



DoD INSTRUCTION 1350.04

LEGAL ASSISTANCE MATTERS

Originating Component: Office of the Under Secretary of Defense for Personnel and Readiness

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Approved by: Gilbert R. Cisneros, Jr., Under Secretary of Defense for Personnel and Readiness

Purpose: In accordance with the authority in DoD Directive 5124.02, this issuance implements Sections 1044, 1044a, 1044b, 1044c, and 1044d of Title 10, United States Code (U.S.C.), for persons eligible for military legal assistance by ensuring a uniform approach for the execution of military testamentary instruments, uniform preamble language for all military powers of attorney, advanced medical directives, and testamentary instruments, and uniform eligibility requirements for Reserve Component members.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance applies to the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY.

Although not every individual needs a will or a military testamentary instrument, all Service members will consider the advisability of making either.

a. Whether a will or military testamentary instrument is necessary or desirable, as well as the form and execution of those documents, will depend on the individual's desires, circumstances, and the intestate succession laws of the appropriate State. Those eligible for legal assistance must decide for themselves whether to prepare any estate planning document(s).

b. Within the limits of available resources and expertise, the Military Services will inform and educate persons eligible for legal assistance on estate planning, generally; and on the advisability of preparing a will or military testamentary instrument. Service members will be educated about these matters before mobilization, deployment, or similar actions.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS.

The Under Secretary of Defense for Personnel and Readiness manages implementation of this issuance.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS.

Within their respective Military Departments, the Secretaries of the Military Departments oversee compliance with this issuance by establishing policies and procedures to implement this issuance.

SECTION 3: PROCEDURES

3.1. MILITARY TESTAMENTARY INSTRUMENT.

A military testamentary instrument will:

a. Be executed:

(1) By:

(a) The testator. If the testator is unable to execute the instrument personally, the instrument will be executed in the presence, by the direction, and on behalf of the testator.

(b) A person authorized to perform notarial acts in accordance with Section 1044a of Title 10, U.S.C.

(c) A State-licensed notary employed by a Military Department or the Coast Guard who is supervised by a military legal assistance counsel in accordance with Section 1044d(c)(2)(C) of Title 10, U.S.C.

(2) In the presence of at least two disinterested witnesses (in addition to the authorized notary), each of whom will attest to witnessing the testator execution of the instrument by signing it.

b. Include a preamble which, in form and content, will substantially be in accordance with Figure 1.

Figure 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 Departments. Federal law exempts this document from any requirement of form, formality, or recording that is provided for testamentary instruments pursuant to 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 will 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 will remain valid unless and until the testator revokes it.

c. Include, or have attached, a self-proving affidavit which, in form and content, will substantially be in accordance with Figure 2.

Figure 2. Military Testamentary Instrument Self-Proving Affidavit

AFFIDAVIT

WITH THE MILITARY SERVICES

AT _____

We, the testator and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned Section 1044a of Title 10, United States Code, authorized Federal notary, or to the undersigned Section 1044d(c)(2)(C) of Title 10, United States Code, authorized State-licensed notary, that in the presence of the witnesses, the testator [enter testator's name] signed and executed the instrument as the testator's 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 and the below named Section 1044a of Title 10, United States Code, authorized Federal notary, or the below named Section 1044d(c)(2)(C) of Title 10, United States Code, authorized State-licensed notary, signed the military testamentary instrument as witness and that, to the best of [his][her] knowledge, the testator was at that time 18 years of age or older or emancipated, of sound mind, and under no constraint or undue influence.

Testator _____

Print Name _____

Witness Signature _____

Print Name _____

Witness Signature _____

Print Name _____

Subscribed, sworn to, and acknowledged before me by the testator; and subscribed and sworn to before me by the witnesses, this date _____.

(Signed) _____

(Name and Official Title of Notary Administering the Oath)
Notary Public, Under the Authority of Section 1044a of Title 10, United States Code
Commission Expires:

3.2. MILITARY POWER OF ATTORNEY.

Section 1044b of Title 10, U.S.C., requires recognition of powers of attorney prepared for persons eligible for legal assistance. If prepared, such documents will include a preamble which, in form and content, will substantially be in accordance with Figure 3.

Figure 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 Departments. 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 will 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.

3.3. MILITARY ADVANCE MEDICAL DIRECTIVE.

Section 1044c of Title 10, U.S.C., requires recognition of military advance medical directives prepared for persons eligible for legal assistance. If prepared, such documents will include a preamble which, in form and content, will substantially be in accordance with Figure 4.

Figure 4. Military Advance Medical Directive Preamble

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 from the Military Departments in accordance with 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 pursuant to the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this advance medical directive will be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.

3.4. RESERVE COMPONENT MEMBERS.

Members of Reserve Components and their dependents are eligible to receive legal assistance in connection with their personal civil legal affairs 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 will be for a period of time that:

- a. Begins on the date of the release.
- b. Is at least twice the length of the period served on active duty under that call or order to active duty.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
U.S.C.	United States Code

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
disinterested witness	A witness who has no private or economic interest in the material at issue.
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: <ul style="list-style-type: none">A testator will;A military testamentary instrument;A trust;Life insurance;An advance medical directive;A healthcare power of attorney;Designation of anatomical gifts; orOther dispositive documents.
intestate succession	The method used by courts to distribute property to descendants or close relatives when a person dies without a valid will.

TERM

DEFINITION

military advance medical directive

A written document, prepared in accordance with this issuance, which:

Explains one's wishes about medical treatment, if one becomes incompetent or unable to communicate; or

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.

When the maker is no longer able to competently make decisions regarding his or her medical treatment.

military legal assistance counsel

A judge advocate, as defined in Section 801(13) of Title 10, U.S.C.; or a civilian attorney serving as a legal assistance officer in accordance with Section 1044 of Title 10, U.S.C.

military power of attorney

A written instrument, prepared in accordance with this issuance, whereby one person, as principal:

Appoints another as his or her agent.

Confers the authority to perform either certain specified acts or the full authority to act on behalf of the principal.

military testamentary instrument

An instrument prepared with testamentary intent in accordance with this issuance and that:

Is executed in accordance with Paragraph 3.1. of this issuance by, or on behalf of, a person (as a testator) who is eligible for military legal assistance.

Makes a disposition of property of the testator, and takes effect upon the death of the testator. 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 pursuant to the laws of a State.

TERM	DEFINITION
state	Defined in Section 1044d of Title 10, U.S.C.
testator	A person who makes a will or military testamentary instrument disposing of his or her property at death.
will	A written instrument prepared, in accordance with applicable State law, for a testator to dispose of the testator's property upon the testator's death. A will is often the principal document in an individual's estate plan.

REFERENCES

DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
United States Code, Title 10