

UNCLASSIFIED

APPENDIX 11 (LEGAL RESOURCE BOOK) TO ANNEX S (LEGAL) TO OPORD 16-000 (LANG OPS) - JFHQ-LA

# The Louisiana National Guard

## Legal Resource Book



16 July 2015



This book does not provide legal advice. It only provides a very brief description of some complicated legal concepts. Relatively minor changes in the factual circumstances can dramatically change the applicable law. You should not rely on this document without consulting with an attorney.



# Legal Resource Book



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### **ORIENTATION**

This guide does not provide legal advice. It only provides a very brief description of some complicated legal concepts. Relatively minor changes in the factual circumstances can dramatically change the applicable law. You should not rely on this document without consulting with an attorney.

The Louisiana National Guard does not have a Legal Assistance Office, nor does it have Legal Assistance Attorneys. Brigade Judge Advocates (JA) may answer limited legal assistance questions in the course of their position within their Brigade. If you have a legal assistance question please request a meeting with your Brigade JA through proper command channels.

Otherwise, please reference the Legal Assistance references listed within this book.

### **SOLDIER READINESS PROCESSING**

During a *Soldier Readiness Processing* (SRP) exercise, you will visit the legal station. At this station, we will discuss child custody, family care plans and any contacts you have had with law enforcement officials. We will also provide wills, powers of attorney, and advance medical directives. In this document, you will find sample letters to employers, creditors, landlords, and various affidavits.

Your legal affairs include some of the important issues and decisions for you and your family members. Your legal affairs should always be in order. Automobile crashes, work related injuries, and training accidents can cause serious consequence for you and your family members. Many people think they have all the time in the world to get their affairs in order or that bad things only happen to other people; unfortunately that is not always the case.

These issues are the ones family members understandably hesitate to think about, but they are extremely important considerations for your family and you. Your unit has been alerted. This means you need to prepare for an imminent call to active service. The command strongly encourages you to get your legal affairs in order. Make the time to organize your property and financial affairs. Give some thought to medical and estate planning. SRP is a component of normal soldier readiness training. This is why we offer legal assistance on a regular recurring basis. Now that your unit has been alerted, focus your attention on updating your legal affairs.

Advance planning will help avoid many legal problems. In addition, taking care of personal legal affairs now will give you and your family peace of mind. This information should assist you to minimize personal legal problems before mobilization or deployment.

Begin by anticipating what would happen if you were required to be apart from your family at a distant location for an indefinite period of time and unable to remain in continuous communication with your family and/or friends. There might be substantial legal and other changes in your life and in the lives of those you left behind. You now need to anticipate and prevent legal problems that might arise. Put your personal, property, and financial affairs in good order now so that there will be no confusion or uncertainty.



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### **GENERAL PREPARATIONS**

To assist you, the Office of the Assistant Secretary of Defense for Reserve Affairs developed the Guard and Reserve Family Readiness Programs Tool Kit. This tool kit is designed to help commanders, members, family members, and family program directors and the support group directors in preparing units for the separations that take place during mobilization and deployment. It is available on the web at <http://ra.defense.gov/familyreadiness> under the Family Readiness link. This tool kit gives helpful hints like making sure all of your important financial documents (i.e., mortgages, bank accounts, saving bonds, etc.) are in safe, fireproof locations and that they are accessible to another family member or friend.

Another very useful item is a [Service Member Deployment Checklist](#). One key to a successful deployment is advance preparation and direct communication with your spouse and family. Keeping personal and legal affairs in order at all times is important to the individual's and family's welfare. You are responsible for your personal and legal affairs. Planning ahead will help family members have access to all the information they need and can give you the peace of mind that your family has the resources and support needed during your absence. If you play a major role in playing bills, managing the family income, handling home repairs and servicing your vehicle, your absence may shift these responsibilities to your spouse. The checklist and tips listed can help prevent your family from feeling overwhelmed and the can be used to record important family matters.

Everyone needs an efficient system of maintaining records. It is best to maintain a file system of important papers and store them in a safe-deposit box or fireproof container. It is also essential to compile a personal inventory of all important documents and where they are kept. The Service Member Deployment Checklist can serve as an inventory of all pertinent personal and legal affairs. You can find this checklist and other helpful tools on the web at <http://www.jagcnet.army.mil/legal>.



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### **LEGAL READINESS PREPARATIONS**

Legal affairs encompass very important issues and decisions for military members. Items such as Estate Planning (including Wills, Military Testamentary Instruments, and Trusts); Medical Planning (including Living Wills, Military Advance Medical Directives, and Designation of Anatomical Gifts); General and Special Powers of Attorney; Property and Financial Affairs Management; and the Servicemembers Civil Relief Act (SCRA) are very complex and are generally not thought about on a day-to-day basis. Once a service member is preparing to deploy or leave for training, legal affairs become a top priority and an important requirement. These issues are the ones that many people understandably hesitate to think about, but are extremely important considerations for you and your family.

Consider the following key components of your legal affairs:

- Check the pages of your service record to make sure the information is correct. An incorrect address phone number can delay quick response in an emergency.
- Make sure that the correct beneficiary is listed on your Servicemembers' Group Life Insurance (SGLI) election and certificate.
- Decide whether you need to have wills or military testamentary instruments drawn up. This may seem like a particularly difficult thing to do, but you will want to take control instead of letting the courts decide for you.
- Decide whether or not you need a "living will," advance medical directive or durable medical power of attorney. 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. This may seem like a difficult thing to do, but you will want to ensure that your wishes are known, honored, and that someone can legally speak on your behalf.
- Decide whether or not you need to give a general or special power of attorney to a friend or family member. This is a legal designation by an individual for a person to execute certain duties on behalf of the service member in his/her absence. For example, if you normally file a joint income tax return, you may want someone to act on your behalf while you are deployed.
- If you have minor children, you may need to give medical power of attorney to a neighbor, grandparent, and/or child care provider to authorize that individual(s) to take action in the event of a medical emergency.
- Before deployment, make sure that you and your agent know the location of important documents such as wills, marriage and birth certificates, and insurance policies.



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- Verify DEERS enrollment so family members can receive needed medical care in your absence. Call 1.800.538.9522 to confirm enrollment.
- Ensure your spouse knows the location of the nearest military legal assistance office (Fort Polk, LA 337.531.2580) for help with legal problems that may arise during mobilization.

During and after mobilization, you and your spouse may obtain free legal assistance from a civilian or military legal assistance attorney assigned to a Legal Assistance Office at a military installation close to your home or unit (Fort Polk, LA). Although not every person wants or needs a will, military testamentary instrument, power of attorney, or healthcare directive, you should consult with one of the attorneys who are here today to prepare these documents for you.

### **ESTATE PLANNING READINESS MATTERS**

- ✓ Advance Medical Directive/"Living Will"
- ✓ Healthcare Power of Attorney
- ✓ Life Insurance
- ✓ Servicemember's Group Life Insurance (SGLI)
- ✓ Power of Attorney
- ✓ Will

The following information on powers of attorney and successions is provided to give you a sense of the flavor of civil law in Louisiana and the federal law of the United States of America. It is very brief and superficial explanation of some rather complex concepts. Please communicate directly with one of our attorneys for a more detailed explanation of any concept that is important to the execution of your wishes.

### **POWERS OF ATTORNEY (POA)**

A power of attorney is a written contract through which you authorize another person to transact your affairs. It can be a very dangerous tool, and the Legal Assistance attorneys do not recommend that you sign a general power of attorney. Our experience with overseas deployments is that most Soldiers do not need a general power of attorney. It is likely that you will have frequent access to telephones and email to conduct some of your personal affairs. In the event that you actually do need a general power of attorney, you can have one completed while overseas and send it to the person that needs the document thru email or the U.S. Postal Service. Sadly, a general power of attorney often causes more harm than good. In fact, during the last half of most deployments there is typically a considerable amount of time spent working legal assistance issues as a result of the damage done by a general power of attorney.





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There are two types of powers of attorney, general and special. A *general power of attorney* authorizes your agent to transact all of your affairs. A *special power of attorney* only authorizes your agent to transact the specifically listed affairs. A special power of attorney is a more limited grant of authority. As you can see a power of attorney is one of the strongest legal documents you can give to a person and it is evidence of great faith and confidence in that person. Obviously, you should only give a power of attorney to an extremely trustworthy individual, and then only when absolutely necessary. You should carefully consider what authority you want to give to what person. The internet and the U.S. Postal Service may allow you to remain sufficiently connected to your affairs so that you may not need an agent.

If you want to revoke, cancel, or end a Power of Attorney before it expires, you must sign a [Revocation of Power of Attorney](#). You must give a copy of the revocation to any person who might have in the past or will possibly in the future deal with your agent.

No one is ever legally required to accept a power of attorney (not even a military power of attorney), regardless of the legality or validity of the power of attorney. In some cases, certain individuals and/or businesses will only accept a power of attorney fulfilling their specific individual standards and requirements, such as banks and other financial institutions. Many have their own form, so ask them. That is the only way to ensure your power of attorney will meet the specific standards of the individuals and/or businesses with which your agent will do business.

Your mandate or agent **MUST** have the **ORIGINAL** Power of Attorney (POA) and not give it to any third party. Your agent should merely show the original to third parties and give them a copy. You should keep a copy for your records. You should also retrieve and destroy the original when you wish to terminate the agency relationship.

\*Power of Attorney can be found on pg. 31

### **WILLS: TESTATE & INTESTATE SUCCESSIONS**

The executor is the person the testator appoints to execute the testator's will. The tutor is the guardian of your minor child and the administrator of that child's property after the termination of a marriage. Marriages are terminated by death, divorce, and/or legal separation.

Your "Estate" is the property, rights, and obligations that you leave upon your death.

Louisiana has "forced heirship." This means the law forces you to give a certain portion of your property to some of your descendants (if they have not been disinherited). The remainder is the disposable portion. You can give the disposable portion to anyone you wish.

The legislature has determined that forced heirs are the children of the decedent who are 23 years of age or younger at the time of the decedent's death or any of the decedent's children who are unable to





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care for themselves or their property because of a mental incapacity or physical infirmity. If there is one forced heir, 1/4 of the estate is reserved to the forced heir. If there are two or more forced heirs, 1/2 of the estate is reserved to the forced heirs.

If you die single, having never married or had children, your entire estate is disposable by you.

Louisiana also has a "community property" which is defined as that property that is acquired in accordance with the legal regime of acquets and gains. Community property is owned in indivision, 1/2 by each spouse. Each spouse owns his/her "separate property" and the other spouse has no ownership interest in it.

The property of unmarried people is separate property. When a marriage terminates (death, divorce, or legal separation) the property of the former community is divided and distributed to the owners as their individual separate property.

A "usufruct" is a type of personal servitude that burdens property (use and fruits). A usufruct is a real right of limited duration and the extent of the burden can depend on the classification of the property as consumable or non-consumable.

"Succession" is the term used to describe the process of transmitting the estate of the deceased to his/her successors who have a right to accept or reject their portion of the tendered estate.

Legatees are the individuals who succeed to the decedent's property under the term of the decedent's will. Heirs are the individuals who succeed to the decedent's property in the absence of a valid testament. Heirs succeed to the decedent's property in accordance with their class of relationship to the decedent. The classes are listed in order of priority. The first class with living or represented members succeeds to the property exclusive of all lower ranking classes. These are the classes of heirs to the decedent's separate property:

- 1) Descendants, without usufruct of the surviving spouse;
- 2) Brothers and sisters (and their descendants) subject to a joint and successive usufruct of the parents of the decedent;
- 3) If there are no surviving siblings or descendants who represent them, the surviving parents succeed to the decedent's estate;
- 4) Surviving spouse who is not judicially separated;
- 5) Ascendants other than parents;
- 6) Other collateral relatives; and
- 7) The State of Louisiana will only succeed to your property if you have no surviving relative.

The following classes of heirs (in the order of priority listed) succeed to the decedent's 1/2 interest in the property of the former community (which terminated with the death of the decedent):

- 1) Descendants, subject to the usufruct of the decedent's surviving spouse (even if s/he is not the parent of the descendant) until the surviving spouse remarries.



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- 2) The surviving spouse not judicially separated from the decedent.

The property that the heir receives from the former community becomes the separate property of the heir.

### **DIVORCE**

Under Louisiana law, you must live apart from your spouse for a period of time before a judge will grant a divorce:

- 180 days if there are no children of the marriage (or if there are children and a court finds evidence of abuse), or
- 365 days if there are children of the marriage.

The only other way to get divorced in Louisiana is if your spouse commits adultery (provable by corroborated testimony at trial) or if your spouse is convicted of a felony and sentenced to imprisonment at hard labor or death. If neither of these applies to you, you must live separate and apart from your spouse for the appropriate time period.

**Legal Separation** - There is no "legal separation" in Louisiana. You are married until you are divorced. You may file a separation agreement, which is a contract voluntarily between a husband and a wife where they agree to resolve a division of property, debts, custody, and support when they separate from each other. A separation agreement is not a court ordered legal separation.

**Procedure** - In order to file for divorce in Louisiana, you or your spouse must have lived in the state for the preceding six months. You may be able to file sooner if you have "domicile" in Louisiana (if it is your Home of Record, for instance). There are two ways of obtaining a divorce based on living separate and apart. You can either file for divorce, then live apart for the requisite time period; or live separate and apart for the time period and then file for divorce.

How long it takes to get a divorce in Louisiana depends on several things: the current court docket in the parish you are filing in, the schedule of your divorce attorney, or how long it takes to serve your spouse with the divorce papers. If your spouse will waive his/her right to service, all legal delays and notice of trial, you could possibly get your divorce quicker. If you don't know your spouse's address, it will take longer to get your divorce. A divorce judgment does not become final until the 30 day period to appeal the judgment has run. You should not remarry until you are sure that your divorce judgment is final.

**Property** - Unless you entered into a valid separate property agreement before getting married, property that either of you got during the marriage is called community property. This may include land, buildings, vehicles, bank accounts, military or civilian retirements or pensions, furniture, personal belongings and debts. A judge divides the community property after one of you files a petition for dividing ("partition of") the community property.



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Separate property is anything owned by you or your spouse before the marriage or that either of you got after the marriage from inheritance or a personal cause of action. Separate property remains the property of you or your spouse. If separate property is mixed in ("commingled") with community property, or gains value (is "enriched") from the use of either community property or the separate property of the other spouse, the court can consider a claim for reimbursement

An action for partition of the community is very complex. Before you file for divorce you should talk with a lawyer about time periods and other important issues about partition of community property

**Alimony** - Alimony in Louisiana is called spousal support. There are two types of spousal support:

- Interim spousal support. This is based on your needs, the ability of your spouse to pay, and the standard of living enjoyed during the marriage. Interim support ends upon divorce unless there is a pending claim for final spousal support. If a claim for final spousal support is pending at the time of divorce, interim spousal support ends with the final support judgment or 180 days after the divorce, whichever happens first.
- Final spousal support. You can only get this if you were free from fault before filing for divorce. A judge will look at you and your spouse's needs, income, means, health and earning capacity, how long your marriage lasted, and other things.

These issues are not simple. You should talk with a lawyer about spousal support before you file for divorce. You may lose your right to get spousal support if you don't file for it in the time the law allows.

**Getting part of your spouse's military retirement or civilian pension** - For military retirement it generally depends on how long you were married, how long your spouse was on active duty status, the state in which you are filing for divorce, and your Soldier's home state. In Louisiana, military retirement or civilian pensions may be divided between spouses in an action to partition property. But you need to discuss these issues with a lawyer before filing for a divorce

### **CHILD CARE, CUSTODY & SUPPORT**

If you are not currently married to and living with the parent of your child/ren who are under the age of 19, reside in your home for more than 30 days per year, and do not have a custody order from a judge that is consistent with the terms of your family care plan, you may have a legal time bomb. If this sounds like your situation, talk to one of the lawyers at the legal station.

When called for active duty service, men and women will be taken from their civilian careers and assigned for duty in the support of the "Global War on Terror" both at home and abroad. For some, being called to active duty service can mean a reduction of total monthly income. Those reservists who are currently paying child support payments based on higher monthly income may find that child support arrears will begin to accumulate when monthly child support payments are not met.

Additionally, custodial parents who are activated may also be affected in their ability to meet their children's needs. Guardsmen experiencing a reduction in monthly income may wish to request a judicial review and modification of their child support orders. You will need to provide your pre-



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mobilization wage rate, a copy of your orders, your current military pay information (such as pay grade and time in service, or a copy of your latest leave and earnings statement (LES), and the current child support order information. A review could result in an upward or downward adjustment, or no modification at all. The sooner a request for a modification is initiated with your state, the sooner an adjustment can be made, if warranted.

See also page 19 regarding LA Military Parent and Child Custody Protection Act.

### LOANS

**Student Loans** - Student loans affected by military mobilization discussed a recent Department of Education advisory on the lowering of student loan interest rates, encouraging refunds, and default proceedings as a result of the recent Reserve/National Guard call-up.

**Tuition** - The [American Council on Education](#) (ACE) sent a letter to college and university presidents regarding the call-up of Reservists, urging support for the call-up. The letter points out: "In previous call-ups, institutions responded with policies that returned tuition, provided for course completion at later dates, and otherwise showed flexibility to ensure that no servicemember suffered a loss of funds or educational opportunity because he or she was called to serve." Mobilizing personnel should contact their college/university for more information.

**Mortgage Loans** - Home mortgage interest rate reductions discussed a recent [Housing & Urban Development](#) advisory on FHA-approved loans. According to VA Expedites Services to victims of terrorist attacks released on September 19, 2001, the "... VA is informing lenders that National Guard and Reserve members who may be called to active duty could be entitled to loan repayment relief under the [Soldiers and Sailors Civil Relief Act of 1940](#)." (now referred to as the [Servicemembers Civil Relief Act](#) (SCRA))

VA Circular 26-01-10 includes this:

*"Members of the Reserves or National Guard who have home loans, and are called to active military service, may also be entitled to protection under the Act. In order for a veteran to qualify for certain protections available under the Act, his or her obligation must have originated prior to current period of active military service. As an example, a loan originated during a period of break in service between active duty tours would appear to meet this requirement. Also meeting the requirement would be a loan originated during a period of active military service that was followed by a break in service. A VA-guaranteed loan that used entitlement obtained through Reserve or National Guard service prior to call to active duty would also appear to meet the requirement. In the case of a secured loan obligation, certain protections apply only if the property is still owned by the veteran during the current period of active service. Benefits under the Act may also extend to co-obligors on a loan."*

The departments of Housing & Urban Development and Veterans Affairs have information on their website for those who experience financial difficulty in meeting mortgage payments. Freddie Mac purchases mortgages from lenders and packages them into securities that are sold to investors.



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Freddie Mac's website now includes information for lenders and mobilized soldiers regarding the SSCRA/SCRA and 6% interest limits.

**Small Business Loans - [U.S. Small Business Administration](#) (SBA) and [Military Reservist Economic Injury Disaster Loan Program](#)** provides economic injury disaster relief funds to eligible military reservist small businesses to meet ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was "called-up" to active duty as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active military duty. The website includes frequently asked questions. Also, see the SBA Veterans Business Development's [Veterans Entrepreneurship & Small Business Development Act](#).

**Debt Collectors** – First, it is important to understand the difference between a creditor and a debtor. A creditor is a person or entity to whom a debtor owes money. If you take out a car loan with Bank XYZ, Bank XYZ is considered your creditor. A debt collector is in the business of collecting debts that are owed to creditors. If you fail to pay your car loan to Bank XYZ, Bank XYZ will typically send your account to a debt collector, Collection Agency ABC. In most states, creditors like Bank XYZ can take broad action to try and collect on their debt, even contacting your employer as part of their collection effort. Debt collections like Collection Agency ABC, however, are very limited in their activities, mainly due to the FDCPA.

Under the FDCPA, debt collectors are not allowed to contact your employer. Under Louisiana law R.S. 9:3562, neither creditors nor debt collectors are permitted to contact your employer, including commanders. These laws are echoed by Army Regulation (AR) 600-15, para 1-7 and para 4-2. There are two exceptions to this rule; a creditor or debt collector may contact your command if they have obtained a judgement against you or if you have given them written permission after the debt was created. Absent these circumstances, they cannot contact your command. They can call and ask for your contact information, but they are not permitted to identify themselves as someone calling regarding a debt.

### **Excerpts from Army Regulation 600-15:**

#### 1–7. Fair Debt Collection Practices Act

- a. A debt collector may not contact any person other than the soldier, his or her lawyer or legal counsel, or the creditor about any debt collection. The debt collector, however, may contact the employer if he or she has a written and signed consent from the soldier, or a court order permitting contact. The written consent must include the debt collector's name. It is illegal for debt collectors to use another name when collecting debts.
- b. Debt collectors who have obtained the needed written consent or court order and who have followed chapter 4 will have their debt complaints processed.
- c. Creditors who collect only on their own behalf are exempt from the Act.

#### 4–2. State laws





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Florida, Louisiana, Maryland, Massachusetts, New York, North Carolina, and Wisconsin have passed laws that forbid creditors from contacting employers. This includes commanders, unless certain conditions are met. These conditions are the reduction of a debt to court judgment or the written permission of a debtor. The judgment must conform to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 USC App, Sec 501 et. seq., (1970)) if applicable. (See DA Pam 27-166.) Other States may enact similar laws; if they do, the same conditions will apply. Creditors wanting to make use of the debt processing privilege must first certify their compliance with the relevant State's law about contact with an employer (fig 4-1). These laws, however, do not apply if the debtor is located in a State that has not passed such a law

### How To Deal With Debt Collectors

If you are receiving calls from debt collectors, the best thing to do is send the company a letter disputing the debt and requesting validation of the debt under FDCPA. If you are contesting the validity of the debt, include the nature of your dispute in that letter. The words "I dispute this debt" impose a special requirement in the debt collector to send you validation of the debt to confirm they are collecting on a valid debt. Until they send you this validation, they must cease all collection activities.

The FDCPA prevents debt collectors from a host of actions. For each violation of the FDCPA, a consumer can sue the debt collector for damages up to \$1,000 in addition to whatever losses the consumer actually suffered.

*Harassing the debtor or others:* This includes threats of violence, use of obscene language, repeated or continuous phone calls, and threats to contact third parties. Debt collectors cannot contact you before 0800 or after 2100.

*Failing to send the required consumer notice:* When a debt collector contacts you, they must notify you within five days of (1) the amount of debt, (2) name of the original creditor, (3) the right to dispute the debt, (4) the right to obtain validation of the debt, and (5) the right to obtain the name and address of the original creditor.

*Continuing to contact the consumer after receiving a notice to cease all communication:* If you notify a debt collector in writing to cease all further contact with you, their failure to honor that demand is a violation of the FDCPA.

*Revealing the debt to third parties:* Third-party contacts are generally unauthorized.

*Threatening dire consequences if the consumer fails to pay:* Some debt collectors falsely threaten lawsuits or other action they do not intend to take. Others falsely threaten arrest or the seizure of property. Creditors can obtain judgement against you for the debt you owe, but they must first notify of the court action.

*Calling the consumer's place of employment:* Under Louisiana law and AR 600-15, neither creditors nor debt collectors may contact employers.



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### **SERVICEMEMBERS' GROUP LIFE INSURANCE (SGLI)**

Each service member is eligible to be insured under the Servicemember's Group Life Insurance (SGLI) up to a maximum of \$400,000.00 in increments of \$50,000.00. You should verify who is designated as beneficiary on your SGLI and make appropriate changes as necessary. An eligible beneficiary can be any person or legal entity designated by the service member. More information about the program can be found at the VA website [benefits.va.gov/insurance/sgli.asp](http://benefits.va.gov/insurance/sgli.asp)

### **UNIFORMED SERVICES EMPLOYMENT & RE-EMPLOYMENT RIGHTS ACT (USERRA)**

Besides worrying about home or car payments, ongoing civil court disputes, and evictions of family or dependents, active military persons are often concerned about whether they will have a job to return to once their period of active duty is over. Fortunately, the answer is usually yes. A federal law known as the *Uniformed Services Employment and Re-employment Rights Act of 1994*, or ESERRA (38 U.S.C. Section 4301 and following), prohibits discrimination against members of the United States military or those who serve in the military reserves. This law requires employers to reinstate an employee who has taken time off to serve in the armed forces, if the employee meets these conditions:

- The employee gave the employer notice, before taking leave that the leave was for military service;
- The employee spent no more than five years on leave for military service;
- The employee was released from military service under honorable conditions; and
- The employee reports back or applies for reinstatement within specified time limits (these limits vary depending on the length of the employee's leave).

USERRA requires employers to reinstate workers to the same position they would have held had they been continually employed throughout their leave, provided they are otherwise qualified for that job. This means that your employer cannot simply return you to your old position. Instead, the employer must give you any promotions, increased pay, or additional job responsibilities that you would have gotten had you never taken leave, but only if you are qualified to do the job. If you are not qualified, your employer must try to get you qualified (by providing training, for example). You are entitled to the benefits and seniority that you would have earned had you been continuously employed. For purposes of benefits plans and leaves policies, the time you spent on leave must be counted as time worked. For more information on USERRA, go to <http://www.dol.gov/elaws/userra.htm> or <http://www.dol.gov>. The website of the U.S. Department of Labor has fact sheets and frequently asked questions about USERRA.





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### **R.S. 29:403, Definitions**

As used in this Part, the following terms shall have the definitions ascribed in this Section unless the context clearly requires otherwise:

- (1) "Appointed official" means a person holding an appointive position or office with any department, board, commission, or agency of the state, or of any political subdivision or municipal corporation, when the office or position is established by the constitution or laws of this state.
- (2) "Benefit, benefit of employment, rights and benefits" means any advantage, profit, privilege, gain, status, account, or interest other than wages or salary for work performed that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.
- (3) "Compensation" means normal or regular base pay, but does not include overtime, per diem, differential pay, or any other allowance for other expense. "Compensation" for peace officers as defined in R.S. 40:2402(1) and firefighters shall also include state supplemental pay or extra compensation paid by the state as authorized and provided by law.
- (4) "Disability" means a physical or mental impairment, which substantially limits one or more of the major life activities, or a record of such impairment. Major life activities include caring for one's self, walking, hearing, speaking, breathing, learning, performing manual tasks, and working.
- (5) "Elected official" means a person holding an office in a governmental entity of the state or any of its political subdivisions which is filled by the vote of the appropriate electorate.
- (6) "Employee" means any person employed by any private or public employer. Employee shall also include an elected or appointed official.
- (7) "Employment" means a position as an employee with any private or public employer. For purposes of this Part, employment shall include commencement of employment, by any actions in furtherance of employment, once an offer has been extended by an employer and accepted by an employee. For purposes of this Part, service in the military service, greater than thirty days shall not be considered secondary employment.
- (8) "Essential functions" means the fundamental job duties of the employment position the person with a disability held or desires.
- (9) "Public retirement system" means any public retirement or pension system, fund, or plan maintained primarily for officers and employees of the state of Louisiana or of any political subdivision thereof, or any district, board, commission, or other agency of either, or of any other such public entity.
- (10) "Reasonable efforts", in the case of actions required of an employer under this Part, means actions, including training provided by an employer, that do not place an undue hardship on the employer.
- (11) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. "Service in the uniformed services" also means service in the armed forces of the United States pursuant to authorization by the United States Congress or presidential proclamation pursuant to the War Powers Resolution (50 U.S.C. 1541 et



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seq.). "Service in the uniformed services" also means state active duty by members of the national guard who are activated pursuant to a call of the governor of this state or of any other state as provided for by law.

(12) "Undue hardship", in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of the nature and cost of the actions needed under this Part; the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility; the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(13) "Uniformed services" means the armed forces of the United States as defined by 10 U.S.C. 101(a)(4), including reserved components of the armed forces, the Army National Guard and the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the president in time of war or emergency.

### **NATIONAL COMMITTEE OF EMPLOYER SUPPORT FOR THE GUARD AND RESERVE (ESGR)**

The *National Committee for Employer Support of the Guard and Reserve* (ESGR) is an agency within the Office of the Assistant Secretary of Defense for Reserve Affairs. It was established in 1972 to promote cooperation and understanding between Reserve component members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. Today ESGR operates through a network of more than 4,500 volunteers throughout 54 committees located in each state, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. For more information, contact the National Council for Employer Support of the Guard and Reserve. This agency assists in promoting cooperation and understanding between Reserve component members and their civilian employers. The website of the *National Committee of Employer Support of the Guard and Reserve*, <http://www.esgr.org>, explains employers' legal obligations. This site also gives employers tips on helping their employees balance military service with employment. In addition, you can download a copy of the useful "Non-Technical Guide to USERRA." For more information on Reservist policies, employer awards, recognition, and USERRA compliance, visit <http://esgr.org>. For the *Reserve Officers Association*, <http://www.roa.org/> If you need information concerning the *U.S. Department of Labor's Veterans' Employment and Training Service* (VETS), visit <http://www.dol.gov/vets>. The website for the *Louisiana Committee of Employer Support of the Guard and Reserve* can be found at <http://esgr.mil/LA>



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### **SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 (SCRA)**

The *Servicemembers Civil Relief Act of 2003* (SCRA) formerly known as the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA) is a federal law that gives all military members some important rights as they enter active duty. It covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. It also provides many important protections to military members while on active duty. For example, one of the most widely known benefits is the ability to reduce consumer debt and mortgage interest rates to 6% under certain circumstances. If you think being called to active military service adversely affects your ability to meet your obligations, talk with one of the attorneys at the legal station.

The SCRA protects active duty military members and reservists or members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents of military members (i.e., certain eviction actions). To receive protection under some parts of the SCRA, the member must be prepared to show that military service has had a "material effect" on the legal or financial matter involved. Protection under the SCRA must be requested during the member's military duty or within 30 to 180 days after military service ends, depending on the protection being requested.

In many situations, the SCRA protections are not automatic, but require some action to invoke the Act. For example, to obtain a reduction of your pre-active duty mortgage or credit card interest rates, you should send your lender/creditor a written request and a copy of your mobilization orders.

**Legal advice available:** If you think that you have rights under the SCRA that may have been violated, or that you are entitled to be shielded from a legal proceeding or financial obligation by the SCRA protections, you should discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible.

#### ***The Six Percent Rule***

One of the most widely known benefits under the SCRA is the ability to reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances. How does the 6% interest rule work?

Considering this example: Three months ago, Mr. Smith and his wife bought a car for \$13,000.00, paying \$1,000.00 down, and financing \$12,000.00 at a 9% interest rate. Last week, Mr. Smith was called to active duty as Staff Sergeant (SSG) Smith. **Before** entering active duty, Mr. Smith earned \$42,000.00 per year. As a Staff Sergeant, he now earns almost \$27,000.00 (a Staff Sergeant with over 12 years of military service from Defense Finance & Accounting Service). Because of the SCRA, SSG Smith may ask the car financing company to lower the interest rate to 6% while he is on active duty since military service has *materially affected* his ability to pay since he is earning less money on active duty than before. SSG Smith should inform the finance company of his situation in writing with a copy of the orders to active duty attached and request immediate confirmation that they have



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lowered his interest rate 6% under the SCRA. The finance company must adjust the interest rate down to 6%, unless it goes to court. In court, the finance company, **not** SSG Smith, would have to prove that SSG Smith's ability to pay the loan has not been materially affected by his military service. The 3% difference is forgiven or excused, and SSG Smith need not pay that amount. SSG Smith does need to continue making the monthly payments of principal and interest (at 6%) to avoid his account being considered delinquent. Continuing payments should also avoid any adverse credit reports from the finance company. (See Section 207, SCRA).

**Note:** In some situations, civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned **before** the call to active duty. In most such situations, military service has not materially affected the member's ability to pay so it is unlikely that the SCRA 6% interest limitation applies. Of course, if the military member's expenses increased (for example, the member must pay for a second apartment at the duty station, or the member's spouse gave up her job to move with him) military service might have materially affected the member and the SCRA 6% interest limit could apply.

What if, instead, of buying the car before he came on active duty, SSG Smith left his car at home for his wife and purchased a used car at this duty station? To do so, he borrowed \$4,000.00 at a 9% interest rate. Since SSG Smith took this debt **after** entering active duty service, the SCRA 6% interest limit does not apply.

**Need specific legal advice?** If you think being called to active military service has reduced your ability to meet your financial obligations, contact your nearest legal assistance office to see if the SCRA applies.

### ***Delay of Court and Administrative Proceedings***

A major change provided by the SCRA is that it permits active duty service members, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety (90) days upon the service member's request. The request must be in writing and (1) explain why the current military duty materially effects the service member's ability to appear, (2) provide a date when the servicemember can appear, and (3) include a letter from the commander stating that the service member's duties preclude his or her appearance and that he or she is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the service member. (See Section 202, SCRA).

### ***Child Custody Proceeding***

LA RS 9:359

SUBPART H. MILITARY PARENT AND CHILD CUSTODY PROTECTION ACT

§359. Short title

This Subpart may be cited as the "Military Parent and Child Custody Protection Act".



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Acts 2010, No. 739, §1.

### §359.2. Final order; modification prohibited

The court shall not enter a final order modifying the existing terms of a custody or visitation order until ninety days after the termination of deployment; however, if the matter was fully tried by a court prior to deployment, the court may enter a final order at any time.

### §359.4. Temporary modification

A. An existing order of custody or visitation may be temporarily modified to reasonably accommodate the deployment of a parent. Any such order issued in accordance with the provisions of this Subpart shall be entered as a temporary order by the court.

B. Unless the court determines that it is not in the best interest of the child, a temporary modification order shall grant the deploying parent reasonable custody or visitation during periods of approved military leave if the existing order granted the deploying parent custody or visitation prior to deployment. All restrictions on the custody or visitation in the existing order shall remain in effect in the temporary modification order.

C. A temporary modification order shall specify that deployment is the reason for modification and shall require the other parent to provide the court and the deploying parent with written notice thirty days prior to a change of address or telephone number.

D. The court shall have an expedited hearing on any custody or visitation matters, upon the motion of a parent and for good cause shown, when military duties prevent the deploying parent from personally appearing at a hearing scheduled regularly on the docket.

Acts 2010, No. 739, §1.

### ***Termination of Lease***

Another significant change provided in the SCRA, is found in Section 305. The prior law only allowed the termination of pre-service “dwelling, professional, business, agricultural, or similar” leases. The new provision in the SCRA allows termination of leases by active duty service members who subsequently received orders for a permanent change of station (PCS) or a deployment for a period of ninety (90) days or more. The SCRA also **includes automobiles** leased for personal or business use by service members and their dependents. The pre-service automobile lease may be cancelled if the service member receives active duty orders for a period of one hundred and eighty (180) day or more. The automobile lease entered into while the service member is **on** active duty may be terminated if the service member receives PCS orders to a (1) location **outside** the continental United States or (2) deployment orders for a period of one hundred and eighty (180) days or more. (See Section 305, SCRA).

### ***Eviction for Nonpayment of Rent***

Although the SCRA does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some **protection from eviction** under the [Servicemembers Civil Relief Act](#) (SCRA), Section 301.





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The landlord must obtain a court order to evict a military member or his/her dependents. The court must find the member's failure to pay is **not** materially affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court *may* stay the eviction (three months unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it. There is no requirement that the lease be entered into before entry on active duty, and the court could make any other "just" order under § 301 of the SCRA.

The requirements of this section are:

- 1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty;
- 2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
- 3) For 2014, the eviction protection applies to leases with monthly rent up to \$3,217.81, provided that the lease was signed prior to enlistment or the date of active duty.

### ***Default Judgment Protection***

If a default judgment is entered against a service member during his or her active duty service, or within sixty (60) days thereafter, the SCRA allows the service member to reopen that default judgment and set it aside. In order to set aside a default judgment, the service member must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/her. The service member must apply to the court relief within ninety (90) days of the termination or release from military service. (See Section 201, SCRA)

### ***Life Insurance Protection***

The SCRA also permits the service member to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the service member will have two years after the period of military service to repay all premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of \$250,000.00 or the maximum limit of the Servicemembers Group Life Insurance (SGLI). (See Section 401, SCRA).

### ***State Taxation Clarification***

The SCRA provides that a nonresident service member's military income and personal property are not subject to state taxation if the service member is present in the state only due to military orders. The state is also prohibited from using the military pay of these nonresident service members to increase the state income tax of the spouse. Under prior law, some states did not tax the nonresident



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service member directly, but did include the nonresident service member's income in the spouse's income, resulting in higher taxes for the spouse. (See Section 511, SCRA).

### ***Health Insurance Reinstatement***

The SCRA further provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect **before** such service commenced and terminated during the period of military service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of the Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement of health insurance protection does not apply to a service member entitled to participate in employer-offered insurance. (See rules regarding employer offered health insurance care in the Uniformed Services Employment and Re-employment Act). And finally, the service member must apply for the reinstatement of the health insurance within one hundred and twenty (120) days after termination or release from military service. As always, submit such request to the insurance company in writing with a copy of the orders for active duty and release from active duty. (See Section 704, SCRA)

### ***Servicemembers' Civil Relief Act (SCRA) Certificates***

DefenseLINK offers information on how to obtain [Servicemembers' Civil Relief Act \(SCRA Certificates\)](#), often required before a default judgment may be approved when suing a member of the military. To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act of 2003 (formerly known as Soldiers' and Sailors' Civil Relief Act of 1940) you can use the public website: [dmdc.mil/appj/scra/](http://dmdc.mil/appj/scra/). This website will provide you with the current active military status of an individual. There is no charge for this certificate.

## **Storage Household Goods & Privately Owned Vehicles**

Some soldiers are entitled to assistance with the storage of household goods (HHG) and privately owned vehicles (POVs).

### ***Qualifying Requirements***

- 1) Service Member (SM) must be single; or
- 2) SM must be a single parent; or
- 3) SM must be married to a SM who is also mobilized.

**Procedures:** SM must contact the Personal Property Department to obtain an application.





# Legal Resource Book



SM completes the application and forwards same, along with mobilization orders, to the Personal Property Department.

Personal Property Department will take action to store HHG. In the event that the Personal Property Department is unable to secure HHG storage, a letter will be provided to the SM explaining instructions for the SM to take and obtain HHG storage and reimbursement procedures.

**NOTE:** In the event that the Personal Property Department is currently unable (and they probably will be) to obtain storage for POVs, but can reimburse the SM, the SM should follow procedures mentioned above and expect to receive a Letter of Instruction regarding POV Storage & Reimbursement.

There may be some slight procedural differences between the various Personal Property Offices. SMs should contact the office closest to them and follow the instructions provided.

<b><i>Federal Personal Property Offices – Contact Information</i></b>	
<b>Naval Air Station (New Orleans)</b> Phone: (504) 678-9820  Personnel Property Shipping Office (PPSO) 400 Russell Office, Bldg 31 New Orleans, LA 70143	<b>Fort Polk</b> Phone: (337) 531-2068 / 7097  Personnel Property Shipping Office (PPSO) 7585 Virginia Ave, Suite 102 Fort Polk, LA 71459
<b>Keesler AFB, Biloxi, MS</b> Phone: (228) 377-1726  Traffic Management Flight Attn: 81 TRANS/LGTTP 500 Fisher Street, Suite 108 Keesler AFB, MS 39534-2540	<b>Barksdale AFB, Shreveport, LA</b> Phone: (318) 456-3229  Traffic Management Flight 2d Logistics Readiness Sq 460 Billy Mitchell, Suite 100 Barksdale AFB, LA 71110-3401



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## Legal Assistance Office Contact Information

The Legal Assistance Office Fort Polk, 337.531.2112/2580, Office of the Staff Judge Advocate, ATTN: Legal Assistance Office, 7133 Radio Road, Fort Polk, LA 71459-5344.

<b>HELPFUL WEBSITES</b>	
 <p><b>The Louisiana National Guard</b></p> <p><a href="http://www.geauxguard.com">http://www.geauxguard.com</a></p>	 <p><a href="https://mypay.dfas.mil/mypay.aspx">https://mypay.dfas.mil/mypay.aspx</a></p>
 <p><a href="http://www.virtualarmory.com/">http://www.virtualarmory.com/</a></p>	 <p><a href="http://www.military.com/">http://www.military.com/</a></p>
 <p><a href="http://www.us.army.mil">http://www.us.army.mil</a></p>	 <p><a href="https://gko.ngb.army.mil/">https://gko.ngb.army.mil/</a></p>
 <p><b>JAGCNet</b>.army.mil The Judge Advocate General's Corps U.S. Army</p> <p>"Empowering the Legal Community with Technology and Knowledge"</p> <p><a href="http://www.jagcnet.army.mil/">http://www.jagcnet.army.mil/</a></p>	 <p><b>USA.gov</b> Government Made Easy</p> <p><a href="http://www.usa.gov/">http://www.usa.gov/</a></p>



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 <p><b>ESGR</b> EMPLOYER SUPPORT OF THE GUARD AND RESERVE <a href="http://www.esrg.mil/LA">http://www.esrg.mil/LA</a></p>	 <p>UNITED STATES DEPARTMENT OF VETERANS AFFAIRS <a href="http://www.va.gov/">http://www.va.gov/</a></p>
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## Civilian Attorneys

<p><b>Acadiana Legal Services Corporation (Lafayette Headquarters)</b> Lafayette, LA 70502-4823 318-327-4320 <a href="http://www.la-law.org">http://www.la-law.org</a></p>	<p><b>Baton Rouge Bar Foundation Pro Bono Project</b> 541 Main Street Baton Rouge, LA 70802 225-344-4803 <a href="http://brba.org">http://brba.org</a></p>
<p><b>Central Louisiana Pro Bono Project, Inc.</b> PO Box 1324 Ste 112 Alexandria, LA 71309-1324 318-449-9778</p>	<p><b>Lafayette Parish Bar Association Volunteer Lawyers</b> PO Box 2194 505 Lafayette, LA 70502 337-237-4700 <a href="http://lafayettebar.org">http://lafayettebar.org</a></p>
<p><b>Legal Services of North Louisiana</b> 720 Travis Street Shreveport, LA 71101 318-222-7186 Toll-Free: 1-800-826-9265 <a href="http://www.lsnl.org">http://www.lsnl.org</a> Offices: <a href="http://lsnl.org/contact.asp">http://lsnl.org/contact.asp</a></p>	<p><b>Natchitoches</b> PO Box 1189 Natchitoches, LA 71458-1189 318-352-7220 Toll-free: 1-800-960-9109</p>
<p><b>Monroe</b> 3016 Cameron Street Monroe, LA 71201 318-699-0889 Toll-free: 1-800-259-6591</p>	<p><b>Southeast Louisiana Legal Services</b> 1010 Common Suite 1400A New Orleans, LA 70112 504-529-1000 <a href="http://www.nolac.org">http://www.nolac.org</a></p>



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<p><b>Southeast Louisiana Legal Services</b>  1200 Derek Drive Suite 100  Hammond, LA 70403  985-345-2130  <a href="http://www.nolac.org">http://www.nolac.org</a></p>	<p><b>Southeast Louisiana Legal Services</b>  715 St. Ferdinand  Baton Rouge, LA 70802  225-383-1087  Fax: 225-383-1197  Applications: 225-448-0331 or 855-512-3980  (toll free)  <a href="http://nolac.org">http://nolac.org</a></p>
<p><b>The Pro Bono Project</b>  615 Baronne Street Ste 201  New Orleans, LA 70113  504-581-4043  <a href="http://www.probono-no.org">http://www.probono-no.org</a></p>	

If you do not qualify for legal assistance and need to hire an attorney, a resource to find an attorney in your area can be found through the Louisiana State Bar Association at <https://www.lsba.org/Public/LawyerReferral.aspx>, or through the following:

- New Orleans area: 504-561-8828
- Baton Rouge area: 225-344-9926
- Lafayette area: <http://www.lafayettebar.org>
- Lake Charles area: 337-497-0090
- Shreveport area: <http://www.shreveportbar.com>

### Helpful Hints for Working With a Lawyer

Ask about cost. If your problem requires more work than the initial half-hour consultation, remember to ask for the lawyer's fees in writing.

Remember your rights. You do not have to hire the lawyer after the initial consultation; feel free to find a lawyer with whom you are comfortable. You have hired a lawyer when you agree to allow them to do more legal work for you.

Be prepared. Bring any papers you think you may need to the first half-hour consultation. Be prepared to give the lawyer all background information. You may also want to prepare a list of questions to ask the lawyer.

Be efficient. If you do hire an attorney, don't make unnecessary phone calls. Most lawyers charge for the time spent on the phone with a client. Keep a running list of questions; cover them in one phone call or ask them at your next scheduled appointment.

Keep records. File any material you receive from your lawyer in one place. Your file is often the best way to answer your questions about your case.



## Legal Resource Book



### Sample Employer Notification Letter

\_\_\_\_\_  
Soldier's Name / Address

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Employer's Business Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State & Zip Code)

Dear Sir or Madam:

As a member of \_\_\_\_\_, I have been called to active duty service by the President of the United States in support of Operation \_\_\_\_\_. My reporting date is \_\_\_\_\_. A copy of my orders is attached for your records. In the event that you have any questions concerning my deployment, please feel free to contact me.

On my return, I will submit an application for re-employment in accordance with the Uniform Service Employment and Re-employment Rights Act (USERRA) of 1994 as amended.

I regret any inconvenience that my leaving may cause; however, I do appreciate your support and concern during my absence.

Sincerely,

\_\_\_\_\_  
(Your name)



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## Sample 6% Interest Rate Reduction Letter

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Creditor's Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State & Zip Code)

Re: **Request for Interest Rate Reduction**

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

Name on Account: \_\_\_\_\_

Billing Address: \_\_\_\_\_

\_\_\_\_\_

Dear Sir or Madam:

I am writing to you concerning my current obligation to your company for a loan or credit bearing an interest rate of \_\_\_\_%. Since incurring this obligation, I have been called to active duty service by the President of the United States in support of Operation \_\_\_\_\_. My reporting date is \_\_\_\_\_. A copy of my orders is attached for your records.

This entry into active duty military service places this financial obligation under the Soldiers and Sailors Civil Relief Act (as amended in December 2003, the Servicemember's Relief Act)(50 U.S.C. 526 et seq) which prescribes a ceiling of 6% annual interest on any obligation under the circumstances described above. This interest rate must be maintained for the entire period that I am on active duty service. The percentage cap includes all service charges, renewal charges, and miscellaneous fees. The rate is applied to the outstanding balance of the obligation as of the date of entry into active duty mentioned above. Any interest charge above this statutory ceiling must be forgiven, not accrued.

Please ensure that your records reflect this statutory ceiling and that any other charges in excess of a 6% annual rate are withdrawn. Please forward to me confirmation of the interest rate reduction and a new payment schedule reflecting the interest rate reduction. You should also be aware that federal law 50 U.S.C. App. 531 sets out the manner in which you may enforce certain rights under the contract, including any right to repossession of property.

I thank you in advance for your attention to this matter. Should there be any question, please feel free to contact me.

Sincerely,



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## Sample Auto, Residential, Business Lease Termination Letter

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Leaseholder's Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State & Zip Code)

Re: **Request to Terminate Lease**

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

Name on Account: \_\_\_\_\_

Billing Address: \_\_\_\_\_

\_\_\_\_\_

Dear Sir or Madam:

I am writing to you concerning my current obligation to your company for a lease of

\_\_\_\_\_.

Since incurring this obligation, I have been called to active duty service by the President of the United States in support of Operation \_\_\_\_\_. My reporting date is \_\_\_\_\_. A copy of my orders is attached for your records.

This entry into active duty military service places this financial obligation under the Soldiers and Sailors Civil Relief Act (as amended in December 2003, the Servicemember's Relief Act)(50 U.S.C. 526 et seq), which authorizes me to terminate this lease as a result of my call to active duty service.

This termination is effective thirty (30) days after the date of this notice. I request that you return all advanced rents and account for the unused portion of the security deposit.

I thank you in advance for your attention to this matter. Should there be any question, please feel free to contact me.

Sincerely,

\_\_\_\_\_





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### LOUISIANA'S MILITARY POWER OF ATTORNEY

#### STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

This is a MILITARY POWER OF ATTORNEY prepared pursuant to Title 10, United States Code, Section 1044b and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney under the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

Additionally, this form is specifically designed for use under Louisiana law, including transactions involving immovable property. It is suggested for use by any person authorized to receive legal assistance from the military service in accordance with federal or state law, who by these presents represents and warrants that he is so eligible. Any person to whom this form is presented may conclusively rely on the authority purportedly granted hereunder.



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BE IT KNOWN THAT on this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, Notary Public in and for said Parish and State, duly commissioned and qualified as such, personally came and appeared \_\_\_\_\_ who declared that he is a member of the \_\_\_\_\_, a branch of the military designated in R.S. 9:3861, or is otherwise included thereunder, and did execute and sign the following Military Power of Attorney.

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE LOUISIANA MILITARY POWERS OF ATTORNEY ACT, R.S. 9:3861 ET SEQ. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU, BUT IT MAY AUTHORIZE YOUR AGENT TO MAKE MEDICAL DECISIONS ON BEHALF OF YOUR MINOR CHILD. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, \_\_\_\_\_,

appoint \_\_\_\_\_,

(NAME AND ADDRESS OF THE PERSON APPOINTED, OR OF EACH PERSON APPOINTED IF YOU WANT TO DESIGNATE MORE THAN ONE) **as my agent (Attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:**

## I. GENERAL POWERS

TO GRANT OR WITHHOLD ANY OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF IT IN THE APPROPRIATE COLUMN ("YES" OR "NO"). (THE GRANTING OF POWERS AFFECTING IMMOVABLE PROPERTY IS PROVIDED IN A SEPARATE SECTION.)

YES	NO	
_____	_____	(A) Tangible personal property transactions.
_____	_____	(B) Stock and bond transactions.
_____	_____	(C) Commodity and option transactions.
_____	_____	(D) Banking and other financial institution transactions.
_____	_____	(E) Business operating transactions.
_____	_____	(F) Insurance and annuity transactions.
_____	_____	(G) Estate, trust, and other beneficiary transactions.
_____	_____	(H) Claims and litigation.
_____	_____	(I) Personal and family maintenance.
_____	_____	(J) Care, custody, and control of a minor child.



# Legal Resource Book



- \_\_\_ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service.
- \_\_\_ (L) Retirement plan transactions.
- \_\_\_ (M) Tax matters.
- \_\_\_ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL IN THE APPROPRIATE COLUMN ("YES" OR "NO") OF LINE (N).

## II. POWERS AFFECTING IMMOVABLE PROPERTY

TO GRANT THE POWER TO AFFECT IMMOVABLE OR REAL PROPERTY WHICH YOU OWN, SUCH AS SELL, LEASE, OR MORTGAGE REAL ESTATE, INITIAL IN THE APPROPRIATE COLUMN ("YES" OR "NO") OF LINE (P) AND PROVIDE LOCATION OF PROPERTY.

YES NO

\_\_\_ (P) Real property transactions affecting the following property:

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## III. SPECIAL INSTRUCTIONS

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This Power of Attorney will:

\_\_\_ Continue to be effective even though I become incapacitated.



# Legal Resource Book



\_\_\_\_\_ Terminate when I become incapacitated.

## EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act:

\_\_\_\_\_ separately or \_\_\_\_\_ jointly.

I agree that any third party who receives a copy of this document may act under it. I agree that any transaction entered into by any third party in reliance on this document shall be binding upon me and I hereby waive all rights I may have to challenge the authority of the named agent, except to recover against him. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(SSN - optional)

Done and passed at the City of \_\_\_\_\_, Parish of \_\_\_\_\_,  
Louisiana, on the day and date first above written, in the presence  
of \_\_\_\_\_ and \_\_\_\_\_,  
competent witnesses, (two witnesses preferred, but only required if line (P) is initialed) who sign with appearer  
and me, officer, after due reading of the whole.

WITNESSES:

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(ADDRESS)

NOTARY SEAL: \_\_\_\_\_  
(SIGNATURE OF NOTARY PUBLIC)