



## DEPLOYMENT POA AND WILL GUIDE

There are several documents you should think about in the event you are absent from your family for a period of time, including powers of attorney, wills, and insurance beneficiary designations.

### **Powers of Attorney (POA)**

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

Businesses are not required to accept a POA . No one can force a business, including a bank, to accept a POA. You should check with your bank and other business or agencies you deal with to ensure they will honor the POA. Sometimes, they have their own POA that they will honor.

NOTE: The finance office will not accept a general power of attorney. The legal office has a special power of attorney to take of your needs at the finance office for military pay.

### **Who needs a Power of Attorney?**

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 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.

### **What kind of Power of Attorney do I need?**

There are two 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 agency may perform on your behalf (i.e., sell or register your car, ship or receive household goods, sell property, access bank accounts, 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.

In deciding which type of POA is needed, always remember the general rule – DON’T GIVE AWAY MORE POWER THAN IS ABSOLUTELY NECESSARY. Don’t get a general POA if all you need is a special POA.

In deciding who to give a POA to (your agent), there are three 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 affairs. To use the POA, the agency 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 POA are notified that it has been revoked. This is another reason to give a POA only when necessary and to the extent needed.

### **Wills – Who needs a Will?**

Not everyone needs a will. Unmarried military members with no children generally do not need a will if they intend their property to be distributed to their closest relatives, usually their mother and father, or siblings if the parents are deceased. This is usually how state law will control distribution if you die without a will. However, if you want to ensure your assets are distributed exactly as you wish, then you should make a will.

ANG members and their spouses can have wills prepared, free of charge, at the legal office during UTA. See the legal assistance information for specifics about how to make an appointment and obtain the will worksheet.

### **Insurance**

All military members who have private life insurance (other than SGLI) should check with their insurance agency to see whether the policy contains a “war clause” or “combat exclusion clause.” Such clauses state that the policy will pay nothing if the insured is killed during combat.

Servicemembers’ Group Life Insurance (SGLI) is a better choice than many other insurance plans because it pays out in situations, such as death by war or suicide, where other plans do not.

However, when it comes to their SGLI benefits, many military members simply sign the form and never think about it again. That’s a big mistake. Think about the following issues, and update your SGLI so that this important benefit goes where you want and need it to go.

The military member has the absolute right to choose the beneficiary to receive the SGLI funds in the event of death. Any person, or legal entity (such as a charity), can be a beneficiary. All you have to do is indicate your preference on an appropriate VA Form (VA Form SGLV-8286). However, you have the option to place no one as your beneficiary, or to indicate “by law” in the place where you would normally list a beneficiary. If you choose either of those options, then SGLI proceeds are paid according to the SGLI statute. According to the statute, the proceeds will first go to your spouse, but if you don’t have a spouse, then to your surviving children in equal shares. If you don’t have any children, the proceeds will go to your parents. If you don’t have any parents, the proceeds will go to the executor of your estate. Finally, if you don’t have a will that names an executor, the proceeds will go to your next of kin according to state law.

However, it’s a bad idea to write in “by law,” or to leave the SGLI designation blank. If you indicate “by law,” the money may not go to the person you really want it to. For example, in one federal case, the military member had been raised by his stepfather. The member indicated that his SGLI proceeds should be paid “by law.” When he died, all the money went to his biological father and mother, who had nothing to do with his upbringing. “By law,” the member’s step-father was not a potential beneficiary.

It is also very important to keep your designation current, especially if you divorce and/or remarry. In another case, the military member designated his spouse on the SGLI election form. However, when he was subsequently divorced and remarried, he never changed the

beneficiary designation. When the military member died, the SGLI proceeds went to his ex-wife instead of his current wife.

It is possible to designate a minor as your SGLI beneficiary. However, SGLI proceeds cannot be paid directly to a minor, except for a minor spouse. Therefore, you need to set up an appropriate instrument, such as a trust or UGMA/UTMA account, which will hold the money for the child. If you simply designate a minor as your SGLI beneficiary and take no further action, the SGLI proceeds will not be released and used for the benefit of a minor until an adult acting on behalf of the minor petitions a court to be appointed the guardian for the SGLI proceeds. Since the appointment of a guardian takes place after the military member's death, the member has no input as to the person selected to act for the minor. Additionally, certain bond, court and legal expenses will have to be paid out of the SGLI proceeds initially as well as during the time that the designated beneficiary remains a minor. Finally, all SGLI proceeds will usually have to be paid to the minor at age 18, regardless of the minor's maturity.

One way to avoid the above expenses is to set up what is commonly known as an UGMA/UTMA account. To do this, you need to select a custodian who is willing to hold the money for the child. There is no requirement for court involvement and as a result, the military member, and not the court, determines who will act in the minor's best interest with regard to the use of SGLI proceeds. Additionally, the UGMA/UTMA custodian can use the SGLI proceeds as he or she determines is appropriate for the benefit of the child during the period of time the child remain a minor. There will also be no delay in the distribution of SGLI proceeds to the designated UGMA/UTMA custodian. You can also designate a trustee under a trust established in a will to receive the money and hold it on behalf of a beneficiary. However, before completing the SGLV-8286 form you need have a will already prepared, the will must contain a trust, and the will must be executed. The advantages of creating a trust are that the trustee can use the SGLI proceeds for the benefit of the minor for a period of time, and in the manner specified in the will. Additionally, direct distribution of SGLI proceeds may be delayed beyond the 18th birthday of the minor.

The legal office stands ready to assist you in preparing needed documents for deployment. Contact us for an appointment.