



## Put Affairs in Order Before You Deploy

So you've received the call to deploy. You have many tasks to complete before you leave—including a number of personal legal affairs.

While you should have the opportunity to see a JAG officer as part of your pre-deployment readiness process, you shouldn't wait to get your legal affairs in order. While JAG officers are very competent, they will not have the opportunity to spend substantial time with each deploying service member, so you need to be prepared when you sit down with your JAG.

I'm a National Guardsman myself. Although I'm an attorney in civilian life, when I deployed to Iraq as a cannon cocker — a field artillery officer — many of the military specific legal issues were new to me, and I had some questions. I wrote them down in advance and when I met the JAG officer, I was prepared with documents he would need to draft my will, as well as address questions I had about the Servicemembers' Civil Relief Act.

Your top priority: If you don't have a will, now is the time to make an appointment at your closest military base to have a will prepared by a JAG officer. A will is the best way to ensure that your wishes are met about who should receive your assets should you become a casualty.

A will is also a way for you to name a guardian for your children should both you and your spouse pass away or if you are a single parent. Further, you can set up a trust and name a trustee to take care of any assets left to your minor children.

You will also need to name an executor — someone who will take care of wrapping up the estate and distributing any assets left as you direct in your will. In many states, executors are paid a commission for their services; thus you should name someone you trust.

If you die without a will, the law of intestacy will dictate how your assets are distributed. This does not mean, as many barracks lawyers believe, that your assets will pass to the state; rather it means your state law will dictate how your assets are distributed.

In many states, your assets will not all pass to your surviving spouse, but will pass proportionately to your spouse and children. This may or may not be how you would like your assets to be distributed — thus the need for a will.

An important note here is that a will does not change your life insurance elections. A will only effects property that will be placed in your estate like your car, house, TV, computers, and other personal property.

You should also think about drafting a health care proxy and advanced medical directive.

A health care proxy gives someone you name the ability to make health care decisions for you should you become incapacitated.

An advanced medical directive (also known as a living will) states what types of medical treatments you desire — or do not desire — should you become incapacitated. This is extremely important; it gives the person you designate as your health care proxy some guidance as to what your preferences for treatment would be.

These issues are especially important if you are a young single service member with divorced parents who have trouble communicating. Nobody wants to see a fight over what medical treatment you should get and which parent should control your decisions when you cannot. It's easier for everybody involved if you make your wishes clear in advance in those kinds of situations.

Another thing to think about is executing a durable power of attorney so that someone you name can execute documents and conduct business for you while you are deployed, such as bank transactions, signing checks and paying bills.

However, you need to deeply trust the person you select, as you'll be giving them quite a bit of power with regard to your business and legal affairs. This is important for married couples so your spouse can take care of the home while you're away.

But even here, you need to be careful; if you get a "Dear John" or "Dear Jane" letter while deployed, not only will Jody be gone when you get home, but if he or she had a power of attorney, so may be the money you had in the bank. You have the ability to revoke a power of attorney at any time. Make sure you talk to the JAG officer about how to revoke this important legal document if your situation changes in six months.

You'll also want to update your life insurance policies to ensure that you have enough coverage to provide for your family. As I mentioned above, life insurance payments pass by contract, not your will. This means you need to name a beneficiary in the life insurance policy. The fact that you name beneficiaries in your will does not mean that your life insurance money will pass to them. Thus, it is very important to ensure that your life insurance policies and the beneficiaries listed are current.

This is especially important if you are undergoing a separation or have recently been divorced. However, be sure to check the terms of your separation agreement or divorce decree as it may stipulate that you need to maintain life insurance for your spouse.

You should also speak to a JAG officer concerning protections afforded you under the Servicemembers' Civil Relief Act of 2003. A future column will deal with the SCRA in full detail, but here are the basics.

If you're involved in litigation or you are being sued, you may be able to stay (hold off) the proceeding during your deployment.

More importantly, the SCRA provides that the rate of interest on debts incurred by service members prior to his/her entry onto active duty shall not exceed 6 percent per year during their period of service. To avoid application of this section, a creditor must show that the ability of the service member to pay more is not materially affected by his or her military service.

Further, under the SCRA, a deploying service member can terminate a lease of a residence or a motor vehicle.

You should speak to a JAG officer for more details on how the protections under SCRA apply to your situation. Make sure you bring your home or car lease, your mortgage and other loan information, and copies of any lawsuits you may be involved in when you talk to the JAG officer.

It's important to note that the SCRA does not apply to any criminal matters; if you have been recently arrested or given a traffic ticket, make sure you resolve those issues before you deploy.

For Guard and reserve members, your civilian jobs are protected by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

We deal with USERRA issues in detail in our print version of "Ask the Lawyer," but, in short, that law states your employer must hold your job until you return from active duty.

Unfortunately, this is an area where we see a lot of issues and litigation. As soon as you receive your military orders, you should notify your employer that you have received orders to active duty. I strongly suggest that you mail a certified letter to your personnel department or fax a letter to them with your orders, ensuring that you keep the fax confirmation sheet or return certified mailing card.

Once you return from active duty, you must notify your employer that you have returned and that you desire to return to work. Once again, I strongly suggest you do this by certified letter or fax so that you have proof of this communication. Don't rely on oral communication because if your return employment becomes an issue, you'll want to have proof of these communications with your employer.

These are just some of the legal issues you should be prepared for when the time comes to deploy. If you have fairly solid information that you'll be deploying in the near future, there's no reason to put off taking care of these issues until the deployment orders actually come down.

This will ensure you have ample time to address these complex issues before the rush of a deployment is facing you and your family.