



# **MOBILIZATION LEGAL GUIDE**

**Office of the Staff Judge Advocate**

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## I. INTRODUCTION

The information in this Guide is designed to help you and your family put your legal affairs in order and anticipate and avoid personal legal problems resulting from deployment. It also contains sample letters and notices you can use to ensure that your rights under the law are protected. It covers such matters as:

1. **Legal Protections and Benefits** that exist for you and your family, including relief from financial obligations; right to terminate leases and other contracts; protection against eviction, repossession, foreclosure and shutoff of utilities; and deferment of payments for servicemembers deployed to Iraq or Afghanistan.
2. **Employment Protections**, including your rights to reinstatement in your job upon your return from service, with accrued seniority and benefits.
3. **Estate Planning**, including your will, life insurance, and the disposition of property owned in joint tenancy.
4. **Medical Planning**, including a "living will" and/or advance healthcare directive/medical power of attorney, and, if appropriate, a power of attorney that will allow someone to make medical decisions for your children in your absence.
5. **Powers of Attorney**, for property, financial affairs, and other matters.
6. **Housing Issues**, including the impact of your deployment on any leases or rental agreements; where your family will live during deployment; and what protections exist against eviction and shutoff of utilities.
7. **Childcare Issues, including** preparation of a Family Care Plan and use of a power of attorney for childcare.
8. **Insurance Issues**, including cancellation and reinstatement of health insurance policies, protection against cancellation of life insurance policies, SGLI and designation of beneficiaries.

## JAG ASSISTANCE

You will have an opportunity (if you have not already done so) to meet with a Judge Advocate General (JAG) attorney and have legal documents (such as a will or power of attorney) prepared and to discuss any specific legal issues you may be confronting.

Some of the things to think about (and, where appropriate, discuss with your spouse or family members) before you meet with a JAG include:

- ❑ Deciding whether you want to have **a will** drawn up for you; how you want to dispose of your property; and whom you want to appoint as your executor.
- ❑ Deciding whether or not you need a **living will** or **advance healthcare directive**. These documents can authorize the person you designate to make decisions regarding your medical care in the event you become incapacitated and cannot make those decisions yourself.
- ❑ Deciding whether or not you should give a **power of attorney** to a friend or family member. This allows the person you choose to sign documents and take a range of actions (that you can specify) on your behalf, including financial, tax and other matters.
- ❑ If you have minor children, whether you want to give a **childcare power of attorney** to a family member, friend and/or child care provider to authorize these individuals to make certain decisions (including medical decisions) and take action on behalf of your children in your absence.
- ❑ Providing **notice to your employer, creditors, landlord, utility company and others** regarding your deployment in order to trigger certain legal rights that exist for you and your family.

***This Mobilization Legal Guide contains information to assist you in understanding and addressing these important legal matters. However, it is necessarily general in nature and is not a substitute for legal advice concerning your particular situation. Additionally, while every care has been taken to ensure the accuracy of the information provided, due to the changes in the statutes and decisional law, some of the information and sample notices contained in this Guide may become outdated. For additional information or guidance regarding any of the matters covered, please consult with the JAG section.***

## II. LEGAL PROTECTIONS AND BENEFITS: THE SERVICEMEMBERS CIVIL RELIEF ACT AND CALIFORNIA LAW

Significant legal benefits and protections exist for you and your family under the Servicemembers Civil Relief Act (SCRA, 50 U.S.C. App. §§ 501 *et seq.*) and California State Law (*Military and Veterans Code*, §§ 389 *et seq.*). These laws cover a broad range of matters, including reduction of interest rates, termination of residential or automobile leases and cell phone contracts, protection from eviction and shutoff of utilities, rights to maintain or reinstate life or health insurance, deferral of payments and taxes, and certain protections in court and administrative proceedings.

### A. Application of the Law

**Active Federal or State Service.** The SCRA protects National Guard members called to active federal service under Title 10 or 32 of the United States Code. California state law provides similar (and in some cases greater) protections to National Guard members called to active federal service or ordered into full-time active state service by the Governor (for example, as with the Hurricane Katrina relief efforts). In most cases, the protections apply during the entire period of active duty and for between 30 days and 1 year after its termination.

**Period of Military Service.** In virtually all cases, for purposes of the law, you are considered to be on active duty from the ***date you receive your orders to report for military service*** rather than the date you actually report for duty. (50 U.S.C. App. § 516(a)). While this adds important protections, you should be mindful that most contracts, leases, debts, other obligations for which you receive protection under the law must have been entered into *before* your military service, meaning that if you sign a contract after you receive your orders but before you report for duty, you will not be protected for that obligation under the law.

**Spouses and Dependents.** Many of the benefits of the law are available to your spouse and dependents, including protection from eviction or foreclosure of property and shutoff of utilities, the right to terminate leases and cell phone contracts, and deferral of payment of income taxes. A “dependent” for purposes of the law means your children and any other person for whom you provided more than one-half of their support of the 180-day period before applying for protection under the law. (50 U.S.C. App. § 511(4)).

**“Materially Affected.”** To receive protection under some parts of the law, you must be prepared to show that military service has materially affected your ability to comply with the legal or financial obligation involved (such as paying a debt or appearing in court). In general, this means that your military service must have made it more difficult or financially burdensome to perform the obligation.

#### **Notice Required.**

*In most situations, the protections of the law are not automatic; they require some action on your part. For example, to obtain a reduction of your mortgage or credit card interest rates, you must send your lender/creditor a written request and a copy of your deployment orders.*

## B. Reduction of Interest Rate on Pre-Service Debt

Under the law, interest rates on credit cards, installment contracts, mortgages, or other debts or obligations incurred before you were called to active duty (except federally insured student loans) are limited to **six percent** during your period of active service. This includes debts owed by you individually or jointly with your spouse. (It makes no difference which of you actually incurred the debt – e.g., for an auto loan for your spouse’s car – as long as you are both liable for repayment of the debt). However, the obligation or debt **must have been incurred before your call to active duty**. Any interest above the 6% amount is forgiven.

### 1. Definition of “Interest.”

For purposes of the law, the definition of “interest” includes not only standard interest charges but also **service charges, renewal charges, transaction fees** or any other charges in connection with the debt or obligation. It also applies to “pre-calculated” or “pre-computed” interest, i.e. interest that is built into the amount of the debt rather than being charged separately from the principal.

### 2. Obtaining the Interest Rate Reduction.

To obtain the reduction, you must provide:

1. **each creditor** (e.g., your bank or credit card company, auto loan company, home loan company, etc.)
2. **written notice** of your call to active service and a copy of your military orders,
3. **no later than 180 days after your release from active duty**. (A sample letter is attached at the end of this Guide.) **It is strongly recommended that you send out notice immediately upon being activated to secure this important right.**

**Automatic Reduction.** As long as you provide notice within the 180-day period, the creditor must *retroactively* reduce all interest charges to 6% for the period of your active service. In the case of a mortgage, trust deed, or other security in the nature of a mortgage, this reduction in interest charges continues for one year after the end of your period of active service. The interest cap is automatic if you provide the proper notice. You do not have to prove to the creditor that your military service materially affected your ability to pay the interest charges under the contract. (However, as discussed below, a creditor may apply to a court for relief from the 6% cap if it believes your ability to pay was not materially affected).

### 3. Creditor Relief If No “Material Effect.”

If the creditor believes that your ability to pay the interest rate at the level above 6% was not materially affected by your military service, it can apply to a court for relief from the interest rate reduction. A court may grant this request if it finds you were not materially affected (as, for example, where your employer made up the difference between your military pay and your prior salary). However, the burden is on the creditor to go to court and make this showing.



## C. Termination of Residential or Automobile Leases

If you are leasing or renting property or a vehicle, the law allows you to terminate that lease upon your call to military service under the circumstances described below. The lease must have been signed before your call to duty. (Sample notices of termination are attached).

### 1. Home or Business Property Lease.

You may terminate a lease for premises ***occupied by you or your legal dependents*** and used as a dwelling or for professional, business, agriculture or similar purposes as long as your period of military service is at least 90 days. Upon termination of the lease, the landlord must prorate any unpaid rent and refund any rent paid for the period after the effective date of the termination. The landlord may not withhold the refund of your security deposit for early termination of the lease (but may withhold any portion necessary to pay for repairs or damages).

***To terminate the lease***, you must provide written notice of termination and a copy of your military orders.

#### **Termination is effective:**

- for a **month-to-month lease**, on the earlier of (i) the last day of the month following the month in which notice is given, or (ii) 45 days;
- for **all other leases**, on the last day of the month following the month in which notice is given.

### 2. Motor Vehicle Lease.

You may terminate any lease of a motor vehicle used by you or your dependents for personal or business transportation provided the lease is for a period of more than 180 days. If you decide to terminate the lease, the lessor must allow you to make payment of amounts due at the time of termination in equal installments over a period of time at least equal to the period of your active duty service. No early termination fees or charges may be collected.

***To terminate the lease***, you must provide written notice of termination and a copy of your military orders and must return the vehicle.

***Termination is effective*** on the date of delivery of the notice and the vehicle.

**Example:** SSG Able is leasing an automobile for personal use at the time he receives orders for a one-year deployment. There are 18 months left on the lease, and SSG Able has a \$585 payment due at the time he receives his orders. If SSG Able returns the vehicle with a notice of termination and a copy of his orders, the lessor must terminate the lease and cannot charge any early termination fees. It must also allow SSG Able to repay the \$585 he owes over a one-year period.

## D. Termination of Cell Phone Contracts

The law allows you and your **spouse and legal dependents** to terminate any cell phone contract entered into on or after January 1, 2006.

*Note: Even though the law does not apply to cell phone contracts entered prior to January 1, 2006, you should consider providing the notice anyway since many cell phone providers will now allow servicemembers to cancel without penalty upon deployment as a matter of company policy.*

To take advantage of this law, you must provide notice to the cell phone company, with a copy of your military orders. This notice **must be sent via certified mail, return receipt requested**. (A sample form is attached.)

## E. Protection from Eviction

The law provides certain protections for you, your spouse or your legal dependents against eviction from a residential dwelling (house or apartment) during the period of your military service.

The landlord must apply for and obtain a specific court order of eviction, and cannot rely on a 3-day notice or any provision of the lease or rental agreement. If the court issues the requested eviction order, it must **stay** (i.e. postpone) the effective date of the order until 30 days after the end of your military service unless it concludes that your ability to comply with the terms of the rental agreement was not materially affected by your military service.

**To obtain the protection of this stay**, you or your representative must apply to the court for the stay. (A sample form is attached.) The court may require partial payment of rent as a condition to issuing the stay.

*Note that your obligation to pay rent is not forgiven as a result of your military service. Although you have protection against eviction for non-payment of rent, you and your spouse (if a party to the rental agreement) will remain responsible for any unpaid rent.*

## F. Protection from Shutoff of Utilities

You may apply for and receive protection against shutoff of utility services (water, electrical, gas, sewer and garbage) to your household for a period of 180 days. (The service provider may, but is not required to, grant additional extensions after the 180-day period). The **account must be in your name or the name of your spouse**.

**To obtain this protection**, you must give the service provider a written notice, enclosing a copy of your military orders, certifying that:

- ❑ You are requesting shutoff protection because of a reduction in household income as a result of a member of the household being called to active duty in the military:
- ❑ During the shutoff protection period, the household will be occupied by one or more of your legal dependents. (A sample form is attached).

**Unpaid Rates and Charges.** Although your household is protected against shutoff of utilities for non-payment, it does not forgive the amounts due (unless these are waived by the service provider). You (or the account holder) remain responsible for payment of those amounts. However, the service provider **must establish a repayment plan** allowing payment of any past due amounts over a reasonable period not to exceed one year after the end of active duty. **Additionally, the service provider may not charge you any late payment fees or interest during the period of active service.**

## **G. Protection from Foreclosure or Repossession**

The law provides protections for you and your legal dependents against termination of contracts for purchase or lease of real or personal property (such as a home or car) and foreclosure or repossession of the property.

**The protection of the law is automatic** if the contract is entered into by you or your dependent and payment of a deposit or at least one installment is made before your call to active duty.

The law applies to all contracts (including mortgages and deeds of trust agreements) for the **purchase or lease** of:

- ❑ **“Personal property”** including vehicles, furniture, appliances, recreational equipment and the like;
- ❑ **“Real property,”** including any home, condominium, building or land.

Such a contract cannot be terminated by the creditor for non-payment or breach, nor may the property be repossessed or foreclosed upon without a court order. This means that a creditor may not rely on provisions in the contract that would otherwise allow it to cancel the agreement and seize the automobile or other personal property or to recover the home or land through “non-judicial” foreclosure. The law extends protection against non-judicial foreclosure to nine months after the end of your period of active service.

As a condition to refusing or staying an order terminating such a contract, the court may require whole or partial repayment of amounts due under the contract. The court may also grant the order to terminate the contract if it finds that your ability to comply with its terms was not materially affected by your military service.

## **H. Life and Health Insurance Protection**

Your call to active duty entitles you automatically to life insurance coverage under the Servicemembers Group Life Insurance (SGLI) program (discussed below in Section IV). You are also entitled, upon return from active duty, to reinstatement of any employer-provided health insurance coverage if you return to your former job. The law also makes you eligible for the following insurance benefits.

## 1. Life Insurance.

The law allows you to apply for **protection against cancellation** of a qualifying life insurance policy and deferment (i.e. postponement) of premiums and other payments that would otherwise be due during the period of your military service and two years thereafter. The amount of the policy may not exceed the maximum SGLI benefit (currently \$400,000).

**To obtain this protection**, you must send written notice to the insurer with a copy to the Secretary of Veterans Affairs. (A sample notice is attached). Upon receipt, the insurer must provide certain information about the policy to the Secretary of Veterans Affairs, which is used to determine whether the policy is eligible for protection.

**Benefits of the Law.** If the Secretary determines that the policy qualifies, the insurer may not cancel the policy for non-payment of premiums at any time after the application is received by the Secretary. This protection remains in effect for the period of your military service and for two years thereafter. You have up to that two-year period to pay any unpaid premiums.

**Premium Payments Federally Guaranteed:** *If the policy qualifies, payment of the premiums is guaranteed by the United States, but you remain responsible for any unpaid premiums and the government may later recover from you any premiums paid on your behalf.*

## 2. Health Insurance

The law also gives you the right to **reinstatement** of any health insurance policy covering you and/or your dependents that was in effect at the start of your military service and that you terminated during the period of your service. (*This does not apply to employer-provided health insurance programs, which are covered by USERRA, discussed below under Section III.*)

**To obtain this protection**, you must send written notice to the insurer electing to reinstate the health insurance *within 180 days after the end of your military service*. (A sample notice is attached).

**Benefits of the Law.** Upon receipt of the notice from you, the insurer must reinstate the health insurance policy without any waiting period and without any exclusions of pre-existing medical conditions (i.e. conditions that existed as of the date of reinstatement).

### **Exceptions:**

- ❑ The limitation on **pre-existing medical conditions** does not include conditions that arose out of or were aggravated by your military service. However, the insurer must obtain a determination by the Secretary of Veterans Affairs that the condition met these criteria before it can exclude it.
- ❑ If you are eligible to participate in an **employer-offered health insurance program**, you are not entitled to the protections of this law.

## I. Income Taxes

### 1. Combat Zone Exclusion and Extension

If you are deployed to a “**combat zone**” or “**qualified hazardous duty zone**,” as defined below, or you are providing **direct support** for operations in those areas for which you receive hostile fire/imminent danger pay, (i) you can **exclude** certain pay from your income, and (ii) most deadlines regarding filing and payment of taxes are extended.

**Combat Zones** include:

- Persian Gulf Area** (Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates);
- Afghanistan**;
- Kosova** (former Yugoslavia).

**Qualified Hazardous Duty Zones** include three parts of former Yugoslavia:

- Bosnia/ Herzegovina**
- Croatia**
- Macedonia**.

### 2. Income Tax Exclusion

If you serve in any of these zones, as an *enlisted person* or as a *warrant officer*, **all of your military pay** – including hostile fire or imminent danger pay -- **is excluded from gross income**.

For *commissioned officers*, the monthly exclusion is capped at the highest enlisted pay, plus any hostile fire or imminent danger pay received.

### 3. Income Tax Extension

If you serve in any of the above zones, virtually all deadlines relating to income tax are extended (including filing your return, paying taxes, establishing an IRA and applying for refunds). This extension covers you, your spouse (even if filing separately) and your dependents. During the extension period, assessment and collection deadlines are extended and there are no penalties imposed. No back taxes can be collected.

**Extension Period.** The extension is for the period of your service *plus* 180 days *plus* the period remaining to take the action when you were deployed. Thus, for example, if your one-year deployment began on January 31, 2006, and ended on January 30, 2007, you would have until mid-October 2007 to file your 2005 income tax return.

## J. Schools and Colleges

If you are granted an academic leave of absence for military service, and within one year after your release from military service, you so request, the school must do either of the following:

- ❑ Refund the tuition (provided you withdrew prior to the date established by the school for withdrawal without academic penalty); or
- ❑ Give you a credit against future tuition. (Note: There is no requirement that you have withdrawn prior to the date set for withdrawal without academic penalty to get this credit).

Additionally, upon request made within one year of your release from military service, the school must restore you to the educational status you had attained prior to being called to military service without loss of academic credits earned, scholarships or grants awarded, or tuition or fees paid (provided the appropriate credit is requested as specified above).

## K. Court and Administrative Proceedings

If you are involved in a judicial or administrative proceeding before or during your military service, the law gives you the right to obtain a **stay of proceedings** and provides you with certain **protections against defaults** or other adverse decisions or actions if you can show that your ability to participate in the proceedings is materially affected by your military service (as, for example, by an overseas deployment). The other party to the proceeding may also request a stay. Statutes of limitation are also suspended during your military service.

These legal protections apply to any matter in **state or federal court** or before **any administrative agency or board** (such as the Workers' Compensation Appeals Board, Unemployment Insurance Appeals Board, Department of Motor Vehicles, etc.) (As used below, "court" includes any administrative agency).

### 1. Stay of Legal Proceedings

At any time during or within 90 days after your military service, you may request a stay of any legal proceeding if your military service materially affects your ability to participate in the proceeding.

**To obtain a stay**, you must send the court a letter stating (1) why your military service materially affects your ability to participate in the proceedings; (2) the date you will be able to appear; and (3) a letter from your commanding officer stating that your military duties prevent your appearance and that leave will not be authorized for an appearance.

**The court must stay the proceedings** if you provide the above information unless it determines that your ability to appear is not materially affected. The stay may be for the entire period of your military service plus three months. The court may impose conditions on the stay (such as making partial payments if the case involves a debt or obligation).

## **2. Protection Against Defaults Judgments or Orders.**

***Prerequisites to Entering Judgment.*** Before entering a judgment against you, the court must require the other party to provide an affidavit under penalty of perjury stating whether or not you are in military service (or that the party cannot determine whether or not you are). *If the court determines you are in military service, the court*

- (1) may not enter judgment until after it appoints an attorney to protect your interests; and
- (2) must grant a stay of the judgment (for a minimum of 90 days) if it determines you may have a valid defense that cannot be presented in your absence.

If the court cannot determine whether or not you are in military service, it may require the other party to post a bond to protect you from any adverse impact of entering a judgment against you.

## **3. Stays of Judgments or Orders.**

The court may also stay the effect of any judgment and order entered against you if you show that your ability to comply is materially affected by your military service. The court may also vacate (i.e. cancel) or stay any order of garnishment or attachment of your money or property. You must apply for this relief during or within 60 days after the end of your military service.

## **4. Tolling of Statutes of Limitation.**

During your military service, all statutes of limitation (i.e. the deadline to file a lawsuit) are “tolled” – i.e., suspended. This law applies to actions ***by or against you*** and includes all administrative proceedings.

## **L. Child Custody, Support and Arrearages.**

The California legislature has recently adopted a variety of statutory provisions that deal with child custody, visitation, support and arrearage matters:

### **1. Custody and Visitation**

Newly-enacted Family Code section 3047 declares that a servicemember's failure to comply with custody or visitation orders as a result of military service/deployment outside of California is not “by itself” sufficient grounds to modify a custody or visitation order. Family courts retain the ability to act in the best interests of children; however, the new legislation provides you with a strong argument in favor of stepping back into the previously existing custody/visitation arrangement without fear that the deployment will automatically undo what existed.

## 2. Child Support

By way of amendments to Family Code section 3651, you may now serve and file a **“Notice of Activation of Military Service and Request to Modify Support Order”** (Form FL-398).

This notice requires the court to hold a hearing prior to the servicemember’s deployment or to essentially stay the hearing during deployment. You then have up to 90 days after return from deployment to have the hearing and reduce the child support “retroactively” to the later of the date of service of the paperwork or the date of deployment. *If you fail to make the request within that time, you may lose the right to an adjustment.*

If you filed Form FL-398, but were unable to have the hearing to reduce child support prior to deployment, you should be able to get the court to grant you a credit for the amount you overpaid during deployment. The court may either grant you a credit against future child support payments or order the person receiving support payments to pay you back over a reasonable time period.

Keep in mind that because the “time share” with your child or children will essentially go down to “0%” during your deployment, you most likely will not be entitled to a reduction in support even if your income (while activated) was reduced.

*In addition to the modification procedures contained in the Notice of Activation of Military Service and Deployment and Request to Modify a Support Order, you may be eligible for a modification based on a change in income due to military activation. To request a modification of support for reasons other than out-of-state deployment, see Form FL-391 Information Sheet—Simplified Way to Change Child, Spousal, or Family Support, for the forms to use and instructions (available on the California Court Website: [www.courtinfo.ca.gov/forms/documents](http://www.courtinfo.ca.gov/forms/documents)).*

## 3. Assistance from Local Child Support Agency

Newly-enacted Family Code section 17440 requires the Department of Child Support Services to develop its own form so that a local child support agency can file a motion to reduce child support on behalf of the servicemember even if the servicemember is not present. The local child support agency is required to file the motion on behalf of the servicemember within five days of a servicemember providing a properly completed form.

If you would like the local child support agency to assist you, you may fill out a **Notice of Deployment** and submit it to the local child support agency. The agency will prepare a request for modification, and you will not need to appear if you are already deployed. The agency must attach the Notice of Deployment to form FL-398 to show the court that the you have authorized the agency to act on your behalf. (You can obtain a Notice of Deployment from any local child support agency.)

## 4. Arrearages

Family Code section 17560 now allows a local child support agency to compromise “arrearages” that accrued due to your deployment if you can show that you would have



paid less child support if a timely motion to reduce child support had been made. This provision is completely retroactive, which means that it applies to deployment periods prior to the effective date of the legislation (January 1, 2006). An offer of compromise "shall be deemed" in the best interests of the state for resolution purposes if you can show that the deployment would have reduced your child support payments, but you were simply unable to have a court hearing before the deployment.

## **M. General Relief from Financial Obligations**

The law allows you to obtain relief from a court from any debt, obligation, liability, tax or assessment on the ground that your military service materially affected your ability to comply with it.

**To obtain this relief**, you must apply to the court during your military service or within 180 days after the end of your service.

**The court may grant the following relief** if it finds your ability to pay is materially affected by military service.

### **1. Real Estate Contracts.**

The court may stay payments due under any real estate contract, mortgage or deed of trust (e.g. for your home or business property) for a period up to **the remaining life of the contract plus the period of your military service**. However, you will be required to pay the balance (principal and interest) due and unpaid as of the date of termination of military service (or the date of your application) in equal installments over the life of the stay at the rate of interest prescribed in the contract. No other charges, fines or penalties may be assessed for the delay in payment.

**Example:** MSG Delta has a 30-year mortgage on his home, on which he has been paying for 10 years. His monthly payment of principal and interest is \$2,200 (a 5½% annual interest rate). Upon his one-year deployment, he applies to the court for relief from the mortgage payment on the ground that his military pay is substantially lower than his civilian income. The court may order that the enforcement of the real estate contract is stayed, and that the amount that would have been due during his deployment (\$26,400 [12 x \$2,200]) may be paid in equal installments over 21 years (the 20-year balance of the mortgage plus the one-year deployment) at 5½ % interest.

### **2. All Other Contracts and Obligations**

The court may stay the enforcement of any other debt, obligation, liability, tax or assessment (including, for example, Mello-Roos taxes or assessments on your home for bonds) for the period of your military service. You will be required to pay the balance due and unpaid at the date of termination of military service (or the date of your application) in equal installments over the period of the stay at the rate of interest set forth in the contract or other obligation. No other charges, fines or penalties may be assessed for the delay in payment.

**Example:** 1LT Victor has a contract to purchase an automobile with a three-year loan at a 5% interest rate. The monthly payment is \$550. One year after buying the car, he is deployed for 18 months. Unable to make the payments because of a reduction in his income, he applies to the court for relief. The court may order that the contract is stayed for the period of his military service and the amount due at the end of his deployment (\$9,900 [18 x \$550]) shall be paid over the 18 months following the end of his military service at 5% interest.

### 3. Additional Options

State and federal laws may give you a range of additional options, including bankruptcy, if you are having a hard time meeting your financial obligations. If you are considering bankruptcy, please consult with JAG or a civilian attorney. Be aware that recent changes to the bankruptcy laws exempt service members from certain means testing requirements under Chapter 7.

#### N. Deferral of Payments for Iraq or Afghanistan Deployments

A recent California law (California Military and Veterans Code §§ 800-11), effective January 1, 2006, gives you an additional benefit if you are called to active duty as part of the Afghanistan or Iraq conflicts.

***In addition to any other benefits provided by law*** (such as reduction of interest rates to 6%), the law allows you to ***defer*** (i.e. delay without interest or penalty) payment on certain debts and obligations for as long as 180 days. The new law applies only to obligations you incurred before you were called to active duty.

#### 1. Deferrable Obligations

The types of debts and obligations that can be deferred include:

- Credit card payments.
- Retail installment contracts (for example, for furniture, appliances or household goods).
- Revolving charge accounts (for example, with a department store).
- Mortgages or deed of trust payments for your primary residence.
- Up to two automobile loans.
- Auto leases (and the company must also extend the term of the lease by the period of the deferral).
- Property taxes and assessments on your primary residence.

## 2. Period of Deferral

You may defer payments on any of the above obligations for the **lesser of** 180 days or the period of active duty plus 60 days.

## 3. Required Notice

To take advantage of this benefit, you must send each company to which you want to defer payments:

- (1) A letter signed by you, ***under penalty of perjury***, requesting a deferral of the financial obligation. Note that deferral is only of amounts due *after this notice*. (A form of this notice is attached.)
- (2) ***If asked, you must provide proof that your employer does not provide you continuing income***, which, together with your military pay, exceeds 90 percent of the amount you earned before the call to active duty. Your employer must provide this information on request within 5 days. (If your employer *does* provide you with such continuing income, you are not eligible for deferral of payments.)

## 4. No Interest or Penalties.

During the period of deferral, no interest may be *charged or accumulated* on the obligation and there can be no penalties assessed. In other words, the interest you would otherwise have been paying during the deferral period cannot be accumulated and added to the amount you owe, and no additional interest can be assessed as a result of the deferral. No adverse credit report may be made, and the deferral cannot be the basis for denying or revoking credit. Additionally, the property subject to the deferred obligation cannot be repossessed or foreclosed on.

## III. YOUR JOB – EMPLOYMENT AND REEMPLOYMENT RIGHTS

### **Critical Tasks:**

***1. Give written notice of your deployment to your employer as early as possible. Send the notice by certified mail. Keep a copy of the letter and the certified mail receipt. A sample notice letter is included at the end of this Guide.***

***2. Return to your job on time. The number of days you have to return to your job depends on the length of your military duty. If you are away from your job on military duty for more than 180 days you must return to your job within 90 days.***

***3. Get help immediately if you are discriminated against because of military or veteran status, if you are denied reemployment, or if any of your other rights under USERRA are violated.***

You have the right to be free from discrimination in employment because of your military service. You also have the right to return to your job after performing military duty. These rights are guaranteed by a federal law called the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) and by similar provisions of California law.

### **A. Discrimination in Hiring and Employment**

*It is illegal for any employer or a prospective employer to discriminate against you because of your membership in the National Guard. You may not be discriminated against in hiring, promotion, reemployment, termination or benefits or in any other way connected with your job. Get help immediately (see “Getting Help” below) if you are the target of discrimination.*

### **B. Reemployment – Getting Your Job Back After Deployment:**

You have a right to return to your job after your release from military duty if you satisfy six conditions:

- 1. You have a job before going on military duty.** Your job is covered by the reemployment rights provisions in USERRA unless the job (a) is only for a brief, non-recurrent period and (b) there is no reasonable expectation that your job will continue indefinitely or for a significant period of time. Generally, permanent full time, part time, hiring hall, or seasonally recurring jobs are covered by USERRA, even if you are on probation or on strike when you go on military leave. A short term temporary job may not be covered. Both government and private sector jobs are covered by USERRA. Get help if you have questions regarding whether your job is covered by USERRA.
- 2. You give your employer notice that you are leaving.** Give your employer notice that you are leaving to perform military duty as early as possible. The notice can be oral or written. However, the best way to protect your rights is to give notice in writing. (A sample notice is attached.) Send the notice to your employer via certified mail, return receipt requested. Keep a copy of the notice and the receipt so that you can prove that you gave notice. See a JAG immediately if it was impossible for you to give notice to your employer before a deployment.
- 3. You are away from your job for less than five years of military service.** This five-year limit is cumulative for each employer. Some types of duty including drills, AT and ADSW do not count toward the five year limit.
- 4. Your military service is honorable.**
- 5. You return to your job on time after being released from military duty.** The law requires you to return to your job or to request reinstatement within a set period after you are released from military duty. If you are performing military duty for less than 31 days you must return to your job on the next regularly scheduled work day that starts at least eight hours after the end of your military duty. If you are performing military duty for more than 31 days but less than 180 days you must

apply for reinstatement within 14 days. If you are performing military duty for more than 180 days you must apply for reinstatement within 90 days. You may have additional time to return to your job if you are recovering from a service-connected disability.

6. **You provide documentation of your eligibility for reemployment on request when you return.** Generally, this means that your employer can ask you for a copy of your orders when you return. Get help if your employer makes an unreasonable request for documentation or if you are denied reemployment.

If you satisfy these conditions you will generally have a right to:

1. **Prompt reinstatement to a job with the seniority, status, and pay rate that you would have if you had remained employed during the period of your deployment.** This is known as the “escalator” rule. Special rules apply to promotions that require the successful completion of an exam or a probationary period. Get help immediately if you are denied reinstatement or if you are not given the seniority, status, and pay that you would have had if you had remained employed during the period of your deployment.
2. **Retraining to enable you to perform your job and reasonable accommodation for any service-connected disability.** Get help if you are denied retraining or if you have a service connected disability that may interfere with your job.
3. **Protection against retaliation.** You cannot be fired because of your military status or for asserting your rights under USERRA. In addition, you are protected from being discharged without cause for one year if your military duty lasted more than 180 days. You are protected from being discharged without cause for six months if your military duty lasted between 31 and 180 days. Get help if you are retaliated against or if you are fired without cause after returning from military duty.
4. **Service credit in any retirement plan.** You are entitled to service credit in your employer’s retirement plan for your period of military service. Your employer may require you to pay the employee contribution to the plan for the period of military service.
5. **A right to use vacation time.** If you have unused vacation credits with your civilian employer when you leave for military duty, then you have the right to use all or some of those vacation credits during your period of military duty. However, your employer cannot require you to do so. You generally do not have the right to earn additional vacation credits from your civilian employer during the time you are away to perform military duty.
6. **A right to continue your health insurance during your military duty at your expense.** If your deployment is for 30 days or less you can be required to pay the usual employee share of the health insurance cost. If your deployment is for longer than 30 days you can be required to pay 102% of the full cost (the employee share plus the employer share) of

the health insurance premium. Note that TRICARE may not cover you or your family for periods of duty lasting less 30 days or less.

7. **Immediate reinstatement of health insurance when you return.** The employer may not impose a waiting period or exclude preexisting conditions that are not service-related.
8. **Any other benefits that your employer offers to other employees who take similar leaves of absence.**

There are some exceptions to these rights. Get help if you have questions or if you are denied any of your rights.

### **C. Choosing When to Start Your Military Leave**

The law permits you to leave your employment a reasonable period of time before starting your military duty. At a minimum, you may take enough time off before starting your military duty to travel safely to your duty station and to arrive fit for duty. For longer periods of military duty, such as a deployment in support of OIF or OEF, you have the right to take a reasonable period of time to put your personal affairs in order and to prepare for deployment.

### **D. Additional Rights**

You may be entitled to other protections or benefits if your employer provides them voluntarily or if they are mandated by a contract or collective bargaining agreement. Federal, state or local government employees may have other protections or benefits under federal, state or local laws. For example, certain employees of the State of California who are called to active duty in support of the Global War on Terrorism are entitled to receive the difference between their state pay and military pay for up to one year. (Government Code § 19775.18).

### **E. Getting Help**

Get help early if you have any questions or problems regarding employment or reemployment. For assistance with employment and reemployment issues call Employer Support of the Guard and Reserve (ESGR) at (800) 336-4590. If ESGR is unable to resolve the problem, contact the U.S. Department of Labor ("DOL") at (866) 487-2365. DOL can refer your case to the Department of Justice for prosecution, or you may hire a private attorney. You may also speak with a JAG if you have questions regarding employment or reemployment issues.

### **F. Other Laws Apply to State Active Duty**

This discussion applies to duty under Title 10 and Title 32. State law protects your job if you are called to state active duty by order of the Governor. You should speak with a JAG if you have questions regarding employment or reemployment issues during state active duty.

## IV. SERVICEMEMBER'S GROUP LIFE INSURANCE (SGLI)

SGLI is a program of low-cost group life insurance for servicemembers. SGLI coverage is available in \$50,000 amounts up to a maximum of \$400,000 (as of September 1, 2005).

- 1. Automatic Coverage.** Upon deployment, National Guard members automatically get SGLI life insurance coverage at the maximum amount (\$400,000) as of the effective date of their orders, for a monthly charge (deducted from military pay). You have the right to retain any other private or government life insurance (although you may not have more than a total of \$400,000 in combined SGLI and VGLI coverage).

If you want to refuse or reduce the \$400,000 coverage, you must do so on Form SGLV 8286: Servicemembers' Group Life Insurance Election and Certificate (which is the same form for designating beneficiaries, discussed below). More information on the coverage and cost of SGLI is available on the Department of Veterans Affairs website: <http://www.insurance.va.gov/sgliSite/SGLI/SGLI.htm>.

- 2. Designating Beneficiaries.** If you have SGLI coverage, you can choose your beneficiaries (i.e., the persons to whom the insurance will be paid) on Form SGLV 8286.
  - Your first choice is listed as the "primary" beneficiary on the form.
  - You can also list "contingent beneficiaries" (those who would receive the proceeds if the primary beneficiary is no longer living at the time of payment).
  - You can also designate several primary beneficiaries and contingent beneficiaries. If you do, you should specify (in fractions or percentages) the share to be paid to each; otherwise, they will share equally in the proceeds.
  - You can change the beneficiaries at any time by submitting a new Form SGLV 8286. The change becomes effective when the form is received by the Office of SGLI. Note that a named beneficiary will **NOT** be changed automatically by any event occurring after you complete the form (e.g. marriage, divorce, birth of children, etc.). Also, your beneficiary *cannot be changed, and is not affected, by any other documents* such as a divorce decree or will. (For further information on beneficiary designations, see AR 600-8-1, paragraph 11-29).
- 3. Designating a Custodian for Children.** Because a child under the age of 18 (a "minor") cannot legally receive or hold property, you must designate a person (a "custodian") who can receive and manage the SGLI proceeds until the child's 18th birthday. If you want to name a custodian, you should first contact the person and confirm that they are willing to do this. The following language may

be used on the form SGLV 8286 when designating a custodian for minor children:

“[NAME OF CUSTODIAN], as custodian for my child(ren), [NAME OF CHILD(REN)], pursuant to the UGMA/UTMA”.

If no custodian is designated on the SGLV form, a court will need to appoint a guardian of the minor to receive the SGLI proceeds on behalf of the minor. Such court process helps protect the minor’s funds from theft, fraud, waste, and other such acts. However, it imposes additional time and expense, and the SGLI proceeds can be significantly reduced by the payment of court costs, attorneys’ fees and expenses incurred by the guardian. Thus, it is well worth designating a custodian to avoid this process. Further guidance on designation of a custodian is available in AR 600-8-1 paragraph 11-30.

- 4. **Converting Coverage.** SGLI may be converted upon release from active duty, active duty for training (ADT), initial active duty for training (IDT), or upon separation from the Ready Reserve, to VGLI or to a commercial life insurance policy effective at the end of the 120-day SGLI extension period.

## V. LIVING WILL AND ADVANCE HEALTH CARE DIRECTIVE

As an adult in the United States, you have the legal right to consent to or refuse medical treatment. You also have the right to give this power to another person under special circumstances (as when you are unconscious or otherwise incapacitated). Making your wishes known about the treatment you want when you are unable to communicate – or giving another the power to make specific medical decisions under those circumstances - can be very helpful to medical personnel and to your family.

### A. Advance Health Care Directive (AHCD).

You can accomplish both things – empowering another to make medical decisions and stating your wishes regarding treatment – in a single document called an “*Advance Health Care Directive*” (also sometimes known as a “Medical Power of Attorney”).

The portion of the Advance Health Care Directive that states your own wishes regarding medical treatment (as distinct from giving another person the right to make medical decisions) is usually referred to as a “Living Will” (discussed below).

An AHCD can also contain a written statement indicating your decision about organ and tissue donation.

You can also express a desire to die at home rather than in a hospital or nursing home.



## B. Health Care Agent

In the AHCD, you can designate a person to make decisions concerning your medical treatment if you are unable to do so. This person should know your desires concerning medical treatment so they can act on your behalf. If no arrangements are made for medical directives and you become incapacitated, the court may appoint a guardian for you.

**Important:** Signing an AHCD that gives someone power to make medical decisions for you, or states your desires regarding medical treatment, **is only effective if you are unable to make those decisions yourself.** It does not take away your right to decide on treatment if you are able to do so.

## C. Living Will.

In the AHCD, you can give medical providers specific instructions about withholding life sustaining procedures, artificial nourishment, and other ways of keeping you alive that you may not wish to have implemented. (A standard clause, however, directs that treatment for alleviation of pain or discomfort must be provided at all times.) You can specifically instruct the medical providers that you do not want your life prolonged and to withhold or withdraw life-sustaining procedures in the event that at some future time, you:

- (1) **are terminally ill**, i.e., have an incurable and irreversible condition that is likely to result in your death within a relatively short time without the administration of life-sustaining treatment;
- (2) **are in a persistive state of unconsciousness**, i.e., become unconscious and, to a reasonable degree of medical certainty, will not regain consciousness; or
- (3) **the likely risks and burdens of treatment would outweigh the expected benefits.**

"**Life sustaining procedure**" generally refers to any medical procedure or intervention that would serve only to prolong the dying process.

"**Terminally ill**" usually means an incurable or irreversible condition with no possibility of recovery, as agreed upon by two doctors in writing.

An AHCD can be destroyed *any time you change your mind*. You can do this by telling someone, revoking it in writing, or by destroying the document. Let your doctor, family and anyone who has a copy of it know that you've destroyed it.

## D. Advantages.

There are multiple advantages to having an AHCD, including the "living will" portion. They include:

1. Difficult decisions about future care are provided for while you are competent, alert and healthy.

2. You can authorize a specific person who knows your desires regarding medical care to make decisions on your behalf.
3. If you become terminally ill or are in a persistent vegetative state, your directions allow you to die under circumstances *you* have chosen. It makes your wishes clear and removes the burden of decisions having to be made by grieving loved ones when you are dying.
4. The AHCD can reduce medical expenses.
5. The AHCD states your desires regarding organ donation at your death and your desire to die at home rather than in a health care facility.

## VI. POWERS OF ATTORNEY

### A. Powers of Attorney.

A Power of Attorney is a legal document that allows a person you designate (your agent or “attorney in fact”) to act on your behalf when you are unavailable. Upon deployment, you may not be able to manage your own affairs and you may need to appoint someone else to act for you. There are two primary types of powers of attorney –

- **General:** The individual you name can act in *all matters*. A general power of attorney gives your representative the authority to conduct any transaction on your behalf. The benefit to a general power of attorney is that your representative can use the power of attorney to handle any unforeseen issues that may arise during deployment. ***The danger of a general power of attorney is that you are legally bound by any decisions this person may make, including using your credit, and buying or selling property in your name.*** With proper planning, a general power of attorney is ***almost never necessary***, and JAG recommends that you use a special or limited power of attorney instead.
- **Limited/Special:** A limited or special power of attorney grants your agent the right to act on your behalf only for specific matters. For example, the limited power of attorney form can be drafted to give your agent (usually a family member or fiancée) specific authority to manage household expenses and deal with insurance, taxes and other listed matters in their absence. You can specify on the form of limited power of attorney exactly what powers you wish to give your agent.

### B. Effect and Limitations of Powers of Attorney.

Executing a power of attorney *does not mean that you can no longer make decisions*; it just means that your agent can act for you also. Additionally, your agent must follow your directions. However, you are bound by any decisions or actions your agent takes on your behalf as long as the other party is relying in good faith on the power of attorney, *even if those actions are contrary to your directions*. You are simply sharing your power with someone else. If you are concerned or dissatisfied with your agent’s conduct, you should promptly revoke the power of attorney (see below).

### **C. Selecting an Agent.**

The person you designate as your agent assumes certain duties and responsibilities on your behalf. Although your agent is supposed to make decisions in your best interest and to use your money and property only for your benefit, he or she has great freedom to do as he or she pleases. Therefore, it is essential to choose someone you trust when you sign a power of attorney. You should also choose someone who will be readily available to perform tasks on your behalf. Avoid selecting anyone who may relocate during your deployment (or a soldier who may be deployed).

### **D. Duration of Power of Attorney.**

Most powers of attorney have a beginning and an ending date. Many servicemembers set the length of their power of attorney based on when they are due to return from deployment (allowing some leeway for an extension of the deployment). In general, a power of attorney should be effective for no more than the period necessary to accomplish its basic purpose (usually not more than two years in the case of standard deployments).

### **E. Revocation of a Power of Attorney.**

If during the period of the power of attorney you no longer want your agent to be able to act on your behalf, you may revoke the power of attorney. You do this by notifying your agent of the revocation and retrieving and destroying the original (and any copies). You should also notify, in writing, any individual or organization who may still be relying on the power of attorney that it has been revoked.

If you are concerned that your agent may be using or misusing your power of attorney despite your revocation, you should also contact your credit card companies and credit reporting agencies (Equifax 800-525-6285, TransUnion 800-680-7289 and Experian 800-680-7289) to cancel any further use of credit accounts and filing either a "Fraud Alert" or a "Security Freeze," either of which will make it difficult for the obtain any further extension of credit on your behalf.

## **VII. ESTATE PLANNING**

### **A. Wills**

A will is a document that states how you want your property distributed upon your death and can contain provisions expressing your desires concerning care of your children, funeral arrangements and other matters. Your will must be in writing and must be generally be signed by you and at least two witnesses. These requirements must be carefully observed, and it is strongly advised that you have your will prepared by a JAG or other attorney.

1. **Appointment of Executor.** In your will, you may designate the person you want to have oversee the management and distribution of your property. (If you do not appoint an executor, the court must appoint someone to carry out that function). In general, you should choose someone familiar with your property and affairs and whom you trust to manage your estate and carry out your wishes.

2. **Community vs. Separate Property.** California is a “community property state,” which generally means that all money, real estate and other property you or your spouse acquire during marriage belongs to both spouses equally, no matter who earns more or who actually purchased the property. Therefore, you can only give away in your will (1) your half of the community property; and (2) any separate property you own, e.g. property you acquired before marriage or obtained by gift or inheritance.

***If you do not have a will***, your property will be distributed according to law (called “intestate succession”), as follows: All community property goes to your spouse. Your separate property also goes to your spouse if you have no children. If you are married and have children, your separate property is divided between your spouse and children. If you have only children (or grandchildren), the estate is divided among them. If you have no spouse, children, or grandchildren, the estate is distributed to your parents, brothers and sisters, grandparents, aunts and uncles, cousins or other members of your family. If you have no living relatives, your property goes to the State.

3. **Wills v. Trusts.** A trust is another tool used in estate planning that can be created as part of a will or as a separate document. A trust is a legal document that appoints a trustee to manage your property and gives detailed instructions on how the property will be managed and distributed. A “living trust” may be established during your lifetime (and you may act as your own trustee), or may be established by your will after your death. Trusts are generally more complicated and time-consuming to create than a will. You will need to have a civilian estate planning attorney assist you if you are interested in establishing a living trust as the JAG section will not be able to assist you in preparing this very involved document.
4. **“Living Wills.”** ***A will only takes effect after you die.*** A “living will” (which, as discussed above, is often part of an advance directive) is a document in which you ***specify your desires regarding your health care while you are still living.*** A will, on the other hand, has no legal effect on your health care – including whether medical treatment is given or withheld.
5. **Probate.** Having a will does not avoid “probate” (the court proceeding in which your estate is settled), but can significantly reduce the cost of probate and the burden to your friends and family.
6. **Maintaining Your Will.** After your will has been signed and witnessed, you should give a copy to the person you appointed as executor. If you keep your will in your possession, you should store it in a safe, fireproof container. Your executor should be informed of where your will is kept at all times so that the probate of your estate may proceed smoothly in the event of your death.

***Note:*** *It is generally not a good idea to place a will in a safe deposit box because the bank will usually require a court order to open a safe deposit box in the event of the owner’s death.*

7. **Changing or Revoking Your Will.** You can change or cancel your will at any time as long as you are of sound mind. Major life events such as marriage, divorce, death of a family member, or a new baby are good reasons to consider

changing your will. You may revoke your old will simply by destroying it, or by writing a new will. If you only want to make minor changes, you may create a '**codicil**,' a document that is attached to your will. The same legal formalities are required for creating a codicil as a will, and therefore it is wise to consult an attorney about the changes you would like to make. **Do not erase any part of your will or attempt to insert changes.**

## **B. Property Not Distributed By Will.**

A substantial amount of property and money does not get distributed by your will (or go through the probate process at all, whether or not you have a will). This includes:

**Joint accounts.** Assets you have in these accounts (bank accounts, stock and bond accounts, etc.) generally do not go through your will but are automatically transferred to the person with whom you hold the account upon your death.

**Real Estate.** Your home or other real property is often owned jointly with a spouse or family member. Title to the property is usually held either in joint tenancy or, for spouses, as community property with rights of survivorship. The interest of any party to such joint ownership passes automatically to the other parties upon death.

**Retirement Accounts.** Distributions from retirement accounts (including pension plans, IRAs, annuities, 401ks, etc.) are to the beneficiaries you have designated in your plan documents.

**Life insurance proceeds** (including SGLI) are distributed to the beneficiaries listed on the designation documents.

<p><b>Beneficiary Designations Control.</b> Your beneficiary designations in the documents relating to your life insurance, retirement account, or joint account are controlling as to who gets the benefit <b>regardless of what your will says.</b></p>
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## **VIII. FAMILY CARE PLAN**

All military members **married to military members** or who are **single parents with minor children** are required to have a Family Care Plan. This is a working plan that outlines how your children and other dependents will be cared for during any period of separation— whether for short-term absences of 30 days or less (such as for temporary duty or annual training) or for long-term absences of 31 days or more (such as for deployments or extended temporary duty assignments).

If you are single, you should also make a plan to address matters such as personal property (referred to as a **Personal Care Plan**.) Although JAGs generally do not prepare Family Care Plans, we are available to advise soldiers on legal issues relating to these documents.

### **A. Purpose**

A Family Care Plan helps provide guidance for caregivers during deployment and includes information about how you want specific matters conducted in your absence.

Included in the plan are copies of legal documents (e.g. guardianship papers and powers of attorney), instructions for care, and contact information for people involved in the plan. It also addresses healthcare, logistical (housing, food, and transportation), educational, financial, and religious arrangements for the care of your children.

It is important that the Family Care Plan be kept current and that your family and/or caregiver have all the information and documentation needed in your absence. You should also secure a copy in a safety deposit box and in a fire-safe box at home.

## **B. Preparing Your Family Care Plan.**

Your Family Care Plan should include the following family members:

- ❑ **Minor children** – the plan should include domestic care, educational needs and family activities such as sports and after-school activities. You must also include a Family Member Care Certification of Childcare Plan and designate a guardian.
- ❑ **Special needs family members** – it is important to include direction regarding family members with special needs under the care of your household. (For assistance in addressing dependent children with special needs, contact your Family Program Coordinator or visit: <http://www.efmconnections.org/>).

## **C. Required Documents.**

A Family Care Plan includes the following forms and documents:

- ❑ Family Care Plan (DA Form 5305-R)
- ❑ Family Care Counseling Checklist (DA Form 5304-R)
- ❑ Power of Attorney or equivalent (DA Form 5841-R)
- ❑ Certificate of Acceptance as Guardian or Escort (DA Form 5840-R)
- ❑ Application for Uniformed Services Identification Card DEERS Enrollment (DD Form 1172)
- ❑ Authorization to Start, Stop, or Change an Allotment for Active Duty (DD Form 2558),
- ❑ Letter of Instruction to Guardian/Escort

## **D. Power of Attorney for Childcare.**

An important part of your Family Care Plan is the is the power of attorney by which you give another person the legal authorization to care for the your dependent children and to make important decisions regarding the children (including decisions about medicare care and schooling) on your behalf.

**Form.** You may us either DA Form 5841-R or a power of attorney form prepared by JAG.

**Guardian Designation.** You can appoint more than one person to act as guardian, but you must specify whether they must act jointly or may act individually.

*You should use the utmost care in designating a guardian for family members. Guardians should be persons who will be immediately available in the event of an emergency and will be able to exercise their responsibilities for extended periods of time, if necessary.*

***The guardian should not be a soldier who may be deployed or mobilized.***



## **IX. SERVICEMEMBER'S SUPPORT REFERENCE PHONE LIST**

American Red Cross	800-843-2949 559-455-1000 x 115 888-494-3559
California Fair Employment & Housing Department	800-233-3212
Chaplain	559-449-2490
Department of Labor	800-473-2356
Employer Support of The Guard and Reserves (ESGR)	800-336-4590
Operation Ready Families Program Coordinators	800-449-9662 916-854-3252 559-222-7278
JFHQ ESGR	916-854-3829
JFHQ JAG	916-854-3505
Servicemembers Opportunity Colleges (SOC)	800-368-5622
U.S. Department of Housing & Urban Development	800-669-9777
Veterans Crisis Center	559-486-1284 800-611-6262



## **X. USEFUL WEBSITES**

### **A. A Comprehensive Guard Site**

[http://www.guardfamily.org/index.cfm?fuseaction=B0603\\_A.list#B0603\\_anchor\\_A\\_01](http://www.guardfamily.org/index.cfm?fuseaction=B0603_A.list#B0603_anchor_A_01)

### **B. Legal Services related to deployment:**

<http://www.jagcnet.army.mil/legal>

DoD Directive 1350.4 Legal Assistance Matters

<http://www.dtic.mil/whs/directives/>

### **C. DEERS Procedures**

DoDI 1341.2 Defense Enrollment Eligibility Report System (DEERS) Procedures

<http://www.dtic.mil/whs/directives/>

### **D. Family Care Links**

DoDI 1342.19 Family Care Plans

<http://www.dtic.mil/whs/directives/>

DoDI 1342-22 Family Centers

<http://www.dtic.mil/whs/directives/>

DoDI 1342.23 Family Readiness in the National Guard and Reserve Components

<http://www.dtic.mil/whs/directives/>

Family Support Center Program

<http://afpubs.hq.af.mil/pubfiles/af/36/afi3>

[6-3009/afi36-3009.pdf](http://afpubs.hq.af.mil/pubfiles/af/36/afi36-3009/afi36-3009.pdf)

Army Regulation 600-20

DA Pam 608-47 [A Guide to Establishing Family Support Groups](#)

## **E. Family Support Groups**

<http://www.usapa.army.mil/>

Useful web sites and links to the publications web sites for the services:

<http://www.dtic.mil/whs/directives/links.html>

## XI. STATUTORY REFERENCES

<u>Protection or Benefit</u>	<u>Servicemembers Civil Relief Act</u>	<u>California State Law</u>
<b>Termination of Agreements</b>		
Termination of Home or Business Property Lease	50 U.S.C. App. § 535(a)(1)	CMVC § 409
Termination of Motor Vehicle Lease	50 U.S.C. App. § 535(a)(2)	N/A
Termination of Cell Phone Contracts	N/A	CMVC § 823
<b>Legal Protections</b>		
Protection from Shutoff of Utilities	N/A	CMVC § 827
Protection from Eviction	50 U.S.C. App. §§ 531	CMVC § 406
Protection from Foreclosure or Repossession	50 U.S.C. App. § 532-33	CMVC §§ 407-08
<b>Insurance Benefits</b>		
Life Insurance	50 U.S.C. App. §§ 541-49	N/A
Health Insurance	50 U.S.C. App. § 594	CMVC § 409.4
<b>Court and Administrative Proceedings</b>		
Stay of Legal Proceedings	50 U.S.C. App. § 522	CMVC § 403
Protection Against Defaults	50 U.S.C. App. § 521	CMVC § 402
Stays of Judgments or Orders	50 U.S.C. App. § 524	CMVC § 403(c)
Tolling of Statutes of Limitation	50 U.S.C. App. § 526	CMVC § 404
<b>Child Custody and Support</b>		
Child Custody and Visitation	N/A	Family Code § 3047
Child Support	N/A	Family Code § 3651

Assistance from Local Child Support Agency	N/A	Family Code § 17440
Child Support Arrearages	N/A	Family Code § 17560

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**Relief from Financial Obligations**

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Reduction to 6% of Interest Rate on Pre-Service Debt	50 U.S.C. App. § 527	CMVC § 405
General Relief from Financial Obligations and Taxes	50 U.S.C. App. § 591	CMVC § 409.3
Relief from Obligations under Real Estate Contracts	50 U.S.C. App. § 591(b)(1)	CMVC § 409.3(a)(1)
Relief from Other Contracts or Obligations	50 U.S.C. App. § 591(b)(2)	CMVC § 409.3(a)(2)
Deferral of Payments for Iraq or Afghanistan Deployments	N/A	CMVC §§ 800-05
Employment and Reemployment Rights	38 U.S.C. §§ 4301 <i>et seq.</i>	CMVC §§ 394 <i>et seq.</i>

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## **XII. SAMPLE LETTERS**

- A. Request for Reduction of Interest Rate to 6%**
- B. Notice of Termination of Property Lease**
- C. Notice of Termination of Automobile Lease**
- D. Notice of Termination of Cell Phone Contract**
- E. Letter Requesting Protection from Shutoff of Utilities**
- F. Letter Requesting Protection Against Cancellation of Life Insurance**
- G. Letter Requesting Reinstatement of Health Insurance**
- H. Letter Requesting Stay of Legal Proceedings**
- I. Letter Requesting Deferral of Payments (Servicemembers Deployed to Iraq or Afghanistan)**
- J. Letter Notifying Employer of Military Service and Reemployment Rights (USERRA)**

Date: \_\_\_\_\_

TO:

**RE: Request for Reduction of Interest Rate to 6%  
Servicemembers Civil Relief Act, 50 U.S.C. App. § 527  
California Military and Veterans Code § 405**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States. A copy of my military orders, which I received on \_\_\_\_\_ is enclosed. I will provide you with copies of any orders that extend my military service.

I incurred a debt with you prior to this period of military service. My account number is \_\_\_\_\_. I am hereby asserting my entitlement to relief under the Servicemembers Civil Relief Act, 50 U.S.C. App. § 527, and California Military and Veterans Code § 527. Under these statutes, the rate of interest on my obligation (*including service charges, renewal charges, fees, and other charges*) must be reduced to six percent (6%) per annum as of the date I received my orders to report for military service. Interest above 6% is forgiven and cannot be accrued. This interest rate reduction must continue throughout my period of active military service, including any extensions thereof.

Please take immediate action to adjust my financial obligation to reflect the 6% interest rate cap, and advise me of the amount of my revised payments. Please direct all correspondence to:

Thank you, in advance, for your cooperation.

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO:

**RE: Notice of Termination of Real Property Lease  
Servicemembers Civil Relief Act, 50 U.S.C. App. § 535  
California Military and Veterans Code § 409**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States. A copy of my military orders is enclosed. I am writing to terminate my lease of the following property (*street address, city and state*):

I leased this property prior to my current period of military service, and I and/or my dependents have occupied it for residential, professional, business, agricultural or similar purposes. I am terminating this lease pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 535 and California Military and Veterans Code (CMVC) § 409.

Pursuant to the SCRA and CMVC the lease will terminate on \_\_\_\_\_, 20\_\_\_\_. I am only required to pay rent for the period preceding the date of termination. If I have paid rent in advance you are required to prorate the payment and refund the balance within thirty (30) days. You are also required to refund my security deposit. Please send any payments or correspondence to:

Thank you, in advance, for your cooperation.

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO:

**RE: Notice of Termination of Motor Vehicle Lease  
Servicemembers Civil Relief Act, 50 U.S.C. App. § 535  
California Military and Veterans Code § 826**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States. A copy of my military orders is enclosed. I am writing to terminate my lease of the following motor vehicle (*make, model and license number*):

I entered into the lease prior to my current period of military service, and I and/or my dependents have used the vehicle for personal and/or business transportation. I am terminating this lease pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 535. The vehicle has been returned or it will be returned within 15 days of the delivery of this notice.

Under the terms of the SCRA, this lease will terminate when the vehicle is returned. I am only required to make lease payments for the period preceding the date of termination. If I have made any lease payments in advance, you are required to prorate and refund the balance within thirty (30) days. The SCRA prohibits you from charging an early termination fee. If you believe that I have any outstanding obligations or liabilities in connection with this lease, please provide me with an itemized list thereof within thirty (30) days of this notice. Please be advised that, pursuant to California Military and Veterans Code § 826, any arrearages or other obligations due and unpaid as of the date of termination may be paid in equal installments over a period at least equal to my period of military service. You are also required to refund my security deposit. Please send any payments or correspondence to:

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**



**VIA CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED**

Date: \_\_\_\_\_

TO: 

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**RE: Notice of Termination of Cellular Telephone Contract  
California Military and Veterans Code § 823  
Account Number: \_\_\_\_\_  
Cell Phone No.: \_\_\_\_\_**

Dear Sir/Madam:

This is a notice of termination of the above-referenced cellular telephone contract pursuant to Section 823 of the California Military and Veterans Code. I am a qualified customer under the provisions of that statute in that:

- I have been called to serve on active state or federal military service; or
- I am the spouse or legal dependent of a servicemember who has been called to serve on active state or federal military service.

I enclose a copy of the military orders that specify the duration of the military service.

Please be advised that no penalty, interest or charges may be assessed based on the exercise of these termination rights.

Thank you for your cooperation.

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO:

**RE: Request for Protection Against Shutoff of Utilities  
California Military and Veterans Code § 827**

Dear Sir/Madam:

This is an application for shutoff protection for utility service pursuant to Section 827 of the California Military and Veterans Code. I am a qualified customer under the provisions of that statute in that I am the customer of record for this service and I am a member of a residential household for which the income is reduced because:

- I have been called to serve on active state or federal military service beginning \_\_\_\_\_, 200\_\_.
- My spouse has been called to serve on active state or federal military service beginning \_\_\_\_\_, 200\_\_.

I enclose a copy of my military orders that specify the duration of the active duty status.

Pursuant to Military and Veterans Code § 827(g)(1), I hereby request establishment of a repayment plan requiring minimum monthly payments that will allow me to pay any past due amounts over a reasonable time period not to exceed one year after the end of the active military duty describe above. Please be advised that, pursuant to Military and Veterans Code § 827(g)(2), no late payment fees or interest may be charged during the period of military service or the repayment period.

Thank you for your cooperation.

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO:

**RE: Request for Protection Against Cancellation of Life Insurance Policy  
Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 541–49  
Policy No.: \_\_\_\_\_**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States. A copy of my military orders is enclosed. I am writing to request protection under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 541-549, against termination of the above-referenced policy of insurance, which was in force at least 180 days before I received my military orders.

Pursuant to 50 U.S.C. App. § 543(a)(3), I hereby acknowledge that my rights under the policy are subject to and modified by the provisions of the 50 U.S.C. App. §§ 541 *et. seq.* Please provide the Secretary of Veterans affairs with a report concerning the policy pursuant to 50 U.S.C. App. § 543(c).

Please direct any correspondence regarding this matter to:

Thank you for your assistance and cooperation.

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

**cc: Secretary of Veterans Affairs  
810 Vermont Ave NW  
Washington , DC 20420**

Date: \_\_\_\_\_

TO:

**RE: Request for Reinstatement of Health Insurance Policy  
Policy No.: \_\_\_\_\_  
Servicemembers Civil Relief Act, 50 U.S.C. App. § 594  
California Military and Veterans Code § 409.4**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I served on active duty with the Armed Forces of the United States from \_\_\_\_\_ to \_\_\_\_\_. A copy of my military orders is enclosed. Prior to my military service, the above-referenced policy was in force and was terminated during my period of active service.

Pursuant to 50 U.S.C. App. § 594 and Military and Veterans Code § 409.4, I hereby request reinstatement of the above-referenced policy. Please be advised that, pursuant to the above-referenced statutes, I am entitled to reinstatement of the policy with no exclusion or waiting periods unless the Secretary of Veterans Affairs determines that the condition triggering such exclusion or waiting period arose from a disability incurred or aggravated in the line of duty.

Please direct any correspondence regarding this matter to:

Thank you for your assistance and cooperation.

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO:

**RE: Request for Stay of Legal Proceedings  
Servicemembers Civil Relief Act, 50 U.S.C. App. § 522  
California Military and Veterans Code § 403**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States. A copy of my military orders is enclosed. I am writing to request a stay of the following action or proceeding (*name of court, name of case and case number*):

I am requesting this stay on the ground that my military service has materially affected my ability to participate in this action or proceeding as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Unless the period of my military service is extended, I will be able to appear within 90 days after the date of termination of military service identified in the enclosed orders. Please direct any correspondence regarding this matter to:

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO:

**RE: Request for Deferral of Payment Obligation  
California Military and Veterans Code §§ 800-805**

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States beginning \_\_\_\_\_, 200\_, as a result of the  **Iraq conflict**  **Afghanistan conflict**. This period of service is currently projected to continue until \_\_\_\_\_, 200\_, and may be extended beyond that date. A copy of my military orders is enclosed. I will provide you with copies of any orders that extend my period of active duty service.

Pursuant to Section 800 of the Military and Veterans Code, I hereby request deferral of payments and other financial obligations on the following account for the maximum period allowable by law:

Account Number: \_\_\_\_\_

Please be advised that, pursuant to Section 804 of the Military and Veterans Code, during the period of deferral of the above-referenced obligation, (1) payments of all principal and interest shall be deferred and no penalties may be imposed on the nonpayment of principal or interest; (2) no interest may be charged or accumulated on principal or interest on which payment was delayed; (3) no foreclosure or repossession of property on which payment was deferred may occur. Additionally, pursuant to Section 805 of the Military and Veterans Code, the exercise of these rights shall not provide the basis for affecting credit ratings, denial or revocation of credit, or a change in the terms of any existing credit arrangement.

Please take immediate action to adjust my account to reflect the deferral of payment obligations. Thank you, in advance, for your cooperation.

**I declare, under penalty of perjury, that the foregoing is true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_, 200\_.**

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**

Date: \_\_\_\_\_

TO: 

**RE: Employment Rights After Active Military Service  
Uniformed Services Employment and Reemployment Rights Act (USERRA)  
38 U.S.C §§ 4301 *et seq.*  
California Military and Veterans Code §§ 394 *et seq.***

Dear Sir/Madam:

I, \_\_\_\_\_, am a member of the California Army National Guard. I have been called to serve on active duty with the Armed Forces of the United States beginning \_\_\_\_\_, 20\_\_\_\_. This period of service will continue until \_\_\_\_\_, 20\_\_\_\_, and may be extended beyond that date. A copy of my military orders is enclosed if they are currently available. If not, a copy will be provided on request when I return from active duty.

My last day at work with you before I begin active duty will be \_\_\_\_\_, 20\_\_\_\_. I will be returning to my job after my release from active duty pursuant to USERRA, 38 U.S.C. §§ 4301 *et seq.* and California Military and Veterans Code §§ 394 *et seq.* (CMVC). I am asserting all other rights provided by USERRA, CMVC, other applicable laws concerning the employment and reemployment of military reservists, and any associated contracts or agreements.

I  do  do not wish to take \_\_\_ days of vacation or paid leave at the beginning of my military leave.

I  do/  do not wish to continue my health care insurance per USERRA, 38 USC § 4317.

During my military service, please direct any correspondence to:



I regret any inconvenience that this may cause you. Thank you, in advance, for your patience and understanding.

Sincerely,

\_\_\_\_\_  
Signature

**Enclosure: Military Orders**