



# ***ESTATE PLANNING***

## ***52 FW/JA***

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There are two major parts of estate planning, and both will be addressed during your appointment to draft a will. The first part is called lifetime estate planning, and it addresses any issues that may arise during your lifetime. The second part, known as death estate planning, addresses the issues that may arise in the event of your death. Below, you will find a discussion on both of these parts.

### **LIFETIME ESTATE PLANNING**

Lifetime estate planning focuses on the areas of health care, quality of life, and how your business will be conducted if you become incapacitated. There are three primary documents that address these issues: Springing Durable General Powers of Attorney (SDGPA), living wills, and Health Care Powers of Attorney (HCPA). In this handout, each of these documents is discussed briefly. For a more in depth discussion, please see our office's handouts entitled "Living Wills and Related Powers of Attorney" and "Powers of Attorney."

A SDGPA authorizes another to act on your behalf. However, unlike the typical power of attorney, a SDGPA takes effect only after you have become incapacitated. Once it becomes effective, a SDGPA will endure throughout your disability. A SDGPA, like a traditional general power of attorney, grants broad authority. For this reason, a SDGPA should be given only to those persons that you can trust with everything you own.

A living will allows you to communicate your desires about the extent of medical treatment you would like to receive. Basically, it establishes whether or not you would like to have your life prolonged

artificially if there is no hope for your recovery to a meaningful and conscious existence. The living will becomes operational only if a physician determines that you have a terminal, incurable medical condition, you are in a vegetative state, or permanently unconscious and your life can only be prolonged by means of artificial support.

A HCPA appoints someone to make medical decisions on your behalf when you are unable to do so (e.g., if you are unconscious). This power of attorney gives your agent the authority to make a wide range of medical decisions on your behalf. It also gives your agent access to your medical information and authority to fully participate with treating physicians in deciding what care should be provided to you. A HCPA will also repeat the intent of a living will; however, it is recommended to have both a HCPA and living will, in case one is not accepted.

Including a SDGPA, a living will, and a HCPA in your estate plan accomplishes two very important things. First, it ensures that your wishes are followed when tragedy strikes. Second, you help to eliminate the possibility that your family members will be left without guidance if they are forced to make extremely difficult decisions relating to your healthcare.

### **DEATH ESTATE PLANNING**

Death estate planning focuses on the care of your family members and the distribution of your assets in the event of your death. A last will and testament, or will, is the most common form of death estate planning, and it is useful for almost everybody. Depending on your personal situation a will can accomplish different purposes. A will directs how your property, which is not disposed of by a joint tenancy with the right of survivorship or by named beneficiaries, will be distributed. If you have minor children, a will can also name a

guardian for the minor children at the death of the second parent.

The estate planning tool that comes to most people's minds when they think about these issues is the will or last will and testament. For a more in depth discussion on wills, please see this office's handout entitled "Wills." However, it is important to recognize that a will is not the only tool that can be used. For instance, property that is jointly owned with a right of survivorship will automatically pass to the co-owner upon your death. Additionally, property with a designated beneficiary, such as a life insurance policy, certain annuities, individual retirement accounts, and certain retirement plans, pass directly to the named beneficiary at death. As a result, it is absolutely imperative that you ensure that the beneficiaries named in those documents are the people that you currently want to receive your property upon your death.

When setting up an estate plan, there are at least two situations you should consider thoroughly. First, if you are married, you should discuss the two death scenario with your spouse. Specifically, consider where your property will go in the event both you and your spouse die. Second, if you have children who have yet to reach the age of majority, you should consider whether you want your property to pass directly to them or whether you would like to establish a trust to hold it for them instead.

During the estate planning process, a number of questions will inevitably arise. When they do, please do not hesitate to contact the legal office at 452-6796, as our legal assistance attorneys stand ready to help.

***CAUTION: This pamphlet is designed to provide information about estate planning. However, it provides only general guidance. The specific facts in your case may involve different legal issues not discussed here. For best results, consult your legal assistance advisor.***



# ***JURY DUTY***

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Jury duty is a civic duty at both the state and federal level. Courts obtain names of prospective jurors from the pool of individuals who are registered to vote in the state. Therefore, if you are registered to vote in your state of legal residence, it is possible for you to be summoned for jury duty by a court in that state. However, if you are an active duty military member stationed overseas, you are eligible for an exemption from jury duty under federal law, 10 U.S.C. 982. Accordingly, under Air Force Instruction 51-301, paragraph 9.25, you are exempt from jury duty if you are:

- a general officer;
- a commander;
- assigned to operating forces in training; or
- stationed outside the United States.

Thus, if you are stationed at Spangdahlem AB, or any other installation in Europe, you are exempt from jury duty in your state of legal residence. However, you still must officially notify the court of your exemption with a letter from your immediate commander. The column to the right contains a sample letter that your commander can send on your behalf.

### **Immediate Commander's Letterhead**

RETURN ADDRESS  
COURT CLERK ADDRESS

Re: Excusal From Jury Service (NAME OF SERVICE MEMBER)

Dear Sir or Madam:

(YOUR GRADE AND NAME), a member of the United States Air Force on active duty, has been summoned to perform jury duty (WHEN, WHERE, AND ON WHAT JURY). Under 10 U.S.C. 982, Department of Defense Directive 5525.8 and Air Force Instruction 51-301, this member has been determined by me, an authorized designee of the Secretary of the Air Force, as exempt from duty on the jury in question because such jury service would unreasonably interfere with the performance of the member's military duties or would adversely affect the readiness of the unit, command, or activity to which the member is assigned. Under 10 U.S.C. 982(b), this determination is conclusive.

Please excuse (GRADE AND NAME) from jury duty. If you have questions or cannot accommodate this request, contact me at (COMMANDER'S DUTY PHONE NUMBER) or the Spangdahlem Air Base legal office at 011-49-6565-61-6796. Thank you for your cooperation.

Sincerely,

IMMEDIATE COMMANDER'S  
SIGNATURE BLOCK



# *Legal Residence*

## *52 FW/JA*

Many people come to the legal office asking about changing their state of legal residence. Often times, they wish to change their legal residence to Florida or Texas because they have heard that they will not have to pay state income taxes in those states. Changing your state of legal residence is not as easy as simply going to the Finance Office and submitting a new DD Form 2058, *State of Legal Residence Certificate*; rather, as discussed below, certain requirements must be met before a change can be made.

### **WHAT IS A LEGAL RESIDENCE?**

A “legal residence” is the state of which you are considered to be a resident. This status is usually acquired by your physical presence within the state, coupled with a desire to be a permanent legal resident or citizen of that state. Stated another way, it is the State you wish to return to after military service. In most cases, you must actually reside in the new state at the time you form the intent to make it your permanent home. Typically, to establish a new residence, you should do the following:

1. Register to vote in the new state;
2. Obtain a local driver’s license;
3. Register your vehicles in the new state;
4. Close old bank accounts in favor of new accounts in the new state.
5. Purchase Property in the new state

**BOTTOM LINE:** If you have never lived in the state, you cannot simply choose one as your State of legal residence. Doing so will open you up to possible tax liability.

### **WILL MY LEGAL RESIDENCE CHANGE BECAUSE I HAVE MOVED?**

Once acquired, your state of legal residence remains the same, even if you move to another State on military orders. It is your choice, if the above factors are satisfied, to change your state of legal residence. Under the Service Members Civil Relief Act, military members can retain their legal residence in a former state without being physically present..

### **WHAT ARE THE CONSEQUENCES OF CHANGING MY LEGAL RESIDENCE?**

A change in your state of legal residence has three major impacts:

1. First, a change will result in a shift of personal income tax obligations from your old State of domicile to your new one.
2. Second, the change will affect certain types of benefits, such as in-state tuition to a college or university.
3. Third, a change of domicile will subject you to the civil law and jurisdiction of the new State.

Although your State of legal residence is not formally recorded anywhere, you should be prepared to provide convincing proof of your change of residence to any State. After you change your State of legal residence, you should notify the Finance Office to change tax withholdings.

Any additional questions or concerns can be addressed through our office and/or the Customer Service section of the 52d Fighter Wing Finance Office.

***CAUTION: This pamphlet is designed to provide information about legal residence. However, it provides only general guidance. The specific facts of your case may involve different legal issues not discussed here. For best results, consult your legal assistance advisor.***



# ***LEGAL NAME CHANGE***

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Almost every state requires you to go through a formal, legal process to change your name. This process usually involves two steps: first, filing a petition with a court in your state of residence and paying the processing fee; and second, assuming the name by changing all your legal documents.

In most states, the first step to change your name is to file a petition for a change of name in the county courthouse in the state in which you are a resident. In addition to asking you for information on your legal residence, date of birth, and age, the application will ask you the reason for the name change. A petition for name change is usually only denied for “good cause,” such as a person having a criminal or bankruptcy record. You may be asked to certify that you have no criminal record. When you file the petition, you will be required to pay a processing fee. Usually, you will not have to make a court appearance, but will instead be informed of the name change after the application is processed. If a hearing is necessary, you may be asked to prove that you have no criminal record, have taken no bankruptcy actions, and have not made the request for any personal financial gain.

After you receive official notice of the name change, you must assume it immediately. This means that you must change all your legal documents, including your social security number, birth certificate, driver’s license, voter and car registration, credit cards, and deeds. This is often the most frustrating part of a legal name change.

To change your minor child’s name, there may be an additional step. Some states require the permission of the other biological parent. Other states only require permission if you were once married to that person. If you must obtain the other parent’s permission, but are unable to

locate him or her after reasonable efforts, you can usually proceed without that person’s approval. In addition, even if the other parent refuses to consent to the name change, a court may still order the change in certain circumstances.

There are several options for beginning the name change process. The easiest way is to have a friend or relative in your state and county of residence go to the county courthouse and ask about the procedures and paperwork. Have that person send you the paperwork, and you can return it with the processing fee and he or she can file it with the court. Otherwise, you can write directly to the clerk of the county courthouse and ask for the necessary papers and for assistance. Finally, you can also contact an attorney in your home state and pay him or her to take care of the filing. Many attorneys will have a standard fee for that type of work. Alternatively, it is also possible to change your name through the German courts; however, it is not recommended. An American court may not honor the German court’s order. In addition, this route involves the added expense of getting a certified translation of the paperwork and filing the order with your county court.

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# ***SERVICEMEMBER'S CIVIL RELIEF ACT 52 FW/JA***

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The purpose of the Servicemember's Civil Relief Act (SCRA), as amended, is to stay, postpone, or suspend enforcement of certain civil obligations of servicemembers. A number of the SCRA's protections are discussed below. For more information on the Act, see 50 U.S.C. App. §§ 501-97.

## **STAY OF PROCEEDINGS (Section 522)**

A servicemember may file an application to stay or delay the proceeding at any stage before final judgment in a civil proceeding in which he/she is involved. A court shall stay the proceeding for at least ninety (90) days if the servicemember's application contains all of the following: (1) facts demonstrating the manner in which current military duty requirements materially affect the servicemember's ability to appear in court; (2) a date when the servicemember will be available to appear; and (3) a statement from the servicemember's commander that the member's current military duty prevents appearance and that military leave is not authorized for the member at the time. A servicemember may apply for an additional stay, after the grant of an initial stay of proceedings, by submitting an application that contains the same information discussed above. Suh, an application for a stay does not constitute a waiver of defenses or an appearance for jurisdictional purposes. However, a servicemember who applies for a stay under this section, and is unsuccessful, may not seek the protections afforded by section 521, default judgments.

## **DEFAULT JUDGEMENTS (Section 521)**

Before a court can enter a default judgment against a servicemember for failure to respond to a lawsuit or failure to appear at trial, the person

who is suing the member must provide the court with an affidavit stating whether the defendant is in military service. If it appears, based on the affidavit, that the defendant is in military service, the court may not enter a judgment until after it appoints an attorney to represent the defendant. If a default judgment is entered against a servicemember, the judgment may be reopened if the member files an application within ninety (90) days after leaving active duty that shows that their service materially affected their ability to make a meritorious or legal defense.

## **6% INTEREST RATE (Section 527)**

The SCRA caps interest at a maximum rate of 6% per year on certain obligations of servicemembers. These obligations include only those entered into prior to entry into military service. "Interest" includes service charges, renewal charges, fees, or any other charges with respect to an obligation. Though the SCRA, on its face, allows a servicemember to pay interest at only 6%, the lender has some recourse. If the lender satisfies the court that the servicemember's ability to pay is not materially affected by his/her military service, the servicemember may be required to pay the previously contracted rate of interest.

## **CONTRACT PROTECTION (Section 532)**

The SCRA provides protection for contracts for the purchase, lease, or bailment of real or personal property that were entered into prior to the servicemember going on active duty. Under the SCRA, these types of contracts may not be rescinded or terminated for a breach of their terms without a court order. Furthermore, the

property cannot be repossessed for a breach without a court order.

### **TERMINATION OF LEASES OF PREMISES (Section 535)**

Under section 535, a service member may terminate a lease of premises occupied for a residential, professional, or similar purpose: 1) if the lease was entered into prior to the member's entrance into the military or; 2) if the member received military orders for a permanent change of station (PCS) or to deploy for a period not less than ninety (90) days. To effectuate the termination, a written notice of termination and a copy of their orders must be delivered to the lessor.

### **EVICTIOIN PROTECTION (Section 531)**

During a time of military service, a servicemember and/or their dependents may not be evicted from a premise without a court order, as long as, the premise is used primarily for dwelling purposes and rent does not exceed the qualifying amount. In 2014 the qualifying amount was \$3,217.81. Upon receipt of a request from a servicemember whose ability to pay the agreed rent amount is materially affected by military service, the presiding court shall stay the eviction proceeding for a period of ninety (90) days or adjust the obligation under the lease to preserve the interests of all parties.

### **TERMINATION OF MOTOR VEHICLE LEASES (Section 535)**

Leases of motor vehicles used for personal and business transportation may be terminated, without penalty, if the person, after executing the lease, enters military service or receives notice of either a PCS outside of the continental U.S. or a deployment for a period not less than 180 days. To effectuate a termination, the member must deliver a written notice of termination and copy of their orders to the lessor. Additionally, the member must return the vehicle.

### **TERMINATION OF TELEPHONE SERVICE CONTRACTS (Section 535a)**

A servicemember, without penalty, may terminate their cellular phone contract if they

receive military orders to relocate, for a period not less than ninety (90) days, to a location that does not support the cellular service. To terminate the contract, the member must deliver written or electronic notice of termination and military orders to the service provider. The service provider must allow the member to retain their telephone number if the relocation is less than three (3) years and the member resubscribes within ninety (90) days of relocating to an area where service is provided.

### **LIFE INSURANCE (Sections 541-49)**

The SCRA offers protection for some of a servicemember's life insurance policies. Specifically, the SCRA prevents a servicemember's private, individual life insurance policies that, have been in place for over 180 days before the member entered service, from lapsing for lack of payment up to two (2) years after the member leaves the service. To obtain this protection, the servicemember must apply in writing to the Department of Veterans Affairs. The total amount of life insurance coverage protection provided by this section may not exceed \$250,000 or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

### **MORTGAGE PROTECTION (Section 533)**

This section applies only to an obligation on real or personal property that is owned by a servicemember and originated before the member entered military service. If the obligation is covered by the SCRA, the sale, foreclosure, or seizure of the mortgaged property for a breach of the obligation is invalid unless the mortgagee, i.e., lender, has a court order approving such action or the member waived the mortgage protection.

### **TAXES RESPECTING PERSONAL PROPERTY, MONEY, CREDITS, AND REAL PROPERTY (Section 561)**

Under this section, no property owned by a servicemember can be sold to enforce the collection of a tax that became due before or during the member's active military service without a court order and a judicial

determination that military service does not materially affect the member's ability to pay the unpaid tax or assessment.

### **INCOME TAX OBLIGATIONS (Section 570)**

Upon notice to the IRS or a State or political subdivision of a State, the collection of income tax on a servicemember's income falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such tax is materially affected by military service. No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred.

### **GUARANTEE OF RESIDENCY (Sections 571 and 595)**

For the purposes of taxation and voting, a servicemember who is absent from their home State because of military orders shall not, solely by reason of that absence, be deemed to have lost a residence or domicile in that State. This same protection applies to a servicemember's spouse.

***CAUTION: This pamphlet is designed to provide general information about the SCRA. Specific facts in your case may involve different legal issues not discussed here. For best results, consult your legal advisor.***





# ***THINK AEF: DEPLOYMENT LEGAL READINESS 52 FW/JA***

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You have been tasked to deploy to an undisclosed location. As you pack your mobility bags, you wonder how you will be able to take care of your personal affairs from your deployed location or whether your spouse will be able to take care of everything in your absence. Listed below are some of the legal documents you should have generated before you leave.

## **POWERS OF ATTORNEY**

A Power of Attorney (POA) is a written instrument that authorizes someone else, your agent, to act on your behalf. There are two common types of POAs: a General Power of Attorney (GPOA) and a Special Power of Attorney (SPOA). A GPOA gives your agent broad authority to handle all your personal affairs. Because of the broad authority it grants, GPOAs should be used sparingly. A SPOA, on the other hand, gives your agent the power to do only those tasks that you specify. Because SPOAs are for limited, specified purposes, they are safer than GPOAs and are more readily accepted by businesses and agencies.

Spangdahlem Air Base also has a Spangdahlem Special Power of Attorney. This POA is designed specifically for Spangdahlem Air Base, and it allows your agent to take care of almost all of your on base needs while you are deployed.

No matter which type of POA you choose, you should pick your agent carefully. Select only responsible individuals whom you trust, as agent's actions will be binding on you. Also, when selecting your agent, it is important to remember that some agencies will accept POAs only if your spouse or a family member is the attorney-in-fact.

You will also need to decide on a termination date for a POA. By policy, the GPOAs and SPOAs our office drafts last a maximum of one year. However, a POA should be granted only for the minimum amount of time needed.

There are two significant limitations on a POA. First, a third-party is not required to accept a POA. Ultimately, the decision on whether to honor a GPOA or SPOA is up to the business or agency where the document is presented. The Finance Office, for example, requires a SPOA from anyone, including a spouse, who wishes to make changes to a service member's pay.

Second, POAs typically become void upon incapacity of the grantor. The reason is that an agent only has those powers that the grantor would have if personally present. Thus, if the grantor becomes incompetent to handle their own affairs, then agent will be disqualified from acting as well. It is possible to draft a POA that is not dissolved by your incapacitation. Specifically, by stating in the POA that "this power of attorney shall not be affected by incapacitation of the principal," you can create what is called a Durable Power of Attorney., which survives incapacitation. Also, it is possible to create a Springing Power of Attorney, which lies inoperative until it "springs" into action in the event of your incapacitation.

Below, are some things to consider when deciding which types of POAs you should have drafted:

1. How are you going to pay your bills, rent, and utilities?

2. Do you need someone to check your mailbox?
3. What about childcare and/or enrolling your children in school?
4. Will your POV registration or insurance expire before you return?

For a more in depth discussion of POAs, please see our office's handouts entitled "Living Wills and Related Powers of Attorney" and "Powers of Attorney."

### **OTHER LEGAL DOCUMENTS TO CONSIDER**

In addition to POAs, you will also want to consider whether you need a will, living will, and/or Health Care Power of Attorney. In making the decision whether to have these documents drafted, it is important to realize that they have the potential to take the burden of some very difficult decisions (e.g., how you are to be buried and when to remove artificial support) off your family members' shoulders. These documents are prepared by appointment only and can be very time consuming to draft and execute. With that in mind, you must make your appointment well in advance of your actual deployment date to give all parties involved enough time to prepare a thorough document. Before setting up an appointment, be sure to complete a will worksheet, which is available online at <https://aflegalassistance.law.af.mil>.

#### **What is a will?**

A will is a legal document that designates how your estate (i.e., money and property) will be distributed after your death. It may also specify your wishes regarding funeral and burial arrangements. If you have minor children, it will state who the court should appoint to be their guardian.

#### **What is a living will?**

A living will, also called an advance medical directive or declaration, becomes when a physician determines that you have a terminal, incurable, medical condition and your life is

only prolonged by means of artificial support. Through a living will, you can communicate your desire not to stop artificial life support when there is no hope of recovery to a meaningful and conscious existence.

Alternatively, you can reinforce your desire to receive all or certain medical treatment that is available to you.

#### **What is a Health Care Power of Attorney?**

A Health Care Power of Attorney (HCPOA) appoints someone to make medical decisions on your behalf when you are incapacitated and unable to do so. The HCPOA gives your agent the authority to consult with physicians and make a wide range of medical decisions on your behalf. It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care to be provided to you.

For a more in depth discussion of wills, living wills and HCPOAs see our office's handouts entitled "Estate Planning" and "Living Wills and Related Powers of Attorney."

***CAUTION: This pamphlet is not legal advice. It is designed to provide information about powers of attorney, wills, and living wills. However, it provides only general guidance. The specific facts in your case may involve different legal issues not discussed here. For best results, consult your legal assistance advisor.***