



# The Power of a Power of Attorney

By CPT Thomas A. Mengesha

The sequence of events that were set in motion on September 11, 2001, changed America forever. On this day, as we all know, the United States of America lost its innocence. The land of the free was no longer as it once was. Open and free travel no longer seemed as open and free. Subsequently, America soon found itself at war with Iraq and Afghanistan. The number of service members needed to adequately fight this war was tremendous. The number of service members on active duty was not enough to engage in effective combat. As such, the burden to pick up the slack fell upon the Reserve and National Guard forces of our military. Not in recent memory has there been a greater number of service members deployed Conus or Oconus.

From a military deployment standpoint, the wars in Iraq and

Afghanistan caused the number of deployments to grow substantially.

Since September 11, 2001, over 1.7 million service members have been deployed in support of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). Operation Enduring Freedom's military focus is on securing the nation of Afghanistan while, as its name suggests, Operation Iraqi Freedom is concerned with securing the nation of Iraq. In addition to the service members deployed to Iraq and Afghanistan, thousands of service members were deployed to Kuwait and Qatar in support of Operation Iraqi Freedom. Moreover, tens of thousands service members were deployed in support of contingency operations around the world.

There have been millions of Americans deployed to war

zones around the world since this great country was founded over 230 years ago; however, recently, it appears that many soldiers are deploying in greater frequency than ever before. In addition, some of those deployed are on their 2nd, 3rd, or even 4th deployment.

In many cases, the deployment is involuntary and not knowing all of the information that will make the deployment less stressful creates a tremendous burden not only for the deploying service member, but the family of that service member as well.

Deployment is much like a roller coaster ride at an amusement park. You first have the uncertainty of the entire event, much like what you feel as you enter the gate of a roller coaster that you have never ridden. You are unsure if you will get on. You may even attempt to get out of it at the very last minute. Just as in the case of a roller coaster ride, as it makes its climb, you must begin certain aspects of preparing for your deployment with the same uncertainty. After you've made it to the top of the roller coaster, you brace yourself for your quick decent, and at this point you realize there is no turning back.

This is a similar feeling to what you may experience upon receiving your mobilization orders, but you brace yourself anyway and prepare for the many highs and lows this deployment ride can offer.

One of the first things you want to do upon notice of your impending deployment is notify family and loved ones. However of great importance is the preparation and safekeeping of a power of attorney. Never underestimate the power of a power of attorney.

When considering securing a power of attorney, know that there are two types: a general power of attorney and a specific power of attorney. A general power of attorney gives another person broad and far-reaching authority to handle your affairs. A special power of attorney only provides for specifically limited handling of your affairs, such as selling your vehicle or preparing your taxes.

Regardless of the type of power of attorney you give, there should be a specific termination date. As an attorney, I recommend powers of attorney terminate after one year has elapsed.

The following two hypothetical "case scenarios" should provide a clearer illustration of the power of a power of attorney.

### Case Scenario 1:

Bill was ordered to active duty to be deployed to Iraq in support of Operation Iraqi Freedom. Bill has been married for 18 years to Carrie.

Bill loves Carrie very much and wants to ensure she is able to take care of things in his absence. Prior to his departure, Bill grants Carrie a power of attorney.

Do to the stress of Bill's absence, Carrie files for divorce. However, Bill, not fully understanding the difference between a general power of attorney and a special power of attorney, had granted Carrie a general power of attorney.

## Through a Mother's Eyes

By Sara Graves

A mother of a two service members wrote AmeriForce Publishing recently relating the details of a story that played out in one of her daughter's lives as her daughter served her country in Iraq beginning in May 2007.

While overseas for 14 months, the daughter's spouse cleared out her bank account, moved their children and furniture into another woman's home and left behind a financial mess after he failed to keep current on their bills.

"My daughter's financial situation will take some time to repair. She had no furniture, no home, all her personal items gone..." said Cheri Hofmann.

Although this is the most unfortunate ending of a deployment, this is not new.

In fact, according to Jesus Oliveras, who is retired and currently working for the First Army as a civilian, it has been occurring to service members for many decades now.

"As a retired Soldier with 38 years of service, I have known numerous individuals dating back to Vietnam era that have gone through this," he said. "Also, one of my own Soldiers went through this during the early stages of the war. I had her sent home early and surprised her husband, but could not recoup the money..."

For service members who are deploying, Oliveras says there are a few precautions that can be taken if there is concern this may happen while they are overseas:

- Consider keeping separate bank accounts with your spouse. Decide ahead of time who will pay what bills.
- Consider having a trusted third party, such as a family member or friend, handle all financial transactions.
- Ask your bank to limit the withdraws on the account, unless specifically approved by the service member. Have bank statements sent to trusted friend or family member. If unusual activity is seen on the account, have them notify the service member.
- Check all financial accounts often, especially if your spouse has a joint account or a general power of attorney.

If you find yourself a victim at the hands of a spouse, there is some protection for the service member through the Servicemembers Civil Relief Act (SCRA). SCRA is intended to postpone or suspend certain civil obligations to allow service members to be able to concentrate on their deployment duties.

For instance, if a spouse fails to pay the mortgage on time while the service member is deployed, SCRA may protect the service member from foreclosure if the military service "materially affects" their ability to meet their financial obligation.

*For more information on SCRA, service members can call Military OneSource anytime at (800) 342-9647 or visit the Armed Forces Legal Assistance website at <http://legalassistance.law.af.mil/index.php>.*

As such, she had far-reaching authority to act on behalf of Bill. She was able to withdrawal \$10,000 from his bank account, sell his 1965 Cobra, and withdrawal money at will from his bank account. Carrie did this while filing for divorce from Bill and receiving all of his military housing allowance, totalling nearly \$2,000 per month.

Upon Bill's return from deployment, he was understandably upset and sought counseling, not to mention all of his assets were gone and he had little recourse because he granted Carrie a general power of attorney, and, therefore, gave her legal right to do these things.

### Case Scenario 2:

Julie is ordered to active duty to be deployed to Afghanistan in support of Operation Enduring Freedom. She has been married to Paul for five years.

Julie loves Paul very much and wants to ensure he is able to take care of things in her absence. Prior to her departure for duty, Julie grants Paul a power of attorney.

Do to the stress of Julie's absence, Paul files for divorce. However, prior to deploying to Afghanistan, Julie read up on the difference between the powers of attorney, and, as such, only granted Paul a special power of attorney.

In this case scenario, Julie, even though she was unhappy about getting a divorce, was very happy about obtaining a special power of attorney to handle the very limited duty of ensuring their taxes were paid during the absence of the deployment.

With a special power of attorney, the person who receives the power can only carry out the specific instructions laid out in the document.

As a licensed and practicing attorney in the state of Michigan, I strongly recommend granting only specific power of attorney to handle those very limited situations that may arise during a deployment. I cannot think of any reason that a service member would want to grant a general power of attorney to anyone.

Remember, it is easier to add or broaden the power of a power of attorney, then cut back, particularly if the person who has the general power of attorney is acting in bad faith.

#### About the Author:

CPT Thomas A. Mengesha has served in the military for over 23 years, both as an enlisted soldier and an officer. He is a licensed and practicing attorney in the state of Michigan.

Most recently, he returned from a two-year deployment in the Iraq war theater of operations where he served as the S1/Adjutant for Base Support Battalion - North at Camp Beuhring in Kuwait.

He also is the author of *The Service Member's Guide to Deployment; What every Soldier, Sailor, Airmen and Marine should know prior to being deployed*. For more information log on to [www.mengesha.com](http://www.mengesha.com).

