



Department of Defense

# DIRECTIVE

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Incorporating Change 1, June 13, 2001

USD(P&R)

SUBJECT: Legal Assistance Matters

References: (a) Title 10, United States Code

## 1. PURPOSE

This Directive implements reference (a) for persons eligible for military legal assistance by establishing a uniform approach for the execution of military testamentary instruments.

## 2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps, and the Coast Guard when it is operating as a Service in the Department of the Navy.

## 3. DEFINITIONS

3.1. Estate Planning. The continuing process of arranging for the use, conservation, and transfer of one's property and wealth during life and upon death. The process produces a plan that may include some or all of these: a testator/testatrix will, military testamentary instrument, a trust, life insurance, an advance medical directive, a healthcare power of attorney, designation of anatomical gifts, and other dispositive documents.

3.2. Military Advance Medical Directive. A written document, prepared in accordance with this Directive, which explains one's wishes about medical treatment if one becomes incompetent or unable to communicate, or which governs the withholding or withdrawal of life-sustaining treatment from the maker of the document in the event of an incurable or irreversible condition that will cause death within a relatively short period of time, and when the maker is no longer able/competent to make decisions regarding his/her medical treatment.

3.3. Military Legal Assistance Counsel. A judge advocate, as defined in section 801(13) of title 10, United States Code (reference (a)), or a civilian attorney serving as a legal assistance officer, under the provisions of section 1044 of reference (a).

3.4. Military Power of Attorney. A written instrument, prepared in accordance with this Directive, whereby one person, as principal, appoints another as his/her agent and confers authority to perform certain specified acts, kinds of acts or full authority to act on behalf of the principal.

3.5. Military Testamentary Instrument. An instrument that is prepared with testamentary intent in accordance with this Directive and that:

3.5.1. Is executed in accordance with this Directive (paragraph 4.2.) by (or on behalf of) a person, as a testator/testatrix, who is eligible for military legal assistance.

3.5.2. Makes a disposition of property of the testator/testatrix, and takes effect upon the death of the testator/testatrix. It has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. However, it is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State.

3.6. Testator/Testatrix. A person who makes a will or military testamentary instrument disposing of his or her property at death.

3.7. Will. A written instrument prepared consistent with State law for a testator/testatrix to dispose of the testator/testatrix property upon the testator/testatrix death. A will is often the principal document in an individual's estate plan.

#### 4. POLICY

It is DoD policy that:

##### 4.1. General

4.1.1. Although not every person needs a will or military testamentary instrument, all military personnel shall consider the advisability of making either. Whether a will or military testamentary instrument is necessary or desirable, and its form and execution, depend on the

individual's desires, circumstances and the intestate succession laws of the appropriate State. Ultimately, those eligible for legal assistance must decide for themselves whether to prepare any estate planning document(s).

4.1.2. The Military Departments, within the limits of available resources and expertise, shall inform and educate persons eligible for legal assistance on estate planning generally, and the advisability of preparing a will or military testamentary instrument. It is especially important that military personnel be educated with respect to these matters before mobilization, deployment, or similar actions.

4.1.3. All commanding officers shall urge military personnel to seek legal counsel regarding an estate plan well before mobilization, deployment, or similar activities. However, any testamentary instrument, to be legally effective, must be the free and voluntary act of the person making it.

4.2. Military Testamentary Instrument. A military testamentary instrument shall:

4.2.1. Be executed by the testator/testatrix (or, if the testator/testatrix is unable to execute the instrument personally, executed in the presence of, by the direction of, and on behalf of the testator/testatrix).

4.2.2. Be executed in the presence of a military legal assistance counsel acting as presiding attorney.

4.2.3. Be executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator/testatrix execution of the instrument by signing it.

4.2.4. Include a statement or preamble in form and content, substantially as outlined at enclosure 1.

4.2.5. Include (or have attached to it), a self-proving affidavit, in a form and content, substantially as outlined at enclosure 2.

4.3. Military Power of Attorney. Section 1044b of title 10, United States Code (reference (a)), requires recognition of powers of attorney prepared for persons eligible for legal assistance. If prepared, such documents will include a statement or preamble in form and content, substantially as outlined at enclosure 3.

4.4. Military Advance Medical Directive. Section 1044c of reference (a), requires recognition of military advance medical directives prepared for persons eligible for legal assistance. If prepared, such documents will include a statement or preamble in form and content, substantially as outlined at enclosure 4.

4.5. Reserve Component Members. Subject to the availability of legal staff resources, the Secretaries of the Military Departments may provide legal assistance in connection with their personal civil legal affairs to members of Reserve components and their dependents, following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense). Eligibility for such legal assistance shall be for a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

## 5. RESPONSIBILITIES

5.1. The Under Secretary of Defense (Personnel and Readiness) shall manage implementation of this Directive.

5.2. The Secretaries of the Military Departments shall insure compliance with this Directive and establish policies and procedures to implement this Directive.

6. SUMMARY OF CHANGE 1. This change is administrative in nature. On page 5 of the issuance, the first sentence was changed to read: "This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to section 1044d of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Services." The United States Code citation was changed to include "d" in the section number for accuracy.

## 7. EFFECTIVE DATE

This Directive is effective immediately.



Paul Wolfowitz  
Deputy Secretary of Defense

Enclosures - 4

- E1. Military Testamentary Preamble
- E2. Military Testamentary Instrument Self-Proving Affidavit
- E3. Military Power of Attorney Preamble
- E4. Military Advance Medical Directive

E1. ENCLOSURE 1

MILITARY TESTAMENTARY PREAMBLE

This is a MILITARY TESTAMENTARY INSTRUMENT prepared pursuant to section 1044d of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Services. Federal law exempts this document from any requirement of form, formality, or recording that is provided for testamentary instruments under the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this document shall receive the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate. It shall remain valid unless and until the testator revokes it.

E2. ENCLOSURE 2

MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT

AFFIDAVIT

WITH THE ARMED FORCES

AT \_\_\_\_\_

We, the testator/testatrix and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that in the presence of a military legal assistance counsel and the witnesses the testator/testatrix signed and executed the instrument as the testator/testatrix military testamentary instrument and that [he][she] had signed willingly (or willingly directed another to sign for [him][her]), and that [he][she] executed it as [his][her] free and voluntary act for the purposes therein expressed. It is further declared that each of the witnesses, in the presence and hearing of the testator/testatrix and a military legal assistance counsel, signed the military testamentary instrument as witness and that to the best of [his][her] knowledge the testator/testatrix was at that time eighteen years of age or older or emancipated, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator/Testatrix

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

Subscribed, sworn to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date \_\_\_\_\_.

(Signed)  
\_\_\_\_\_

\_\_\_\_\_  
(Official Capacity of Person Administering the Oath)

E3. ENCLOSURE 3

MILITARY POWER OF ATTORNEY PREAMBLE

This is a military Power of Attorney prepared pursuant to section 1044b of title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Service. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a State, the District of Columbia, or a commonwealth, territory, 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.

E4. ENCLOSURE 4

MILITARY ADVANCE MEDICAL DIRECTIVE

This is a military advance medical directive prepared pursuant to section 1044c of title 10, United States Code. It was prepared by an attorney authorized to provide legal assistance for an individual eligible to receive legal assistance under section 1044 of title 10, United States Code. Federal law exempts this advance medical directive from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State. Federal law specifies that this advance medical directive shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.