



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series
Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



FINANCIAL LIABILITY INVESTIGATIONS OF PROPERTY LOSS (FLIPLs)

WHAT IS A FLIPL?

A FLIPL is an investigation as to whether a financial loss to the Army was a result of misconduct or negligence of a Soldier(s) or Civilian(s) when property has been lost or damaged. FLIPLs are governed by AR 735-5.

COULD I BE LIABLE FOR LOST, DAMAGED, OR DESTROYED GOVERNMENT PROPERTY?

Yes, in some circumstances. Soldiers and Department of the Army civilian employees may have to pay for Army property they lose or damage. Financial liability ordinarily will not exceed one month's base pay. In certain cases, however, such as the loss of personal arms or equipment or damage to Government housing, liability may equal the full amount of the loss.

CAN I JUST SIGN A STATEMENT OF CHARGES, INSTEAD OF HAVING A FLIPL INITIATED?

Sometimes. A FLIPL is not required in every situation in which there is a loss or damage. If the loss is less than one month's base pay, the command may ask the responsible individual to sign a DD Form 362, Statement of Charges/Cash Collection Voucher. This is essentially an admission of liability for the lost or damaged property, and an agreement to pay for it. The command cannot force or coerce someone to sign the statement: it must be voluntary. A FLIPL is used in situations where responsibility for the loss is in question, or where the amount to be charged is in dispute.

I'M THE SUBJECT OF A FLIPL. WHAT CAN I EXPECT?

The FLIPL process starts when the appointing authority, usually a Lieutenant Colonel or above (most often a battalion commander), appoints a financial liability investigating officer to investigate the facts surrounding the loss. Generally, the financial liability investigating officer must be senior in grade to the individual subject to potential liability. The financial liability investigating officer investigates and makes initial findings as to the circumstances surrounding the loss. If the investigating officer intends to recommend financial liability, a copy of those initial findings is then given to the individual subject to potential liability.

WHAT RIGHTS DO I HAVE AS A SUBJECT OF A FLIPL?

Soldiers and DA civilian employees have many rights during the FLIPL process. This includes the right to receive a copy of any evidence being used against you, if financial liability is being recommended, and the right to submit a rebuttal in your own defense. You also have a right to receive legal advice from a legal assistance attorney.

HOW LONG DO I HAVE TO SUBMIT A REBUTTAL?

An individual has 7 calendar days to prepare and submit a rebuttal back to the financial liability investigating officer. The time constraints will extend to 15 days if the findings were mailed/emailed instead of hand delivered. Mailing or emailing may be appropriate if the financial liability investigating officer and the individual are not assigned to the same installation (e.g., where the individual PCSed during the FLIPL process).

WHAT HAPPENS AFTER I SUBMIT MY REBUTTAL?

The financial liability investigating officer will consider the rebuttal along with the findings, and make a recommendation about who should be held liable and in what amount. The recommendation is made to the appointing authority. The appointing authority reviews the FLIPL packet, comments on the financial liability investigating officer's recommendation, and forwards it to the approving authority. Before making his decision, the approving authority receives a legal opinion that the findings are legally sufficient and that the FLIPL was completed in accordance with AR 735-5. The approving authority, usually a Colonel or above (most often a brigade commander or a division or installation chief of staff), approves or disapproves the financial liability investigating officer's recommendation.

UNDER WHAT CIRCUMSTANCES CAN I BE HELD LIABLE FOR LOSING OR DAMAGING GOVERNMENT PROPERTY?

To assess liability, the approving authority must find 1) the person to be held liable had a duty/responsibility to take care of the property; 2) the person failed to carry out that duty (negligence); and 3) the person's failure led to the loss (proximate cause). The approving authority will notify the person to be charged that financial liability has been assessed. All three of these are required by AR 735-5 for financial liability to be assessed, not just one or two.

CAN I APPEAL IF I AM FOUND FINANCIALLY LIABLE AFTER SUBMITTING A REBUTTAL?

A person held liable has 30 days to request reconsideration of the approving authority decision to assess liability. The request goes back to the approving authority (the financial liability investigating officer and the appointing authority are not involved). If the approving authority decides to continue liability, he or she will forward the request to the appeal authority. The appeal authority, usually a General Officer, is the next higher commander in the chain of command. The appeal authority will examine all of the facts and the recommendations again. The decision of the appeal authority is final.

WHAT ARE MY POST-FLIPL OPTIONS IF MY REQUEST FOR RECONSIDERATION FAILS?

Once the approving and/or appeal authority renders a decision, the person to be held liable still has several options to avoid losing pay. These options are not a part of the FLIPL process but are afforded to Soldiers and civilian employees under other Army Regulations. These options include the right to request remission or cancellation of the debt (enlisted personnel only), to request a hearing (civilian personnel only), to request a payment plan with DFAS, or to petition the Army Board for the Correction of Military Records (ABCMR) to reverse the chain of command action.

WHAT ABOUT FLIPLs INVOLVING GOVERNMENT VEHICLE ACCIDENTS?

AR 735-5 authorizes the waiver or reduction of financial liability for Government vehicle accidents caused by "simple negligence." The chain of command can use the FLIPL to document the loss and justify repairing the vehicle without actually having to take money from the Soldier or civilian employee involved. The waiver provision recognizes that accidents happen and that personnel should not have to lose pay for simple fender benders. Personnel should be sure to ask for the waiver in their rebuttal or request for reconsideration.

This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney. You may schedule a legal assistance appointment by calling the Fort Gordon Legal Assistance Office at 709-791-7812/7813.