authorizing Agent to Prepare and File State Income Tax Returns

To prepare, execute, and file the _____ (name state) income tax return(s) or declaration(s) of estimate tax required to be made by me for the taxable year 19__.

Lawsuits And Miscellaneous Claims

Initiating a Lawsuit

To begin, prosecute, and carry to completion all appropriate actions and legal proceedings against _____ (name(s)); and if it shall in the discretion of said attorney seem wise, to compromise, refer to arbitration, or take such other steps as may be necessary to carry out the foregoing.

Settling a Lawsuit - Defendant

To compromise and settle the action brought against me by _____ (name(s)) now pending in the _____ (court) for injuries suffered by the above plaintiff, at or near _____ (place) on or about the _____ (date) day of _____ (month, year), to make payment to said plaintiff, and to obtain from said plaintiff a full and complete receipt, release, discharge, and satisfaction made out to me as the named defendant in the above action.

Settling a Lawsuit - Plaintiff

To compromise and settle my action against _____ (name(s)), now pending in the _____ (court) for injuries received by me at or near _____ (place) on or about the _____ (date) day

of _____ (month, year) _____, to collect and receive or sums of money, and to execute a full and complete receipt, release, discharge, and satisfaction thereof to the named defendant.

Taking Action in the Event of Auto Theft

To institute, maintain, and prosecute any and all actions brought on my behalf against _____ (name(s)) _____ (any negligent persons, businesses, or governmental or private agencies or organizations) arising out of the theft of my _____ (type car) _____ automobile, serial number _____, on _____, 19____, in _____ (city, state) _____.

Making Claims for Auto Damage

For me and in my name to file a claim against _____ with _____ Insurance Company for damage occurring to my _____ (type car) _____ automobile, vehicle identification number _____, on _____, 19____, in _____ (city, state) _____; to have control, use, and possession of said automobile for the purpose of permitting claims inspections and obtaining required bids or assessments; to compromise and settle such claim as my attorney shall in the attorney's sole discretion deem wise; and to receive on my behalf all monies paid by _____ Insurance Company as a result of the claim and to (deposit same in my account numbered _____ in the _____ Bank in _____ (city, state) _____ (forward the same to me at the following address: _____).

Miscellaneous

Collecting Reimbursement

To execute and deliver to the proper persons any and all documents necessary to effect the reimbursement of \$ _____ from _____, to which I am entitled as a result of the following circumstances: _____.

Receiving Mail

Unless otherwise directed, the United States Postal Service may deliver an addressee's mail to his or her employee or competent family member without any action on the part of the addressee. If the addressee wishes to designate another person to receive his or her mail, the United States Postal Service requires that such designation be in writing, although no special form is required. (United States Postal Service, Domestic Mail Manual § 153.211 (1987).) If the addressee wishes to designate a commercial mail receiving agency to received mail,

USPS Form 1583, "Application for Delivery of Mail Through Agent" must be used. Id. § 153.212. The following power of attorney clause may be used when the service member desires to appoint an agent, other than a commercial mail receiving agency, to receive mail from the United States Postal Service and private carriers.

To receive, accept or otherwise acquire in my name, during my absence on (leave) (TDY) (emergency leave), all mail addressed to me and any packages sent by the United States Post Service, private carriers, or delivery services addressed to me.

Access to Safety Deposit Boxes

A bank may have its own forms and expect these to be used exclusively in accomplishing banking transactions. It is best to have the client investigate the bank's policies before the client executes a special power of attorney for access to safety deposit boxes.

To have access for all purposes to described safety deposit box number _____ in the _____ Bank in _____ (city, state) _____, and to have full power to use the same for safekeeping any of my property or papers, and to remove therefrom at any time, or from time to time, all or any part of the contents of any such box or vault.

Signing for a Widow/Widower in Survivor Benefit Matters

To execute any and all documents, forms and/or applications necessary to assist me with all matters pertaining to Social Security, Veteran's Administration, insurance, and employment records of my deceased (husband) (wife), _____ (husband's/wife's name) _____.

Sample Forms for General Powers of Attorney
(include preamble - 10 U.S.C. § 1044b)

General powers of attorney are to be used only in rare and exceptional cases when a special power of attorney or other legal means cannot accomplish the client's desires. Ideally, the attorney should counsel each client who wants such a document so that the client understands fully the breadth of power granted and the risks involved in such a grant. Additionally, the attorney should propose less risky alternatives to the client.

If the general power of attorney is to be used, the attorney should tailor the language to fit the major tasks that the attorney-in-fact will be called upon to perform.

Short Form

KNOW ALL PERSONS BY THESE PRESENTS that I, (full name, grade, and SSN), a legal resident of (city, county, state, zip), United States of America, (now in the military service of the (Army, Air Force, etc.) of the United States and presently residing at (address) (now accompanying my spouse, who is the military service of the (Army, Air Force, etc.) of the United States, and currently stationed at (location)),

DO HEREBY APPOINT AND MAKE (name), SSN (SSN), of (city, state), my lawful attorney to manage and conduct all my affairs and act in all matters concerning my estate in my name and my behalf. All lawful acts and deeds by said attorney in my place and on my behalf are authorized by me. These include, but are not limited to, the following:

1. To execute all documents needed for transportation of dependents and shipment of household goods and other property, as authorized by law and Army regulations.
2. To sign for and clear government or other quarters in the best interests of my dependents and in accordance with law and Army regulations.
3. To demand, act to recover, and receive all sums of money and all other things which are now or will become owing or belonging to me, and to institute accounts on my behalf and to deposit, draw upon or expend such funds of mine as are necessary or appropriate to support my dependents and conduct business on my behalf.
4. To transact all business of mine on my behalf, including the hiring and firing of any agents, counsel, or employees of my business, and including buying and selling personal property, making such investments as my attorney shall deem sound.
5. To take, hold, and possess any real property owned by me; to buy, receive, lease, accept or acquire, or to sell, convey, encumber,

repair, improve or otherwise to enter contracts concerning my real property.

6. To institute and prosecute, or to appear and defend, any claims or litigation involving me or my interests.

7. To handle all matters concerning my life insurance, including the right to change beneficiaries, method of payment of insurance proceeds, to borrow against the policy and so on.

8. To prepare and file all tax returns and governmental applications and requests; to have access to any safe deposit boxes in my name, or to rent such a safety deposit box.

9. To extend and renew all notes and liens as my attorney deems appropriate.

I HEREBY GIVE AND GRANT UNTO MY ATTORNEY FULL POWER AND AUTHORITY TO DO AND PERFORM EACH AND EVERY ACT AND MATTER CONCERNING MY ESTATE, PROPERTY, AND AFFAIRS AS FULLY AND EFFECTUALLY TO ALL INTENTS AND PURPOSES AS I COULD DO LEGALLY IF I WERE PRESENT.

The above described powers are merely examples of the general power herein granted and not in limitation or definition thereof.

I HEREBY RATIFY ALL THAT MY SAID ATTORNEY SHALL LAWFULLY DO OR CAUSE TO BE DONE BY THIS DOCUMENT.

(Optional "durable" power of attorney clause, which is required in some states if the power of attorney is to continue to be effective in the event the principal becomes mentally incompetent: "This Power of Attorney shall continue to be effective should I become disabled, incompetent or incapacitated prior to the below-stated expiration date.")

Further, unless sooner revoked or terminated by me, this Power of Attorney shall become NULL and VOID from and after _____, 19__.

(Optional POW/MIA extension clause: "Notwithstanding my inclusion of a specific expiration date herein, if on the above-specified expiration date, or if at any time immediately preceding that specified expiration date, I should be or have been, carried in a military status of "missing," "missing in action," or "prisoner of war," then this Power of Attorney shall automatically continue to remain valid and in full effect until _____ days after I have returned to the United States military control following termination of such status UNLESS OTHERWISE REVOKED OR TERMINATED BY ME.")

(Add appropriate notarial clause.)

Long Form

KNOW ALL PERSONS BY THESE PRESENTS, that I, (full name, grade, and SSN) _____, a legal resident of _____ (city, county, state, zip) _____, (now in the military service of the (Army, Air Force, etc.) of the United States and presently residing at _____ (now accompanying my spouse, who is in the military service of the (Army, Air Force, etc.) of the United States and currently stationed at _____), desiring to execute a GENERAL POWER OF ATTORNEY have made, constituted and appointed, and by these presents do make, constitute, and appoint _____, whose present address is _____ (city, county, state, zip) _____, my true and lawful attorney,

GIVING AND GRANTING unto my said attorney full power to act as follows:

1. **REAL PROPERTY TRANSACTIONS:** (a) to buy, contract to buy, receive, lease or rent for any term, accept, or otherwise acquire real estate or any options thereon or interests therein, including any and all rights for the development of oil, gas or other mineral deposits, wherever situated, on such terms, conditions and considerations as my attorney-in-fact shall deem proper, in my name, or jointly in my name and that of any other party or parties including my attorney-in-fact;

(b) to sell, contract to sell, mortgage, encumber, exchange, lease or rent for any term, grant options to purchase or otherwise dispose of any or all real estate in which I now have or may hereafter acquire any right, title or interest, including any and all right for the development of oil, gas or other mineral deposits, whether such real estate be homestead or non-homestead, or whether such real estate be owned as community property, in joint tenancy, tenancy by the entireties, tenancy in common or in any other manner or capacity, and in my name, or jointly with any other party or parties, including my attorney-in-fact, on such terms, conditions and considerations as my attorney-in-fact shall deem proper to sign, seal, execute, acknowledge and deliver any and all instruments in writing of any kind and nature, as may be necessary or convenient, containing such terms my said attorney-in-fact shall deem advisable, and further to waive, relinquish and convey any homestead estates, rights under homestead exemption laws, dower or curtesy estates, and all other rights or interest to which I may at any time be entitled;

(c) to manage, utilize, conserve, demolish, repair, rebuild, alter or improve any real estate or structure thereon, owned or claimed to be owned by me in whole or in part, and to protect the same by action, proceeding or otherwise, including, but not limited to, the recovery of possession thereof and the removal of tenants or other persons, animals or objects therefrom.

2. PERSONAL PROPERTY TRANSACTIONS: (a) to buy, contract to buy, accept, sell, exchange, mortgage, pledge, lease or rent, contract for the repair of, and in any and every manner deal in and with any and all personal property of every kind whatever, tangible or intangible, which I may own or in which I now have or hereafter may acquire, any right, title or interest, on such terms, conditions and considerations as my attorney-in-fact shall deem proper;

(b) to execute and deliver to the proper persons and authority any and all documents, instruments and papers necessary to effect the proper registration and licensing of any automobiles in which I now or may hereafter have an interest;

(c) to enter into contracts for the storage of tangible personal property of every kind;

(d) to take possession and order the removal and shipment of any of my property from or to any station, post, warehouse, depot, dock, or other place of storage, safekeeping, or use, governmental or private, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate, or other instrument necessary or convenient for such purposes.

3. BUSINESS TRANSACTIONS: To demand, sue for, recover, receive, compromise, settle, adjust and pay all accounts, legacies, bequests, interest, dividends, annuities, demands, debts, taxes, and any and all other obligations, which may now or hereafter be due, owing or payable by or to me, and to carry on and transact every kind of business on my behalf, in my name or jointly in my name and that of any other person or persons, including my attorney-in-fact, and including, but not limited to, transactions concerning any and all investments and shares of stock, bonds, securities, certificates of deposit, on such terms, considerations and conditions as my attorney-in-fact may deem proper and to invest and reinvest and exchange investments, and to execute and deliver good and sufficient instruments for the accomplishment thereof, and to act as my attorney or proxy with respect to any stocks, shares, bonds or other investments, rights or interest as I may now or hereafter hold.

4. BANKING TRANSACTIONS: (a) to deposit or withdraw for any purpose, in or from any bank, building and loan association, trust company or other financial institution, including the United States Postal Service, any funds, checks, or other credits which I now or hereafter may have on deposit or be entitled to, and to endorse, cash and receive the proceeds of any and all checks, vouchers, or other orders for money, to open or close accounts, and to receive statements, vouchers, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I may have an interest;

(b) to have access for all purposes to any or all safety deposit boxes or vaults rented in my name or in the names of any other person or

persons and myself, with full power to use same for safekeeping any property or papers and to remove therefrom at any time, or from time to time, all or any part of the contents of any such box or vault;

(c) to borrow money and to execute in my name any instrument evidencing indebtedness incurred on my behalf and to extend and renew the same, as well as any indebtedness heretofore incurred by me, for the payment of which I may in any way be liable.

**** [Note: The Fort Stewart Legal Assistance Office, during Desert Storm, incorporated language into its General POAs as follows:**

"To close accounts and to receive statements, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I have an interest. The power to open new credit and/or banking accounts in my name or to increase and/or exceed credit limits on existing credit accounts is expressly disallowed."]

BORROWING MONEY: "To borrow money in my name, but only from those sources stated hereafter, when deemed necessary to my said attorney upon such terms as to my said attorney appear proper and to execute such instruments as may be required for such purpose. Said power to borrow money shall be limited to Army Emergency Relief (AER) loans and/or similar emergency loans available from the American Red Cross."

FINANCE: "To obtain from any military finance office my Leave and Earnings Statements (LES), or copies thereof, in my behalf and to further transact any business allowable by said finance office in my behalf and to execute such instruments as may be required for such purpose."

5. TAXES: To make, execute and file income and all other tax returns and declarations of estimated tax required to be made by me by any law or regulation of any government or governmental department, board or court, to represent and act for me in any tax matters in dispute or litigation, in any governmental department, board or court, to receive, endorse, and collect checks in settlements of any refund of taxes, to execute consents agreeing to a later determination of taxes than is provided by statutes of limitation, to execute closing agreements relative to tax liabilities, to file claims for abatement, refund, or credit taxes, to make any adjustments or settlements and to sign any and all receipts, waivers, settlements or agreements pertaining to all income or other taxes assessed against me or my property by statute.

6. **GOVERNMENT DOCUMENTS, VOUCHERS AND CHECKS:** (a) to execute, sign and deliver any and all government reports, applications, requests, vouchers and demands in my behalf, including, but not limited to those for any and all allowances and reimbursements properly payable to me by the United States, such as for the transportation of family members or for the shipment of household effects or other property as authorized by law or regulations;

(b) to receive, endorse and collect the proceeds of checks payable to my order drawn on the Treasurer of the United States for whatever account, and to execute in my name and on my behalf, all bonds, indemnities, applications or other documents, which may be required by law or regulations to secure the issuance of substitutes for such checks, and to give full discharge for the same.

7. **INSURANCE TRANSACTIONS:** (a) to pay the premiums on, modify, rescind, release, terminate, or execute any rights, privileges, or options on any contract of life, accident, health, disability, liability, property or other insurance presently owned by me or by any person on my behalf, or hereafter acquired;

(b) to procure new, different, or additional contracts of insurance on my life or with respect to protecting me or my property from ill health, disability, accident, liability, or loss;

(c) to apply for, and receive, any loan on the security of any contract of insurance, to surrender and receive the cash surrender value, to exercise any election or conversion rights, and to demand, receive or obtain any money, dividend or other thing of value to which I am or to which I may become entitled as the proceeds or other return or profit arising out of any contract of insurance or of any one or more of the insurance transactions herein enumerated.

8. **PERSONAL TRANSACTIONS:** (a) to do all acts necessary for maintaining the customary living standard of my dependents including, by way of illustration but not limitation, provision of such living quarters and their maintenance and operation, food, clothing, medical, surgical and dental care, educational facilities, and other incidentals to which my dependents are accustomed;

(b) to continue the discharge of any service or duties assumed by me to my family, relatives or friends, and to continue payments incidental to my membership in, or affiliation with, any church, club, society, or other organization.

9. **REPRESENTATION AND EMPLOYMENT OF ASSISTANCE:** (a) on my behalf and in my name or the name of my attorney, to institute, prosecute, appear in, defend, compromise, arbitrate, settle, or dispose of any legal, equitable or administrative hearings, actions, suits, attachments, claims or other proceedings, to which I am or may become a party or in which I have an interest, and to engage and dismiss counsel in connection therewith, authorizing my attorney in-fact to assert or to

waive any or all rights, privileges and defenses available to me under the Soldiers' and Sailors' Civil Relief Act or other legislation designed for the protection of personnel in the armed forces or their family members;

(b) to hire, engage, employ and appoint agents, employees and counsel upon such terms and conditions and at such compensation as my said attorney-in-fact shall deem proper in the exercise of the powers herein granted; to dismiss and remove at pleasure any such agents, employees and counsel as well as any agents, employees and counsel heretofore or hereafter employed by me or in my behalf.

10. **MISCELLANEOUS:** (a) to sign, seal, acknowledge and deliver any instrument necessary to accomplish any of the powers herein granted;

(b) to modify, reform, renegotiate or rescind any contract or obligation heretofore or hereafter made by me or in my behalf.

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

I further declare that any act or thing lawfully done hereunder by my said attorney shall be binding on myself and my heirs, legal and personal representatives and assigns, whether the same shall have been done either before or after my death, or other revocation of this instrument, unless and until reliable intelligence or notice thereof shall have been received by my said attorney; and whether or not I, the grantor of this instrument, shall have been reported or listed, either officially or otherwise, as "missing in action" as that phrase is used in military parlance, or as "captured," it being my intent that such status designation shall not bar my attorney from fully and completely exercising and continuing to exercise any and all powers and rights herein granted and that such report of "missing in action" or "captured" shall neither constitute nor be interpreted as constituting notice of my death nor operate to revoke this instrument.

FURTHER, unless sooner revoked or terminated by me, this Power of Attorney shall become, NULL, and VOID from and after _____, 19__.

Notwithstanding my insertion of a specific expiration date herein, if on the above specified expiration date I shall be, have been, carried in a military status of "missing", "missing-in-action" or "prisoner-of-war" then this power of attorney shall automatically continue to remain valid and in full effect until sixty (60) days after I have returned to United States military control following termination of such "missing," "missing-in-action" or "prisoner-of-war" status.

(Add appropriate notarial clause.)

Sample Clauses for General Powers of Attorney Effective Only Upon Disability

The practitioner should research the special requirements of the particular jurisdiction to determine whether the following clauses will be effective.

This Power of Attorney shall be effective only upon and not until my disability, as certified by two licensed physicians on the endorsement at the end of this document. Following such certification, this Power of Attorney shall continue in effect until it is certified by two licensed physicians on the endorsement at the end of this document that the disability has abated and I thereafter revoke this Power in writing.

The undersigned, Dr. _____ and Dr. _____, being physicians licensed in the States of _____ and _____, respectively, hereby certify that they have examined the above-named maker of this Power of Attorney and find that the maker is physically and/or mentally disabled in that the maker is incapable of managing personal affairs.

Signature

Signature

Print Name

Print Name

Address

Address

Date

Date

The undersigned, Dr. _____ and Dr. _____, being physicians licensed in the States of _____ and _____, respectively, hereby certify that _____ they have examined the above-named maker of this Power of Attorney and finds that the disability described in the above endorsement has abated and that the maker is capable of managing personal affairs.

Signature

Signature

Print Name

Print Name

Address

Address

Date

Date

On this day personally appeared before me _____, to
me known to be one of the physicians*

* A separate clause should be used for each physician.
described in and who executed the within and foregoing instrument, and
acknowledged that he/she signed the same as a free and voluntary act and
deed, for the uses and purposes therein mentioned.

(Add appropriate notarial clause.)

Sample Forms of Acknowledgment

These formats must be varied, amended, or altered to meet any special requirements of any jurisdiction. Additional guidance and forms are included in the Legal Assistance Notarial Guide.

Acknowledgment by Civilian Notary Public

STATE OF _____

CITY/COUNTY OF _____

I, _____, do hereby certify that I am a duly commissioned, qualified, and authorized notary public in and for the aforesaid _____ (city/county) _____ and State, do hereby certify that on the _____ day of _____, 19____, before me personally within the territorial limits of my warrant of authority appeared _____, who is known by me to be the identical person who is described in, whose name is subscribed to, and who signed the Power of Attorney annexed hereto as Grantor, and having been duly sworn, acknowledged that he/she executed said instrument after the contents thereof had been read and duly explained and that such execution was a free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affix my official seal this _____ day of _____, 19____.

My commission expires _____

(SEAL)

(Notary's Signature)

(Notary's Typed Name and Social Security Number)

Acknowledgment by Qualified Military Personnel

[The provisions of AR 27-55 (also see 10 U.S.C § 1044a and b) should be carefully observed. Additional guidance is provided in the Legal Assistance Notarial Guide].

With the United States Armed Forces

At _____ (location)*

* Insert country, State, and county in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert, "In a foreign country" or "In a possession of the U.S. outside of the continental U.S."

I, _____, the undersigned officer, do hereby certify that on this _____ day of _____, 19____, before me personally appeared _____ (name of person whose signature is being acknowledged), _____ (SSN) _____, whose home address is _____ and who is known to me to be _____ (status**

** "A U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Forces member," or "a person serving with the U.S. Armed Forces," or other appropriate description of status.

and to be the identical person who is described in, whose name is subscribed to, and who made, signed, and executed the foregoing instrument, and having first made known to the maker the contents thereof, the maker signed and sealed the same, on the date it bears, as a true, free, and voluntary act and deed for the uses, purposes, and considerations therein set forth, and I do further certify that by statute no seal is required on this certificate, and the same is executed in my capacity as _____ ***.

*** "a commissioned officer under statutory authority granted to me by" (state authority), or

"a commissioned officer assigned to duty with the JAGC (staff judge advocate, adjutant, etc.) under statutory authority granted to me by" (state authority), or

"a judge advocate (staff judge advocate, adjutant, etc.) under authority granted to me by Art. 136, UCMJ; 10 U.S.C. §§ 936 and 1044" (federal authority), or

(Signature of Officer)

(Typed Name of Officer)

(Official Capacity)

(SSN, Grade, and Branch of Service)

(Command or Organization)

(Permanent Home Address)

Sample Revocation Of Power Of Attorney

KNOW ALL PERSONS BY THESE PRESENTS:

That whereas I, _____, SSN _____, a legal resident of the State of _____, United States of America, now in the military service in the rank of _____ in the Army of the United States, did, on the _____ day of _____, 19____, by written instrument, empower _____, SSN _____, of _____, to act as my true and lawful attorney in my name and in my stead to do and perform the following: _____, and all matters and things pertaining thereto as fully as I myself could do them;

NOW, THEREFORE, I, FOR GOOD CAUSE, DO HEREBY REVOKE, COUNTERMAND, TERMINATE, AND MAKE VOID, the Power of Attorney so granted, and all powers and authorities therein given and contained.

IN WITNESS WHEREOF, I hereunto set my hand this _____ day of _____, 19__.

Signature

Typed Name

(Add appropriate notarial clause.)

USAREUR Forms For Powers of Attorney

In USAREUR, military officials will accept a variety of Powers of Attorney without the requirement that they be notarized. Where the form does not contain an acknowledgment block, the individual's legal signature (LS) will suffice.

THE FOLLOWING FORMS WERE PROVIDED BY:

**LTC EDWARD J. HAMILTON, JR.
USAR
PO Box 1939
Whiteville, NC 28472
(W) 910-642-1495**

[These forms were designed for use when no word processing equipment is available. Note also that the preamble discussed on p. 6-3 of this Guide was added to the forms during editing]

INSTRUCTIONS TO ATTORNEYS CONCERNING EXECUTION OF SPECIAL POWER OF ATTORNEY FORM. (S-POA-ARM) (documents follow these instructions):

1. Brief soldier on pros and cons of powers of attorney and determine if the Special Power of Attorney is appropriate for the soldier's needs.
2. Manually enter the appropriate information on the first page (first paragraph). Also enter on page 2, in the first paragraph an expiration date suitable to the soldier or the word "indefinite" if the power will have no predetermined expiration date.
3. Select from the "inventory" of appendices the appropriate powers to be granted by the Principal to the Attorney-in-Fact. Attach all selected appendices behind the first 3 pages.
4. Number sequentially each appendix in the blank space at the top of each appendix page beginning with the number "1".
5. When all desired appendices have been selected, sequentially numbered and attached to the basic document on the first page, second paragraph, enter in the blank the number of the last appendix which is attached. If only one appendix is attached, enter the number "1".
6. At the bottom of each page (basic document and all appendices) manually enter the appropriate page information. Have the soldier insert any required information in blanks on the appendices (e.g., children's names, etc.).
7. Assemble the soldier (the Principal) two witnesses and the notary public and have the soldier (a) enter his full signature on the left margin of page 1, (b) enter the date, and his full signature on page 2 (Principal signature line) and (c) enter his full signature and the date on each of the attached appendices.
8. Have the witnesses sign on pages 2 and 3 where indicated.
9. Have the notary public sign where required on page 3.
10. The attorney should complete any information, caption, blanks etc. on page 2 and 3 not completed by others who have signed and should verify that all information required to be entered on any appendix has been properly entered.
11. Suggest due to the "assembled" nature of the document that the document be stapled in a manuscript cover.

12. Deliver the document to the soldier. Inform soldier that no copies are retained by the attorney and safekeeping and delivery to the attorney in fact are his/her responsibilities.

attys.ins

ATTORNEY WORKSHEET

Select Powers which will apply:

- ☐ DISPOSITION OF PROPERTY
- ☐ COLLECTION OF DEBTS
- ☐ RECOVERING POSSESSION OF PROPERTY
- ☐ ACQUISITION OF PROPERTY
- ☐ LITIGATION, REPRESENTATION, AND EMPLOYMENT OF ASSISTANCE
- ☐ ENDORSING CHECKS AND DEPOSITING MONEY
- ☐ WITHDRAWALS/CHECK WRITING
- ☐ SAFE DEPOSIT BOXES
- ☐ EXECUTING GOVERNMENT VOUCHERS
- ☐ TAX RETURNS
- ☐ SHIPMENT OF PROPERTY
- ☐ MOTOR VEHICLE - SALE
- ☐ MOTOR VEHICLE (Limited Power)
- ☐ PROPERTY MANAGEMENT
- ☐ MEDICAL CARE OF MINORS
- ☐ MAIL
- ☐ SAVINGS BOND
- ☐ GUARDIANSHIP

SPECIAL POWER OF ATTORNEY

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY, OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

KNOW ALL MEN BY THESE PRESENTS:

That I, _____, Social Security Number _____, as the Principal and a legal resident of _____, _____ have made, constituted and appointed, and by these presents do make, constitute and appoint _____, whose present address is _____ my true and lawful attorney to act as follows; that is to say:

GIVING AND GRANTING unto my said attorney full power to do only those things set forth in Appendices 1 through _____ which is/are attached hereto, incorporated herein by reference and made a part hereof. Each Appendix bears my complete signature at the end thereof.

FURTHER, I do authorize my aforesaid attorney in fact to perform all necessary acts in the execution of the aforesaid authorization with the same validity as I could effect if personally present.

AND I HEREBY DECLARE that any act or thing lawfully done hereunder by my said attorney shall be binding on myself and my heirs, legal and personal representatives, and assigns;

PROVIDED, however, that all business transacted hereunder for me or for my account shall be transacted in my name, and that all endorsements and instruments executed by my said attorney for the purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney and the designation "attorney-in-fact."

In the event I should be or have been carried in a military status of "missing" or "missing in action" or "prisoner of war" or if I should be held hostage by terrorist(s) within or outside the United States, or be detained against my will by anyone, anywhere, this power of attorney

shall continue to remain valid and in full effect. Any such status shall not bar my attorney-in-fact from fully and completely exercising and continuing to exercise any and all rights and powers herein granted until this power of attorney is terminated.

This power of attorney is not affected by physical disability or mental incompetence of the Principal which renders the Principal incapable of managing his own estate. It is my intent that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence. FURTHER, this power of attorney shall remain in full force and effect until the occurrence of the first of the following circumstances: (1) my death, (2) the death of my said attorney, (3) until the revocation of this power of attorney by me, or (4) until _____.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 19____.

Principal

STATE OF _____)
COUNTY OF _____)

ATTESTATION

This special power of attorney, including the attached appendices, was this ____ day of _____, 19____, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Witness

Witness

STATE OF _____)
COUNTY OF _____)

PROBATE

PERSONALLY appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within special power of attorney, including the attached appendices, and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

_____ Witness

SWORN to before me this
_____ day of _____, 19____.

_____(L.S.)
Notary Public for

My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGEMENT

The foregoing Power of Attorney was acknowledged before me this
_____ day of _____, 19____, by the Principal.

_____(L.S.)
Notary Public for

My Commission Expires: _____

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

DISPOSITION OF PROPERTY. To lease, sell, insure, transfer, mortgage, pledge, exchange or otherwise dispose of or encumber any and all of my property, real, personal, tangible, intangible or mixed, and to execute and deliver good and sufficient deeds, bills of sale, assignments or other instruments for the lease, conveyance, mortgage or transfer of the same. *****NOTHING FOLLOWS ON THIS PAGE*****

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

COLLECTION OF DEBTS. To collect, sue for, compromise or otherwise dispose of any claim, debt, rents or share in an estate in which I now or hereafter may have an interest. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

RECOVERING POSSESSION OF PROPERTY. To eject, remove, or relieve tenants or other persons from, and recover possession of, any property, real, personal or mixed, in which I now or hereafter may have an interest. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

ACQUISITION OF PROPERTY. To buy, receive, lease, accept or otherwise acquire in my name and for my account property, real, personal or mixed, upon such terms, considerations and conditions as my said attorney shall think proper. ***NOTHING FOLLOWS ON THIS PAGE.***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

LITIGATION, REPRESENTATION, AND EMPLOYMENT OF ASSISTANCE. On my behalf and in my name or the name of my attorney, to insure, prosecute, appear in, defend, compromise, arbitrate, settle, or dispose of any legal, equitable or administrative hearings, actions, suits, attachments claims or other proceedings, including government claims to which I am or may become a part or in which I have an interest; and to engage and dismiss counsel in connection therewith, authorizing my attorney to assert or waive any or all rights, privileges and defenses available to me under the Soldiers' and Sailors' Civil Relief Act or other legislation designed for the protection of personnel in the Armed Forces or their dependents. To hire, engage, employ and appoint agents, employees and counsel upon such terms and conditions and at such compensation as my said attorney shall deem proper in the exercise of the powers herein granted; to dismiss and remove at pleasure any such agents, employees and counsel as well as any agents, employees and counsel heretofore or hereafter employed by me or in my behalf.

NOTHING FOLLOWS ON THIS PAGE

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

ENDORISING CHECKS AND DEPOSITING MONEY. (a) To deposit in my name and for my account (or in any joint account in which I have an interest) with any bank, banker, trust company, credit union or other financial institution, all monies which may come into (his) (her) hands as such attorney and all bills of exchange, drafts, checks, promissory notes and other securities (including, but not limited to, such instruments issued by or drawn on the treasurer or other fiscal officer or depository of the United States, of any sovereign state of authority, or any political subdivision or instrumentality thereof) for money payable or belonging to me, and for that purpose to sign my name (in the manner provided herein) and endorse the same for deposit or collection.

(b) To open deposit accounts and to receive statements, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I have an interest. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

WITHDRAWALS/CHECK WRITING - To withdraw or sign for any purpose, from any bank, banker, trust company, credit union or other financial institution, any funds, checks, or other credits which I now or hereafter may have on deposit or be entitled to, and to endorse, cash and receive the proceeds of any and all checks, vouchers, or other orders for money, to open or close deposit accounts, and to receive statements, vouchers, notices or other documents from any bank or other financial institution concerning any and all accounts or banking transactions in my name or in which I may have an interest. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

SAFE DEPOSIT BOXES. To have access for all purposes to any and all safety deposit boxes or vaults rented in my name or in the names of any person or persons and myself, with full power to use the same for safekeeping any property or papers, and to remove therefrom at any time, or from time to time, all or any part of the contents of any such box or vault and to have the power to close and surrender such box or vault.
NOTHING FOLLOWS ON THIS PAGE

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

EXECUTING GOVERNMENT VOUCHERS. To execute vouchers in my behalf for any and all allowances, compensation, and reimbursements properly payable to me by the Government of the United States or any agency or department thereof, including, but not restricted to, allowances and reimbursements for transportation of dependents or for shipment of household effects as authorized by law and regulations. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

TAX RETURNS. To prepare and file income and all other tax returns and declarations of estimated tax required to be made by me by law; to represent and act for me in all tax matters in dispute or litigation, to receive, endorse, and collect checks in settlement of any refund of taxes, to file claims for abatement refund or credit taxes, to make any adjustments or settlements and to sign any and all receipts, waivers, settlements or agreements pertaining to all income or other taxes assessed against me or my property by statute. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

SHIPMENT OF PROPERTY. To take possession and order the removal and shipment of any of my property from or to any posts, warehouse, depot, dock, or other place of storage or safekeeping, Governmental or private, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such purpose. *****NOTHING FOLLOWS ON THIS PAGE*****

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

MOTOR VEHICLE - SALE. To execute and deliver to the proper persons and authority any and all documents, instruments and papers necessary to effect proper registration of any automobile in which I now or may hereafter have an interest, or the sale thereof and transfer of legal title thereto as required by law, and to collect and receipt for all monies paid in consideration of such sale and transfer. ***NOTHING FOLLOWS ON THIS PAGE***

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

MOTOR VEHICLE (Limited Power) - To exercise rights and powers incident and pertaining to the operation and maintenance of my motor vehicle(s) designated below including but not limited to authority of possession, operation, registration in my name, license tag renewals, payment of personal property taxes, repairs, maintenance, storage, towing, insuring and signing all statements and affidavits in connection with such authority but specifically having NO POWER OF SALE AND NO POWER TO TRANSFER TITLE. ***NOTHING FOLLOWS ON THIS PAGE***

(Year)	(Make)	(ID No.)

_____	_____	_____
(Year)	(Make	(ID No.)

_____	_____	_____
(Year)	(Make)	(ID No.)

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

PROPERTY MANAGEMENT. To manage, maintain, repair or cause to be managed, maintained and repaired the residential property which I occupy as my primary residence as designated below including but not limited to maintaining the structure, out buildings, utilities, grounds, roof, security system and feeding and caring for any of my pets living around the residence. Repairs shall be those limited to protecting the residence or repairing pipes, heating, cooling, refrigeration systems and household appliances as needed. Also included in this authorization is the authority to deal with the prevention and repair of termite damage and bug infestation and authority to do all things necessary to comply with local building codes and ordinances. The property address of the subject property is

_____.

NOTHING FOLLOWS ON THIS PAGE

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

MEDICAL CARE OF MINORS. To authorize and consent to medical or dental care and treatment for any minor child of mine (as designated below) in medical facilities, or in a physician's office, including but not limited to, inpatient or outpatient care, hospitalization, emergency treatment, ordinary treatment, surgery, anesthetics, and any and all other medical or dental care or treatment that may be necessary or desirable for the well-being of my minor child, and my attorney shall have the power to execute, for me, in my name, place and stead, all such consents, authorizations and papers as may be necessary in connection therewith.

NAME

BIRTHDATE

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NOTHING FOLLOWS ON THIS PAGE

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

MAIL. To receive, open, read, respond to and redirect my mail and to represent me before the U.S. Postal Service or any private parcel or courier service.

NOTHING FOLLOWS ON THIS PAGE

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

SAVINGS BONDS. This power expressly includes the authority to endorse and cash United States Savings Bonds which are registered in my name or in which I have an interest.

*****NOTHING FOLLOWS ON THIS PAGE*****

Principal

Date

APPENDIX _____ OF SPECIAL POWER OF ATTORNEY

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY, OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

GUARDIANSHIP. To act in loco parentis for the child/children designated below; to perform any and all acts as fully to all intents and purposes as I might or could if personally present; to authorize and provide for their care, maintenance, well being, discipline, education, and health, including, but not limited to, authorizing any and all medical care and treatment regardless of whether on an emergency basis, or for routine care, including any and all major surgery deemed necessary by a duly licensed staff physician at any military or civilian hospital, whether within or without the territorial limits of the United States; to register my said child/children in school, and to grant or to withhold, as my said attorney shall deem appropriate, permission to participate in school activities.

NAME

BIRTHDATE

NOTHING FOLLOWS ON THIS PAGE

Principal

Date

STATE OF)
)
COUNTY OF) POWER OF ATTORNEY
 (Military-Durable-Immediate)

KNOW ALL MEN BY THESE PRESENTS that as principal (the "Principal")
I, _____ (Social Security
Number _____), a resident of the state and county aforesaid,
have made, constituted and appointed and by these presents do make
constitute and appoint my _____,
_____, my true and lawful attorney ("Attorney")
for the purposes hereinafter set forth.

ARTICLE I.

Empowerment of Attorney

Attorney is authorized in Attorney's absolute discretion from time to time and at any time with respect to my property, real or personal, at any time owned or held by me and without authorization of any court and in addition to any other rights, powers or authority granted by any other provision of this power of attorney or by statute or general rules of law (and regardless of whether I am mentally incompetent or physically or mentally disabled or incapable of managing my property and income), with full power of substitution, as follows:

A. Powers in General

To do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person, if personally present, the specifically enumerated powers described below being in aid and exemplification of the full, complete, and general power herein granted and not in limitation or definition thereof.

B. Powers Relating to Management of Assets

1. To buy, receive, lease as lessor, accept or otherwise acquire; to sell, convey, mortgage, grant options upon, hypothecate, pledge, transfer, exchange, quit-claim, or otherwise encumber or dispose of; or to contract or agree for the acquisition, disposal, or encumbrance of any property whatsoever or any custody, possession, interest, or right therein, for cash or credit and upon such terms, considerations and conditions as Attorney shall think proper, and no person dealing with Attorney shall be bound to see to the application of any monies paid;

2. To take, hold, possess, invest or otherwise manage any or all of my property or any interest therein; to eject, remove or relieve tenants or other persons from, and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, build on, raze, rebuild, alter, modify, or improve the same or any part thereof, and/or to lease any property, real

or personal for me or my benefit, as lessee, with or without option to renew; to collect, receive and receipt for rents, issues and profits of my property;

3. To make, endorse, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, assignments, agreements, certificates, endorsements, hypothecations, checks, notes, mortgages, vouchers, receipts, consents, waivers, releases, undertakings, satisfactions, acknowledgments and such other documents or instruments in writing of whatever kind and nature as may be necessary, convenient, or proper in the premises;

4. To subdivide, develop or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration;

5. To invest and reinvest all or any part of any property in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute of rule of law concerning investments by fiduciaries;

6. To continue and operate any business owned by me and to do any and all things deemed needful or appropriate by Attorney, including the power to incorporate the business and to put additional capital into the business, for such time as Attorney shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for Attorney's own negligence; and to close out; liquidate, or sell the business at such time and upon such terms as Attorney shall deem best;

7. To transfer all of my stock and/or securities to my Attorney, as agent (with the beneficial ownership thereof remaining in me) if necessary or convenient in order to exercise the power with respect to such stock and/or securities granted herein;

8. To sell or exercise stock subscription or conversion rights;

9. To refrain from voting or to vote shares of stock owned by me at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting my property;

10. To participate in any plan of reorganization or consolidation or merger involving any company or companies with respect to stock or other securities which I own and to deposit such stock or other securities under any plan of reorganization or with any protective

committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by Attorney pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as Attorney may deem advisable in connection therewith;

11. To take possession and order the removal and shipment of any of my property from or to any military post, warehouse, depot, dock, or other place of storage or safekeeping, Governmental or private, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such purpose.

C. Powers Relating to Management of Assets and/or Custody of Person

1. To prepare, execute and file joint or separate income and other tax returns and amended returns and declarations of estimated tax for any year or years; to prepare, execute and file gift tax returns made by me or by Attorney on my behalf for any years or years; to consent to any gift and to utilize any gift splitting provision; to utilize or make any tax election; and to prepare, sign and file claims for refund of any tax and other governmental reports, applications, requests, and documents;

2. To continue, open, or close accounts and deposits with any bank, banker, trust company or any building or savings and loan association or any other banking or similar institution and to receive statements, notices or other documents from any of said institutions concerning any and all accounts and deposits in my name or in which I may have an interest;

3. To deposit in my name and for my account, with any bank, banker or trust company or any building or savings and loan association or any other banking or similar institution, all moneys to which I am entitled or which may come into Attorney's hands as such attorney-in-fact, and all bills of exchange, drafts, checks, promissory notes and other securities for money payable belonging to me, and for that purpose to sign my name and endorse each and every such instrument for cashing, deposit or collection; and from time to time, or at any time, to withdraw any or all moneys deposited to my credit at any bank, banker or trust company or any building or savings and loan association or any other banking or similar institution having moneys belonging to me, and, in connection therewith, to draw checks or to make withdrawals in my name, to make, do, execute, acknowledge and deliver, for and upon my behalf and in my name, all such checks, notes and contracts; and no such institution shall be required to investigate or question the purposes for which such funds, deposits, moneys or instruments are being deposited or withdrawn and I do expressly relieve such institutions from all liability whatsoever for any cashing, withdrawal of deposit by Attorney, regardless of Attorney's reasons therefor whether known or unknown to such institution;

4. To endorse, cash, receive, and collect checks payable to my order drawn on the Treasurer or other fiscal officer or depository of

the United States, or any sovereign state or authority, or any political subdivision or instrumentality thereof, or any private person, firm, corporation, or partnership;

5. To have access at any time or times to any safe deposit box rented by me or on which I serve as a deputy, wheresoever located, and to remove all or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate as a result of permitting Attorney to exercise this power;

6. To make, do, and transact all and every kind of business of any nature or kind whatsoever, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interests, dividends, annuities, demands, debts, taxes, and obligations, or any rebate, refund, or discount thereon, which may now or hereafter be due, owing, or payable by me or to me;

7. To institute, prosecute, defend, abandon, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation involving me, my property or any interest of mine;

8. To borrow money, use credit cards (including obtaining cash advances) and to encumber, mortgage or pledge any and all of my property in connection with the exercise of any power vested in Attorney; and to modify, extend, renew any terms, conditions or payment schedules set forth in any loan or collateral documents;

9. To deal with Attorney in Attorney's individual, or any fiduciary, capacity, in buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions;

10. To employ and dismiss and compensate agents, accountants, investment advisors, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, real estate agents and/or brokers, and other assistants and advisors deemed by Attorney needful for the proper administration of my property, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such agent or professional representative was selected and retained with reasonable care;

11. To purchase for my benefit and in my behalf United States Government bonds redeemable at par in payment of United States Estate taxes imposed at my death upon my estate;

12. To apply for a Certificate of Title upon, and endorse and transfer title thereto, any automobile, boat, outboard motor, mobile home, airplane, truck, pick-up, van, motorcycle or other vehicle, and to represent in such transfer assignment that the title to said vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment;

13. To insure my property against damage or loss and Attorney against liability with respect to third persons;

14. To pay and adjust debts incurred by me or by Attorney in connection with any power authorized hereunder;

15. To execute vouchers in my behalf for any and all allowances, compensation, and reimbursements properly payable to me by the Government of the United States or any agency or department thereof, including but not restricted to, allowances and reimbursements for transportation of dependents or for shipment of household effects as authorized by law and regulations;

16. To consent to, apply for, request or certify with regard to and on my behalf extension, modification, amendment or termination of any military orders which I may operate under or be subject to from time to time;

17. To exercise any rights I may have with creditors or landlords under the Soldier's and Sailor's Civil Relief Act.

D. Powers Relating to Custody of Person

1. To establish where I shall reside, including the exact physical location, and the city, county, and state of residence and, if necessary, to establish where I shall reside and make all necessary arrangements for me at any hospital, convalescent institution, nursing home or similar establishment, to have and exercise all rights on my behalf which I may have and possess at any such residence or institution and to report such address as my official address to the United States Post Office and any other person, firm, corporation or governmental agency as may be necessary, desirable, convenient or appropriate;

2. To employ, dismiss and compensate medical personnel including physicians, surgeons, dentists, medical specialists, nurses, and paramedical assistants deemed by Attorney needful for the proper care, custody and control of my person and to do so without liability for any neglect, omission, misconduct or the fault of any such physician or other

medical personnel, provided such physician or other medical personnel were selected and retained with reasonable care;

3. To authorize any and all kinds of medical procedures and treatment including but not limited to medication, therapy, surgical procedures, and dental care, and to consent to all such treatment, medication or procedures where such consent is required; to obtain the use of medical equipment, devices or other equipment and devices deemed by Attorney needful for proper care, custody and control of my person and to do so without liability for any neglect, omission, misconduct or fault with respect to such medical treatment or other matters authorized herein; to obtain, request the release of, receipt for and deliver any medical or dental records of mine from or to any doctor, dentist or other person having or needing custody of same;

4. To purchase, dispose of and abandon clothing, food, medicine, household and personal effects of all kinds;

5. To arrange for transportation and travel for me for any purpose, including for medical treatment or recreation;

6. To make advance arrangements for funeral services, including but not limited to purchase of a burial plot and marker and such other and related arrangements for services, flowers, ministerial services, transportation and other necessary, related, convenient or appropriate goods and services as my Attorney shall deem advisable or appropriate under the circumstances;

7. To apply for, elect, receive, deposit and utilize on my behalf all benefits payable by any governmental body or agency, federal, state, county, city or other and to obtain, make claim upon, collect and dispose of insurance and insurance proceeds for my care, custody and control;

8. To house (or provide for housing), support and maintain any animals which I own and to contract for and pay the expenses of proper veterinary care and treatment for such animals, or if the care and maintenance of such animals shall become unreasonably expensive in Attorney's opinion to dispose of such animals.

ARTICLE II.

Termination, Amendment, Resignation and Removal

A. Termination and Amendment

This power of attorney shall remain in full force and effect until the earlier of the following events: (i) Attorney has resigned as provided herein; (ii) I have revoked this power of attorney by written instrument recorded in the public records of the county aforesaid, (iii) knowledge of my death reaches Attorney, (iv) the death of Attorney, or (v) _____, 19____. Appointment of a guardian terminates all or part of this power of attorney that relates to matters within the scope of the guardianship and appointment of a conservator terminates all or part of this power of attorney that relates to matters within the scope of the conservatorship. This power of attorney may be amended by me at any time and from time to time but such amendment shall not be effective as to third persons dealing with Attorney without notice of such amendment unless such amendment shall have been recorded in the public records of the county aforesaid.

B. Resignation

In the event that Attorney shall become unable or unwilling to serve or continue to serve, then Attorney may resign by delivering to me in writing a copy of his resignation and recording the original in the public records of the county aforesaid. Upon such resignation and recording, Attorney shall thereupon be divested of all authority under this power of attorney.

C. Removal

Any person named herein as Attorney may be removed by written instrument executed by me and recorded in the public records of the county aforesaid.

ARTICLE III.

Incidental Powers and Binding Effect

In connection with the exercise of the powers herein described, Attorney is fully authorized and empowered to perform any other acts or things necessary, appropriate, or incidental thereto, with the same validity and effect as if I were personally present, competent, and personally exercised the powers myself. All acts lawfully done by Attorney hereunder during any period of any disability or mental incompetence shall have the same effect and inure to the benefit of and bind me and my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled. The powers herein conferred may be exercised by Attorney alone and the signature or act of Attorney on my behalf may be accepted by third persons as fully authorized by me and with the same force and effect as if done under my hand and seal and as if I were present in person, acting on my own behalf and competent.

ARTICLE IV.

Reliance by Third Party

No person who may act in reliance upon the representations of Attorney for the scope of authority granted to Attorney shall incur any liability to me or to my estate as a result of permitting Attorney to exercise any power, nor shall any person dealing with Attorney be responsible to determine or insure the proper application of funds or property.

ARTICLE V.

Miscellaneous

A. Exculpation

Attorney, Attorney's heirs, successors and assigns are hereby released and forever discharged from any and all liability upon any claim or demand of any nature whatsoever by me, my heirs or assigns, the beneficiaries under my will or under any trust which I have created or shall hereafter create or any person whomsoever on account of any failure to act of Attorney pursuant to this power of Attorney. If the authority contained herein shall be revoked or terminated by operation of law without notice, I hereby agree for myself, my executors, administrators, heirs and assigns, in consideration of Attorney's willingness to act pursuant to this Power of Attorney, to save and hold Attorney harmless from any loss suffered or any liability incurred by Attorney in so acting after such revocation or termination without notice.

B. Definitions

Whenever the word "Attorney" or "Principal" or any modifying or substituted pronoun therefor is used in this power of attorney, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof. The word "Attorney" shall include the individual named in the first paragraph of the first page of this document and to anyone that person or I may name as a substitute attorney.

C. Severability

If any part of any provision of this power of attorney shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision of the remaining provisions of this power of attorney.

D. Compensation

Attorney shall be entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by Attorney on my behalf pursuant to any provision of this power of attorney, but Attorney shall not be entitled to compensation for services rendered hereunder.

E. Restrictions

Notwithstanding any provision herein to the contrary, Attorney shall not satisfy the legal obligations of Attorney out of any property subject to this power of Attorney, nor may Attorney exercise this power in favor of Attorney, Attorney's estate, Attorney's creditors or the creditors of Attorney's estate.

F. Reservations

Notwithstanding any provision hereto to the contrary, Attorney shall have no power or authority whatever with respect to (a) any policy of insurance owned by me on the life of Attorney, and (b) any trust created by Attorney as to which I am a trustee.

G. Construction

It is my intention that no property subject to this power shall be includable in the gross estate for federal or state estate tax purposes of Attorney under the Internal Revenue Code of 1986, as amended, of any other applicable section, if any, of federal and/or state law.

H. Power Not Affected by Principal's Military Status

In the event I should be or have been carried in a military status of "missing" or "missing in action" or "prisoner of war" or if I should be held hostage by terrorist(s) within or outside the United States, this power of attorney shall continue to remain valid and in full effect. Any such status shall not bar Attorney from fully and completely exercising and continuing to exercise any and all rights and powers

herein granted until this power of attorney is terminated as set forth in Article II.

I. Power Not Affected by Principal's Incapacity

This power of attorney is not affected by physical disability or mental incompetence of the Principal which renders the Principal incapable of managing his own estate. It is my intent that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence.

IN WITNESS WHEREOF, as Principal, I have executed this power of attorney as of this _____ day of _____, 19____, and I have directed that photographic copies of this instrument be made which shall have the same force and effect as an original.

Principal

STATE OF _____
COUNTY OF _____

)
) ATTESTATION
)

This Power of Attorney consisting of _____ typewritten pages, including this page and the one (1) page which follows, the _____ preceding pages hereof bearing on the left hand margin the signature of the Principal, was this _____ day of _____, 19____, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Witness

Witness

STATE OF)
COUNTY OF) PROBATE

Personally appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within power of attorney and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

Witness

SWORN to before me this _____
day of _____, 19____

_____(L.S.)
Notary Public for _____
My Commission expires: _____

STATE OF)
COUNTY OF) ACKNOWLEDGEMENT

The foregoing Power of Attorney was acknowledged before me this _____
day of _____, 19____ by the Principal.

_____(L.S.)

Notary Public for

My Commission
expires: _____

STATE OF)
) POWER OF ATTORNEY
COUNTY OF) (Military-Durable-Delayed)

THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY, OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

KNOW ALL MEN BY THESE PRESENTS that as principal (the "Principal")
I, _____ (Social Security Number
_____), a resident of the state and county aforesaid,
have made, constituted and appointed and by these presents do make
constitute and appoint my _____,
attorney ("Attorney") for the purposes hereinafter set forth.

DELAYED EFFECTIVE DATE

I DECLARE THAT THIS POWER OF ATTORNEY SHALL BECOME VALID AND EFFECTIVE ONLY AT AND FROM THE DATE THAT A COMMISSIONED OFFICER IN THE UNITED STATES ARMED FORCES ATTESTS, BY HIS NOTARIZED SIGNATURE IN THE DEPLOYMENT CERTIFICATION APPEARING AT THE END OF THIS POWER OF ATTORNEY, THAT I HAVE DEPLOYED TO OUTSIDE THE CONTINENTAL UNITED STATES IN THE ARMED SERVICE OF THE UNITED STATES. I ALSO DECLARE THAT SUCH NOTARIZED SIGNATURE OF AN OFFICER SHALL ITSELF ALONE BE SUFFICIENT TO MAKE THIS POWER FULLY VALID AND EFFECTIVE. I HEREBY REQUEST AND AUTHORIZE THAT AS SOON AS POSSIBLE AFTER MY DEPLOYMENT THE SAID DEPLOYMENT CERTIFICATION BE COMPLETED AND SIGNED BY A COMMISSIONED OFFICER AND THEN BE NOTARIZED.

ARTICLE I.

Empowerment of Attorney

Attorney is authorized in Attorney's absolute discretion from time to time and at any time with respect to my property, real or personal, at any time owned or held by me and without authorization of any court and in addition to any other rights, powers or authority granted by any other provision of this power of attorney or by statute or general rules of law (and regardless of whether I am mentally incompetent or physically or mentally disabled or incapable of managing my property and income), with full power of substitution, as follows:

A. Powers in General

To do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person, if personally present, the specifically enumerated powers described below being in aid and exemplification of the full, complete, and general power herein granted and not in limitation or definition thereof.

B. Powers Relating to Management of Assets

1. To buy, receive, lease as lessor, accept or otherwise acquire; to sell, convey, mortgage, grant options upon, hypothecate, pledge, transfer, exchange, quit-claim, or otherwise encumber or dispose of; or to contract or agree for the acquisition, disposal, or encumbrance of any property whatsoever or any custody, possession, interest, or right therein, for cash or credit and upon such terms, considerations and conditions as Attorney shall think proper, and no person dealing with Attorney shall be bound to see to the application of any monies paid;

2. To take, hold, possess, invest or otherwise manage any or all of my property or any interest therein; to eject, remove or relieve tenants or other persons from, and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, build on, raze, rebuild, alter, modify, or improve the same or any part thereof, and/or to lease any property, real or personal for me or my benefit, as lessee, with or without option to renew; to collect, receive and receipt for rents, issues and profits of my property;

3. To make, endorse, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, assignments, agreements, certificates, endorsements, hypothecations, checks, notes, mortgages, vouchers, receipts, consents, waivers, releases, undertakings, satisfactions, acknowledgments and such other documents or instruments in writing of whatever kind and nature as may be necessary, convenient, or proper in the premises;

4. To subdivide, develop or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration;

5. To invest and reinvest all or any part of my property in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute of rule of law concerning investments by fiduciaries;

6. To continue and operate any business owned by me and to do any and all things deemed needful or appropriate by Attorney, including the power to incorporate the business and to put additional capital into the business, for such time as Attorney shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for Attorney's own negligence; and to close out; liquidate, or sell the business at such time and upon such terms as Attorney shall deem best;

7. To transfer all of my stock and/or securities to my Attorney, as agent (with the beneficial ownership thereof remaining in me) if necessary or convenient in order to exercise the power with respect to such stock and/or securities granted herein;

8. To sell or exercise stock subscription or conversion rights;

9. To refrain from voting or to vote shares of stock owned by me at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting my property;

10. To participate in any plan of reorganization or consolidation or merger involving any company or companies with respect to stock or other securities which I own and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by Attorney pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as attorney may deem advisable in connection therewith;

11. To take possession and order the removal and shipment of any of my property from or to any military post, warehouse, depot, dock, or other place of storage or safekeeping, Governmental or private, and to execute and deliver any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such purpose.

C. Powers Relating to Management of Assets and/or Custody of Person

1. To prepare, execute and file joint or separate income and other tax returns and amended returns and declarations of estimated tax for any year or years; to prepare, execute and file gift tax returns made by me or by Attorney on my behalf for any years or years; to consent to any gift and to utilize any gift splitting provision; to utilize or make any tax election; and to prepare, sign and file claims for refund of any tax and other governmental reports, applications, requests, and documents;

2. To continue, open, or close accounts and deposits with any bank, banker, trust company or any building or savings and loan association or any other banking or similar institution and to receive

statements, notices or other documents from any of said institutions concerning any and all accounts and deposits in my name or in which I may have an interest;

3. To deposit in my name and for my account, with any bank, banker or trust company or any building or savings and loan association or any other banking or similar institution, all moneys to which I am entitled or which may come into Attorney's hands as such attorney-in-fact, and all bills of exchange, drafts, checks, promissory notes and other securities for money payable belonging to me, and for that purpose to sign my name and endorse each and every such instrument for cashing, deposit or collection; and from time to time, or at any time, to withdraw any or all moneys deposited to my credit at any bank, banker or trust company or any building or savings and loan association or any other banking or similar institution having moneys belonging to me, and, in connection therewith, to draw checks or to make withdrawals in my name, to make, do, execute, acknowledge and deliver, for and upon my behalf and in my name, all such checks, notes and contracts; and no such institution shall be required to investigate or question the purposes for which such funds, deposits, moneys or instruments are being deposited or withdrawn and I do expressly relieve such institutions from all liability whatsoever for any cashing, withdrawal of deposit by Attorney, regardless of Attorney's reasons therefor whether known or unknown to such institution;

4. To endorse, cash, receive, and collect checks payable to my order drawn on the Treasurer or other fiscal officer or depository of the United States, or any sovereign state or authority, or any political subdivision or instrumentality thereof, or any private person, firm, corporation, or partnership;

5. To have access at any time or times to any safe deposit box rented by me or on which I serve as a deputy, wheresoever located, and to remove all or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate as a result of permitting Attorney to exercise this power;

6. To make, do, and transact all and every kind of business of any nature or kind whatsoever, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interests, dividends, annuities, demands, debts, taxes, and obligations, or any rebate, refund, or discount thereon, which may now or hereafter be due, owing, or payable by me or to me;

7. To institute, prosecute, defend, abandon, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation involving me, my property or any interest of mine;

8. To borrow money, use credit cards (including obtaining cash advances) and to encumber, mortgage or pledge any and all of any property in connection with the exercise of any power vested in

Attorney; and to modify, extend, renew any terms conditions or payment schedules set forth in any loan or collateral documents;

9. To deal with Attorney in Attorney's individual, or any fiduciary, capacity, in buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions;

10. To employ and dismiss and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, real estate agents and/or brokers, and other assistants and advisors deemed by Attorney needful for the proper administration of my property, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such agent or professional representative was selected and retained with reasonable care;

11. To purchase for my benefit and in my behalf United States Government bonds redeemable at par in payment of United States Estate taxes imposed at my death upon my estate;

12. To apply for a Certificate of Title upon, and endorse and transfer title thereto, any automobile, boat, outboard motor, mobile home, airplane, truck, pick-up, van, motorcycle or other vehicle, and to represent in such transfer assignment that the title to said vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment;

13. To insure my property against damage or loss and Attorney against liability with respect to third persons;

14. To pay and adjust debts incurred by me or by Attorney in connection with any power authorized hereunder;

15. To execute vouchers in my behalf for any and all allowances, compensation, and reimbursements properly payable to me by the Government of the United States or any agency or department thereof, including but not restricted to, allowances and reimbursements for transportation of dependents or for shipment of household effects as authorized by law and regulations;

16. To consent to, apply for, request or certify with regard to and on my behalf extension, modification, amendment or termination of any military orders which I may operate under or be subject to from time to time;

17. To exercise any rights I may have with creditors or landlords under the Soldier's and Sailor's Civil Relief Act.

D. Powers Relating to Custody of Person

1. To establish where I shall reside, including the exact physical location, and the city, county, and state of residence and, if necessary, to establish where I shall reside and make all necessary arrangements for me at any hospital, convalescent institution, nursing home or similar establishment, to have and exercise all rights on my

behalf which I may have and possess at any such residence or institution and to report such address as my official address to the United States Post Office and any other person, firm, corporation or governmental agency as may be necessary, desirable, convenient or appropriate;

2. To employ, dismiss and compensate medical personnel including physicians, surgeons, dentists, medical specialists, nurses, and paramedical assistants deemed by Attorney needful for the proper care, custody and control of my person and to do so without liability for any neglect, omission, misconduct or the fault of any such physician or other medical personnel, provided such physician or other medical personnel were selected and retained with reasonable care;

3. To authorize any and all kinds of medical procedures and treatment including but not limited to medication, therapy, surgical procedures, and dental care, and to consent to all such treatment, medication or procedures where such consent is required; to obtain the use of medical equipment, devices or other equipment and devices deemed by Attorney needful for proper care, custody and control of my person and to do so without liability for any neglect, omission, misconduct or fault with respect to such medical treatment or other matters authorized herein; to obtain, request the release of, receipt for and deliver any medical or dental records of mine from or to any doctor, dentist or other person having or needing custody of same;

4. To purchase, dispose of and abandon clothing, food, medicine, household and personal effects of all kinds;

5. To arrange for transportation and travel for me for any purpose, including for medical treatment or recreation;

6. To make advance arrangements for funeral services, including but not limited to purchase of a burial plot and marker and such other and related arrangements for services, flowers, ministerial services, transportation and other necessary, related, convenient or appropriate goods and services as any Attorney shall deem advisable or appropriate under the circumstances;

7. To apply for, elect, receive, deposit and utilize on my behalf all benefits payable by any governmental body or agency, federal, state, county, city or other and to obtain, make claim upon, collect and dispose of insurance and insurance proceeds for any care, custody and control;

B. To house (or provide for housing), support and maintain any animals which I own and to contract for and pay the expenses of proper veterinary care and treatment for such animals, or if the care and maintenance of such animals shall become unreasonably expensive in Attorney's opinion to dispose of such animals.

ARTICLE II.

Termination, Amendment, Resignation and Removal

A. Termination and Amendment

This power of attorney shall remain in full force and effect until the earlier of the following events: (i) Attorney has resigned as provided herein; (ii) I have revoked this power of attorney by written instrument recorded in the public records of the county aforesaid, (iii) knowledge of my death reaches Attorney or (iv) the death of Attorney. Appointment of a guardian terminates all or part of this power of attorney that relates to matters within the scope of the guardianship and appointment of a conservator terminates all or part of this power of attorney that relates to matters within the scope of the conservatorship. This power of attorney may be amended by me at any time and from time to time but such amendment shall not be effective as to third persons dealing with Attorney without notice of such amendment unless such amendment shall have been recorded in the public records of the county aforesaid.

B. Resignation

In the event that Attorney shall become unable or unwilling to serve or continue to serve, then Attorney may resign by delivering to me in writing a copy of his resignation and recording the original in the public records of the county aforesaid. Upon such resignation and recording, Attorney shall thereupon be divested of all authority under this power of attorney.

C. Removal

Any person named herein as Attorney may be removed by written instrument executed by me and recorded in the public records of the county aforesaid.

ARTICLE III.

Incidental Powers and Binding Effect

In connection with the exercise of the powers herein described, Attorney is fully authorized and empowered to perform any other acts or things necessary, appropriate, or incidental thereto, with the same validity and effect as if I were personally present, competent, and personally exercised the powers myself. All acts lawfully done by Attorney hereunder during any period of my disability or mental incompetence shall have the same effect and inure to the benefit of and bind me and my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled. The powers herein conferred may be exercised by Attorney alone and the signature or act of Attorney on my behalf may be accepted by third persons as fully authorized by me and with the same force and effect as if done under my hand and seal and as if I were present in person, acting on my own behalf and competent.

ARTICLE IV.

Reliance by Third Party

No person who may act in reliance upon the representations of Attorney for the scope of authority granted to Attorney shall incur any liability to me or to my estate as a result of permitting Attorney to exercise any power, nor shall any person dealing with Attorney be responsible to determine or insure the proper application of funds or property.

ARTICLE V.

Miscellaneous

A. Exculpation

Attorney, Attorney's heirs, successors and assigns are hereby released and forever discharged from any and all liability upon any claim or demand of any nature whatsoever by me, my heirs or assigns, the beneficiaries under my will or under any trust which I have created or shall hereafter create or any person whomsoever on account of any failure to act of Attorney pursuant to this power of Attorney. If the authority contained herein shall be revoked or terminated by operation of law without notice, I hereby agree for myself, my executors, administrators, heirs and assigns, in consideration of Attorney's willingness to act pursuant to this Power of Attorney, to save and hold Attorney harmless from any loss suffered or any liability incurred by Attorney in so acting after such revocation or termination without notice.

B. Definitions

Whenever the word "Attorney" or "Principal" or any modifying or substituted pronoun therefor is used in this power of attorney, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof. The word "Attorney" shall include the individual named in the first paragraph of the first page of this document and to anyone that person or I may name as a substitute attorney.

C. Severability

If any part of any provision of this power of attorney shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision of the remaining provisions of this power of attorney.

D. Compensation

Attorney shall be entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by Attorney on my behalf pursuant to any provision of this power of attorney, but Attorney shall not be entitled to compensation for services rendered hereunder.

E. Restrictions

Notwithstanding any provision herein to the contrary, Attorney shall not satisfy the legal obligations of Attorney out of any property subject to this power of Attorney, nor may Attorney exercise this power in favor of Attorney, Attorney's estate, Attorney's creditors or the creditors of Attorney's estate.

F. Reservations

Notwithstanding any provision hereto to the contrary, Attorney shall have no power or authority whatever with respect to (a) any policy of insurance owned by me on the life of Attorney, and (b) any trust created by Attorney as to which I am a trustee.

G. Construction

It is my intention that no property subject to this power shall be includable in the gross estate for federal or state estate tax purposes) of Attorney under the Internal Revenue Code of 1986, as amended, of any other applicable section, if any, of federal and/or state law.

H. Power Not Affected by Principal's Military Status

In the event I should be or have been carried in a military status of "missing" or "missing in action" or "prisoner of war" or if I should be held hostage by terrorist(s) within or outside the United States, this power of attorney shall continue to remain valid and in full effect. Any such status shall not bar Attorney from fully and completely exercising and continuing to exercise any and all rights and powers herein granted until this power of attorney is terminated as set forth in Article II.

I. Power Not Affected by Principal's Incapacity

This power of attorney shall not be affected by physical disability or mental incompetence of the Principal which renders the Principal incapable of managing his own estate. It is my intent that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence.

IN WITNESS WHEREOF, as Principal, I have executed this power of attorney as of this _____ day of _____, 19____, and I have directed that photographic copies of this instrument be made which shall have the same force and effect as an original.

Principal

STATE OF
COUNTY OF

)
)
)

ATTESTATION

This Power of Attorney consisting of _____ typewritten pages, including this page and the two (2) pages which follow, the _____ preceding pages hereof bearing on the left hand margin the signature of the Principal, was this _____ day of _____, 19____, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Witness

Witness

STATE OF
COUNTY OF

)
)
)

PROBATE

Personally appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within power of attorney and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

Witness

SWORN to before me this _____
day of _____, 19____

(L.S.)

Notary Public for _____
My Commission Expires: _____

STATE OF
COUNTY OF

)
)
)

ACKNOWLEDGEMENT

The foregoing Power of Attorney was acknowledged before me this
____ day of _____, 19____, by the Principal.

_____(L.S.)

Notary Public for

My Commission

Expires: _____

DEPLOYMENT CERTIFICATION

I, _____
(Rank) (Name)
being duly sworn, do hereby certify that I am a commissioned officer in
the Armed Forces of the United States, that I am presently serving at
_____, and I do further certify that the
aforementioned _____, the Principal of the
Power of Attorney, is a member of the United States Armed Forces and has
deployed to outside the continental United States in the armed service
of the United States. I authorize photographic copies of this Deployment
Certification to be made and desire that they have the same force and
effect as the original.

(Signature of Officer)

(Duty Telephone)

SWORN to before me this _____
day of _____, 19____

_____(L.S.)
Notary Public for _____
My Commission expires: _____

CHAPTER 7 .

DURABLE POWERS OF ATTORNEY

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CHAPTER 7

DURABLE POWERS OF ATTORNEY

Outline of Instruction

I. REFERENCES.

- A. English, The UPC and the New Durable Powers, 27 Real Property, Probate & Trust J. 333 (1992).
- B. Uniform Probate Code § 5-501

II. DURABLE POWERS OF ATTORNEY.

- A. Defined: A power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Uniform Probate Code § 5-501 (1969).
- B. A durable power of attorney creates a special agency relationship that survives subsequent disability of the principal.
 - 1. Grantor must have capacity to grant the power.
 - 2. Power does not obligate third parties to act.
- C. All states have legislation authorizing the Durable Power of Attorney.
- D. Existing state statutes are not uniform.
 - 1. State statutes on preparation and execution requirements vary.
 - a. Some jurisdictions require that durable powers be executed with the same formalities as a will. [See, S.C. Code Ann. §32-13-10 (Cm. Supp. 1982)].

- b. Peculiarities of substantive state law may also pose problems.

E. Uses of durable powers of attorney - See Appendix.

F. Tax implications of a power of attorney. A power which allows the agent to make gifts to himself or to others for whom he has an obligation to support without limitation probably creates a general power of appointment. This will cause the assets of the principal which are subject to the power to be included in the agent's estate for federal estate tax purposes if the agent predeceases the principal. IRC § 2041. Avoid this problem by:

1. Including a limit in the power on the amount the agent can transfer to himself or to others for whom he has a support obligation.
 - a. The limit can be expressed in terms of the amount of the annual exclusion (\$10,000). IRC § 2053(b).
 - b. The limit can be expressed in terms of a "5 and 5" power. IRC §§ 2041(b)(2) and 2514(e).
2. Limiting the power to make gifts by an ascertainable standard (e.g., health, education, support or maintenance). IRC §§ 2041(b)(1)(A) and 2514(c)(1).

G. Advantages to Durable Powers of Attorney.

1. Broad application and flexibility.
2. Informal.
3. Inexpensive to prepare and administer.
4. Need not transfer property to the agent.

III. SPRINGING DURABLE POWERS OF ATTORNEY.

"This power of attorney shall become effective upon the disability or incapacity of the principal."

- A. "Spring" into effect only upon incapacity.
- B. Clearly identify the condition that will activate the power.
- C. A certification process may be used to clarify when it is effective.
- D. May be less effective than a general durable power of attorney. (Third parties may be reluctant to accept - hard to tell when condition effective).

APPENDIX

DURABLE POWERS OF ATTORNEY--USES

1. **Management of property.** The following powers should be considered and expressed in the document when appropriate:

- a. To make deposits/withdrawals from accounts, to sell, to lease, to borrow, to invest, etc.
- b. To have access to the principal's safe-deposit box.
- c. To sign tax returns on behalf of the principal and to represent or to obtain representation of the principal at a tax audit. [It is prudent to authorize an agent to execute the IRS's own power of attorney forms because it is not clear if the IRS will accept a durable power of attorney for the purposes described above. The IRS requires that powers of attorney relate to specific tax years. Therefore, an agent's authority to act in tax matters should be limited to a number of specific years, e.g., 1987-2002.]
- d. To deal with retirement plans (e.g., to make IRA contributions, rollovers, and voluntary contributions, to borrow from the plan, to elect pay-out options).
- e. To fund a previously created living trust or to create different forms of property ownership. [Both of these actions can be helpful in avoiding the necessity of ancillary administration with respect to real property owned in another state.]
- f. To borrow for the benefit of the principal, which may be desirable if the other alternative would be to sell a highly appreciated asset during the life of the principal & forfeiting the stepped-up basis at death.
- g. To deal with life insurance on the life of the principal, including such actions as increasing coverage. [This may even be possible without an additional physical exam], to use policy dividends for added insurance, and to borrow against the policy [thus giving the agent an alternative to selling assets and possibly incurring a capital gain tax.]
- h. To represent the principal in creating or modifying the terms of buy-sell agreements.
- i. To forgive or collect the principal's debts.
- j. To complete the principal's charitable pledges.
- k. To redirect the principal's mail.
- l. To cancel or continue the principal's credit cards and charge accounts.
- m. To take custody of the principal's wills, deeds, life insurance policies, contracts, and securities.
- n. To institute, settle, appeal, or dismiss administrative proceedings and litigation on the principal's behalf.
- o. To reform estate planning documents [other than wills] if they prove to be defective after incompetency. [In this connection, some expression of intent in the durable power of attorney by the principal would be helpful. The lawyer must also be wary of changing "grand-fathered" estate planning documents if the effect would be to lose grand-fathering protection. Wills cannot be directly amended under a durable power of attorney.]

p. To nominate a conservator for the principal and a guardian for the principal's minor children.

q. To resign offices and positions, both public and private, on the principal's behalf.

2. Custody and management of the person.

a. To establish a residence for the principal [e.g., a nursing home].

b. To arrange for the principal's transportation and travel.

c. To arrange for the principal's recreation.

d. To purchase, store, repair, and dispose of (including abandonment) the principal's clothing, consumables, household goods, furnishings, and personal effects.

e. To make advance funeral and burial arrangements and to arrange to give and to receive anatomical gifts on the principal's behalf.

f. To arrange for the care and/or disposition of the principal's pet animals.

g. To employ, compensate, and discharge domestics, companions, and other nonmedical personnel on the principal's behalf.

h. To arrange for the satisfaction of the principal's religious and spiritual needs.

i. To provide for the principal's companionship.

j. To nominate guardian's for the principal's minor children.

3. Health care decisions.

a. To obtain and disclose the principal's medical records and other personal information.

b. To employ and discharge health care personnel.

c. To give or withhold consent to medical treatment of the principal.

d. To give or withhold consent to psychiatric care of the principal.

e. To authorize relief from the principal's pain.

f. To grant releases to medical personnel and others on the principal's behalf.

g. To refuse medical treatment on the principal's behalf.

**STATE BY STATE ANALYSIS
OF POWERS OF ATTORNEY (DURABLE)**

ALABAMA

1. Durable Powers of Attorney How Made

The law on powers of attorney in Alabama is covered by the Code of Alabama Sec 26-1-2. Under this statute a durable power of attorney is created by using the words, "This power of attorney shall not be affected by disability, incompetency, or incapacity of the principal."

2. Springing Powers

While there is no specific statute in Alabama dealing with the "springing powers" there is no statute denying their validity.

3. Who Can Create a Durable Power

There appears to be no limitations on who can create such a power in Alabama law.

4. Other Considerations

Alabama statutes have no specific reference to the "missing" or "missing in action" problem referred to in Clause 10 of the general form. Clause 10 should be included to provide for the durability of the power in this contingency. But see § 12-21-92, official written report that a person is missing, MIA, interned or captured, or is dead or alive, is prima facie evidence that the person is missing, MIA, etc.

5. Alabama Clause (General Form)

This power of attorney shall not become ineffective by my disability, incompetency, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States, called to active duty due to my unit/myself being mobilized. This power shall not become ineffective due to my absence and inability to act because of my military service or my status as "missing", missing in action or "prisoner of war" (See Code of Alabama). § 35-4-27 requires powers of attorney conferring authority to convey property, to enter satisfaction of mortgages or other liens to be proved or acknowledged and recorded in the same manner and to be received as evidence to the same extent as conveyances.

ALASKA

1. Durable Powers of Attorney How Made

The law on durable powers of attorney in Alaska has been recently revised and is contained in A.S. §§ 13.26.350-.356. When in Alaska a durable power may be created by using the words "This power of attorney shall not be affected by the subsequent disability of the principal," or "This power shall become effective upon the disability of the principal," or "other words substantially similar."

2. Springing Powers

While there is no specific statute in Alaska dealing with "springing" powers there is no statute denying their validity.

3. Who Can Create a Durable Power

Any resident or non-resident with the capacity to contract can create the power.

4. Other Considerations

Alaska statutes have no specific reference to the "missing" or "missing-in-action" or "prisoner of war." But see § 13.06.035 -persons missing/absent for a continuous period of 5 years can be presumed dead.

5. Alaska Clause (General Form)

This durable power of attorney shall not become ineffective by my disability or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my military service or my status as "missing," "missing in action" or "prisoner of war" or other similar status. (See A.S. §§ 13.26.350-.356).

ARIZONA

1. Durable Powers of Attorney How Made

The law on powers of attorney in Arizona is covered in Arizona Rev. Stat. Ann. § 14-5501 and 14-5502 (1975). Under this statute a durable power of attorney is created by using the words "this power of attorney shall not be affected by disability of the principal" or "this power of attorney shall become effective upon the disability of the principal."

2. Springing Powers

While there is no specific statute in Arizona dealing with "springing" powers there is no statute denying their validity.

3. Who Can Create a Durable Power

Any person with the capacity to contract, whether a resident or not, can create a durable power.

4. Other Considerations

Arizona statutes have no specific reference to the "missing", missing-in-action, or prisoner of war.

5. Arizona Clause (General Form)

This durable power of attorney shall not become ineffective by my disability or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my military service or my status as "missing", "missing-in-action", "prisoner of war" or other similar status. (See Ariz. Rev. Stat. Ann. § 14-5501 & 14-5502 (1975)).

ARKANSAS

1. Durable Powers of Attorney How Made

The law on durable powers of attorney in Arkansas is covered in the Arkansas Code of 1987 Annotated Sections 28-68-201 to 28-68-203 inclusive. A durable power must be in writing and the writing contain the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words.

2. Springing Powers

While there is no specific statutory reference to springing power there is no reference in case law or statutory law denying their validity.

3. Who Can Create a Durable Power

There are no limitations on who can create such a power in Arkansas law.

4. Other Considerations

Arkansas has no specific reference to the "missing", "missing in action" or "prisoner of war" problem. But see § 16-40-105, five years absence allows presumption of death.

5. Arkansas Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See A.C.A. Sections 28-68-201 to 28-68-203 inclusive.)

CALIFORNIA

1. Durable Powers of Attorney How Made

The law on durable powers of attorney in California is covered in California Civil Code §§ 2400-2407, by Stats. 1981, Chapter 511, § 4 known as "Uniform Durable Power of Attorney Act." In 1984 California Added the "Statutory Short for Power of Attorney Act and the Statutory Form Durable Power of Attorney for Health Care" Civil Code §§ 2450-2513. Both acts provide for printed forms which can be purchased in office supply stores and executed without consultation with counsel. The later two acts are mentioned for the benefit of counsel knowing such forms exist and the obvious need to question clients about their use of such lurking self-help landmines. The power is created in California by using the words, "This Power of Attorney shall not be affected by subsequent incapacity of the principal" or "This power shall become effective upon the incapacity of the principal," or similar words. § 2400.

2. Springing Powers

In the opinion of at least one knowledgeable California commentator the phrase, "This power shall become effective upon the incapacity of the principal," indicates California's acceptance of the "springing durable power" which becomes "operational not at the date of execution but the date of incapacity."

3. Who Can Create a Durable Power

Anyone who has the capacity to contract may make a valid durable power.

4. Other Considerations

See P.O.W. - M.I.A. Family Relief Act of 1972, Sec 10 of Stats. 1972, and Civil Code § 2355 which states that agency is terminated when principal becomes an absentee [includes missing and missing in action] unless the power of attorney expressly provides otherwise in writing. Civil Code § 2355(f).

5. California Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See Calif. Civil Code § 2400 - 2407 by Stats. 1981, Chapter 511, § 4).

COLORADO

1. Durable Powers of Attorney How Made

Durable powers are formed in Colorado under § 15-14-501 of the Colorado Statute 1973, 1983 Amendments which state that any power using the words "This power of attorney shall not be affected by the disability of the principal" or "This power of attorney shall become effective upon the disability of the principal or similar words" will create a durable power. Durable powers must be in writing.

2. Springing Powers

Colorado permits the so called "springing power" to go into effect only on the disability of the individual.

3. Who Can Create a Durable Power

Anyone, residents and non-resident alike, having reached the age of 18 can create a durable power in Colorado.

4. Other Considerations

See § 13-25-122. An official written report or record that a person is missing, missing in action, interned in a neutral country, captured by an enemy, or is dead or alive made by an authorized officer of the United States is prima facie evidence that such person was, on the date of the report, missing, MIA, etc, as the case may be. [No automatic revocation - no presumption of death]. Clause 10 ought to be included to provide for the durability of the power given this contingency.

CONNECTICUT

1. Durable Powers of Attorney How Made

The durable power of attorney is formed under § 45a-562 of the Connecticut General Statutes. To qualify the grant of authority must "be in a writing executed by the principal." Furthermore, the words, "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal" or "words of similar import" must appear.

2. Who Can Create a Durable Power

Adults, 18 and over including non-residents who otherwise have the capacity to contract can create such a power.

3. Other Considerations

Connecticut has no specific reference to the "missing", "missing-in-action", "prisoner-of-war," except § 52-181 - (essentially same as Colorado). In Connecticut, the durable power of attorney must be "executed and witnessed in the same manner as provided for deeds in Section 47-5." This section requires a signature "with or without a seal by the grantor [principal] with his own hand. . .with his name annexed to it. . .acknowledged. . .to be his act and deed; . . .and attested by two witnesses. . ." This special Connecticut requirement would need to be taken into account with the General Form. But see: § 27-137 which adds additional forms of acknowledgments of instruments by persons serving in the armed forces or their spouses. NOTE: Chapter 7a & 1-56a specifies the format for durable Powers of Attorney for bank accounts. NOTE: Chapter 7a, § 27-136 states that attorneys-in-fact acting on a Power of Attorney granted by a principal in the armed forces are liable for acts performed after death of the principal if the acts are done in good faith without the knowledge of death.

4. Connecticut Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See C.G.S.A. § 45a-562, Connecticut Gen. Stat. Chapter 802e, & 45a-562.

DELAWARE

1. Durable Powers of Attorney How Made

Durable powers are formed under 63 Delaware Laws, Chapter 267, 12 Del.C. §4901-4905. Under this statute a durable power of attorney is created by a writing containing the words: "This power of attorney shall not be affected by subsequent disability or incapacity of the principal" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing such intent.

2. Springing Powers

Such powers are specifically authorized by the words indicating that the power of attorney "shall become effective upon the disability or incapacity of the principal."

3. Who Can Create a Durable Power

Residents and non-residents who have the ability to contract can create the powers.

4. Other Considerations

Delaware has no specific reference to "missing", "missing-in-action", "prisoner-of-war."

5. Delaware Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty by myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

DISTRICT OF COLUMBIA

1. Durable Powers of Attorney How Made

1) Durable powers are formed in the District of Columbia under D.C. Code Ann. §§ 21-2081 through 21-2085 (1981, Repl. Vol. 1989). The durable power must be in writing and contain the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words.

2. Who Can Create a Durable Power

There are no limitations in this area.

3. Other Considerations

The District of Columbia has no specific reference to the "missing", "missing-in-action", "prisoner-of-war," & 14-701 - absence for 7 years creates a presumption of death.

4. District of Columbia Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war". (See D.C. Code Ann. § 21-2081 through 2085 (1981, Repl. Vol. 1989)).

FLORIDA

1. Durable Powers of Attorney How Made

In Florida durable powers of attorney are formed using the newly amended Fla. Stat. § 709.08 (Supp.1990). Prior to 10 October 1990 such durable powers had to be given to a family member. Now they can be given to anyone. The power must be in writing, state the relationship of the parties, if any, and shall include the words, "This durable family power of attorney shall not be affected by disability of the principal except as provided by statute," or similar words clearly showing the intent of the principal.

2. Springing Powers

There are no Florida cases or statutes denying the validity of springing powers. But see: § 709.08(2) - incompetence of the donor revokes the Power of Attorney.

3. Who Can Create a Durable Power

There are no limitations.

4. Other Considerations

A new requirement has been added to § 709.08 (1990) which requires that "certain close family members be notified of the execution of the durable power of attorney by a communication to their last known address. Under Fla. Stat. § 709.08 (4) (1990), "notification is required to the spouse or if there is no spouse, to the principal's adult, natural or adopted children." However, it is noted that the failure to notify these persons "does not affect the validity of the power of attorney."

Florida also apparently forbids powers of attorney to be used to give consent for abortion, under §§ 709.08 (1) 1990 and the provision implementing them under Chapter 90-232, Section 17. Therefore, under the general form 8a would not be necessary since Florida does not allow the durable power of attorney to provide consent for abortion.

Also, Florida seems to have no specific reference to the "missing", "missing-in-action", "prisoner-of-war" problem mentioned in Clause 10 of the General Form. Clause 10 ought to be included to provide for the durability of the power given this contingency.

5. Florida Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability or absence "except as provided by statute." This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See Fla. Stat. § 709.08 (1990 Amendments)).

GEORGIA

There is no Georgia Uniform Durable Power of Attorney Act, therefore, such powers are governed by general agency law and the common law. This was amended slightly by O.C.G.A. § 10-6-36, which reads as follows:

A written power of attorney, unless expressly providing otherwise, shall not be terminated by the incompetency of the principal. The power to act as an attorney-in-fact for a principal who subsequently becomes incompetent shall remain in force until such time as a guardian or receiver shall be appointed for the principal or until some other judicial proceeding shall terminate the power.

Another problem in Georgia law is that as a general rule under the common law, power of attorney is revoked automatically upon the death of the principal. However, under O.C.G.A. § 10-6-35 a power of attorney given "by a member of the Armed Forces of the United States or a person connected with war service outside the United States is not revoked by death unless the attorney-in-fact has actual notice of the death of the principal."

2. Springing Powers

There are no Georgia laws or cases denying the validity of "springing powers".

3. Who Can Create a Durable Power Under O.C.G.A. § 10-6-3

There seems to be no restriction on this power.

4. Other Considerations

See § 10-6-35(c), "No report or listing, either official or unofficial, of "missing" or "missing in action" as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of the principal or notice of any facts indicating the same or shall operate to revoke the agency [created by a power of attorney]."

5. Georgia Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

HAWAII

1. Durable Powers of Attorney How Made

Durable powers of attorney in Hawaii are formed under the Uniform Durable Power of Attorney Act, Hawaii Revised Statutes as Chapter 551D-1 through 551 D-7. Under this statute the power of attorney must be in writing and contain the words "This power of attorney shall not be affected by the disability of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words.

2. Springing Powers

The later clause seems to indicate springing powers are acceptable under Hawaii law.

3. Who Can Create a Durable Power

There seem to be no restrictions on the power.

4. Other Considerations

Hawaii has no specific reference to "missing", "missing-in-action", "prisoner-of-war." But § 560:1-107 states a general rule that a person absent for a continuous period of 5 years whose absence is not satisfactorily explained is presumed dead.

5. Hawaii Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See Hawaii Revised Statutes Chapter 551D-1 through 551D-7).

IDAHO

1. Durable Powers of Attorney How Made

Durable powers are formed under Idaho law Idaho Code § 15-5-501 through § 15-5-507. Durable powers are formed in a writing containing the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal" or "This power of attorney shall become effective upon the disability or incapacity of the principal," or other similar words.

2. Springing Powers

Specifically authorized when the words "this power of attorney shall become effective upon the disability or incapacity of the principal."

3. Who Can Create a Durable Power

Any person with the capacity to contract can create such a power.

4. Other Considerations

Idaho seems to have no specific reference to "missing", "missing-in-action", "prisoner-of-war."

5. Idaho Clause (General Form)

This power of attorney shall be a durable power under Idaho Code § 15-5-501 through 15-5-507. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

ILLINOIS

1. Durable Powers of Attorney How Made

In Illinois durable powers of attorney are formed under the Illinois Power of Attorney Act. Article II, Durable Powers of Attorney, § 2-1 of the Act covers the purposes for such a durable power. While there are no magic words or phrases needing to be incantated, the Act states, "The General Assembly recognizes that each individual has the right to appoint an agent to deal with property or make personal or healthcare decisions for the individual but that this right cannot be fully effective unless the principal may empower the agent to act throughout the principal's lifetime including periods of disability and be sure that third parties will honor the agent's authority at all times." So it appears that the standard language discussing incapacity, disability and the like should suffice.

2. Springing Powers

Springing powers are alluded to in the Illinois Durable Power of Attorney Act in §2-4a [aka Ch 110-1/2 para 802-4(a)]. "The principal may specify in the agency the event or time when the agency will begin. . ."

3. Who Can Create a Durable Power

Apparently anyone with capacity to contract.

4. Other Considerations

Illinois has no specific reference to "missing", "missing-in-action", "prisoner-of-war."

5. Illinois Clause (General Form)

This power of attorney shall be a durable power of attorney under the Illinois Durable Power of Attorney Act [Note: The drafter may need to incorporate the statutory cite here]. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status a "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See Illinois Power of Attorney Act including Article II, Durable Powers or Attorney).

INDIANA

1. Durable Powers of Attorney How Made

Durable powers of attorney in Indiana are formed under § 30-5-1 to 10-1 West's AIC. The act states that a durable power may be created by a writing using the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words.

2. Springing Powers

Springing powers appear to be contemplated in the last sentence.

3. Who Can Create a Durable Power

Any "person" referring to individuals at least eighteen (18) years old, corporations, trusts, or partnerships.

5. Indiana Clause (General Form)

This power of attorney shall be a durable power of attorney under the Indiana Durable Power of Attorney Act § 30-5-1 to 10-1 West's AIC.

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status as contemplated.

IOWA

1. Durable Powers of Attorney How Made

Iowa's durable powers are covered at § 633.705 and 633.706, I.C.A. (1983). The power must be written and include the words, "This power of attorney becomes effective upon the disability of the principal," or "This power of attorney shall not be affected by disability of the principal," or similar words.

2. Who Can Create a Durable Power

Any adult may currently execute a valid power of attorney.

3. Other Considerations

There is a requirement of recordation when dealing with real estate. Section 29A.74 of the Iowa Code deals with the "missing", "missing-in-action" section and should be listed specifically under item #10 of the General Form.

4. Iowa Clause (General Form)

This durable power of attorney will not be affected by the disability of the principal/service member. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This power will not become ineffective due to my absence or status as "missing" or my inability to act because of my military service. This power formed under Sections 633-705, and 633.706 I.C.A. (1983).

KANSAS

1. Durable Powers of Attorney How Made

Kansas follows the Uniform Durable Power of Attorney Act under K.S.A. § 58-610 through 58-617. The act states that the power must be written and contain the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "The power of attorney shall become effective upon the disability or incapacity of the principal. Similar words can be used.

2. Springing Powers

Springing powers are provided for in the act. An agent can act upon disability or incapacity.

3. Who Can Create a Durable Power

Persons, including non-residents with the capacity to contract may use the act. There are no formal execution requirements, however under K.S.A. § 58-601 a power "may be acknowledged or proved in the same manner as conveyances or land are proved." Revocations should be likewise recorded and notice sent to persons named in the P.O.A. by certified, registered or restricted mail.

4. Kansas Clause

This power of attorney shall be a durable power of attorney under K.S.A. § 58-610 through 68-617. This power of attorney shall not be affected by the disability or incapacity of the principal due to his service in the Armed Forces of the United States. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my military service, or my status as "missing", "missing-in-action", "prisoner-of-war".

5. Kansas Clause (General Form)

The durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See K.S.A. § 58-610 thru 58/617.)

KENTUCKY

1. Durable Powers of Attorney How Made
Durable powers are formed in Kentucky under K.R.S. § 386.093. Such durable powers use the words, "this power of attorney shall not be affected by the disability of the principal" or "this power of attorney shall become effective upon the disability of the principal" or similar words.
2. Springing Powers
The latter phrase above seems to foresee springing powers.
3. Who Can Create a Durable Power
There appear to be none other than the need for capacity to contract.
4. Other Considerations
Kentucky statutes also have a specific reference to the "missing", "missing-in-action", "prisoner-of-war" problem referred to in Clause 10 of the General Form. K.R.S. § 384.010 & K.R.S. § 384.030 ought to be included as a citation to the General Form 10. Note also that § 384.050 provides for heirs, next of kin, persons with an interest, etc, to petition district court and be appointed conservators of the estate of any person designated MIA/POW, interned or captured.

LOUISIANA

1. Durable Powers of Attorney How Made

Powers of Attorney are called "mandates" in Louisiana and are found in Civil Code Act 2989. "Mandate, procuration, or letter of attorney is an act by which one person gives power to another to transact for him and in his name, one or several affairs." It can be general or specific (Art. 2994). Article 2995 states that "it may vest an indefinite power to do whatever may appear conducive to the interest of the principal, or it may restrict the power given to the doing of what is specified in the procuration. Certain cases require express powers, listed in Art. 2997, including the ability to make health care decisions, to include surgery, medical expenses, nursing home residency, or medication. [Art. 2997A(7)]. This was added to Art. 2997 in 1990.

2. Who Can Create a Mandate

All adults and emancipated minors may be appointed attorneys in fact.

3. Other Considerations

There is no specific statutory guidance regarding MIA/POW status.

MAINE

1. Durable Powers of Attorney How Made

In Maine the statutes provide for the durable powers when a written power of attorney contains the words, "This power of attorney shall not be affected by the disability of the principal" or "This power shall become effective upon the disability of the principal" or similar words. Title 18-A §§ 5-501 & 5-502.

2. Springing Powers

The latter clause of the previous sentence seems to indicate such springing powers are recognized.

3. Who Can Create a Durable Power

It seems anyone with the capacity to contract should be able to create such a power.

4. Other Considerations

Maine has no specific reference to the "missing", "missing-in-action", "prisoner-of-war" problem.

5. Maine Clause (General Form)

This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status. (See M.R.S.A. Tit 18-A § 5-501 & 5-502 Supp. 1986).

MARYLAND

1. Durable Powers of Attorney How Made

In Maryland the statutes provide for durable powers when a written power of attorney contains the words "This power of attorney shall not be affected by the disability of the principal" or "This power shall become effective upon the disability of the principal" or other similar words. See Laws of Maryland, Estates and Trusts Article §§ 13-601 through 13-603.

2. Springing Powers

The second phrase quoted above specifically foresees such springing powers.

3. Who Can Create a Durable Power

Anyone who has the capacity to contract, including "nonresidents can create the power."

4. Other Considerations

Maryland statutes also have a specific reference to the "missing", "missing-in-action", "prisoner-of-war" problem referred to in Clause 10 of the General Form. Maryland Statute § 13-603 ought to be included as a citation to the general form. Designation as MIA does not revoke the power unless the instrument otherwise provides.

5. Maryland Clause (General Form)

This power of attorney is formed under Maryland Durable Power of Attorney Statutes § 13-601 through § 13-603.

This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

MASSACHUSETTS

1. Durable Powers of Attorney How Made

In Massachusetts the statutes provide for durable powers when a written power contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words. 201B & 1, et. seq., the Massachusetts Uniform Durable Power of Attorney Act.

2. Springing Powers

The latter phrase described in the above sentence envisions springing powers.

3. Who Can Create a Durable Power

There are apparently no limits on who can create the power.

4. Other Considerations

Massachusetts has no specific reference to "missing", "missing-in-action", "prisoner-of-war in relation to P.O.A.," but § 201-16A allows probate court to appoint a conservator for MIA/POW

5. Massachusetts Clause (General Form)

This power of attorney shall be a durable power of attorney under the Massachusetts Uniform Durable Power of Attorney Act. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

MICHIGAN

1. Durable Powers of Attorney How Made

Michigan statutes allow durable powers to be formed where a written power of attorney contains the words "This power of attorney shall not be affected by the disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words. See M.C.L.A. § 700.495.

2. Springing Powers

Springing powers are specifically foreseen by the phrase above, "This power of attorney shall become effective upon the disability of the principal."

3. Who Can Create a Durable Power

Other than the need for the capacity to enter into a task or relationship, no other restrictions apply. Therefore, even children with sufficient mental capabilities might serve. There are no residency requirements.

4. Other Considerations

§ 720.502 addresses "missing", "missing-in-action", "prisoner-of-war." It does not mandate an assumption of death. But a written finding of presumed death made by Secretary of War (SIC), Secretary of Navy, or other officer of U.S. authorized to make such finding is prima facie evidence of death. § 720.501. If out of state recording is contemplated, supernumerary witnesses may be indicated. See M.C.L. § 561.5, 565.47, 565.201, 120.

5. Michigan Clause (General Form)

This power of attorney shall be a durable power of attorney under M.C.L.A. § 700.495 & 700.999(1). This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

MINNESOTA

1. Durable Powers of Attorney How Made

In Minnesota the statutes provided for a durable power when the words "This power of attorney shall not be affected by the disability of the principal" or "This power of attorney shall become effective upon the disability of the principal" or similar words. See Chapter 523 Minnesota Statutes Section 523.07.

2. Springing Powers

Springing powers appear to be authorized by the clause, "This power of attorney shall become effective upon the disability of the principal" as stated above.

3. Who Can Create a Durable Power

Any competent adult under Minnesota law can apparently create a durable power.

4. Other Considerations

Minnesota statutes also have a specific reference to the "missing" persons. Chapter 523 Minnesota Statutes § 523.10 states that missing persons are presumed alive. While not specifically tailored to members of the Armed Services "missing in action" problem, it probably cannot hurt to mention this section.

5. Minnesota Clause (General Form)

This power of attorney shall be a durable power of attorney under Chapter 523 of the Minnesota Statutes. This durable power of attorney shall not become affected by my subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

MISSISSIPPI

1. Durable Powers of Attorney How Made

To create a durable power in Mississippi, the instrument must be written and state "This power shall not be affected by the subsequent disability or incompetence of the principal" or "This power of attorney shall become effective upon the disability of the principal" or other similar words. See Mississippi Laws 1982, § 87-3-13.

2. Springing Powers

Springing powers appear to be authorized by the clause, "This power of attorney shall become effective upon disability of the principal" as stated above.

3. Who Can Create a Durable Power

Anyone with capacity to contract, including non-residents, may create the power.

4. Other Considerations

§ 13-1-25 specifies presumptions as to status of military and naval personnel or federal civilian employee:

(1) Written finding of presumed death by officer of U.S. authorized to make such finding is prima facie evidence of death.

(2) Official written report of missing, missing in action, interned by neutral country, captured by enemy or is dead or alive is prima facie evidence that principal is missing, missing in action, interned, captured, or is dead or alive, as the case may be. [No automatic revocation of power].

5. Mississippi Clause (General Form)

This durable power of attorney is formed under the Mississippi laws 1982, Ch. 87-3-13. This durable power of attorney shall not become affected by subsequent disability incapacity of absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

MISSOURI

1. Durable Powers of Attorney How Made

Durable powers of attorney in Missouri must be written. Also, durable powers must be denominated as "Durable Power of Attorney" or state in substance the following: "THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT SHALL NOT TERMINATE IF I BECOME DISABLED OR INCAPACITATED." Under the new "Durable Power of Attorney Law of Missouri" such powers of attorney do not have to be recorded as they did under the old statute. §404.705.

2. Springing Powers

While there is no case or statutory law on point, a properly executed durable power or attorney appointing an agent, custodian immediately and giving him powers contingent on the mobilization of the soldier should suffice. This would satisfy the general law of agency and the Missouri statutes.

3. Who Can Create a Durable Power

There seem to be no limitations on the power.

4. Other Considerations

Missouri provides for an alternative to the durable "springing" power for possible use for IDT/AT periods. This section is Mo. Rev. Stat. § 475.024 (1985) which covers the temporary delegation of powers by a parent under the Probate Code 475.024. A parent or a minor, by a properly executed power of attorney may delegate to another individual for a period not exceeding one year, any of his powers regarding care or custody of the minor child, except his power to consent to marriage or adoption of the minor child. Another somewhat unusual provision of the Missouri statute is that a person appointed as an attorney in fact under the statute has no duty to act unless ". . . the attorney in fact has agreed expressly in writing to act for the principal." This further limitation must be remembered and written acknowledgement from the holder of the power should be in hand before execution of a Missouri document could be considered to be completed.

Also, Missouri has no specific reference to "missing", "missing-in-action", "prisoner-of-war," however, § 404-705 specifies that the authority granted by a principal to an attorney in fact in a written P.O.A. is not terminated in the event of later uncertainty as to whether the principal is dead or alive so long as the P.O.A. is designated "durable."

5. Missouri Clause (General Form)

"DURABLE POWER OF ATTORNEY"

This is a DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT SHALL NOT TERMINATE IF I BECOME DISABLED OR INCAPACITATED. This durable power of attorney shall not become effective due to my absence and inability to act because of my military service, or my status as "missing", "missing-in-action", "prisoner-of-war". This durable power of attorney is in accordance with Mo. Ann. Stat. § 404.700 to 404.735 (Vernon 1990), the Durable Power of Attorney Law of Missouri.

MONTANA

1. Durable Powers of Attorney How Made

In Montana, the statutes provide for the Durable Powers when a written power of attorney contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words. See Montana Code Annotated § 72-5-501, & § 72-5-502.

2. Springing Powers

Springing Powers seem to be contemplated by the second clause as outlined above.

3. Who Can Create a Durable Power

There are apparently no restrictions.

4. Other Considerations

§ 26-1-602 (26) states a disputable presumption that all persons not heard from in 7 years are dead. However, § 26-1-622 states that an official written report or record that a person is dead or alive; missing; missing in action; interned in a neutral country; captured; etc made by an authorized officer of the United States is prima facie evidence that such person is dead or alive, missing, missing in action, interned, or captured, as the case may be. [No automatic revocation; no presumption of death].

5. Montana Clause (General Form)

This durable power of attorney is formed under Montana Code Annotated § 72-5-501 & 502. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NEBRASKA

1. Durable Powers of Attorney How Made

The law on durable power of attorney in Nebraska is covered Neb. Rev. Stat. § 30-2665 (1943). Under this statute a durable power of attorney is created by using the words "this power of attorney shall not be affected by the disability of the principal" or "This power of attorney will become effective upon the disability of the principal." Other similar words or phrases evidencing the principal's intent to create such a power are sufficient to create a durable power but as such must be in writing. Court approval is not required for a valid power.

2. Springing Powers

Such powers are covered in the second clause above stating, "This power of attorney will become effective upon the disability of the principal."

3. Who Can Create a Durable Power

Anyone with capacity to contract can create such a power.

4. Special Non-Durable Power of Attorney

Under Nebraska law § 30-2604, Neb. Rev. Stat. (1943) a special power of attorney is present for a parent to delegate their powers for up to six months regarding care, custody and or property to the child including consent for emergency medical care treatment.

5. Other Considerations

Nebraska seems to have no specific reference to "missing", "missing-in-action", "prisoner-of-war."

6. Nebraska Clause for General Form

This durable power of attorney will not be affected by the disability of the principal/service member. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This power shall not become ineffective due to my absence or status as "missing" or "prisoner of war" or my inability to act because of my military service. This power is formed under Neb. Rev. Stat. § 30-2665 through 30-2669.

NEVADA

1. Durable Powers of Attorney How Made

Durable powers are formed in Nevada under the Durable Power of Attorney Statute N.R.S. 111.460, which states that written powers using the words "shall not be affected by the disability principal of the principal" or "becomes ineffective upon the disability of the principal" or similar words.

2. Springing Powers

Springing powers are covered in the phrase "become[s] effective upon the disability of the principal."

3. Who Can Create a Durable Power

Apparently any adult can create the power.

4. Other Considerations

In 1987 the Nevada legislature passed an act which created a durable power of attorney for health care. See Chapter 396 of N.R.S. See § 161.010 which provides for the appointment of a conservator whenever a person serving in or with the armed forces of the United States has been reported as missing, missing in action, interned in a neutral country, or captured and has not provided an adequate power of attorney authorizing another to act in his behalf.

5. Nevada Clause (General Form)

This durable power formed under the Nevada Durable Power of Attorney Act N.R.S. § 111.460 et. seq. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NEW HAMPSHIRE

1. Durable Powers of Attorney How Made

New Hampshire's powers are formed under R.S.A. § 506.6 (Supp.) which states that written powers "shall not be affected by the subsequent disability or incompetence of the principal" or similar words.

2. Springing Powers

Springing powers are not mentioned in the statute. A properly executed "special" durable power of attorney appointing an agent immediately and giving him powers contingent on the mobilization of the soldier should suffice. This would satisfy the general law of agency and the New Hampshire statute.

3. Who Can Create a Durable Power

Anyone who has the power to contract can create a durable power.

4. Other Considerations

The agency is not revoked by the death of the principal as to an attorney-in-fact who, without notice of death, acts in good faith, believing upon good reason, that the agency still exists. This is covered in R.S.A. § 506:5. Also because of the peculiar nature of general powers of attorney in New Hampshire the phrase "special durable powers of attorney" should be used.

5. New Hampshire Clause (General Form)

This special durable power of attorney is formed under the New Hampshire Durable Powers of Attorney Act. N.S.A. § 506.6. This special durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect immediately with the powers contingent upon being called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NEW JERSEY

1. Durable Powers of Attorney How Made

In New Jersey the statutes provide for the Durable Powers when a written power of attorney contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal" or similar words. See N.J.S.A. § 46:2B-8.

2. Springing Powers

The second phrase above covers springing powers.

3. Who Can Create a Durable Power

Anyone with the capacity to contract, including non-residents, can create the power.

4. Other Considerations

New Jersey has no specific reference to "missing", "missing-in-action", "prisoner-of-war," but § 46:2B-8b states that a person shall be under a disability if confined, detained by a foreign power, or has disappeared.

5. New Jersey Clause (General Form)

This special durable power of attorney is formed under N.J.S.A. § 46:2B-8. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NEW MEXICO

1. Durable Powers of Attorney How Made

In New Mexico the statutes provide for Durable Powers when a written power of attorney contains the words "This power of attorney shall not be affected by the incapacity of the principal" or "This power of attorney shall become effective upon the incapacity of the principal" or similar words. N.M.S.A. § 45-5-501 and 502.

2. Springing Powers

The second phrase above contemplates "springing" powers.

3. Who Can Create a Durable Power

Anyone with the ability to contract may create power.

4. Other Considerations

New Mexico has no specific reference to "missing", "missing-in-action", "prisoner-of-war."

5. New Mexico Clause (General Form)

This special durable power of attorney is formed under the N.M.S.A. § 45-5-501 A & B (1989). This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NEW YORK

1. Durable Powers of Attorney How Made

Durable powers are formed in New York under §§ 5-1601 & 5-1602 of N.Y. Gen. Oblig. Law (McKinney 1978 & Supp. 1988) which state that "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal or similar words."

2. Springing Powers

The New York Statute § 5-1602 covers this possibility by allowing the power of attorney to "become effective upon the occurrence of a specified contingency, including but not limited to the incapacity of the principal," provided "that . . . a person or persons named in the instrument declare in writing that such contingency has occurred." Furthermore, a "power containing such a limitation is effective when the written declaration is made stating that the specified contingency has occurred "without regard to whether the specified contingency has occurred." The Law Revision Commission's memorandum states that the declarant and the attorney-in-fact may be the same person.

3. Who Can Create a Durable Power

Anyone with capacity to contract can create such a power.

4. Other Considerations

See CPRL § 4527. An official written report that a person is missing, MIA, interned in a neutral country, or captured by an enemy, or is dead or alive, is prima facie evidence of such fact.

5. New York Clause (General Form)

This special durable power of attorney is formed under N.Y. Gen. Oblig. § 5-1601, 5-1602. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. The person named as attorney-in-fact must declare in writing that such contingency has occurred. See N.Y. Gen. Oblig. § 5-1602. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NORTH CAROLINA

1. Durable Powers of Attorney How Made

Durable powers are formed under North Carolina under N.C. Gen. Stat. § 32A-8 and § 32A-9. The power of attorney must be written and state that it is executed pursuant to Art 2 § 32A-8 or contain the words "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence" or "This power of attorney shall become effective after I become incapacitated or mentally incompetent" or similar words. § 32A-8.

To be valid subsequent to the principal's incapacity or mental incompetence, the Power of Attorney must be registered in the office of register of deeds in the county where the principal had legal residence or property. It can be registered after the principal becomes incapacitated. § 32A-9.

2. Springing Powers

Such powers are authorized under § N.C. Gen. Stat. 32A-8.

3. Who Can Create a Durable Power

Anyone with capacity to contract may create such a power.

4. Other Considerations

See §§ 28B-1 thru 28B-10, Estates of Absentees in Military Service. § 28B-2(2) allows for appointment of a receiver for estates of absentees in military service (including MIA/POW who have been reported in that status for a period of 1 year) who did not provide an adequate power of attorney. See Also § 8-37.2 - report that person is MIA/POW is prima facie evidence of that status.

5. North Carolina Clause (General Form)

This special durable springing power of attorney is formed under N.C. Gen. Stat. §§ 32A-8 and 32A-9 as amended. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power will be recorded at _____ (county), _____ (city), N.C. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

NORTH DAKOTA

1. Durable Powers of Attorney How Made

Durable powers are formed in North Dakota under Chapter 30.1-30-01, et seq. which states that a durable Power of Attorney is created by any power in writing which contains the words, "This power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time" or this Power of Attorney becomes effective upon the disability or incapacity of the principal," or similar words.

2. Springing Powers

Springing Powers are contemplated by the second phrase above.

3. Who Can Create a Durable Power

Anyone with the capacity to contract, resident or not can create the power.

4. Other Considerations

North Dakota has no specific reference to "missing", "missing in action" or "prisoner of war."

5. North Dakota Clause (General Form)

This durable power of attorney formed under the North Dakota Uniform Durable Power of Attorney Act Chapter 30.1-30-01, et seq. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

OHIO

1. Durable Powers of Attorney How Made

Ohio's durable powers are covered at Revised Code §§ 1337.09 and § 1337.091. The power must be written and include the words "This power shall not be affected by disability, incapacitation of the principal or lapse of time" or similar words.

2. Springing Powers

Specifically authorized by § 1337.09(B) conditioned on the occurrence of a specified event, including but not limited to disability, incapacity, or adjudged incompetency of the principal.

3. Who Can Create a Durable Power

Apparently anyone with capacity to contract can create such powers.

4. Other Considerations

Ohio has no specific reference to the "missing", "missing in action" or "prisoner of war." NOTE: Ohio has a special durable power for health care. See § 1337.11 et seq.

5. Ohio Clause (General Form)

This special durable power of attorney is formed under Ohio Statutes §§ 1337.09 & 1337.091. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. The attorney-in-fact is appointed immediately and giving the attorney-in-fact powers upon the soldier's call-up. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

OKLAHOMA

1. Durable Powers of Attorney How Made

In Oklahoma the Uniform Durable Power of Attorney Act is used to form such powers. A power must be written and use the words, "This power of attorney shall not be affected by the disability of the principal" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words. See 58 O.S. Supp. 1989 §§ 1071-1077.

2. Springing Powers

Such powers are contemplated by the second phrase above.

3. Who Can Create a Durable Power

Apparently anyone with capacity to contract can create such powers.

4. Other Considerations

Oklahoma has no specific reference to "missing", "missing in action" or "prisoner of war." But see O.S. § 361 which allows appointment of a conservator for persons reported "missing," MIA, POW, etc. for a period of 3 months.

5. Oklahoma Clause (General Form)

This durable power of attorney is formed under 58 O.S. Supp. 1989 §§ 1071-1077. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

OREGON

1. Durable Powers of Attorney How Made

Durable powers are formed in Oregon under Oregon Revised Statutes § 127.005 and § 127.015. Such powers must be in writing, and although the language of the statute does not follow the Uniform Durable Powers Act the "intent" is the same.

2. Springing Powers

The language above seems to indicate springing powers are valid.

3. Who Can Create a Durable Power

Anyone with capacity to contract can create such powers.

4. Other Considerations

Oregon has no specific reference to "missing", "missing in action" or "prisoner of war." But see § 127.015 which states that power is not revoked until death is known. See also § 126.157 which authorizes appointment of a conservator for the estate of persons confined, detained by a foreign power, or who have disappeared.

5. Oregon Clause (General Form)

This durable power of attorney formed under Oregon Revised Stat. § 127.005 and § 127.015. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

PENNSYLVANIA

1. Durable Powers of Attorney How Made

Durable powers are formed in Pennsylvania under 20 Pa.C.S. § 5601 et seq, and the written power indicates that the power "would not be affected by the disability of the principal" or "This power shall go into effect upon the disability of the principal" or similar words.

2. Springing Powers

Springing powers are authorized by the second phrase above.

3. Who Can Create a Durable Power

Anyone with capacity to contract can create the power.

4. Other Considerations

Pennsylvania has no specific reference to "missing", "missing in action" or "prisoner of war." But see Pa. C. S. 51 § 9401 and § 9402. Official written report that person is missing, MIA, interned, captured, or is dead or alive is prima facie evidence of such status, as the case may be.

5. Pennsylvania Clause (General Form)

This durable power of attorney formed under 20 Pa.C.S. § 5601 et seq. This durable power of attorney shall not become affected by subsequent disability, incapacity or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

RHODE ISLAND

1. Durable Powers of Attorney How Made

Durable powers are formed in Rhode Island under § 34-22-6.1, which states that a power must be in writing and contain the words, "This power of attorney should not be affected by the incompetency of the donor", or "This power shall become effective upon the incompetency of the donor", or similar words.

2. Springing Powers

The second phrase above permits springing powers.

3. Who Can Create a Durable Power

Apparently there are no statutory restrictions on who can create a power.

4. Other Considerations

Amendments to § 23-410-2 of the Rhode Island General Statutes dealing with Healthcare Powers of Attorney. This form contemplates that the person giving the power must be an adult and act for him/herself. It does not seem to take into account child health care.

§ 34-22-10 states that attorney-in-fact does not lose power of attorney by reason only of a report to the effect that the principal is missing or missing in action unless the death of such principal has been presumed by order of a court of competent jurisdiction and the attorney in fact has actual notice of such order.

5. Rhode Island Clause (General Form)

This durable power of attorney formed under Rhode Island laws § 34-22-6.1. This durable power of attorney shall not become affected by subsequent disability, incapacity of absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

SOUTH CAROLINA

1. Durable Powers of Attorney How Made

South Carolina's durable powers are covered at S.C. Code Ann. 62-5-501. If the power which must be written includes "This power of attorney is not affected by physical disability or mental incompetence of the principal", or "This power of attorney becomes effective upon the physical disability or mental incompetence of the principal" or similar words, then such power will be effective.

2. Springing Powers

Springing powers are contemplated.

3. Who Can Create a Durable Power

Anyone over 18 years and those under 18 if married can create durable powers.

4. Other Considerations

Under South Carolina law an instrument must be "executed and attested with the same formality as a will." This means at least two witnesses must sign in the presence of each other. Further, the instrument must be recorded in the same manner as a deed.

South Carolina has no specific reference to "missing", "missing in action" or "prisoner of war," but the instrument is effective notwithstanding "later uncertainty as to whether the principal is dead or alive."

5. South Carolina Clause (General Form)

This durable power of attorney formed under S.C. Code Ann. 62-5-501. This durable power of attorney shall not become affected by subsequent disability, incapacity of absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

SOUTH DAKOTA

1. Durable Powers of Attorney How Made

In South Dakota the statutes provide for durable powers when a written power of attorney contains the words "This power of attorney shall not be affected by the disability of the principal" or "This power shall become effective upon the disability of the principal" or similar words showing the intent of the principal that the authority of the attorney-in-fact to be durable to the extent authorized by statute." See S.D.C.L. § 59-7-2.1.

2. Springing Powers

The second phrase contemplates springing powers.

3. Who Can Create a Durable Power

Anyone with capacity to contract can create such powers.

4. Other Considerations

S.D.C.L. § 59-7-5 covers the "missing", "missing in action" problem specifically and ought to be included in item #10 of the general form. The Durable Power of Attorney also authorizes the attorney-in-fact to consent to, or reject medical procedures and intervention.

5. South Dakota Clause (General Form)

This power of attorney shall not be affected by the disability of the principal. This power will remain effective while a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my military service, or my status as "missing", "missing in action" or prisoner of war. This durable power of attorney is in accordance with S.D.C.L. § 59-7-2.1. (1990 Amendments)

TENNESSEE

1. Durable Powers of Attorney How Made

In Tennessee the statutes provide for durable powers when a written power of attorney contains the words "This power of attorney shall not be affected by the subsequent disability or incapacity of the principal", or "This power shall become effective upon the principal" or similar words. See Tenn. Code § 34-6-102

2. Springing Powers

The second phrase contemplates springing powers.

3. Who Can Create a Durable Power

Anyone with the Capacity to contract can create such powers.

4. Other Considerations

Tennessee enacted a new statute covering durable power of attorney for health care under Public Law Chapter No. 831 on 9 April 1990. Under these provisions a valid durable health care power of attorney must: "(1) specifically authorize the attorney-in-fact to make health care decisions; (2) contain the date of its execution, and (3) be witnessed by two witnesses (who are required to make a declaration set forth in the statute) or be acknowledged before a notary at any public place within Tennessee." This power continues even after the death of the principal (e.g. authorizing organ donation).

Tennessee has no specific reference to "missing", "missing in action" or "prisoner of war." See Tenn. Stat. 24-5-110 which states that a person is presumed to be missing, captured, etc. as is stated in the official report. Ordinary (non-health care) durable powers of attorney are effective until the attorney-in-fact has actual knowledge of the principal's death.

5. Tennessee Clause (General Form)

This durable power of attorney is valid under Tenn. Statutes § 34-6-10, et. seq. Uniform Durable Power of Attorney, and Public Law Chapter No. 831 durable power of attorney for healthcare. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

TEXAS

1. Durable Powers of Attorney How Made

Under Texas law, a durable power must contain the words "This power of attorney shall not terminate on disability of the principal" or similar words. The durable power of attorney must be:

- (1) In writing
- (2) Signed by a principal who is an adult.
- (3) Witnessed and signed by two persons who are 18 years of age or older.
- (4) Filed for record in the county in which the principal resides except for power of attorney executed for medical care." See § 36A of the Texas Probate Code.

2. Springing Powers

No provision for springing powers are present in the Texas Statute.

3. Who Can Create a Durable Power

Any adult with capacity can create the power.

4. Other Considerations

A durable power of attorney for health care may be created under Texas Civ Stat § 4590h-1. Even with the power of attorney, the agent may not authorize some type of medical treatment, e.g. abortion.

Texas allows the spouse of a person missing in action or POW to file a petition to get control over community property after a 6 month period. § 5.26.

5. Texas Clause (General Form)

This durable power of attorney is formed under § 36A of the Texas Probate Code. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

UTAH

1. Durable Powers of Attorney How Made

Durable powers are formed in Utah under § 75-5-501 and § 75-5-502, Utah Code Annotated. The power must be in writing and contain the words, "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words. § 75-5-501.

2. Springing Powers:

Springing Powers are contemplated by the provisions of § 75-5-502 specifying the effective date of power contingent upon the disability of the principal.

3. Who Can Create a Durable Power:

No limits are specified. The recordation laws use the words "person competent to execute such documents," so a reasonable inference would be that unemancipated minors cannot execute a durable power of attorney.

4. Other Considerations.

Although there is no specific reference to "missing," "missing in action" or "prisoner of war," § 75-5-501 provides for continuing validity of the power notwithstanding "later uncertainty as to whether the principal is dead or alive." Also, instruments affecting realty should be recorded. § 57-3-2.

5. Utah Clause - (Needs to be drafted)

VERMONT

1. Durable Powers of Attorney How Made

Durable Powers are formed in Vermont under Title 14, Chapter 111, Subchapter 11, §§ 3051 and 3052 of Vermont Statutes Annotated which state that a power must be in writing and contain the words "This power of attorney shall not be affected by the disability of the principal" or "This power shall become effective upon the disability of the principal" or similar words.

2. Springing Powers

The second phrase contemplates springing powers.

3. Who Can Create a Durable Power

Apparently there are no limits.

4. Other Considerations

§ 3051 leaves the power viable notwithstanding uncertainty as to whether the principal is dead or alive. For durable power of attorney for health care, see Title 11 § 3451 et seq. Also, Title 12 § 1702 - § 1703 states the presumption that an official written report that a person is missing, missing in action, interned, captured, or is dead or alive, is prima facie evidence of such status.

5. Vermont Clause (General Form)

This durable power formed under Title 14, Chapter 111, Sub chapter 11 § 3051 and 3052 of Vermont Statutes Annotated. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

VIRGINIA

1. Durable Powers of Attorney How Made

Durable powers are formed in Virginia pursuant to Va. Code Ann. § 11-9.1 (1989 Repl. Vol.), which states that a power must be in writing and contain the words "this power of attorney (or his authority) shall not terminate on disability of the principal" or other similar words.

2. Springing Powers

Springing powers are authorized under Va Code Ann. § 11-9.4 under the title of "Contingent Powers of Attorney" and are valid upon "(a) a specified future date, (b) the occurrence of a specific future event, or (c) existence of a specified condition which may occur in the future."

3. Who Can Create a Durable Power

Anyone with capacity to contract can create such powers.

4. Other Considerations

Virginia statutes have a specific reference to the "missing" or "missing in action" problem referred to in Clause 10 of the General Form. See Va. Code Ann. § 11-9.3 (1989 Repl. Vol.) Designation as missing in action does not operate to revoke the power of attorney unless such revocation is contained in the instrument.

5. Virginia Clause (General Form)

This durable power of attorney formed under Va. Code Ann. § 11-9.1, § 11-9.3 §§ 11-9.4 (1989 Rep. 1 Vol.). This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

WASHINGTON

1. Durable Powers of Attorney How Made

In Washington to create a durable power the document must be written and state "This power of attorney shall not be affected by disability of the principal" or "This power of attorney shall become effective upon the disability of the principal" or similar words. Rev. Code of Washington § 11.94.010, et. seq.

2. Springing Powers

The second phrase above contemplates springing powers.

3. Who Can Create a Durable Power

There are apparently no requirements.

4. Other Considerations

The power continues in force notwithstanding later uncertainty as to whether the principal is dead or alive. § 11.94.010(1) has a specific reference to "missing" and "missing in action" principals in § 73.20.070 that states that powers of attorney are not revoked by such status. See generally § 73.20.010 et seq. for all information specific to veterans and military personnel in conjunction with powers of attorney. Health care powers are specifically mentioned in § 11.94.046 and § 11.94.010(3).

5. Washington Clause (General Form)

This durable power of attorney formed under Rev. Code of Washington § 11.94.010 et seq. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

WEST VIRGINIA

1. Durable Powers of Attorney How Made

In West Virginia, to create a durable power the instrument must be written and state "This power of attorney shall not be affected by subsequent disability or incompetence of the principal" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words. See W.Va. Code Ann. § 39-4-1 to 39-4-7 (Supp. 1986).

2. Springing Powers

Springing powers are contemplated by the second phrase above.

3. Who Can Create a Durable Power

Anyone with the capacity to contract may make such a power.

4. Other Considerations

West Virginia has no specific reference to "missing", "missing in action" or "prisoner of war."

5. West Virginia Clause (General Form)

This durable power of attorney formed under W.Va. Code Ann § 39-4-1 to 39-4-7 (Supp. 1986). This durable power of attorney shall not become affected by subsequent disability, incapacity of absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

WISCONSIN

1. Durable Powers of Attorney How Made

In Wisconsin to create a durable power the document must be written and state "this power of attorney shall not be affected by disability of the principal" or "this power of attorney shall not be affected by the disability of the principal" or similar words. See Wis. Stat. § 243.07, et. seq.

2. Springing Powers

The second phrase above contemplates springing powers.

3. Who Can Create a Durable Power

Anyone with capacity to contract can create the power.

4. Other Considerations

Wisconsin has no specific reference to "missing", "missing in action" or "prisoner of war." A power of attorney is not revoked until notice of death. § 243.07(4). For reference to health care, see § 243.07(6m).

5. Wisconsin Clause (General Form)

This durable power of attorney is formed under Wis. Stat. § 243.07 et. seq. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This durable power of attorney shall not become ineffective due to my absence and inability to act because of my status as "missing", "missing-in-action", "prisoner-of-war" or other similar status.

WYOMING

1. Durable Powers of Attorney How Made

In Wyoming to create a durable power of attorney the instrument must be written and state "This power of attorney shall not become ineffective by my disability," or "This power of attorney shall become effective upon my disability," or state words showing the intent of the principal that the authority conferred by his power of attorney instrument shall be exercised notwithstanding his disability. W.S. § 3-5-101(a)."

2. Springing Powers

The second phrase above contemplates a springing power.

3. Who Can Create a Durable Power

There is no restriction on who can create a durable power under Wyoming law.

4. Other Considerations

§ 3-5-101(C) continues the power notwithstanding uncertainty as to whether the principal is dead or alive. Wyoming has a specific reference to "missing", "missing in action" or "prisoner of war." A report of principal as missing does not constitute or have the effect of notice of death.

5. Wyoming Clause (General Form)

This durable power is formed under W.S. § 3-5-101. This durable power of attorney shall not become affected by subsequent disability, incapacity, or absence. This power shall go into effect while I am a member of the Armed Forces of the United States called to active duty due to myself/my unit being mobilized. This power shall not become ineffective due to my absence and inability to act because of my military service or my status as "missing-in-action" or "prisoner-of-war".

