

# Pre-Deployment Legal Brief

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What you need to know before you  
deploy

OJAG Code 16 (Legal Assistance)



# Introduction

- The purpose of this brief is to provide you with all the knowledge you need to be “legally ready” before you deploy
- What does it mean to be “legally ready?”
  - You and your family resolve legal issues or have a plan in place that addresses your unique legal requirements, enabling you to be focused on the job and mission, remaining confident that your legal needs are being met
- Legal Assistance offices provide legal advice to on personal legal issues to Servicemembers and their dependants at no cost





# Legal Issues Related to Deployment

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- Estate Planning (Wills)
- Powers of Attorney
- Consumer Protection
- Servicemembers Civil Relief Act (SCRA)
- Family Support
- Employment and Reemployment Rights (Reservists Only)



# Estate Planning

- An “Estate Plan” refers to all of the documents that concern possessions, property, and even health care decisions in the event of death or incapacitation. These documents include:
  - Wills
  - Living Will and/or Health Care Directives
  - Durable Financial Power of Attorney
  - Disposition of Remains
  - SGLI
  - “Record of Emergency Data” (DD-93) and your Electronic Service Record



# Estate Planning - Wills

- A will tells the world how to distribute your estate (your money and possessions) upon your death
- The will names an “executor” or “personal representative” who will distribute your estate
- If you have children who are younger than 18, or who are over 18 and disabled, a will can nominate guardians for them and their assets in the event both parents pass away
- A will can also tell your personal representative how to dispose of your remains





# Estate Planning – Who Needs a Will?

- If you have dependents; and/or own real property; and/or have personal property that you want to specifically designate how it would be disposed of, then you may need a will
  
- If you die without a will
  - Your property will be distributed according to state law
  - If you have minor children, the state will make decisions about your children upon your death if you die without a will
  - These decisions may or may not be in accordance with your wishes
  
- If you are married, both you and your spouse can get a will (and many other important estate planning documents) at no cost at a military legal assistance office



# Estate Planning – What is a Living Will?

- A living will allows you to nominate an “agent” (a trusted adult) to make health care decisions for you if you are still living but cannot make those decisions for yourself because of a serious illness or injury
- A living will also allows you to make, in advance, certain decisions about your health care by specifically telling your “agent” what to do
- It is sometimes known as an “Advance Healthcare Directive”



# Estate Planning – Record of Emergency Data, SGLI Beneficiary Designation

- It is important to think of all of these documents as a part of your estate plan, even though they are not part of your will
  - These documents allow you to designate who will receive your life insurance, death gratuity, final pay, and other benefits in the event of your death
  - The value of these benefits can exceed \$500,000
  
- A legal assistance attorney can help you make sure these documents are filled out correctly – if your will sets up a special “trust” (e.g., for your minor children), it is especially important for a legal assistance attorney to help you complete the SGLI Beneficiary Designation
  
- These documents must be filed with your PSD to take effect





# Powers of Attorney

- Powers of attorney are legal documents where you (the “principal”) grant someone else (the “agent”) the legal authority to act on your behalf
- Common uses for a power of attorney allow your agent to act on your behalf to:
  - Endorse or cash checks in your name
  - Sell, register, transport, or purchase your vehicle
  - In loco parentis (allows someone else to make “parental” types of decisions for your children, but is not a substitute for a court order)
  - File your income tax returns
  - Enter or vacate military housing for you
  - Buy, sell, or refinance your real estate



# Powers of Attorney

- There are two common types of Powers of Attorney:
  - General
    - A “General” power of attorney gives your agent unlimited power to act on your behalf
    - Benefits: you don’t have to guess what will need to be done during your deployment because it allows your agent to do everything on your behalf
    - Problems: the power that it provides may be abused, and some businesses may not accept it due to its broad nature
  - Special
    - A “Special” power of attorney gives your agent limited power to do a specific thing (to register your car, for example)
    - Special powers of attorney are more likely to be honored by businesses and creditors
    - They are generally required for financial and real estate issues



# Power of Attorney for Child Care (*In Loco Parentis*)

- A child care power of attorney allows you to appoint an agent to care for your minor children
- It can be an important tool for dual military spouses and single parents but it is not a substitute for a Family Care Plan (NAVPERS 1740/6 and 1740/7)
  - A child care power of attorney is something to have in addition to your Family Care Plan – it can give the person you designate in your Family Care Plan the legal authority to care for your child
- It is often used by caregivers to:
  - Register children for school or daycare
  - Authorize medical treatment for the child when the parents cannot be reached to provide their authorization
- A child care power of attorney does not grant legal or physical custody – those can only be granted by a court order



# Communicating Your Estate Plan

- Once your estate planning documents are completed, it is important to communicate your wishes to your close family and friends
  - Tell the executor of your will that you have named that person as an executor, and tell him or her where the documents will be located
  - If you have named a guardian or guardians for your minor children, tell the guardians that you have named them as such, and tell the guardians any other wishes you may have regarding the care of your children
  - Tell your loved ones, as well as the person you named as your agent in the advanced health care directive (living will), your wishes for your health care should you be injured or ill and unable to make such decisions for yourself
  - Communicate any wishes you have regarding your burial or memorial service to your loved ones; just in case the documents containing your wishes cannot be located
  
- *Tell those close to you that you have an estate plan, and explain where the documents are located*



# Consumer Protection and the Servicemember's Civil Relief Act

- Important topics in these areas are:
  - Identity Theft
  - Vehicle Storage
  - Take Care of Your Property While Deployed
  - Tax Filing
  - Meeting Financial Obligations While Deployed
  - Cell Phone Contracts
  - Interest Rate Protection





# Consumer Law – Identity Theft

- To help avoid identity theft, add an “Active Duty Alert” to your credit reports calling any one of the three credit reporting agencies (calling one places the alert on file with the others)
  - The active duty alert requires the Agencies to contact you directly to verify your identity if someone requests credit in your name
    - TransUnion – 1-800-680-7289
    - Equifax – 1-800-525-6285
    - Experian – 1-800-397-3742
  
- Regularly check your credit history
  - **Your Access to Free Credit Reports**  
<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre34.shtm>
  
- Review your monthly financial statements – immediately report any abnormalities



# Consumer Law – Vehicle Storage

- It is a good idea to notify DMV of your current address in case your vehicle is towed
- Store your vehicle in legitimate storage facilities
- Make sure the registration is current
- Make sure the insurance is current in case the vehicle is damaged while in storage
  - Many insurance companies have “storage” insurance that is less expensive but will still protect the vehicle



# Taking Care of Your Property While Deployed

- In addition to your vehicle, you should think about how to protect and care for your other possessions and property while you are deployed
  - Home or apartment
    - Make sure you have homeowners or renters insurance that will stay in place for the entire deployment
    - Notify your landlord or neighbors of your absence and provide a key to someone you trust
    - Do your best to prepare your home or apartment and personal property for the weather that may occur while you are deployed (for example, winter-proofing your home even though winter may be months away)
  - Other possessions
    - Make sure your renters or homeowners insurance provides enough coverage so that you can replace your possessions in the event they are lost
    - Create a record of your possessions by using videotape or simply writing down a list of the things you own – this will make filing a claim much easier in the event of a loss





# Tax Filing

- If you are deployed during the tax season (January through mid-April), the IRS provides three types of extensions
  - First, for those deployed to a combat zone or in support of contingency operations, the IRS provides an automatic extension for filing and payment of any taxes you owe until 180 after you return from the combat zone (plus any days you were deployed during that particular tax season)
    - For example, if you returned from a deployment on 15 January, you have 195 days (180 plus the 15 days of the tax season you were deployed) to file and pay your taxes
  - Second, for those who are living outside the United States (but not deployed to a combat zone or in support of contingency operations) the IRS provides an automatic two month extension of the deadline to file your taxes
    - NOTE – the deadline to pay does not extend; if you file after the deadline and you owe taxes, you will be charge interest on the amount you owed starting on the last day of the tax season
  - Finally, any military member can file form 4868 before the last day of the tax season to receive a 6 month extension to file
    - The extension is automatic after you file the form
    - Like the second type, the deadline to pay taxes does not extend



# Meeting Financial Obligations

- There are additional financial obligations to consider before you deploy, for example:
  - Loan payments
  - Credit card payments
  - Utilities
  - Other recurring payments (gym membership, cell phone, car lease, etc.)
  - Child support
  
- It is important to have a plan in place to meet these financial obligations, whether by arranging for automatic payments or requesting a hold while you are deployed
  - Keep in mind that some of these obligations may be placed on hold, but the company will continue to charge you interest. It is best to use the protections of the SCRA (see next section) if possible – if you cannot, it is best to continue to make payments while deployed



# Servicemembers Civil Relief Act (SCRA)

- Allows termination of rental property lease and some auto leases
- May allow you to delay civil court proceedings while an active duty
- Allows you to reduce the interest rates on most of your pre-service debt to 6%
- Allows you to cancel or suspend cell phone contracts while on orders out of the contract area
- Protects you from lien sales, judgments against you, and protects your family from eviction under certain circumstances
- Note: There are complex requirements to obtain many of these benefits, so it is important to see a legal assistance attorney to insure you will be successful in exercising your rights under the SCRA



# SCRA – Cell Phones

- The SCRA allows you to interrupt your cell phone service without paying any fees as long as you are on orders for 90 days or more to a location that is not supported by your current cell phone contract
- Allows you to reinstate your service with the same phone number as long as you resubscribe to the service within 90 days from the time you return to the contract area
- It is best to provide your cell phone company with written notice of your intent to interrupt your service along with a copy of your orders
  - Legal assistance attorneys are available to help if you have questions about this process



# SCRA - Landlord/Tenant

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- The SCRA is powerful because it allows servicemembers or their dependents with whom the member lives to break a lease with deployment orders (or with any notification, certification, or verification from your Commanding Officer) of 90 days or more
  
- You must provide written notice to the landlord along with a copy of your orders
  - You will owe rent for one month after the end of the month in which notice was given, so it is a good idea to provide notice early or you may end up paying rent for an extra month while you are deployed



# Landlord/Tenant

- Schedule a walkthrough with your landlord at least 3 days before you leave so you can make any repairs to damaged property before you move
- Landlords should not charge you for damages that fall into the category of “normal wear and tear”
- Landlords are usually required to return a security deposit within a certain timeframe, and to fully account for any money withheld
- State laws may provide even more protections for tenants – you can go to your legal assistance office to learn about these protections



# SCRA – Delaying Certain Court Proceedings Due to Military Service

- Don't ignore any subpoenas or other court documents that are delivered to you – IMMEDIATELY NOTIFY AND SEEK ASSISTANCE from your chain of command and your local legal assistance office
- Civil or domestic court proceedings may be rescheduled due to military service or a military obligation that prevents you from attending at the set date and time; the SCRA requires courts to delay proceedings for at least 90 days
  - Requires one letter from you and one letter from your Commanding Officer, both of which state:
    - that your military obligation prevents you from attending court
    - leave cannot be granted
    - a date on which you will be available to appear in court
  - It is important to note that these letters should be sent before the court date – if the proceedings take place without you, any judgments levied against you can be difficult and expensive to overturn
- Note: The SCRA does not provide for a delay in cases of criminal proceedings for failure to appear citations or in matters involving violations of motor vehicle operation laws



# SCRA – Additional Benefits

- In many instances, the SCRA allows deploying servicemembers to break car leases before a deployment (of 180 days or more) if the servicemember gives written notice and a copy of orders to the dealership and returns the vehicle within 15 days of that written notice
  
- Servicemembers (whether deploying or not) may reduce their interest rate on a pre-active duty debt to 6%
  - Provide the request in writing
  - Include a copy of your enlistment contract or active duty orders
  - Such loans include credit card debt, mortgages, and car loans
  
- The SCRA can also delay an eviction of the servicemember's family while the servicemember is deployed
  
- Legal assistance attorneys are available to help if you have questions about these benefits





# Family Support

- Family support issues sometimes arise while on deployment
  - MILPERSMAN 1754-030 states that there is a duty to support military dependents, and dependents may contact a Sailor's command and ask that the Sailor be counseled about this duty
  - Setting up an allotment or other type of automatic payment will insure continuous support for your dependents and can help avoid problems before they start
  
- Ensure all dependents have ID cards, and that they will not expire during deployment
  
- Ensure your family has information about medical providers, Fleet & Family Support Centers, command ombudsmen, etc.
  
- Ensure your Command has accurate information on how to reach your dependents in case of emergency or natural disaster



# Employment and Reemployment Rights (Reservists Only)

- Uniformed Services Employment and Reemployment Rights Act (USERRA)
  - Prohibits discrimination against Reservists by their civilian employer and requires reemployment after a call to Active Duty
  - In addition to providing reemployment, the employer must also return the Reservist to a similar position for seniority, pay, and retirement purposes, as well as provide retraining if necessary

A blue banner with white text and graphics. At the top, there are two white stars on the left and right, and five circular seals of the Department of the Army, Department of the Navy, Department of the Air Force, and United States Coast Guard in the center. Below the seals, the text reads: "YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT". At the bottom, a white line separates the text from a paragraph: "USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services."/>

**YOUR RIGHTS UNDER USERRA**  
**THE UNIFORMED SERVICES EMPLOYMENT**  
**AND REEMPLOYMENT RIGHTS ACT**

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.



# Employment and Reemployment Rights (Reservists Only)

- To insure reemployment after a call to Active Duty, Reservists **MUST**:
  - Notify employer of upcoming call to Active Duty (provide a copy of orders along with written notification)
  - Receive an Honorable or General discharge (if released from Reserves after Active Duty time)
  - Reapply for the job in a “reasonable amount of time”



# Employment and Reemployment Rights (Reservists Only)

- Timely reapplication for job means:
  - If Active for <31 days, you must reapply at the beginning of the first regularly scheduled work period, after taking the time required to return home safely followed by an 8 hour rest period
  - If Active for 31-180 days, you have 14 days to reapply
  - If Active for 181 or more days, you have 90 days to reapply
  - A service related illness or injury extends the reapplication deadline to 2 years during recovery



# Employment and Reemployment Rights (Reservists Only)

➤ Support for Reservists dealing with USERRA issues can be obtained by contacting:

– The Department of Labor (DOL VETS)

<http://www.dol.gov/vets/>

(804) 786-7270/7269/6599

– National Committee for Employer Support of the Guard and Reserve (NCESGR)

[www.esgr.org](http://www.esgr.org)

1-800-336-4590



# Legal Assistance Offices

- For more information on any of the topics discussed in this presentation, or for any other personal legal issues, contact your local legal assistance office at:  
[http://www.jag.navy.mil/legal\\_services/nlso\\_map\\_global.htm](http://www.jag.navy.mil/legal_services/nlso_map_global.htm)
  - Click on your geographic region to find the office closest to you
  - Phone consultations are also available if you are too far away to travel to the nearest office
  
- JAGs in other services can also provide legal assistance advice - you may find an office in your geographic location by going to the Armed Forces Legal Assistance Locator at:  
<http://legalassistance.law.af.mil/content/locator.php>