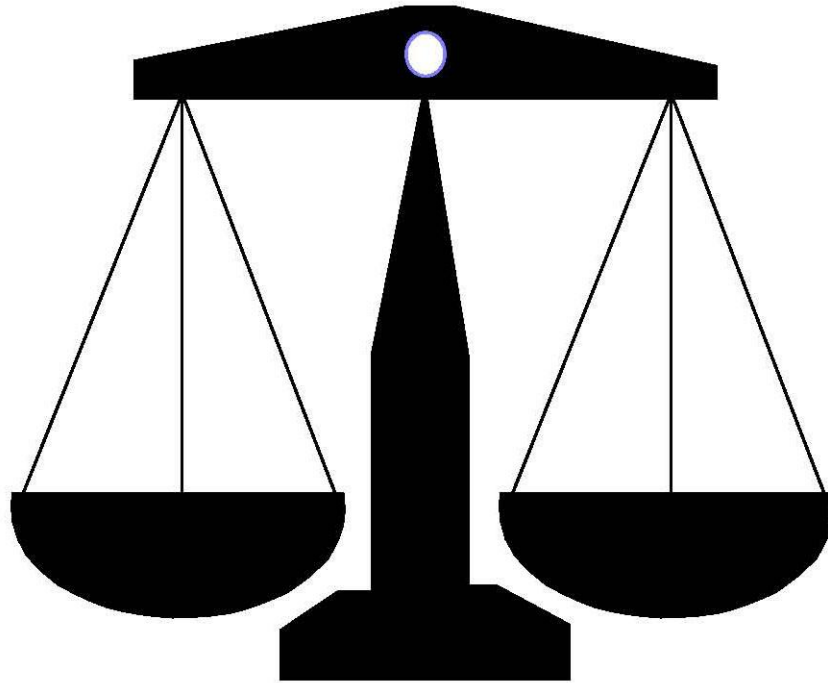


# ***FOR COMMANDERS AND SOLDIERS***



***Legal Assistance Division  
Office of the Staff Judge Advocate  
US Army Accessions Command and Fort Knox  
Fort Knox, Kentucky***

### ***Acknowledgments***

This guide was produced with the support of the officers and enlisted personnel of the Office of the Staff Judge Advocate, US Army Accessions Command and Fort Knox. As your service exemplifies, it is indeed an honor and a privilege to serve our country in uniform.

This guide was inspired by a similar publication put out by the Office of the Staff Judge Advocate, I Corps and Fort Lewis. We credit that office with the idea for a condensed reference source containing general legal assistance information. Our Fort Knox guide expands on their effort by including eleven (11) new chapters. Those chapters address a host of Army administrative actions (bars to reenlistment, FLIPL, reprimands, etc.) commonly experienced by Soldiers of all ranks, along with a number of new civilian-related chapters (hiring a civilian attorney, various motor vehicle issues, etc.). The rest of the guide has been completely redone to reflect the Accessions Command's location in the Commonwealth of Kentucky. The guide provides general information about the laws, procedures, and other requirements found here in the Bluegrass State. We trust the reader finds its content useful.

***Office of the Staff Judge Advocate,  
US Army Accessions Command and Fort Knox***

# **LEGAL ASSISTANCE GUIDE - FOR COMMANDERS AND SOLDIERS**

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**Information provided in this guide is general in nature and is not a substitute for advice from an attorney. Legal assistance attorneys are available to discuss specific legal problems. Telephone DSN 464-2771 or COML (502) 624-2771 for more information or to schedule an appointment.**

## CHAPTER 1

### LEGAL ASSISTANCE SERVICES

#### INTRODUCTION

The mission of the Legal Assistance Office is to assist eligible clients with their personal legal needs. We provide counseling, advice, and guidance on issues including domestic relations and family law, landlord/tenant issues, debtor/creditor law, consumer issues, real property transactions, taxation, civilian criminal matters and the hiring of a civilian attorney. In addition, we assist with the preparation of rebuttals, statements, and appeals for Army administrative actions including reports of survey, reprimands, bars to reenlistment, bars under the Qualitative Management Program, reduction boards, and hardship discharges. Further, we prepare and execute wills, powers of attorney, and advance medical directives so that soldiers are ready for worldwide deployment.

#### YOUR LEGAL ASSISTANCE OFFICER

Legal assistance officers are members of the Army Judge Advocate General's Corps. Like all JAG officers, legal assistance officers are attorneys licensed to practice law before a federal court or before the highest court of one of the fifty states or a federal territory. Many JAG attorneys are, in fact, licensed to practice law in more than one state or jurisdiction. As with every soldier and officer, JAG officers are assigned CONUS and OCONUS based on the needs of the Army. For that reason, your legal assistance attorney may not be licensed in the state or jurisdiction in which he or she is stationed. That does not affect our mission, however, which is to provide high quality legal service.

Supporting that mission, reserve component JAG officers frequently complete their active training obligation with duty in the Legal Assistance Office. Reserve JAG officers bring valuable insights, knowledge, and experience from their civilian law practices, into their legal assistance work.

Department of the Army civilian attorneys also serve as legal assistance attorneys. Many work in their home state and are licensed to practice law there. That expertise gives the Army, and persons eligible for legal assistance, an added advantage.

JAG officers, both active-duty and reserve component, and Department of the Army civilian attorneys staff the Fort Knox Legal Assistance Office. We have attorneys licensed to practice in Kentucky with knowledge of the local court systems, and experienced JAG attorneys versed in military practice. The combination is an office well rounded in many different areas of practice - your law firm.

## LOCATION

Legal assistance is available at any military installation where there is an Office of the Staff Judge Advocate. The Fort Knox Legal Assistance Office is located in the Office of the Staff Judge Advocate, Pike Hall, Building 1310, Room 129 at the corner of Knox Street and Third Avenue (just north of the main Post Office).

## TELEPHONE NUMBERS

Our telephone number is DSN 464-2771; COMM (502) 624-2771. Telephone for information about legal assistance or to schedule an appointment for attorney services.

## ELIGIBILITY REQUIREMENTS

Army Regulation (AR) 27-3 sets forth the eligibility requirements for legal assistance services. Active-duty soldiers, sailors, airmen, and marines, their ID card-holding dependents, military retirees from all services, and reserve component personnel on active-duty for more than 29 days are eligible for legal assistance services. In select situations, certain other persons are entitled to legal assistance. The primary exception is Department of the Army (DA) civilians needing assistance with a report of survey. As a general rule, however, legal assistance services are not available to DA civilians (unless they fit into another category of eligible persons). Persons seeking legal assistance must present a valid military ID card before receiving service.

Casualty assistance is coordinated with the casualty assistance office for the personal representatives, executors and administrators of soldiers who die on active-duty and for military retirees. In this circumstance, legal assistance is limited to matters regarding settlement of the estate and military death benefits.

Questions about eligibility to receive legal assistance services should be directed to the Legal Assistance Office. Our telephone number is DSN 464-2771; COMM (502) 624-2771.

## HOURS OF OPERATION

Legal assistance is provided by appointment and, in limited circumstances, on a walk-in basis. Persons wishing to meet with an attorney ordinarily need an appointment. Appointments are scheduled on Monday and Tuesday from 0900 to 1540 and on Wednesday from 0900 to 1140. Attorney services are available on a walk-in basis on Friday starting at 0900. Walk-ins are seen on a first-come first-serve basis as time and space permits. Servicemembers in uniform have priority for walk-in appointments.

Appointments may be scheduled in person at the Legal Assistance Office or by telephone. The Legal Assistance Office is open Monday through Friday from 0800 to 1600. Based on availability, you will be scheduled to meet with an attorney at the next available time. Emergency appointments are handled on a case-by-case basis. Appointments are strongly

encouraged. Persons seeking legal assistance must present a valid military ID card before receiving service.

Notary services are provided on a walk-in basis, Monday through Friday, 0800 to 1600. Notary services include powers of attorney, notarization of signatures, and notarized statements. You must have a valid military ID card to obtain notary service. Eligible persons should not sign the document(s) to be notarized until they get to the Legal Assistance Office and then only in the presence of the notary.

\*\*\*NOTE: Notary service is available for civilians who are accepting responsibility for the care of a child(ren) under an Army family care plan. Notary service is also available for civilians who are selling a motor vehicle to a servicemember. The civilian must appear with the servicemember and sign the vehicle title in the presence of the notary.\*\*\*

### COST

Legal assistance is free. It is a benefit made available to eligible persons as a part of their military service.

### CONFIDENTIALITY

As an attorney, your legal assistance officer is obligated by law and professional ethics to keep private legal conversations confidential. All legal issues discussed with a legal assistance officer remain strictly confidential. Those communications will be disclosed to third parties only with your prior authorization or consent.

### THINGS TO REMEMBER WHEN SEEKING LEGAL ADVICE

Bring all documents and paperwork associated with your legal situation to your legal assistance appointment. A legal assistance attorney cannot help you unless you provide all the facts pertaining to your case. To that end, the documents and other paperwork detailing the problem are essential. Additionally, you may wish to prepare a checklist of facts and questions to discuss with the legal assistance officer. This will ensure you remember all of the important details and will make sure you receive the most accurate advice.

## CHAPTER 2

### NOTARY SERVICES - AUTHENTICATION OF DOCUMENTS

#### INTRODUCTION

Many legal documents (deeds, contracts, powers of attorney, etc.) require authentication to be binding and valid. Authentication simply means the person who signed his or her name to the document was, in fact, that person. Notarization is the most common form of authentication, and is very simple to complete. To have a document notarized, the person signing the document simply affixes his or her signature in the presence of an official called a notary public. A notary public is authorized by the state or other jurisdiction to verify the identity of a person, and to attest to the signature of that person after he or she signs the document in question. The notary public then affixes his or her signature and seal above or below the authenticated signature.

NOTE: A notary public cannot certify documents. Only the agency or office which issued the original document can give you a certified copy. The notary public can give you a notarized copy of the document but it will have little, if any, value. Birth certificates are the most common document of which certified copies are needed. The state, which issued the original document, is the only source of certified copies. The states charge a fee (usually less than \$20.00) for the copies. The Legal Assistance Office is available to assist in determining what office has authority to issue certified document copies.

#### NOTARY SERVICES

The Legal Assistance Office provides free notary services to all active-duty soldiers, sailors, airmen, and marines, their ID card-holding dependents, military retirees from all services, and reserve component personnel on active-duty for more than 29 days. The Legal Assistance Office is located in the Office of the Staff Judge Advocate, Pike Hall, Building 1310, Room 129 at the corner of Knox Street and Third Avenue (just north of the main Post Office). Notary services are provided on a walk-in basis, Monday through Friday, 0800 to 1600.

Your notary public performs a highly technical legal function, which requires close attention-to-detail. Before seeking notary services, you should consider the following:

1. Proper Identification: You must have a valid military ID card to receive notary services. A notary public is subject to severe legal penalties for failing to check identification. Do not be surprised when the notary pays close attention to the details of your identification card and the style/nature of your signature.

2. Signature: DO NOT sign anything you plan to have notarized until told to do so by the notary, and then sign only in the presence of the notary. When both husband and wife are required to have their signatures notarized, both must appear before the notary. DO NOT make any changes in the document(s) until you have seen the notary or an attorney.

3. Personal Appearance: Documents CANNOT be notarized unless the individual whose signature is to be notarized appears in person before the notary.

4. Certified Copies: The notary public can make notarized copies of original documents. A notary public, however, cannot make certified copies. Only the agency or office that produced the original document can certify a copy.

5. Notarized Copies: Be sure to have the original document so the notary can either make copies of the document, or compare copies that have already been made to the original. Make sure the entire document has been copied (both sides). The notary public cannot make notarized copies of a copy. The original is required. Remember too - notarized copies are not certified copies. Notarized copies are often of little, if any, value.

6. Blank Forms: The notary public cannot notarize blank forms. All blanks should be completely filled in when you sign any document.

#### ALTERNATE SOURCES FOR NOTARY SERVICES

Banks, credit unions, insurance offices, law firms, and other financial or legal related professional offices often provide notary services for a small charge. Remember - notary services at the Legal Assistance Office are free.



## CHAPTER 3

### **BARS TO REENLISTMENT**

#### INTRODUCTION

A bar to reenlistment is the administrative tool commanders use to deny reenlistment to soldiers thought to be substandard. Army Regulation (AR) 601-280 sets forth policies and procedures for the Army's retention/reenlistment program. The AR is clear that only soldiers of "high moral character, personal competence, and demonstrated adaptability" to the requirements of military service will be reenlisted into the Army. With that standard, the AR authorizes bars for soldiers whose immediate separation is not warranted, but whose reenlistment is not in the best interest of the Army. The focus is on service beyond ETS, not on forcing the soldier out prior to ETS. Honorable service (the absence of misconduct) does not prevent a bar to reenlistment.

#### CRITERIA

There are three criteria justifying initiation of a bar to reenlistment. In accordance with AR 601-280, bars are appropriate for soldiers who are 1) untrainable; 2) unsuitable; or 3) unable to formulate a genuine family care plan. "Untrainable" simply means the particular soldier has, despite repeated attempts, failed to meet minimum professional standards. Inability to perform basic tasks associated with their MOS, repeated failure of the Army Physical Fitness Test, or repeated failure to qualify with their assigned weapon are all examples of untrainability. "Unsuitability" is different in that the focus is more on attitude and motivation. The focus is on whether the soldier presents proper military bearing and whether the soldier refuses, or is otherwise unable, to adapt to the military lifestyle. Questionable off-duty conduct not amounting to misconduct may justify a bar on this ground. Third, single soldiers with dependent family members or dual military couples with dependents who are unable to craft an acceptable family care plan are subject to a bar.

#### PROCEDURES

Any commander in a soldier's chain of command may initiate a bar. Normally, the soldier's company-level commander will initiate the action because that commander is most likely to have direct contact with the soldier, and be most aware of the soldier's successes and shortcomings. A bar is initiated using DA Form 4126-R. Once the bar is initiated, the commander will present it to the soldier. The soldier will then have 7 days to submit a rebuttal statement. If the commander determines the bar is still warranted, it will be forwarded up the chain of command for approval or disapproval. For soldiers with less than 10 years of active Federal service, the first commander in the grade of lieutenant colonel (usually the battalion-level commander) will approve, or disapprove, the bar. For soldiers with 10 or more years of active Federal service, the approval authority is the first general officer in the soldier's chain of command, or the commander with authority to convene a general court-martial over the soldier,

whichever is most direct to the soldier. Any of these higher level commanders may disapprove the proposed bar.

An approved bar is placed in the soldier's local personnel file (201 file). The approved bar will be reviewed at the end of 3 months, if not before, and will be removed or continued. Usually, the company-level commander will review the bar and make a recommendation to the commander who approved it. Once approved, only the approving commander or a higher commander may remove the bar. If the bar is continued, the soldier may request voluntary separation from the Army. If the soldier does not request separation, the continued bar will be reviewed a second time at the end of another 3 months. If at that time the bar is not removed, involuntary separation proceedings must be initiated. Soldiers with more than 18 years of active Federal service will not be separated prior to retirement.

### APPEALS

Soldiers may appeal approved bars. Separation proceedings will be halted pending final action on the appeal. For soldiers with less than 10 years active Federal service, the appeal authority is the first general officer in the soldier's chain of command or the commander exercising general court-martial convening authority over the soldier, whichever is most direct. For soldiers with 10 or more years of active Federal service, the appeal authority is the Commanding General, Personnel Command (PERSCOM).

Appeals should rebut the allegation(s) of untrainability, unsuitability, or absence of a family care plan. The focus should be on presenting the picture of a soldier who is motivated, hard working, and otherwise committed to being a professional soldier. The big picture must show that the soldier wants to stay in the Army, and that it is in the best interests of the Army to have the soldier stay. Professionalism and commitment to excellence are the standard. The soldier's appeal should focus on what the soldier has done to excel and to overcome the deficiencies that prompted the bar.

### WHAT LEGAL ASSISTANCE CAN DO

We can help with the preparation of rebuttal statements and with appeals. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 4

### BUYING A HOME

#### INTRODUCTION

Buying a home is the largest and most complex business transaction most people ever make. Because it is so important and so complicated, you should obtain expert advice and information before signing any contract involving real estate. The information set forth here does not replace or substitute for that expert legal advice. The assistance of trained and qualified persons is essential to make sure the transaction is productive and error-free. The following information provides general guidance about things you will need to consider before purchasing a home.

#### PREVENTIVE LAW

Review all documents relating to the sale with an attorney before you sign anything. Earnest money agreements, sales contracts, mortgage paperwork, etc. are all complex and easy to misunderstand. Experts can spot problems or pitfalls. Reviewing those documents with an attorney before signing can head-off those potential problems. Remember - once you sign the agreement(s), you are bound by your contract.

#### OBTAINING FINANCING

Shop around for favorable loans. Interest rates and service fees vary from institution to institution, even in the same community. Remember to consider additional fees each lending institution may charge. Those additional fees may include points, loan initiation fees, and early payment penalties.

#### DEFINITIONS

The following terms typically come-up during home buying negotiations. These definitions are provided so you will be familiar with them should one become an issue.

1. Earnest Money Agreement: The earnest money agreement is a contract between the seller and the prospective buyer for the purchase of property and is often part of the real estate contract. The buyer deposits a sum of money "in escrow" to show that he or she intends to buy the house. If the sale goes through, the deposit is applied to the down payment. If the sale is not completed due to the buyer's fault, the deposit may be forfeited. Consequently, the buyer should not sign the earnest money agreement until he or she is sure that the purchase will be made. Note that, for the buyer, it is extremely important to add a provision to the contract making the contract subject to the buyer obtaining adequate financing and an acceptable appraisal.

2. Real Estate Contract: The real estate contract is the final agreement between the buyer and seller regarding the specific terms of the sale. Because it is critical that the contract be correctly and properly drafted, you would be wise to obtain professional legal assistance prior to signing the contract.

3. Closing: The closing is the final meeting where the land sale is finalized once and for all. At closing, the purchase price is paid, the deed is delivered or placed in escrow, the mortgage is secured, real estate agents, surveyors, attorneys, and other professionals are paid for their services, and any other transaction regarding the purchase becomes final. Both the buyer and the seller can usually expect to pay some closing costs, so check with the lending institution or your closing agent to see how much your closing costs will be.

4. HUD-1: Every homebuyer will receive a closing statement from the federal Department of Housing and Urban Development (HUD). The statement is called a HUD-1. It provides an itemized list of the financial arrangements that brought about the sale including the purchase price, loan fees, points, commissions received by the realtor and attorney's fees.

5. Mortgages: A mortgage is a loan extended by a bank, credit union, saving and loan association, or some other financial institution which is used to purchase a home. First mortgages are sometimes referred to as a purchase-money mortgage because the money was used to buy the home. In contrast, a second mortgage is actually a home-equity loan. What's the difference? When a buyer mortgages a house to buy it, he or she is buying the title to the house and not much more. By making payments on the mortgage the buyer acquires equity in the home meaning it is becoming his instead of the bank's. With a purchase-money mortgage, a buyer has little if any equity in the house. After making a few payments, he can get a second mortgage by getting a loan secured by that equity he has acquired. If a buyer cannot make payments according to the terms of the mortgage agreement, the lender may foreclose on the home and force the buyer to move out. Mortgages are used frequently by homebuyers in Kentucky.

6. Deed of Trust or Deed to Secure Debt: Buyers should be aware that some states use an alternate form of transaction to secure lenders who extend credit to home purchasers. In these states, the lending institution may actually receive a deed giving it title to the property. These deeds are often called a deed of trust or a deed to secure debt. The repayment theory is the same as with a mortgage. The buyer makes payments according to the terms of the loan agreement and thereby acquires equity in the property. With the last payment, the lender will clear the deed and transfer unencumbered title to the buyer. These types of deeds are used frequently by homebuyers in Virginia, Georgia, and other eastern states.

7. Assumption: A purchaser has several options when it comes to purchasing a mortgaged property. The buyer may agree to step into the shoes of the current owner (the seller) and continue to make payments on the existing mortgage. In that situation, the buyer assumes the mortgage responsibility. In contrast, a seller may pay off an existing mortgage with proceeds received from the sale. If the buyer finances the purchase, he or she will have a new mortgage to secure the loan. The seller's old mortgage will have been paid and the new owner will have a new mortgage. This is not assumption. Why would you want to assume the responsibility to

make payments on an existing mortgage? The primary reason would be if the existing mortgage has a low interest rate; lower than what could be obtained on a new mortgage. Not all loans are assumable however. The lending institution must approve any assumption.

8. Subject to: Be very careful if you plan to buy a property "subject to" a mortgage or other lien. A subject to purchase occurs when a buyer purchases a mortgaged or otherwise encumbered property and the encumbrance is 1) not paid off, or 2) the buyer does not assume the mortgage or lien. The person with the lien on the property will have a superior claim than the purchaser, and in theory, could foreclose on the property to satisfy that lien. All of this sounds complicated and it is. The bottom line is to be very careful with this type of arrangement. Consult an expert before signing anything.

9. Mortgage Payment or Credit Life Insurance: This is a form of life insurance that decreases its coverage as the debt diminishes. The policy pays off the debt if the owner dies. Frequently, a commercial term life insurance policy will provide the same benefit at a lower cost, so check around before you purchase credit life insurance.

10. Department of Veterans' Affairs (VA) Guaranteed Loans: For qualifying soldiers and retirees the VA will guarantee a residential purchase money loan without requiring a down payment. Commercial lending institutions usually require that a homebuyer front a sizable down payment (perhaps as much as 10%) before extending credit to finance the purchase of a home. With a VA guaranteed loan, the homebuyer does not have to come up with that down payment. The commercial lending institution will make the loan with a promise from the VA that it will make payment on the loan if the borrower defaults. There is no limit on the amount of the loan, and it may be used while on active duty.

Additional advantages of a VA loan (in addition to not having to pay the down payment) are 1) most likely there will be no monthly mortgage insurance premiums, and the loan will be assumable should someone else seek to purchase the financed property from the buyer. Also, new homes financed with a VA loan will carry a one-year builder's warranty ensuring the property met and will continue to meet VA specifications.

Origination fees are the primary disadvantage of a VA loan. The fee is 2% of the total loan amount. The fee increases to 3% if the home buyer has previously obtained a VA loan. The 3% fee can be discounted if the veteran places at least 5% down on the home. Also, each veteran is entitled to only one VA loan at a time. Soldiers may have their eligibility reinstated, however, by paying off the loan, paying down the loan, selling to a buyer who refinances the mortgage, or selling to another VA approved buyer who assumes the guarantee (with permission from the VA and the lending institution).

Soldiers, sailors, airmen, and marines who served on active duty for at least two (2) years, and if discharged, received either an honorable or general discharge, are eligible to receive a VA loan. Combat veterans (including personnel who served in Operation Desert Storm) need only have served 90 days on active duty.

Persons seeking a VA loan should visit their local VA office. Completion of a VA Form 26-1880, Request for Determination of Eligibility and Available Loan Guarantee Entitlement, is required. This will determine eligibility. If eligible, the VA will conduct an appraisal of the home to be purchased. A homebuyer will then select a commercial lender to finance the purchase. The homebuyer, the VA, and the lender will then close the loan.

11. Federal Housing Administration (FHA) Insured Loans: A FHA loan is similar to a VA loan. It is actually a loan guarantee instead of a loan. As with the VA, the FHA will make payment on the loan should the buyer default. Loan guarantees vary by state depending upon several factors, such as the type of loan. For this guarantee, the buyer is usually charged a fee of one-half of one percent per year on the unpaid balance. Just about everyone is eligible for a FHA loan. Local realtors and mortgage lenders can provide more information on how to apply.

12. Conventional Loans: The majority of home financing is through conventional loans rather than through the VA or FHA. Banks, credit unions, and savings and loan associations are the most common sources. A down payment on the house is usually required to secure the loan. Applicable interest rates vary on the current money market, and from community to community. Likewise, fees and terms and conditions on the loan vary from institution to institution. Generally, conventional loans require excellent job stability, excellent credit, and at least some money in the bank.

13. Installment Land Sale Contracts: In some cases, the seller will finance the purchase of his or her property. In a sense, the seller will act as the bank and will provide the credit necessary to buy the property. The buyer will take possession of the property and make payments to the seller over time. The seller will retain the deed (title) to the property until the last payment is made. The buyer will acquire equity in the property with each payment. The land sale contract is the buyer's assurance that the seller will convey title at the specified time.

14. Points: Points are start-up fees assessed by a lender to originate a loan. A "point" is usually 1% of the amount of the mortgage. Payment of points can be spread out over the life of the loan. The HUD-1 will document the amount of points to be paid.

15. General Warranty Deed: A general warranty deed conveys the seller's interest in the property, and carries with it a promise from the seller to ensure no one will challenge the buyer's right to own, use, and enjoy the property. In a sense, the seller provides a warranty much like a car dealer does when selling a car. If title to the property proves defective, the seller will correct the defect, or be liable for not doing so. Examples of defects in title are unpaid mortgages, tax liens, judgments, and mechanic's liens against the real estate.

16. Quitclaim Deed: A quitclaim deed transfers whatever interest the seller has, or may have, in the particular parcel of land. The seller does not warrant he has a particular interest in the property, or that he has a marketable title to convey. Quite to the contrary, a quitclaim deed is often given in situations where the seller is not sure what, if anything, he has to convey. Quitclaims are often made between spouses as part of a divorce proceeding, or by heirs during probate of an estate. By accepting such a deed, the buyer assumes all the risks. The buyer takes

the property subject to outstanding mortgage claims, tax liens, etc. In a sense, a quitclaim deed sale is similar to purchasing a used car "as is."

17. Title Insurance: In most cases, a buyer should insist upon a general warranty deed. The use of title insurance, however, reduces the importance of a warranty deed. Basically, title insurance is a contract, purchased from a title insurance company, which indemnifies the buyer against losses arising out of defects in, or liens on, the title to the real estate.

18. Income Taxes: Up to \$250,000 (\$500,000 if married filing joint) in profit from the sale of your primary home will be excluded from federal income taxation if: 1) you owned and lived in the home for at least two of the previous five years, 2) the home was your primary residence meaning it was your main home, and 3) you have not excluded this type of gain in the previous two-year period. The old rules about rolling over profit to prevent payment of tax have been repealed. Reinvestment is no longer a consideration if you meet the requirements listed here.

19. Real Estate Taxes: The buyer and seller must determine who will pay current year local and/or state real estate tax on the property to be conveyed. Often the parties will prorate the taxes so that the seller pays up until the date of sale and the buyer pays thereafter. The arrangement should be recorded on the HUD-1.

20. Title Search: A title search should be performed before the purchase of a home, typically by an attorney. In fact, most lenders require proof of clean title before they will lend money for the purchase of land. Title searches check the recorded chain of title to make certain that the seller of the land is in fact the true and only owner of the land being sold. These searches can provide a listing of all previous owners and any persons with liens or potential interests in the land. It is important to make certain that you are acquiring a clean title to the land.

21. Survey: A professional survey should be completed to accurately define the location of the parcel to be purchased so that it is identified to the exclusion of all others. Surveys are especially important if the property is not referred to on a larger survey. The survey should show roadways, easements, buildings, physical features, underground conduits, and other encroachments.

22. Oral Contracts for the Sale of Land: All contracts for the sale of land must be placed into writing. If the contracts are not in writing, they most likely will not be enforceable by either the buyer or seller.

23. The Housing Referral Office: The Housing Referral Office of the Family Housing Branch at Fort Knox functions as a listing, inspection, advising/counseling and referral agency for all types of housing offered for rent or sale to military personnel, their family members, or DOD civilians. The Housing office is located in building 1383 on Pershing Drive near Vine Grove Road (telephone (502) 624-4749). The Housing office is an excellent starting point to obtain more detailed information on purchasing a home in local communities, or advice on buying a home in general.

## CHAPTER 5

### CHANGING YOUR NAME OR THE NAME OF YOUR CHILD

#### INTRODUCTION

Changing your name, or the name of a child or other dependent, involves completion of a relatively simple procedure. Before starting the process, though, you should be absolutely sure about the name change. Changing a person's name creates a domino-like effect. Government, employee, and other records will have to be updated to reflect the change. Therefore, before starting the legal process to change your name, you may want to discuss the matter with a legal assistance attorney.

#### PROCEDURE

Each state has its own set of rules regarding the legal process for changing a person's name. Generally, a person can change his or her name to anything they want so long as it is for a legitimate purpose, and there is no fraud involved. In Kentucky, a person wishing to change a name simply completes a state provided application (actually called a petition), and then files that application with the district court in the county where he or she lives. The court clerk has blank applications available to the public. (Note: Kentucky has two local courts; the circuit court (higher) and the district court (lower). The two courts share a clerk. The combined clerk officially belongs to the circuit court. You should look for signs saying Circuit Court Clerk even though your petition will be heard in district court).

The populated portion of Fort Knox is in Hardin County. Hardin County has two courthouses. A name change petition can be filed with the clerk at either location. The Radcliff courthouse is on West Lincoln Trail Boulevard next to Wal-Mart. The clerk's office is located on the second floor. (Note: The Radcliff courthouse is the large building on the left when you stand in the main parking lot at the Government center. The county clerk's office is in the small one-story building on the right. Name change petitions are filed with the court clerk in the courthouse, not the county clerk). The Elizabethtown courthouse is located in a large new building just off the town circle. The clerk's office is on the first floor. The clerk will require payment of a \$28 filing fee plus an \$8 recording fee when you submit the name change petition.

The clerk will place the matter on the court calendar. You and your civilian attorney, if you hire one, will have to appear on that date and time. The judge will decide whether to approve your petition. If you have a legitimate reason for changing your name, the court will most likely approve the change.

#### PROCEDURES FOR CHANGING A MINOR'S NAME

The process for changing the name of a minor child is slightly different (and more complex). Usually, the parent not requesting the change will have to sign an affidavit providing his or her consent to the name change. If that parent refuses to provide the affidavit, or if he or



she is unavailable to provide the affidavit, you can still file the name change petition. You will need to send a certified letter return receipt requested to the last known address of the other parent. If you are not sure whether the address is still correct, send the letter anyway. The letter should notify that parent of the proposed name change. When you go to court, take the return receipt showing that you mailed the letter and that you tried to notify the other parent. The judge will decide how to proceed from there.

### NOTIFYING OTHERS OF THE NAME CHANGE

If the court approves the name change, the judge will sign an order to that effect. You should send certified copies of the order to every agency or Government office maintaining records in the former name. Notarized copies of the order are not acceptable. Certified copies must come from the court clerk's office. The copies will be available for a small fee. Examples of the agencies you should notify are: Department of Veteran's Affairs, Social Security Administration, Internal Revenue Service, your state revenue department, your state motor vehicle department, your state registrar of vital statistics, and the Immigration and Naturalization Service. It is especially important for the individual to notify the Social Security Administration of name changes to insure accurate posting of wage credit for income tax and social security purposes. Failure to notify appropriate agencies could be viewed as evidence of fraud and, thereby, result in adverse action against you.

### CHANGING OFFICIAL ARMY RECORDS

Army Regulation (AR) 600-2 sets forth policies and procedures for changing official Army records. Individuals seeking a name change may, in fact, request that action. The approving authority is the soldier's immediate commander. To initiate the action, the individual must submit a signed request to his commander, containing the name listed in Army records, the new name, and the reasons for the desired change. Documentary evidence of the new name will generally be required. NOTE: AR 600-2 requires that the soldier notify the Social Security Administration of any name change. The addition or deletion of "Jr.," "Sr.," "III," middle name or slight changes in spelling may be accomplished by submission of the individual's signed application. Major changes require substantiating documentation such as certified copies of a divorce decree, court order changing the name, or a birth certificate.

Military retirees should notify the Department of Veteran's Affairs about name changes to their official service records.

Remember - AR 600-2 applies only to official Army records. It is an administrative procedure pertaining to maintenance and update of Army records. AR 600-2 has nothing to do with a legal name change. A legal name change requires action by a civilian court.

## CHAPTER 6

### CIVILIAN ATTORNEYS - TIPS FOR HIRING ONE

#### THE ARMY JAG CORPS - LEGAL ASSISTANCE SERVICES

All active-duty (and in some instances, reserve) soldiers, sailors, airmen, marines, their family members, and military retirees from all armed forces are eligible for free legal assistance provided by the Army Judge Advocate General's Corps. The mission of every Army Legal Assistance Office is to help, advise, and counsel eligible persons with their personal legal matters. Personal legal matters include the preparation and execution of wills, powers of attorney, and advance medical directives, and counseling on family law, landlord/tenant law, consumer credit transactions, real property transactions, and federal and state taxation.

As a part of the Army, a judge advocate's true expertise is in assisting soldiers prepare rebuttals, statements or appeals to Army administrative actions including reports of survey, reprimands, bars to reenlistment, reduction boards, line-of-duty investigations, OER or NCOER appeals, and proposed reassignments from recruiting duty.

#### HIRING A CIVILIAN ATTORNEY

In certain situations, military legal assistance attorneys cannot resolve your problem. Military regulations restrict our ability to represent service members in civilian court, or to prepare documents that will be filed with a civilian court. In those situations it will be necessary to obtain an attorney from the private sector who has the expertise and the knowledge to assist service members with court appearances and with filing court documents. Those situations most often involve civilian criminal matters; divorce, separation, paternity or other family related matters, personal injury cases, or matters destined for small claims court. Once you hire a civilian attorney, that attorney is your advocate on the case. You should work with them to resolve things. It is improper, in fact, for the Legal Assistance Office, or its attorneys, to get in the middle of that relationship.

#### MAGISTRATE'S COURT - CIVILIAN COURT FOR FORT KNOX

Legal assistance attorneys cannot appear with clients in Magistrate's Court. Magistrate's Court is the civilian court for Fort Knox. The Court hears cases involving alleged misconduct that occurred on the installation. Traffic tickets are perhaps the largest part of the Court docket. Legal assistance attorneys can discuss civilian criminal charges with service members and they can help the person decide whether the charge is serious enough that a civilian attorney should be hired.

#### CIVILIAN ATTORNEY REFERRAL LIST

The Legal Assistance Office maintains an up-to-date list of all civilian attorneys in the Radcliff/Elizabethtown area. The list has names, office locations, telephone numbers, and a brief

description of the type of law they practice. Like any other profession, some attorneys specialize in the practice of particular types of law. In hiring a civilian attorney, service members must be careful to hire one with expertise in the area of law matching their personal legal situation. A real estate lawyer may not be a wise choice to defend a civilian criminal case. The Legal Assistance Office does not endorse one attorney over another.

### CAN YOU HANDLE THE PROBLEM YOURSELF

Legal assistance attorneys can help you decide if you need a civilian attorney. In making that decision, remember there are many things individuals can do for themselves without the aid of an attorney. Small claims court is a great example. If someone owes you a small sum of money, small claims court allows you the opportunity to have a judge order payment of that money. In Kentucky, small claims court can hear matters valued at up to \$1,500. You do not need an attorney to go to court with you. You can do it yourself. Minor traffic tickets are another example. For instance, if you received a speeding ticket you believe was not warranted, you have the right to appear in court to contest the ticket. With the cost of an attorney most likely far in excess of the potential fine, the assistance of an attorney may be unnecessary. You can tell your side of the story in court and save the time and expense of hiring an attorney. The expertise of an attorney, however, is always advisable in a complicated situation where a large sum of money is involved or where the criminal charge is more than a minor traffic ticket.

### NEGOTIATING FEES

Civilian attorneys will charge a fee for their services. Practicing law is their livelihood so they charge for their time and expertise. Fees, however, are negotiable between the client and the attorney. If you are on a tight budget, you may have to "shop around" a bit to find an attorney who can assist you within the limits of your financial ability. Most attorneys are willing to work on a payment plan with monthly or other periodic payments to cover the full cost of representation. Also, depending on the nature of your case, the attorney may agree to represent you based on a contingency. The classic example of that is a personal injury case. The attorney may agree to represent you and receive his payment as a percentage of the settlement he recovers for you. On the other hand, some cases are not appropriate for contingency arrangements. In those cases, such as a divorce or other family law proceeding, a retainer and hourly charges may be required. In that situation, you may agree to pay the attorney an amount (the retainer) up-front. After that, the attorney will bill you by the hour for the number of hours spent on the case. The bottom line is your agreement with the attorney is a contract. As with any contract, it is up for negotiation at the beginning. In finalizing the contract, be sure to get it in writing, and be sure to require that you get a periodic itemized bill showing exactly what the civilian attorney did on your behalf.

### LEGAL ASSISTANCE AS A POINT-OF-CONTACT

Please feel free to call us to schedule an appointment or for more information about hiring a civilian attorney. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 7

### CIVILIAN COURTS - JURISDICTION OVER SOLDIERS AND DEPENDENTS

#### INTRODUCTION

Military personnel and their dependent family members are subject to the jurisdiction of civilian courts, both federal and state. Living on a federal reservation such as Fort Knox does not create an exemption for service members or their dependents. Military personnel and dependents may be charged, tried, convicted, and punished for criminal misconduct, and they may be compelled to answer civil proceedings. The location of the court is the only issue for persons living on Fort Knox. Criminal misconduct occurring on Fort Knox will be handled by Federal Magistrate Court on Fort Knox (misdemeanors) or at the Federal courthouse in Louisville (felonies). Criminal misconduct occurring off-post, and civil proceedings arising from conduct that occurred off-post, will be heard at the local courthouse for the county where the actions occurred.

#### CIVIL PROCESS

The Commonwealth of Kentucky has statutory authority to serve its criminal and civil process on-post, after referral to the appropriate Army authorities. Process is the generic term referring to legal documents, usually a criminal or civil complaint and summons requiring either an appearance in court or an answer to civil action. This means state authorities can, after coordination with appropriate Army authorities, come onto Fort Knox and repossess personal property, arrest soldiers and other persons for crimes committed off-post, or serve legal papers.

Military personnel arrested off-post may be subject to both civilian and military law. If the nature of the offense is purely military, the military courts will have exclusive jurisdiction. However, if the alleged offense is one that violates the Uniform Code of Military Justice, and a local criminal statute, the soldier may be subject to trial before a military court or before a civilian court and, in some instances, before both.

#### CIRCUIT COURT

Circuit court is the highest local level court in Kentucky. It has jurisdiction to hear all felony charges and all civil actions where the amount of money in dispute is \$4,000 or more. In addition, circuit court has exclusive jurisdiction over all divorce, separation, and child custody proceedings. Soldiers who satisfy the residency requirements to file for divorce in Kentucky will file their request with the circuit court.

Hardin County Circuit Court is located at the county courthouse in Elizabethtown. The court and its clerk's office are located in a new building just off of the town circle on 31W South. The address is 100 Public Square, Elizabethtown, KY, 42701. The telephone number is (502) 766-5000.

## DISTRICT COURT

District court is the lower level local court in Kentucky. It has jurisdiction to hear all misdemeanor charges and all civil actions where the amount of money in dispute is less than \$4,000. For disputes involving less than \$1,500, district court has a small claims division (discussed in detail below).

Hardin County conducts district court at the satellite courthouse in Radcliff and at the main courthouse in Elizabethtown. The Radcliff courthouse is located on West Lincoln Trail Boulevard next to Wal-Mart (the courthouse is the two-story building on the left when you stand in the parking lot at the Government center). The Elizabethtown courthouse is located in a new building just off of the town circle on 31W South.

NOTE: The circuit court and the district court share a combined clerk's office. The office officially belongs to the circuit court, so that is the sign to look for.

## COURT COSTS IN HARDIN COUNTY

The following is a partial listing of court costs and fees for Hardin County:

- a. The fee for filing a civil action in circuit court is \$103.00 (plus \$25.00 if a jury is requested). There is an additional \$20.00 Sheriff's service fee for each defendant who must be served with copies of the court documents;
- b. The fee for filing a civil action in district court is \$45.50 (plus \$25.00 if a jury is requested). There is an additional \$20.00 Sheriff's service fee for each defendant who must be served with copies of the court documents;
- c. Probate of will and appointment of executor: \$51.50 (plus \$8.00 recording fee);
- d. Probate of will only: \$28.00 (plus \$8.00 recording fee);
- e. Appointment of administrator, guardian, or trustee: \$51.50;
- f. Petition of surviving spouse/children for transfer of exemption and to dispense with administration: \$28.00;
- g. Name change: \$28.00 (plus clerk's fee of \$8.00).

## SMALL CLAIMS COURT

Small claims court provides a simplified procedure for recovering money damages. To initiate your claim, you should contact the office of the circuit court clerk for the county where the person who owes you money lives. For persons living on Fort Knox, Hardin County actually has two courthouses that can assist you. The Radcliff courthouse is located off of West Lincoln Trail Boulevard (parallel to Wal-Mart). The clerk's office is on the second floor of the building.

The Elizabethtown courthouse is located just off of the town circle. The clerk's office is on the building's first floor. It costs \$38.00 (an \$18.00 filing fee plus a \$20.00 fee for the sheriff to serve your claim on the named defendant). You pay the \$18.00 at the clerk's office and the separate \$20.00 at the sheriff's office. A deputy clerk can help you fill-out (in duplicate) a small claims complaint stating the circumstances of your case. With that, you can recover up to \$1,500.00.

The defendant you name is served with notice of your claim and is informed of the date and time to appear. Keep in mind the defendant can counterclaim against you, which means you could lose your case, and end up owing the defendant up to \$1,500.00.

You need to appear on the date and time the clerk gives you. You bring your witnesses and other evidence and tell your side of the story, and the defendant gets to do the same. You don't need a lawyer (although Kentucky law allows you to hire one if you wish; most businesses do) and there are no formal rules of evidence or procedure, so it's a bit like The People's Court.

The defendant has the right to ask the court to move the case out of small claims court. If this happens, your case will proceed on a different day as a regular civil lawsuit in district court. If your case is moved from small claims court, you should get a civilian attorney to represent you, since the normal rules of procedure and evidence will apply. However, most cases aren't moved from small claims court. Defendants usually want to resolve the case as quickly as you do, and keeping the case in small claims court is often the best way to do this.

If the defendant is served with your complaint and fails to show up for trial, the court will issue a default judgment on your behalf, which is like winning by forfeit. If you win a judgment, however, whether by default or otherwise, it doesn't necessarily mean you'll see your money right away. Either side may appeal up to the county's circuit court. In addition, whatever judgment you win still requires enforcement to get you any money. If the defendant can't pay (if he doesn't have any money he is referred to as "judgment-proof"), you might have to try to garnish his wages or have the sheriff seize and then sell his property.

## TRAFFIC COURT- OFF-POST TICKETS

District court handles routine traffic infractions (felony traffic charges are heard in circuit court). Most traffic infractions can be handled by prepaying the fine, costs of court, and fees without a court appearance. Prepayment can be handled through the mail or by visiting the clerk's office. The citation, or the issuing police officer, should provide instructions on how to prepay a ticket. If needed, contact the clerk's office for further instructions

If you wish to contest a ticket, you will need to appear in the court on the date and time indicated on the citation. You have the right to appear on your own or to appear with the assistance of an attorney. Serious charges, which may lead to suspension of your driving privileges, will usually require a mandatory court appearance (prepayment of the ticket will not be allowed). You should have an attorney represent you if it is a serious charge. However, the cost associated with hiring an attorney may far exceed the cost and ramifications of the ticket. Representing yourself may be the better option.

NOTE: you must pay the traffic ticket before the court date or appear in court. Failure to pay and/or failure to appear could result in issuance of a bench warrant for your arrest and suspension of your driving privileges. If you absolutely cannot afford to pay the ticket, contact the court before the deadline and try to work out some arrangements.

### FEDERAL MAGISTRATE COURT

Magistrate court is civilian court for Fort Knox. The judge is a United States Federal Magistrate from Louisville. Magistrate court handles misdemeanor charges arising from alleged misconduct occurring on Fort Knox. Jurisdiction covers all military personnel, their dependent family members, and all other persons on Fort Knox. Felonies are tried at the Federal Courthouse in Louisville. Misdemeanors are tried on Fort Knox in the Office of the Staff Judge Advocate, Pike Hall, Building 1310, Wing B, Third Floor Courtroom. Currently court is conducted every Thursday morning at 0900 in the Fort Knox courtroom.

Ordinary traffic citations (issued by the Military Police) constitute the largest portion of the court's docket. As with local traffic court, some offenses may be prepaid while others require a mandatory appearance in court. Tickets issued by the Military Police contain pertinent information surrounding the alleged violation. If the violation requires a mandatory court appearance, your court date will be printed on the face of the ticket. If the ticket does not specify a date, you will have 10 days to prepay the ticket by mail. If payment is not received within the allotted time, a notice will be mailed to you notifying you of the date and time (usually within 90 days of the offense) you must appear in court. If you wish to prepay the ticket after receiving that notice, you can do so in person on the date of your hearing. Prepayment can be made to the court clerk, on that day only, in Pike Hall, Building 1310, Third Floor Courtroom.

As with local court, you always have the right to appear in court to contest the ticket. You may appear on your own or you can appear with the assistance of a civilian attorney. Serious charges which may lead to suspension of your driving privileges will usually require a mandatory court appearance (prepayment of the ticket will not be allowed). You should have an attorney represent you if it is a serious charge. Otherwise, the cost associated with hiring an attorney may far exceed the cost and ramifications of the ticket. Representing yourself may be the better option.

You must pay the traffic ticket before the court date or appear in court. Failure to pay and/or failure to appear could result in issuance of a bench warrant for your arrest and suspension of your driving privileges. If you absolutely cannot afford to pay the ticket, contact the court before the deadline and try to work out some arrangements.

If you have questions concerning Federal Magistrate Court, contact the court clerk at (502) 624-2086.

## CHAPTER 8

### CONTRACTS

#### INTRODUCTION

A contract is an agreement between two or more parties who are promising to do something in return for something from one or more of the other parties. All of us have entered contracts even if we did not realize that that is what we were doing. Contracts may pertain to just about any type of subject matter and can come in a variety of forms. Written contracts are usually preferable but, in certain circumstances, a verbal contract may be just as good as one that's written. With just about every aspect of our lives controlled or at least affected by a contract, it is important to understand certain basic concepts that govern the creation, enforcement, and dissolution of contracts.

#### CONTRACTUAL AGREEMENTS

Any competent adult may enter into a contract for almost any purpose. Certain contracts must be in writing or satisfy other special requirements to be enforceable. Generally, if you have a written contract, only the written terms of a contract will be binding. Oral promises or representations about the contract will be hard to prove and most likely unenforceable. If your contract has blank spaces to be filled in by the parties, make sure the blanks are filled in completely before signing the contract. By the same token, read and understand all the fine print before signing the contract. You should never sign a contract unless you intend to be absolutely bound by its written terms. In other words, read the provisions with a view towards what may go wrong with the contract.

The following are frequent terms, which should be considered, and negotiated if necessary, before signing a contract:

1. Are you (or more specifically the product being purchased) protected by a warranty or service repair contract?
2. What are your rights to cancel the contract if something unforeseen comes up?
3. Can you move the product/property out of the state or country if you are reassigned pursuant to military orders? \*\*\* (Some car loans and just about all car leases require consent from the lender/lessor before moving the vehicle out of the state/country.)\*\*\*
4. Does your residential lease have a PCS clause allowing you to break the contract early if you are reassigned pursuant to military orders?
5. What is the interest rate, if any, that will apply to the contract? Can the interest rate change?



Never rush yourself into signing a contract. If your contract is changed in any way as time goes by, make sure those changes, additions, or addendums are placed in writing and incorporated into the contract.

The Legal Assistance Office is available to review contracts with you before you sign anything. It is always easier to prevent problems than to get out of a problem. If you have any questions, bring a copy of the contract to the Legal Assistance Office and an attorney can review it with you.

### RIGHT TO CANCEL A CONTRACT

If you sign a retail installment contract, which was solicited somewhere other than at the seller's place of business, such as in your home, you have the right to cancel the contract. The classic example of this type of contract is door-to-door encyclopedia sales. The contract cancellation must be done by midnight on the third business day after signing the original contract. The Federal Trade Commission (see Consumer Rights and Remedies, Chapter 9) provides the same right (called a cooling-off period) to consumers, but only on purchases of \$25 or more (with a few other exceptions for emergency purchases, necessities, etc...).

\*\*\*NOTE: Sellers often telephone you at home seeking permission to come by for an in-home sales pitch. Beware: the 3-day cooling-off rule will not apply in these situations if you authorize the seller to come to your home. The 3-day rule applies to unsolicited sales only.\*\*\*

You must act promptly and must be able to prove your cancellation notice complied with the law. In other words, read the contract to determine how you should notify the seller. If the contract does not specify how notice must be sent, send it by certified mail, return receipt requested. Keep a copy of your cancellation notice and the certified mail receipt. Merchandise that has been received or is subsequently received must be returned to the seller in the same condition in which it was received.

This right to cancel a contract within three days may also exist in contracts signed at the seller's place of business but only if the contract so provides. Keep in mind, the general rule is that the written terms of a contract are binding on each party who signs it even if one of the parties later changes his mind. Because your rights ultimately depend on the exact wording of the contract, it is extremely important for you to keep your copy of the contract and carefully retain copies of all correspondence.

### ENFORCING A CONTRACT

As a general rule, valid contracts are binding on all parties to the contract. Should one party fail to abide by the terms of the contract (called breach of contract), the other party may be able to have a court enforce the contract and either compel performance from the party in breach or receive money damages. Small claims court is usually the most convenient forum for resolving minor contracts. Contracts involving large sums of money or contracts that are very complex will require action from a higher court. The parties to a contract always have the right, however, to resolve disputes themselves with an out-of-court settlement.

In certain situations, contracts may have a remedy written into the agreement. This is fairly common in auto loans and leases. The usual remedy is non-judicial repossession. The contract will authorize the creditor to repossess the vehicle if the consumer/soldier falls behind in his or her payments. Repossessions on-post are coordinated through the Military Police. The general rule is that parties seeking to repossess a car or other property must not breach the peace to retake the property. Additional costs and fees will result if a creditor is forced to seek court assistance in carrying through with repossession.

### SOLDIER'S OBLIGATION TO REMAIN CURRENT WITH JUST DEBTS

Army Regulation (AR) 600-15 requires soldiers to remain current with their just debts. The AR is punitive in that soldiers may be subjected to possible UCMJ action if they fail to pay debts on time. If the soldier has a valid good faith argument why he should not pay an alleged debt, he is not in violation of the AR. In that circumstance, the alleged creditor must resolve the dispute in court or with an out-of-court settlement agreed to by the soldier. If the creditor goes to court and secures a judgment requiring payment from the soldier and the soldier still does not pay, that soldier may then be in violation of the AR.

Creditors may contact a soldier's chain of command. Collection agencies (a company in the business of collecting debts), however, are prohibited from contacting the soldier's chain of command once the soldier tells the third-party collector not to. An exception to that rule is if a court has granted the collection agency permission to contact the chain of command. If a collection agency contacts your chain of command in an effort to get you to pay a debt, contact the Legal Assistance Office and make arrangements to speak with an attorney.

### DEFENSES TO A CONTRACT

If the soldier has a legal defense to a contract, i.e., he or she has a valid legal excuse for nonperformance under the terms of the contract, the soldier must explain that reason to the other party and/or assert the defense in court. Typical examples of reasons for nonperformance are: (1) the soldier was a minor at the time he or she signed the contract; (2) the contract's purpose or terms were illegal; (3) the contract was not put in writing; (4) the contract was induced by fraud or there was some other type of misrepresentation about a material fact; or (5) the soldier signed the contract under force or compulsion.

### ON-POST SOLICITATION

Vendors planning to solicit sales, or to sell goods on Fort Knox, need permission from the installation commander to do so. Installation commanders have broad discretion under Army Regulation (AR) 210-7 to allow or disallow solicitors and to set the rules which they are governed by. For this reason, specific rules vary widely from post to post, and are subject to change at short notice. Contact the installation commander's office for current information. On a general note, however, before authorization can be granted on any post, the seller must submit written evidence that the seller's company meets state licensing requirements. If the solicitor violates any Fort Knox regulation or the terms of the solicitation permit issued by Fort Knox, the

solicitor's permit may be suspended and/or revoked, and the solicitor may be barred from Fort Knox.

**CAUTION:** Simply because a seller is properly authorized to make sales on Fort Knox is no guarantee the proposal offered is the "best deal" available or that it is offered on the best available terms. Never let yourself be rushed into signing a contract without checking into it first. Also, even though sellers are required to have a permit to solicit on Fort Knox, sellers may ignore that requirement and solicit on post anyway. Contracts made with unauthorized sellers are most likely valid. Lack of authorization will not necessarily void the contract.

## CHAPTER 9

### CONSUMER RIGHTS AND REMEDIES

#### INTRODUCTION

Soldiers and their dependent family members should train themselves to be savvy consumers. Well-informed shoppers often avoid common pitfalls, which may cause headaches for less prudent consumers. Be sure you investigate all of the terms and conditions of any business transaction before entering into the deal. Should you find yourself in a troublesome consumer situation, it is important to know where to go for help on how to get out of the situation as painlessly as possible.

#### DECEPTIVE (ADVERTISING) PRACTICES

Be aware of deceptive advertising techniques such as:

1. Bait and Switch: The seller advertises a "bait" product, such as a name brand sewing machine, vacuum cleaner, automobile, or so many rooms of carpet, at an unusually low price. The product is sometimes characterized as "freight damaged" or as a "repossession." The advertised product is usually of poor quality, obviously in need of repair, or for some reason, unavailable for purchase. The seller then offers a substantially more expensive "switch product."

2. Contests and Surveys: Be wary of such statements as "you have just been selected the lucky winner of..." Sometimes contests and surveys are used to trick people into making purchases they later regret. Such contests and surveys are commonly conducted by telephone or direct mail. The free "prize" is often available only by purchasing expensive companion items such as yearbooks with free encyclopedias, computers with free Internet access, or service policies with free magazines or further instruction after the free lesson. Remember if it sounds too good to be true, it probably is...

3. Imaginary Sales and Discounts: A seller may advertise the price of a color television has been marked down from \$549.95 to \$499.95 for a savings of \$50. Wise comparative shopping may show that the "sale price" is the same as another store's regular price for the same television. The seller marked up the item and then pretended to discount it. Watch out for words like "special discount," "marked down," "new low price," or "save big." Comparative shopping is important to avoid being duped.

#### SHOPPING BY MAIL

Buying goods through the mail and over the Internet are frequent problem areas for soldiers and their families. A common problem is an extended delay in receiving the purchased goods. The buyer may purchase an item using a credit card and then wait weeks to receive it. The Federal Trade Commission (FTC) has a rule, which may give you the right to cancel the contract and get your money back if the delay extends beyond 30 days. Be sure to keep copies of

all correspondence you receive and send, including the original order form and a copy of the check, money order, or credit card receipt/statement which documents how you paid the seller. If you have a mail order problem, you may wish to contact the FTC, which is listed under agencies in this chapter.

Shopping over the Internet has become a new way to shop through the mail. The same rules regarding shopping through the mail apply, but the Internet involves some other issues consumers must keep in mind. As always, buying from reputable and well-known companies will provide you with the greatest security. If buying from a lesser-known company, you may want to investigate the company's background before purchasing from them. You may check the Internet to see how long they have been in business and how long they have been shipping goods over the Internet?

In addition, Internet shoppers purchasing with a credit card on-line have another unique concern to worry about. Consumers in this situation must make sure they are transmitting their credit card numbers over a secure line. In most circumstances, it is better to print-off the order form (completed if the website allows you to do that) and then mail in the order or telephone the company with payment or payment information.

#### FAIR CREDIT BILLING ACT (FCBA)

The FCBA helps protect consumers with disputes concerning billing errors. Most often these disputes come to light when the consumer receives his or her end of month billing statement showing the current amount due on the account. Such disputes may include 1) being billed for items they never received; 2) when they are billed for more than the item was supposed to cost or; 3) when they are being charged twice for the same product by their credit card company. This Act only applies to "open end" credit accounts (credit cards, revolving charge accounts, etc...). The act does not apply to installment contracts (loans, credit extensions, etc...). For this reason, the act is not applicable to the purchases of cars, furniture, and major appliances that are purchased on an installment basis.

If you have a legitimate FCBA dispute, you must write to the creditor at the address listed on the statement. You should include your name, your address, and a detailed description of the billing error. This letter must reach your creditor within sixty (60) days of your receipt of the mistaken bill. It may be wise to send the letter by certified mail, return receipt requested. Keep a copy of the letter along with the return receipt when it comes back. Once the creditor has received your objection, they have thirty (30) days to respond. The Legal Assistance Office can help you prepare the necessary letter.

Some creditors provide a telephone number for billing errors. These are good places to begin your inquiry. If the creditor will not correct the error over the telephone, follow-up with the written protest discussed above.

While the creditor investigates, you may withhold the disputed payment only, but not payment on other non-disputed portions of the bill. The creditor may not threaten you or classify you as delinquent while the investigation is ongoing. Once the creditor completes its

investigation, the creditor is required to contact you in writing with a description of their findings. If you were billed incorrectly, you will owe nothing. If you were mistaken, however, you must pay the charge and any late fees and interest charges associated with it.

If the creditor finds no error and you still dispute the charge, you have ten (10) days to notify the creditor that you will not pay the amount. This will be the time that you file a legal action. At this time though, the creditor can begin collection procedures for the disputed amount and can report you to collection agencies (so long as they note your objection).

The above only applies to billing errors, keep in mind. If you are unsatisfied with the quality of the good or service you received, different rules apply. You should contact your credit card company to determine what your specific rights are in this area.

If you wish to report violations of the FCBA, you can do so to the Federal Trade Commission's Consumer Response Center. It is located at 600 Pennsylvania Avenue, NW, Washington DC 20580. Their toll free telephone number is 1-877-FTC-HELP (382-4357).

## AUTOMOBILES

A car purchase is often a very complex transaction. The purchase agreement, financing contract, and warranty or service contract information is extensive and usually in hard to understand language. You may want to consult the Legal Assistance Office for help in deciphering the paperwork.

Also, purchasers should be aware that Kentucky does have a "lemon law." The "lemon law" can benefit a consumer when a new and recently purchased car has undergone multiple repairs for a problem that the dealership is unable to solve. See the chapter on "Motor Vehicles" for a brief description of this law and how a consumer can benefit from it.

## CONSUMER LEGISLATION - DOOR-TO-DOOR SALES

As a result of frequent high-pressure techniques and sometimes shoddy and over-priced merchandise, federal regulations provide consumers a brief period to reconsider their purchase. Consumers ordinarily have three days to reconsider and cancel most door-to-door sales contracts.

During this "cooling off period," buyers may cancel most contracts signed at home with a door-to-door salesperson. To cancel, buyers must send a letter by certified mail, return receipt requested, by midnight of the third business day following signing of the original contract. This rule generally applies only to installment contracts that involve a service charge or are to be paid by more than four installments.

Remember to check the reputation of firms selling door-to-door before signing a contract. Do some comparative pricing at local stores that carry the same or similar merchandise. Often you will find that you can buy comparable items at lower prices. Avoid a salesperson who uses a high-pressure sales pitch or insists you sign a contract immediately saying that he or she is not

allowed to come back later. Read every word of the contract and think it over before you make a decision.

### CONSUMER LEGISLATION - FEDERAL LAW

The Consumer Protection Act, commonly called the Truth in Lending Act, is designed to assure "a meaningful disclosure of credit terms" so consumers will be able to see exactly what they are paying. This statute requires a creditor to provide a complete disclosure of the finance charge and annual interest rate. This applies to practically every consumer credit transaction, such as common revolving charge accounts in department stores and bank credit cards, as well as installment contracts. Violations of the disclosure may, in certain instances, allow you to rescind the transaction. By knowing exactly what interest you are paying, you as a consumer are able to "shop around" for the best interest rate. You should also be aware of the Fair Debt Collection Practices Act, which protects you in your dealings with a collection agency and will protect you from unfair or high-pressure debt collection practices.

### OTHER LEGAL REMEDIES

Any person who has lost money because of a deceptive business practice may sue in Kentucky Circuit Court for actual damages sustained, court costs, attorney fees and possibly punitive damages. A person may also bring suit in Small Claims Court at the District Courthouses for actual damages up to \$1,500.

### AGENCIES - POINTS-OF-CONTACT

Several government and civilian agencies have been established to assist the consumer. Before contacting one or more of the following agencies, try to resolve the matter directly with the business firm. Problems can often be solved through a business's own procedures. If that fails, consider contacting one of the following agencies:

1. Federal Trade Commission. Contact the Midwest Region's Federal Trade Commission office for interstate deceptive practices and violations of certain federal consumer protection legislation. It is located at 55 East Monroe Street, Suite 1860, Chicago, Illinois, 60603-5701.

2. Office of the Kentucky Attorney General, Consumer Protection Division: It is located at 9001 Shelbyville Road, Suite 3, Louisville, Kentucky, 40222-8003. (The Legal Assistance Office has a two-page complaint form, which can be filled out and mailed in to the Attorney General's office. The Legal Assistance Office has copies of the form and can assist with completing it.)

3. Better Business Bureau: The area chapter of the Better Business Bureau (BBB) may be able to assist with resolution of local consumer problems. The regional BBB is located at 844 South 4<sup>th</sup> Street, Louisville, Kentucky, 40203-2186. Their telephone is (502) 583-6546 or toll free at 1-800-388-2222.

4. Fort Knox Legal Assistance Office: We can provide initial advice and guidance about consumer situations including door-to-door sales, consumer rights, the state lemon law, etc. We are located in the Office of the Staff Judge Advocate, Pike Hall, Building 1310, Wing B, First Floor, Room 129 and our telephone number is (502) 624-2771.



## CHAPTER 10

### CREDIT, CREDIT TRANSACTIONS, AND CREDITORS

#### INTRODUCTION

Credit is worth its weight in gold. If you stop to think about it, a credit consumer buys something without paying for it. Instead, the credit consumer obtains goods or services with a promise to pay for it later. That is an important, and highly valuable, privilege. Credit, however, and the ability to buy things with only a promise, is not without limit. For consumers who buy too many things, promising to pay more than they are really able, a negative credit history may result. A negative credit history can be difficult to overcome. This is true whether you are dealing with a mom and pop type store or with a large corporation. Creditors want to know if you are reliable and they look at your credit history to find out. Those creditors are primarily concerned with whether you have and whether you can make timely payments on a regular schedule. In considering that, the creditor will examine your credit report along with such other factors as your income, length of time you have lived and worked in an area or at a particular job, and the amount of your outstanding obligations and debts.

#### CREDIT BUREAUS AND CONSUMER REPORTING AGENCIES

Credit histories are maintained by credit reporting agencies. The three largest credit agencies are TransUnion, Equifax, and Experian. Their addresses and telephone numbers are as follows:

TransUnion	Equifax	Experian
PO Box 390	PO Box 105873	PO Box 2104
Springfield, PA 19064	Atlanta, GA 30348	Allen, TX 75013
(800) 888-4213	(800) 685-1111	(800) 682-7654.

These agencies collect and sell information about consumers. If you have a credit card or if you have borrowed money from a bank or other financial institution, you have a file with one or all of these companies. Future creditors will most likely check your credit history with one of these agencies before approving your request for credit.

Your credit agency file will most likely contain your name, present and past addresses, Social Security number, employment history, marital status, liens against your property, past lawsuits (including bankruptcies), and maybe even criminal background information. The bulk of the information details your loan and credit history. Your file will contain names of current creditors (credit card companies, retail stores, auto finance companies, etc.) and the status of your accounts with those companies. Notations will be present concerning whether your accounts have been turned over to collection, or whether amounts have been charged-off as uncollected. Once on your credit report, information remains for quite a long time. Data other than bankruptcy may remain for up to seven years. Bankruptcies may remain for as long as ten years.

## MAKING SURE YOUR CREDIT REPORT IS ACCURATE

Consumers must be aggressive in making sure their credit reports remain accurate and up-to-date. Consumers should periodically request a copy of their credit report from one of the big three agencies. Those reports are available for a small fee (currently \$8) and can be ordered in writing or even over the Internet. If ordering over the Internet, make sure you are using a secure site. When checking, you may want to purchase a copy of your report from several of the larger credit bureaus, because their information can differ at times. There is no requirement for these companies to verify that they all have the same information.

If you do not wish to purchase copies of your credit reports, you may qualify for a free copy. If a credit bureau has provided a copy of your credit report to a person or business, and it was used to deny you of employment, insurance, a credit card, etc..., you can obtain a copy of your credit report from that company free of charge. You must request the report within thirty (30) days of the denial however. You can also obtain a free copy of your credit report once per year if you are (1) unemployed and plan on looking for a job within sixty (60) days, (2) are currently on state welfare, (3) or your report is inaccurate because of recent fraud perpetrated against you. If you do not fall within one of these exceptions, you will have to purchase a copy of your credit report.

Why should consumers be aggressive in monitoring their credit file(s)? Credit agency files often contain incorrect or incomplete information. Based on that inaccurate information, creditors may refuse all sorts of credit transactions including denied insurance policies, and rejected loans for buying a home or car. A poor credit history may also affect your ability to purchase or maintain certain types of insurance or obtain employment in some fields.

## FEDERAL FAIR CREDIT REPORTING ACT (FFCRA)

To avoid hassles based on incorrect credit information, the Federal Fair Credit Reporting Act (FFCRA) limits the categories of information credit agencies may maintain, and provides measures allowing for the correction of inaccurate information. It is up to the consumer, however, to enforce those rights.

First, the FFCRA restricts what the credit reporting agencies can and cannot do. Those agencies may only report information the agencies believe will be used for credit, employment, insurance, or business purposes. Agencies may not gather or report character, reputation, or lifestyle data. The FFCRA, however, does not create an affirmative obligation for credit-reporting agencies to notify consumers about negative information listed on their file.

Second, if you are denied credit based on information in your agency(s) file, the FFCRA gives you the right to obtain a free copy of your file from the agency that reported the information. If the report contains erroneous information, you have the right to have the reporting agency investigate your concerns to determine the credit report's accuracy.

## CHAPTER 11

### DEBTOR RELIEF - OPTIONS FOR BANKRUPTCY

#### INTRODUCTION

There are two methods for declaring individual bankruptcy. Bankruptcy may be the option of last resort for consumers who are hopelessly behind in paying their bills. It should be considered after receiving financial counseling from Army Community Services (ACS) or a similar program. Bankruptcy will have severe and long-term impact on your individual credit history. It truly is an option of last resort.

#### STRAIGHT BANKRUPTCY

Chapter 7 of the Federal Bankruptcy Act provides for total or straight bankruptcy. With a Chapter 7 proceeding, a debtor files a petition with the Federal Bankruptcy Court asking the court to discharge (wipe out) his or her debts. In exchange the court sells all of the debtor's property except for EXEMPT property. Exempt property is determined by state law and is basically the property you are allowed to keep even if you declare bankruptcy. The money obtained from the sale of non-exempt property is turned over to the person's creditors as full satisfaction for outstanding debts. With that, straight bankruptcy gives the debtor a fresh financial start. If a debtor has declared straight bankruptcy before, he or she must wait 6 years before declaring straight bankruptcy again.

In most situations, the following debts are non-dischargeable in a straight bankruptcy:

- a. Federal, state, county, district, city or other government taxes;
- b. Student loans;
- c. Alimony or child support obligations;
- d. Debts not listed on your bankruptcy petition;
- e. Debts you reaffirm (outstanding debts you agreed to pay after filing for bankruptcy);
- f. Money or property obtained from creditors through fraud; and
- g. Debts resulting from "willful or malicious" misconduct.

Depending on your personal financial situation, you may have other non-dischargeable debts.

The following property is EXEMPT under Kentucky law:

- a. \$3,000 in household goods;
- b. \$5,000 equity in your home (equity is the value of the property minus the amount you still owe in mortgages or other liens);
- c. \$2,500 equity in your personal vehicle;
- d. \$1,000 general exemption for any property;
- e. any amount in retirement accounts such as pensions or IRAs; and

- f. amounts received from Government sources such as Social Security, unemployment compensation, veteran's benefits, worker's compensation, and other similar benefits.
- g. any professionally prescribed health aids for the debtor or a dependent.
- h. you may have other exemptions under the Kentucky bankruptcy code depending on your occupation, insurance benefits/coverage, court settlements and awards, etc... Speak with a Legal Assistance Attorney for a complete evaluation of your rights (telephone (502) 624-2771).

The amounts are doubled for a married couple filing bankruptcy jointly. NOTE: Debtors cannot defraud their creditors by fraudulently converting assets to exempt property or transferring assets to other persons to avoid payment of just debts.

### WAGE EARNER BANKRUPTCY

Chapter 13 of the Federal Bankruptcy Act provides for creation of debt repayment plans. The plans allow debtors with regular income to pay off their debts over an extended period of time. In a sense, a Chapter 13 is not bankruptcy in that the debtor will eventually pay his or her debts. The court will simply order that the debtor have extra time to do so.

With a Chapter 13 proceeding, the Federal Bankruptcy Court consolidates an individual's debts under the supervision of a court-appointed trustee. The trustee and debtor sit down together, look at the debts owed and the debtor's income, and determine a payment plan which leaves the debtor enough money to live on while repaying all outstanding debts.

In administering a Chapter 13 proceeding, the court issues a restraining order prohibiting creditors from contacting the debtor, his or her employer, or his or her co-signers. The order stops all legal action, including proposed garnishments, against the debtor. In addition, the court prohibits all creditors (including collection agencies) from trying to collect from the debtor. The creditors instead deal with the court-appointed trustee. Finally, the restraining order prevents accrual of service charges, late charges, and, in most cases, interest on the unpaid debts.

The most important aspect of a Chapter 13 proceeding is that the debtor keeps all of his or her personal property including their home and its furnishings and vehicles.

The following persons should consider filing under Chapter 13 instead of Chapter 7:

- a. You own your home and are in danger of losing it because of money problems;
- b. You are behind on debt payments, but could catch-up if given extra time;
- c. You have regular income from a job or business; or
- d. You have filed a Chapter 7 within the previous 6 years.

### WHAT DOES IT COST TO FILE BANKRUPTCY

Filing fees are currently \$175.00. That amount must be paid to the bankruptcy court at the time you file your petition. Attorney's fees are extra. Your legal assistance attorney cannot represent you in a bankruptcy proceeding. You will need to hire a civilian attorney. The Legal Assistance Office can provide initial advice and counseling about bankruptcy law and can point

you to a capable local attorney. Telephone 624-2771 for more information or to schedule an appointment. Army Community Services (ACS) has expertise to look at your income and your debts to determine whether bankruptcy is an option you should consider. Telephone ACS at 624-1996 for more information or to schedule an appointment.

If you do choose to file bankruptcy, it can be done at the closest federal district court. The United States District Court for the Western District of Kentucky, located in Louisville, is the closest to Ft. Knox and Hardin County. You can contact the clerk's office by telephone at (502) 625-3500. Their fax number is (502) 625-3880. The address is United States District Court; Gene Snyder Courthouse; 601 West Broadway, Room 601; Louisville, KY 40202.

## CHAPTER 12

### ELECTIONS AND VOTING

#### INTRODUCTION

Each state has its own requirements concerning the conduct of elections and individual voting. Kentucky's requirements are discussed in this chapter. Questions about other states should be directed to your unit voting officer.

#### ELIGIBILITY TO VOTE

According to Kentucky law (K.R.S. 116.025), eligible voters are all persons who are: (a) eighteen years of age or older; (b) citizens of the United States; (c) have lived in the state, county and precinct for the thirty days immediately preceding the election in which they offer to vote, and (d) are not disqualified by reasons of idiocy, insanity, or conviction of an infamous crime without subsequent restoration of civil rights.

The legal residency requirement is the element, which creates roadblocks for soldiers wishing to vote in Kentucky. A soldier is not a resident of Kentucky simply because he or she is assigned here due to military orders. The soldier remains a resident of his or her home state and is fully entitled to vote there provided he or she meets that state's voting requirements. To vote in Kentucky, however, the soldier must take affirmative steps to establish residency here. Those steps may include buying a home in Kentucky, paying taxes to Kentucky, obtaining a Kentucky driver's license, or other similar actions showing an intent to make Kentucky your one and only home. Without those steps, soldiers will not be allowed to vote in Kentucky.

#### VOTER REGISTRATION

You must register to vote before you can actually cast a ballot. The county clerk's office is the point-of-contact for registration. Ordinarily, you will have to appear at the clerk's office and prove residency in Kentucky. Registration must be completed at least 30 days prior to the election and/or primary in which you wish to vote. Once completed, your voter registration remains effective until you register to vote somewhere else, or until it is canceled for failing to vote in several consecutive elections. For persons living on or near Fort Knox, the Hardin County Clerk has two offices. The Elizabethtown office is located in the main courthouse just off of the town circle. Their telephone number is (270) 765-4372. The Radcliff office is in a one-story building next to the satellite courthouse (parallel to Wal-Mart on West Lincoln Trail Boulevard) and can be reached at (270) 351-1299.

#### ABSENTEE VOTING

Military personnel who wish to vote in their home state should contact their unit voting officer or the office of the voter registrar in their home city or county, for assistance in obtaining

an absentee ballot. The Fort Knox Voter Assistance Office is a point-of-contact as well. Their telephone number is 624-5079.

## CHAPTER 13

### FAMILY LAW - ADOPTION AND GUARDIANSHIP

#### INTRODUCTION

Adoption is the legal process through which parties establish a legal parent-child relationship without benefit of a blood relationship. Any legally competent person, 18 years of age or older, and a resident of Kentucky for 12 months, may petition a Kentucky court to become an adoptive parent. A non-resident petitioner may become an adoptive parent if the child to be adopted is a resident of Kentucky. Non-residents in the state due to military orders have standing to become adoptive parents once they have been in Kentucky for 60 days (Kentucky Revised Statutes (KRS) 199.475).

#### PROCEDURES

Adoption is an extremely complicated matter. It is generally advisable to have legal counsel assist with the adoption proceeding. The money spent on an attorney may be money well spent. Adoptions not done with strict adherence to the adoption statutes often create lingering problems. The goal is to sever all legal ties between the natural parents and the adoptive child. Adoptions conducted improperly may lead to later problems with the natural parents.

Adoption proceedings usually progress through the following stages (see K.R.S. 199.473, Supp, 1998):

1. The Petition: A written petition is filed with the circuit court for the county where the petitioner resides. If the petitioner is married, the husband or wife of the petitioner must join in the application unless the petitioner is married to a natural parent of the child. If the child is under age 16, the child must have lived with the petitioner for at least 3 months before the application can be filed, and the child must have been placed in the home by a licensed child adoption service/agency. Involvement of an agency is not necessary if the petitioner is a stepparent, grandparent, sister, brother, aunt or uncle.

2. Placement of the Child: To receive a child from a child adoption service/agency, the petitioner must file an application with the Commissioner of Child Welfare. The commissioner's office will conduct a background and home investigation of the interested parties. The investigation will be concluded within 60 days of filing the application. A negative decision by the commissioner may be appealed to the circuit court. The appeal must be made within 10 days of the decision.

3. Pre-petition Placement: Once the petitioner receives the child, and after the child has lived with the petitioner for the required 3 months, the petitioner may finally file the actual adoption petition (see #1 above).



4. Requesting a Post-placement Investigation: Within 90 days of filing the petition, a second post-placement investigation will be conducted to determine whether the adoption should be approved. The petitioners should make their request for the investigation when they file the petition. The investigation will focus on whether the proposed parents are financially able and morally fit to have the child, whether the child is suitable for adoption, and whether adoption is in the best interests of the child.

5. Consent: Unless parental rights are involuntarily terminated (see #6 below), consent to the adoption must be obtained from the natural parent(s) or from the state or other guardian if the state or other guardian have been appointed. In addition, if the child is age 12 or older, he or she must consent to the adoption. The petition for adoption, and any attachments, should reference the issue of consent. Statements from the natural parent(s) or other guardian(s) consenting to termination of parental or other rights should be included with the petition. Moreover, the petition should clearly identify the petitioners, the child, and the biological parents, and that the petition is based on the signed and attached consent forms.

6. Termination of Parental Rights: Without consent from the natural parent(s), the court will conduct a private hearing (in the judge's chambers or in closed court) to determine whether parental rights should be involuntarily terminated. The hearing will focus on, among other things, whether the natural parent(s) 1) have abandoned or deserted the child; 2) have substantially, continuously, or repeatedly neglected the child; or 3) have refused to give the child parental care and protection. The petition for termination of parental rights will be filed by the prospective adoptive parents and must fully identify 1) the petitioner; 2) the party or parties having parental rights who have not consented to relinquishment; 3) the child; and 4) the facts forming the basis of the petition. An adoption cannot go forward without consent or an order terminating parental rights.

7. Details to Include in the Adoption Petition: The adoption petition should reference the following information (see K.R.S. 199.490):

- a. The name and address of each petitioner;
- b. The name and address of the child;
- c. The child's relationship, if any, to the petitioners;
- d. The child's full name should the adoption be ordered;
- e. A full description of all property, known by the petitioners, to belong to the child;
- f. The names and addresses of the child's parents or legal guardians, regardless of whether they are present;
- g. Whether the child's parent's rights have been terminated; and

h. Any facts necessary to help locate any of the parties or information listed above.

7. Filing a Post-placement Report: The post-placement report will be filed with the court (see #4 above). The report should contain all reasonably available information concerning the physical and mental health of the child, the petitioner's home environment, family life, health, facilities and resources of the petitioner, and any other facts and circumstances affecting the proposed adoption.

8. Final Hearing: The court will conduct a final private hearing (in the judge's chambers or in closed court) with petitioners present to take final action on the matter. At the hearing, the court may place the petitioners under oath to testify about the adoption. The court will consider their testimony, the pre-placement and post-placement investigation reports, and any other relevant information. If the court approves the adoption, it will issue an order containing the names of the petitioners and the requested new name (adopted name) of the child. The order will not name the natural parent(s) or the child's pre-adoption name. The court record will be sealed and issuance of a new birth certificate with the adoptive name will be ordered.

#### ADOPTION REIMBURSEMENT

The Army may reimburse soldiers for adoption related expenses (currently the Army will reimburse expenses up to \$2,500). The adoption must be of an orphan child; one not related to the adoptive parent(s) in anyway. Completion of a DD Form 2675, Reimbursement Request for Adoption Expenses, is required. The form with instructions for completion is available at the Legal Assistance Office. Telephone 624-2771 for more information.

#### GUARDIANSHIPS

A guardianship allows control of a child to be transferred from the parent or legal guardian to another adult. This is often done when the parent(s) are stationed overseas and wish for the child to remain in their home DoD school. A guardianship is very important because without it, no one but the parent can provide the basic care-taking essentials of the minor.

There are two types of "guardianships." The first is actually a temporary power of attorney (called a voluntary appointment of guardian) authorizing an adult to provide for a child's basic needs (a separate medical power of attorney is needed to authorize medical treatment for the child). It is not a guardianship because it is not court-ordered. Voluntary appointments are frequently given to grandparents by their children to look out for grandchildren during summer vacations or family visits, etc.

The second type of guardianship is permanent court-ordered guardianship. Actually, there are several different types of court-ordered guardianship. First is limited guardianship, which allows the guardian to have full care, custody, and control of the minor, without access to the child's financial resources. Second is a conservatorship (fancy name for a money-related guardianship), which allows for the guardian to access the child's financial resources only. The

third and most commonly used type is full guardianship, which gives full care, custody, and control of the child to the guardian, as well as full financial control.

Limited or full guardianship is required to enroll children in Department of Defense (DoD) schools on Fort Knox or on other military installations. Full guardianship is required to enroll a child in "DEERS."

Three documents are needed to obtain court-ordered guardianship in Kentucky. First, the minor child's parents or legal guardians complete "Petition for Appointment of a Guardian" (AOC-852). Second, the person(s) seeking guardianship complete an "Application for Appointment as Guardian" (AOC-853). Finally, the county judge will complete an "Order of Appointment of Guardian" making guardianship effective. The judge will consider the request after conducting an informal hearing at the county courthouse. The petition and application will contain questions on the type of guardianship being established and the facts that make the guardianship necessary. If these are convincing to the judge, the order will be signed and the guardianship made effective. NOTE: the process for completing a guardianship varies from state to state and even from county to county in Kentucky. The information contained here is applicable in Hardin County. Persons living in other counties should contact their circuit court clerk's office, district court division, and ask for instructions.

The petition and application forms are available in the Legal Assistance Office on Fort Knox (Pike Hall, Building 1310) and at the Circuit Court Clerk's Office, District Division, in Radcliff or in Elizabethtown. Court dates will typically be made within 7 days to order the guardianship. The Legal Assistance Office can help you complete these forms and notarize any signatures as is required.

The filing fee for guardianship is \$51.50 plus \$1.15 for a certified copy of the "Order of Guardianship." Checks or money order should be made payable to the "Hardin District Court" for \$52.65 (cash is not accepted). The phone number for the Hardin County Circuit Clerk is 351-1299 or 766-5042 and all calls can be directed to that office.

At some point, you may wish to terminate the guardianship. This requires a motion to be filed in the Hardin District Court Probate Division. The motion is a "Motion to Terminate Guardianship," and requires only a short statement of the facts that demonstrate why the guardianship is no longer required. The matter will go before a judge, who will typically grant the motion and provide an "Order Terminating Guardianship." The Legal Assistance Office can assist you in this process as well.

Telephone the Legal Assistance Office at 624-2771 to obtain more information or to schedule an appointment.

## CHAPTER 14

### FAMILY LAW - MARRIAGE AND DIVORCE

#### INTRODUCTION

The purpose of this chapter is to provide preliminary information on the issues you should be thinking about if you are experiencing problems with your marriage or family situation. Specifically, the goal is to provide general guidance about divorce, separation, the payment of support, and other issues which you will need to think about before hiring a civilian attorney to represent you and before you go to court. This area of the law is very complex and can be emotionally draining for all persons involved. Nothing in this chapter replaces the advice of your civilian attorney and should not be relied on in lieu of that advice.

#### MARRIAGE

Marriage is, at its root, a civil contract entered into by a male and a female after they have completed certain administrative requirements in accordance with state procedures. The following is an overview of some of Kentucky's requirements and procedures:

1. **The License:** Kentucky requires a license to get married. The county clerk for the county in which the persons live is the point-of-contact for obtaining the license. Both parties must appear at the clerk's office to apply for the license. Some states require a blood test; Kentucky does not. The license is valid for 30 days once issued. The parties need to get married within those 30 days or reapply for an updated license.

2. **Prohibited Marriages.** Common law marriages are not recognized in Kentucky. Other examples of prohibited marriages are:

- a. Bigamy - (where one or both parties are already married to other living persons);
- b. Incest - (where the parties are blood relatives of each other in the degree of first cousin or closer);
- c. Homosexual - (where the parties are of the same sex); and
- d. Marriage where one party has been adjudged mentally disabled by a court of competent jurisdiction (in certain circumstances).

3. **Age Requirements:** Eighteen is the legal age to marry without parental consent. Either applicant under the age of 18 must have his/her parents or their legal guardian present to sign a consent form, or must have a notarized affidavit of consent from their parent or legal guardian. In cases where the parties are under 18, and the woman is pregnant, an appeal can be

made to a district court judge to allow the marriage without parental consent. No one under the

age of 16 may obtain a marriage license, even with parental consent, except by court order.

4. Foreign Marriages: As a general rule, the United States (and Kentucky) recognizes the validity of a foreign marriage if it was valid in the country where performed. There are, however, many variables that may affect the validity of a foreign marriage. OCONUS soldiers should (if not required to by their unit or the applicable Status of Forces agreement) check with the Legal Assistance Office in their overseas location to ensure a foreign marriage is valid in that country.

5. Annulment: Annulment of a marriage means the marriage never happened. It is different from divorce because a divorce simply ends a marriage. An annulment turns back the clock and makes it as if the marriage never occurred. For that reason, courts are very reluctant to order annulments. The Kentucky courts will order annulment under the following circumstances:

- a. Either party was under the age of consent at the time of marriage, that party went through with the marriage without parental or court-ordered consent, and the parties have not cohabited;
- b. Either party was validly married to another person at the time of the marriage;
- c. Either party was of unsound mind at the time of marriage;
- d. Consent of either party was obtained by fraud or by force;
- e. The parties are too closely related (first cousins or closer).

#### DISSOLUTION OF MARRIAGE (DIVORCE)

Kentucky is a no-fault divorce jurisdiction. A party requesting divorce does not have to allege fault (grounds) for divorce such as adultery, desertion, or physical or mental cruelty. Grounds may be relevant to bringing final resolution to the matter (i.e. grounds may affect award of alimony, award of child custody, etc.) but it is not essential for filing the initial complaint for divorce. With the no-fault provision, the party asking for divorce simply has to allege that the marriage is irretrievably broken and that reconciliation is not possible. With that, there are a number of administrative requirements which govern who can file for divorce in Kentucky, and which govern how the court will process the action towards final resolution. A few of those factors are listed here:

1. Circuit Court: All divorce actions in Kentucky are handled in circuit court. Circuit court is the highest local level court in Kentucky.

2. Residency: A Kentucky resident, or a member of the Armed Forces who is stationed in Kentucky, can file for dissolution of marriage in Kentucky. A servicemember need not be a resident of Kentucky and may have another state as his or her home of record. In every case, the person must have lived in Kentucky for 180 days (6 months) prior to filing.

3. **Separate and Apart:** The parties must have been separate for at least 60 days before the court will take final action on the matter. The parties may continue to live in the same house while the divorce is pending so long as they do not have sexual relations. The 60 days may include time prior to actual filing of the complaint.

4. **Waiting Period:** If there are minor children involved, the court cannot take final action on the matter until 60 days after filing of the complaint.

5. **Hearing:** After the separation period and the waiting period (if applicable) have passed, the court will set the matter for hearing. The parties and their attorneys will appear to make their arguments for property division, child custody, spousal support, child support, etc. In certain circumstances, the court may allow the matter to be resolved with written depositions. With that, personal appearance by the parties may be avoided. Often the judge will refer contested matters to a court-appointed commissioner for a recommendation as to what final action should be taken. The commissioner is an attorney who will investigate all of the facts and circumstances prior to making a recommendation. The commissioner will usually hold a meeting with the parties present to argue their side of the case. In certain circumstances, the court may grant the divorce and reserve final action on contested issues such as child custody and child support. The reserved matters will be referred to the commissioner. In those cases, the court will schedule a second hearing to accept the commissioner's recommendation and to take final action on the reserved matters.

6. **Attorneys:** If the divorce is uncontested and the parties can agree on what final action they want from the court, the parties can save the expense of having two attorneys to handle the matter. One attorney can draw-up the necessary documents and present it to the court. The reason for this is that the attorney is simply reducing the parties' agreement to writing. The attorney is not arguing for either side over the other. If the divorce is contested, both parties should have an attorney.

7. **Separation Agreement/Contract:** The parties may enter into a written separation agreement to amicably divide their property and their debts, to provide for spousal support or maintenance, and make an initial determination as to child custody, visitation and support. The separation agreement is simply a contract on how the marriage relationship will end. The court will usually incorporate the agreement into its final order for divorce.

8. **Legal Separation:** Legal separation and a separation agreement are not the same thing. Legal separation is a legal relationship between a husband and wife, and is truly a holdover from an earlier time when divorce was frowned upon as a means to end a marital relationship. It is created by court order after a petition for legal separation. In a sense it is an intermediate step between marriage and divorce. The court will simply order that the parties are living separate and apart. They are still technically married though. Most parties skip over this relationship and move directly to a divorce. Legally separated spouses cannot remarry and cannot move on with their lives. The divorce allows the parties to put the marriage in the past.

9. **Property Division:** Kentucky is a separate property state. Each spouse is allowed to keep property that belonged to him or her before the marriage. Property acquired by either

spouse during the marriage is marital property and is subject to division in the divorce action. Alleged marital misconduct is usually irrelevant in dividing marital property. The focus is on achieving a just and equitable (fair) division. In making the division, the court will consider the length of the marriage, the contributions of each spouse to the marriage, the value and nature of the property, the economic circumstances of each spouse, who will have custody of the minor children (if there are any), where the minor children will live, debts owed by the parties, and any other factor which would affect a fair division. The court's decision on division of property is usually final. In rare circumstances, a party may convince the court to relook a finalized division and, if appropriate, modify the division.

10. Military Retirement: A soldier's military pension is considered marital property just like any other asset. The court can divide it even if the soldier has not yet reached retirement eligibility. The pension will be divided using a formula awarding the non-military spouse a percentage based on the number of years of marriage and the number of years of marriage while the soldier was in the Army. The easiest example is a soldier who has been in the Army for 10 years and has been married all 10 of those years. The spouse would be entitled to one half of the soldier's pension as that point in time (one half of 10 years or 5 years worth). When the soldier retires after 20 years, the spouse would be entitled to one quarter of his or her pension. The division of military retirement is a question of state law. That means the formula may vary from state to state. The division has nothing to do with the federal government or with the Army (or other services). In Kentucky, the formula is set out in a court case called Poe v. Poe.

11. Maintenance/Spousal Support/Alimony: Either spouse may request maintenance (also called alimony). The court will decide how long maintenance will be paid. The court is supposed to disregard marital misconduct in deciding whether to grant maintenance. Misconduct, however, may be relevant in determining the amount that has to be paid. In making its decision, the court will usually consider monetary resources available to the party seeking maintenance, that party's job prospects and/or work-related education, time necessary for job training or reeducation, standard of living during the marriage, duration of the marriage, age, physical and emotional condition of the parties, financial obligations, amounts of child support if applicable, and ability of the payee spouse to meet his or her own needs or obligations. Unlike requests for modification of property division, the courts frequently grant requests to modify the award of, and the amount of, spousal support.

12. Child Custody: The focus is on the best interests of the child(ren). The court will usually consider the relative stability of the parent's separate households, the wishes of the parents, the wishes of the child, each parent's morality and fitness, and the mental and physical state of all individuals concerned. Non-custodial parents are frequently provided with rights of visitation (usually as the parties can agree). Requests for modification are frequently heard. A modification usually requires a showing that circumstances have materially changed and that the modification would be in the best interests of the child.

13. Child Support: The focus is on providing for the education and well-being of the children. As with custody, the court will usually consider what is in the best interest of the child. Among other considerations, the following factors will most likely be considered: 1) the financial resources, if any, of the children; 2) the financial resources of both parents; 3) the

standard of living the children would have enjoyed had the marriage continued; 4) the physical and emotional needs of the children; and 5) the children's educational needs. Kentucky's courts use an elaborate child support chart to help determine an appropriate amount of support. The chart takes into account the total income of both parties and the number of children to be supported. The amount of support indicated on the chart is then divided into percentages based on each parent's percentage of income contributed to the total income amount. For soldiers, courts will usually consider base pay, allowances for housing and sustenance, and any other income reflected on a leave and earnings statement. Soldiers should certainly argue that base pay alone should be used in determining a support obligation but the courts may consider everything.

14. Court-ordered Child Support versus Army Regulation (AR) 608-99: Soldiers have an affirmative duty to support their family members. The duty is imposed by AR 608-99. In the absence of a court order or a written agreement specifying a different amount, the Army's interim support requirements require the payment of BAH-II as monthly support. The amount of support (BAH-II) to be paid is based on the soldier's pay grade and on whether his or her dependents live in Government housing. BAH-II is completely separate from BAH. Soldiers receive BAH as an allowance for housing. It varies from installation to installation. BAH-II comes off of the Army interim support chart. It is constant throughout the Army. Soldiers frequently owe more in BAH-II than they are receiving in BAH. That occurs because the support AR works independent of the BAH system. The most important thing to remember is that a court order specifying a different amount of support, more or less, controls over BAH-II and the Army's interim support requirements.

15. Collection of Child Support/Maintenance. The court may order payments directly to the court or to the Kentucky State Support Agency. Federal law permits garnishment of military pay for child support or maintenance when directed by a court order. There are limits, however, on how much take-home pay can be garnished. When a soldier is supporting a second family, a maximum of 50% of take-home pay may be garnished. If a soldier does not have a second family, 60% of take-home pay may be reached. In addition, an extra 5% of take-home pay may be garnished if a soldier's payments are more than 12 weeks overdue. Federal law (42 U.S.C. Sec. 665) establishes an involuntary allotment from military active duty pay for the collection of child or spousal support when a soldier is two or more months in arrears in support payments. The same dollar limits applicable to garnishment apply also to an involuntary allotment.

16. Felony Non-Payment of Support: In Kentucky it is a felony to be more than \$1,000 behind in the payment of child support. Likewise, it is a felony to be more than six months behind in the payment of child support. Felony violations are prosecuted in criminal court. Possible penalties are completely separate from and in addition to potential penalties for being in contempt of the original civil court order requiring payment of support.

#### WHAT LEGAL ASSISTANCE CAN DO

Legal assistance attorneys are available to provide preliminary advice, guidance, and information about divorce, separation, payment or non-payment of support, and hiring a civilian attorney. Telephone 624-2771 for more information or to schedule an appointment.



## CHAPTER 15

### LEGAL RESIDENCE, HOME OF RECORD, AND STATE INCOME TAXES

#### INTRODUCTION

Soldiers and their dependent family members are often confused about legal residence and home of record. Legal residence is the status states often look at to determine whether a person is entitled to vote in that state, whether that person can file certain suits in that state's courts, and whether he or she can be required to pay taxes in that state. Indeed the payment of taxes is often the most important consequence of legal residence. Forty-one states and the District of Columbia tax individual income. Avoidance of state income tax is a consideration for a large number of military personnel. Fortunately, the Army has a sizable presence in several states (Texas and Tennessee having the largest concentrations) without state income tax. The purpose of this chapter is to differentiate between legal residence and home of record and to provide a few tips on how to change, or how not to change, residence.

#### HOME OF RECORD

Military members are often confused about what "home of record" really means. Home of record is a military term. It is an administrative notation made on a soldier's personnel record to indicate the state where the soldier lived at the time of entrance onto active duty. Home of record is completely separate from and is not the same as legal residence. It does not control eligibility to vote, payment of state income tax, or rules for filing lawsuits (examples include divorce and adoption suits) in state court.

The most common confusion about home of record involves family members. The short answer is that military dependents (spouses, children, etc.) do not have a home of record. The term applies to servicemembers only. A soldier's home of record may, in fact, be the same state as his or her state of legal residence, but not necessarily. When the soldier entered active duty, the state where he or she lived was his or her home of record. Chances are that state was also his or her state of legal residence because that is where they grew up or at least where they had lived for a length of time prior to coming into the military. Home of record does not change. State of legal residence can change (see below).

#### LEGAL RESIDENCE AND DOMICILE

Domicile (or state of legal residence) is a legal term, which describes the state you consider (and that others will consider) your home state. It is the state that you plan to return to, if away due to traveling or military assignment. It is safe to say that thousands of soldiers are currently assigned to installations outside their state of legal residence, or domicile. Your state of domicile may tax your military income whether or not you are assigned to and living currently in the state. Conversely, military assignment to (and living or residing in) a state in which you are not domiciled (in other words a non-resident state) does not allow the non-resident state to tax your military income. The right to tax remains with your state of domicile. It is important to

note that this inability to tax only applies to military income. Soldiers with secondary non-military income earned in their state of assignment may owe tax to that state. In addition, military spouses and other family members are not protected from paying tax to the state where they are physically living. Only the soldier's military income is protected from taxation by the non-resident state.

The following example illustrates a common situation. A soldier from Georgia enlists in the Army in that state. Georgia is his home of record. In addition, and more importantly, Georgia is also his state of legal residence. He is stationed at Fort Knox. Being stationed outside Georgia does not change his home of record or his state of legal residence. If Georgia law requires it, and it does, he will have to pay Georgia state income tax. If that soldier is married, however, and his wife earned income in Kentucky, she may have to pay Kentucky state income tax.

Soldiers stationed in a state other than their state of legal residence may take affirmative steps to change domicile to the new state. A large percentage of military members do this to avoid paying state income tax. For example, that same Georgia soldier mentioned above, if stationed at Fort Hood, may be able to change his domicile to Texas. Texas does not tax individual income. The soldier will save the money he otherwise would have paid to Georgia. To make this happen completely and correctly, there are a numbers of things the soldier needs to do. Why? Georgia does not want to lose the soldier's tax money. If the change in domicile is not clearly accomplished, Georgia will be able to continue to seek income tax from the soldier.

### CHANGING LEGAL RESIDENCE

To change domicile the soldier must be physically present in the new state. Living in a state under military orders is enough to establish physical presence. In addition, the soldier needs to demonstrate his intent to make the new state his permanent home. No single act will demonstrate the required intent, but there are several things that will indicate intent to remain in the new state and to create a change in domicile. Examples of such acts include: 1) buying property or a home in the new state; 2) canceling voter registration in the old state, reregistering in the new state, and actually voting there; 3) obtaining a driver's license and vehicle registration in the new state; 4) opening a bank account(s) in the new state; and 5) submitting a DD Form 2058 to change state of legal residence to the new state. The DD Form 2058, State of Legal Residence Certificate, is used to tell DFAS to stop withholding tax for the old state, and to start withholding tax for the new state (if the new state has an income tax). Submitting a DD Form 2058 does not change home of record and, more importantly, it may not by itself change state of legal residence either (at least as far as the state is concerned). Changing your tax responsibility from one state to another requires a true change in state of legal residence. Submitting the DD Form 2058 is only one part of the process.

Changing state of legal residence - how wise is it? For soldiers planning to do one tour in the Army and then get out, changing domicile is not a wise course of action. The Georgia soldier discussed above provides an example. If that soldier changes his domicile to Texas with the thought of avoiding Georgia tax, and then he gets out of the Army and returns to Georgia, Georgia may declare that he was a resident all along and demand back income tax to cover the

years he was in Texas. Sounds farfetched but it happens. For that soldier, the wisest course would have been to pay Georgia what it was due each year, and thereby avoid the big bill all at once.

Remember the distinction between state of legal residence (domicile) and home of record. Home of record is a military term that applies only to military members. Home of record has no bearing on state income tax. Domicile is a civilian term. In determining whether you owe tax, the states apply civilian rules on domicile. Avoid interest and possible late payment penalties by knowing the tax requirements of your state of legal residence (domicile).

#### A FINAL WORD OF CAUTION

The rules concerning change of legal residence are simple, but the legal effects and tax consequences can be very complicated. The Legal Assistance Office is available to provide information and additional guidance about changing legal residence. Telephone 624-2771 for more information or to schedule an appointment.

## CHAPTER 16

### MINORS - PERSONS UNDER AGE 18

#### INTRODUCTION

Persons under age 18 are considered minors in the Commonwealth of Kentucky. There are certain privileges (for example the free and unlimited right to make contracts and the right to vote) afforded persons who have achieved that age. There are, however, other privileges which require that the person have reached age 21 (for example the privilege to buy and consume alcohol). For that reason, and to avoid confusion, this chapter seeks to clarify some of the privileges afforded to persons based on their age.

#### CONTRACTS

Individuals under age 18 have certain legal protections sheltering them from unscrupulous persons who might otherwise take advantage of that young person's tender age. Contracts, the ability to make contracts and the enforceability of contracts involving minors are the most common area of concern. In general, a contract with a minor may be "voidable" if:

1. The goods and/or services purchased are not necessities of life such as food, medicine, etc., and
2. The minor, while still under age 18 or within a reasonable time after reaching 18, disaffirms or revokes the contract.

"Voidable" simply means that the contract has a flaw, which may allow the minor the right to cancel the contract. Even if the two conditions are present, the contract will remain valid if the minor misrepresented his or her age as being 18 or older, or if the minor is engaged in business as an adult and the other party had good reason to believe the minor was capable of contracting.

The law is designed to protect the inexperienced and should not be used to defraud or deceive. Consequently, unless the minor disaffirms the contract within a reasonable time after attaining age 18, a court, should the matter go to court, can find that the person "ratified" the contract by not voiding it earlier. The former minor will be bound by the terms of his or her contract.

If a person disaffirms or voids a contract because the contract was entered into while the person was a minor, the minor must restore and/or refund to the other party all money and property the minor received by virtue of the contract. After doing so, the minor is entitled to receive back whatever payment(s) made on the contract.

## ALCOHOLIC BEVERAGES

It is unlawful to purchase, possess or consume alcoholic beverages in Kentucky unless you are at least 21 years old. Civilian bar owners or the owners of other establishments that sell alcohol may be convicted, fined, and sentenced to prison if they sell or serve alcohol to minors, or if they allow minors on the premises to consume alcohol. When underage soldiers misrepresent their age as being 21 or older, the soldiers may be guilty of a misdemeanor, punishable under Kentucky state law.

## ALCOHOLIC BEVERAGES ON-POST

Fort Knox's policy on purchase and consumption of alcoholic beverages is as follows:

1. Only those military personnel 21 years or older may purchase and consume alcohol on the installation.
2. Family members and bona fide guests of military personnel may use club facilities, but those under 21 may not consume alcoholic beverages.

## CHAPTER 17

### MOTOR VEHICLES - LICENSE REQUIREMENTS AND ACCIDENTS

#### INTRODUCTION

Driving is a "privilege;" not a "right." As a privilege, the state has the right to grant it, to regulate it after it is granted, and in certain circumstances, to suspend and/or revoke it. Kentucky aggressively enforces that right to protect the lives and property of all persons who travel on the state's highways. The state legislature has adopted laws to define who will have the privilege to drive and/or operate a motor vehicle, to determine which vehicles will be allowed on the highways, and to establish rules governing revocation for those who violate the rules.

Aside from the rules and regulations promulgated and enforced by the state, there are a number of issues that drivers must know and be aware of to protect themselves against the actions of other drivers. Knowing how to respond in the immediate aftermath of an automobile accident can preserve your legal rights to money and/or other compensation from another driver.

Also, issues pertaining to the purchase, sale, lease, and/or repair of motor vehicles often create problems for ill-prepared consumers. Prudence in making those contracts can save you money, time, and effort and will ensure your motor vehicle experience is positive and rewarding.

#### DRIVERS LICENSES

Persons operating a motor vehicle on the highways of Kentucky must have and be in physical possession of a valid motor operator's permit. Motorcyclists and commercial truck and bus drivers must have special endorsements on their regular permits authorizing operation of those special vehicles. Soldiers and the dependent family members living in Kentucky, who are at least 16 years of age and who possess a valid driver's license issued by another state, may drive in Kentucky without a Kentucky driver's license. They can do that so long as they remain non-residents of the state. If the soldier and his/her family change their residency to Kentucky, they will need to obtain a Kentucky driver's license.

NOTE: Driver's licenses issued by US Army Europe are not valid in Kentucky.

NOTE: A state driver's permit is not required when operating an official military vehicle provided the driver has a valid military operator's license (K.R.S. 186.420).

The general statutory requirements for a driver's license state that any person 16 years of age or older, unless excluded by law, who passes a written examination and a driver's test, and who pays the required fee, is eligible to become a licensed Kentucky driver (K.R.S. 186.410). The license must be renewed every 4 years in the licensee's birthday month. The license of a Kentucky resident in the armed forces, however, may be specially stamped to remain in full force and effect as long as such service continues and up to 90 days after an honorable separation, unless suspended, canceled or revoked for cause.

Kentucky residents are required to have a probationary permit for 180 days prior to issuance of their first permanent permit. (K.R.S. 186.412). In addition, special rules apply to persons under 18 years of age. Typically this group must meet the above requirement and must complete a driver's training course and obtain parental consent. A driver's license may be obtained from your county's circuit court clerk (K.R.S. 186.412). The driver's test is conducted in the vehicle you provide. Applicants must surrender all valid driver's licenses in their possession issued by any other state.

## SUSPENSION

A driver may have his/her privilege to drive suspended and/or revoked after conviction for a serious traffic offense (DUI, DWI, driving on suspended license, reckless driving, etc.), or if a certain number of points are acquired after several minor traffic offense convictions. Likewise, a non-resident's privilege to drive in Kentucky is suspended and/or revoked automatically if that person's home state suspends and/or revokes their privilege to drive. In that situation, Kentucky will exercise reciprocity and withhold the privilege to drive.

## ON-POST ADMINISTRATIVE SUSPENSION

Soldiers and other members of the military may have their on-post privilege to drive suspended administratively after an arrest for driving under the influence. The suspension is authorized by Army Regulation (AR) 190-5 and is justified by failure of the chemical alcohol test (registering .08 or above on the breath, blood or urine test). The suspension will become a revocation automatically upon conviction. The servicemember can appeal the suspension to the President of the Installation Driving Review Board. The board will review all of the facts and circumstances and decide whether to end or continue the suspension. If the suspension is continued, the board may grant limited driving privileges for restricted purposes (to and from work, to and from the PX and Commissary, etc.). This AR 190-5 suspension usually lasts for one year. It applies on-post only, however, a court-ordered suspension following conviction on the DUI, will suspend your privilege to drive everywhere (on and off-post). NOTE: Even if convicted of the DUI and even if your privilege to drive is suspended/revoked, you can still operate Government owned vehicles (tactical and non-tactical vehicles) if you have a valid military operator's license.

## VEHICLE LICENSES AND REGISTRATION

A valid registration certificate must be carried in your vehicle at all times. In Kentucky, the vehicle registration certificate is issued annually by the county's circuit court clerk. It is the validated receipt for the Application for Certificate of Title and payment of fees.

Kentucky recognizes valid automobile registration issued by a soldier's home state. Thus, a soldier has the option of displaying his home state plates or obtaining Kentucky plates.

A nonresident soldier may be able to operate a vehicle in Kentucky with license plates issued by USAREUR until they expire, but should contact the county clerk (not the circuit court clerk) for current information. However, a resident soldier must apply for Kentucky license

plates upon arrival in the state. For an automobile that has been registered overseas, a customs declaration and proof of title (your overseas registration certificate) are necessary for the initial registration of a vehicle in Kentucky. This applies whether the vehicle was purchased overseas or taken overseas from a prior CONUS duty station. If the registration is to be accomplished by use of a power of attorney, the power of attorney must be notarized, and the county clerk will retain a copy of the power of attorney. Military personnel should contact the Vehicle Registration Office at (502) 624-6222 on Fort Knox located at 204 Old Ironsides Avenue.

It is possible for non-resident soldiers, i.e., those who are in Kentucky under valid military orders but who maintain their legal residence in some other state, to purchase a special temporary license which serves as registration while they are waiting for their vehicle registration document to come from their state of legal residence. Temporary registration is also available to the non-resident soldier whose USAREUR plates are nearing their expiration date if the home state plates have not arrived. Fee: approximately \$15.00. This temporary license (registration) is good for about one month, so it is necessary that soldiers have their registration completed with the home state within that time. There are no exceptions to the temporary time period, nor extensions. If the soldier does not have his or her home state registration before the temporary registration expires, they must register the vehicle in Kentucky.

### VEHICLE TITLES

When purchasing a motor vehicle in Kentucky, be certain the seller gives you the Certificate of Title upon purchase, since it is required to transfer title. Failure to obtain the Certificate of Title often results in unnecessary inconvenience and expense.

The Certificate of Title for the vehicle must show you and no one else (except your spouse) as the purchaser. The purchaser's name, along with the seller's signature, must appear in the appropriate places on the certificate.

Purchasers of a motor vehicle in Kentucky must transfer title from the seller to the buyer through the county clerk within a short time after the date of sale. Failure or neglect of the buyer to transfer the Certificate of Title within a short time after the sale may be a misdemeanor, and the buyer is subject to a fine. The application for transfer can be made upon a seller's Report of Sale, which may be presented to the County Clerk or any agent. At that time, a new Vehicle Certificate of Title will be issued in the purchaser's name. An owner's Certificate of Title is very important, because without it, no vehicle license plates or Vehicle Registration Certificates may be issued applied for. If the vehicle is purchased from a dealer, the dealer should make the transfer.

When a vehicle cannot be given clear title after it has been purchased, a buyer is required to secure a bond equivalent to one and a half times the value of the vehicle. For example, if the value of a car is \$100, the bond will be \$150. The vehicle must be bonded for 3 years before it can receive clear title. The bond is transferable to a new owner. You do not always have to pay the full bond in cash since some insurance companies will make arrangements to include the bond in their insurance coverage for an additional fee.



## INSTALLMENT PAYMENTS

If you purchase a motor vehicle in Kentucky under a time payment plan the seller or the lender (secured party) usually retains legal title with a lien on the vehicle until the full purchase price is paid. The buyer is designated on the title as the registered owner. The secured party is issued a Certificate of Ownership by the county clerk. Contact the county clerk's office for more information.

## PRIVATE SALES

You should be aware that just because you paid for a vehicle does not mean that you have legal title to it. Often soldiers sell vehicles informally by signing off as owner and writing in the name of the buyer as the new owner. This is NOT valid or legal. The title and registration must be correctly changed and notarized or the seller may remain liable for the costs of removing and disposing of the vehicle if it is later abandoned. **DO NOT BUY ANY VEHICLE IF THE CERTIFICATE OF TITLE ALREADY BEARS ANY NAME OTHER THAN THAT OF THE REGISTERED OR LEGAL OWNER.** You must have a clear title before you are the legal owner. The cost of this process of transferring title is a transfer fee plus any applicable tax.

In order to protect against continuing liability, the seller must immediately submit a "SELLER'S REPORT OF SALE," reporting the date of sale, license plate number, vehicle identification number and purchaser's name and address to the County Clerk's Office. The form is available from the County Clerk or the Legal Assistance Office. Take the time to submit the report of sale. It protects you, the seller, from potential liability if the buyer fails to apply for a title.

## VEHICLES AND FOREIGN COUNTRIES

If you purchase a vehicle OCONUS, you must title and register it in your home state or state of assignment upon your return from overseas. At the time you register the vehicle, you may be required to pay either a local sales tax or use tax to the state in which the vehicle is to be registered.

Use caution when you purchase a vehicle in the continental United States and you do not pay for the vehicle in its entirety up front. Many companies that finance a vehicle will not allow the vehicle to be taken outside of the continental United States. This includes vehicles with outstanding loans, as well as leased vehicles. So make certain that you keep this in mind when purchasing a vehicle on credit or leasing a vehicle. If you are transferred overseas and you failed to negotiate a solution in the contract you have three options. First, you could sell the car to another with the permission of the lease's dealer or the finance company. Second, if the car is a lease, you could walk away from the lease and pay all of the early termination penalties. Third, you could simply purchase the vehicle and pay off any outstanding debts on it.

## KENTUCKY TAXES ON MOTOR VEHICLE SALES

Kentucky has a sales tax (6%) that is applied to the purchase price of most goods, including automobiles, purchased in the state. Military personnel are not exempt from this tax. In addition to state sales tax, many local communities are permitted to add a surcharge.

Kentucky also has a use tax (currently at 6%). The use tax is designed to complement the retail sales tax by imposing a tax of like amount (total of 6%) on the use of goods purchased in other states or overseas and then brought into Kentucky. The theory is that the 6% would have been paid if the goods had been purchased in Kentucky so Kentucky is going to levy a use tax to recoup what it would have gotten upfront in sales tax. This is only an issue if the jurisdiction where the vehicle was purchased has a sales tax less than Kentucky's 6%. If the jurisdiction has a lower sales tax, Kentucky's use tax will be the difference between that jurisdiction's tax and Kentucky's 6%. For example, Virginia's sales tax is currently 4.5%. A driver who purchases a vehicle in Virginia, pays its 4.5% sales tax, and then wants to register the vehicle in Kentucky, will be required a 1.5% use tax to Kentucky. NOTE: Kentucky law exempts non-resident active duty service members stationed in Kentucky from the payment of use tax on new cars purchased in Kentucky. The theory is that the person will register the vehicle in his or her home state and pay that state's use tax.

Personal property tax is charged on the assessed value of a person's tangible personal property. It is levied on goods after they are purchased. The Soldiers' and Sailors' Civil Relief Act protects nonresident soldiers from having to pay Kentucky personal property tax. In order to invoke this exemption, you need to take your January LES for the current year and a completed DD Form 2058 listing your state of legal residence to the vehicle registration office. When you present these documents, you will not be charged the tax, only the renewal registration fees (for a vehicle registered here). NOTE: The vehicle must be registered in the service member's name as primary owner and not in a spouse or child's name in order for this exemption to be properly applied. Also, the exemption does not apply to leased vehicles.

## AUTOMOBILE ACCIDENTS

Auto accidents happen. Knowing how to respond and how to act in the moment of crisis is essential. This is a short list of suggestions for how to protect your legal rights should you be involved in an auto accident.

1. Remain at the scene and do not move your vehicle until the police arrive. The police may take measurements (skid marks, etc.) to document the accident. Those measurements may be helpful in determining who was at fault, and in resolving the matter with insurance companies and with other drivers. On some busy highways, motorists are, however, encouraged to move damaged vehicles out of the path of traffic and onto the shoulders of the highway. Signs will be posted to instruct drivers if that is the case. On a separate note, be aware that it is a crime to flee the scene of an accident.

2. Inform the police immediately. If you are unable to do so, have a bystander or a passenger telephone the police.

3. Obtain the other driver's name, address and age. Ask to see his or her driver's license. If possible, make a note of the license expiration date and any driving restrictions, such as corrective lenses. Also, check the vehicle registration to determine if someone other than the driver is the owner. Put all of this in writing if at all possible.

4. Obtain the name of the other driver's insurance company. Drivers operating a vehicle in Kentucky are required to carry proof of their auto insurance in their vehicle at all times (K.R.S. 304.39-117). Most insurance companies provide this information to their motorists on small wallet-size cards. Write down the name and address of the company, the name and address of the local agent, and the policy number.

5. Write down the names and addresses of witnesses. This information will be important if you have to go to court to determine fault and to assign liability.

6. Be cautious about what you say. Do not admit liability (that the accident was your fault) to either the other driver or to the police. That would be an admission, which can be used against you in court. Don't say you're sorry - that's an admission too.

7. Write down all the facts of the accident as soon as you can...memory fades amazingly quickly. If appropriate, make a diagram showing what happened. Ask your passengers, if any, and witnesses to write down what they saw.

8. Contact your insurance agent immediately. Most policies require prompt notice, and provide that failure to do so could void your coverage. Do not trust the other driver. Do not rely on the other party's statements that it might be best to not contact insurance companies.

9. Report the accident to the appropriate state agency. In Kentucky, whenever there is a vehicle accident causing physical injury, death, or damage that leaves the vehicle inoperable, a law enforcement officer must be contacted immediately to fill out a report (K.R.S. 189.635(2)). In addition, a full written report must be turned in to the Department of the State Police if the accident involved more than \$500 in property damage. That report must be completed on forms published by that Department and filed with it within 10 days of the accident. Failure to file the report may result in the loss of both your driver's license and your driving privileges.

10. Unattended Vehicles: If you are involved in a collision with an unattended vehicle, locate the owner of the vehicle or leave a signed statement in a conspicuous place. Also, be sure you comply with any of the requirements in the "9" above. Failure to do so is a misdemeanor and involves criminal penalties. Immediately report the accident to the proper authorities.

11. Uninsured Motorist: Auto insurance with liability coverage is required in Kentucky. Chapter 16 of the Kentucky Revised Statutes elaborates on specific motor vehicle insurance requirements. Failure to have valid liability coverage is a violation of state law. Violation is a traffic offense punishable by a fine of not more than \$1000.00 (K.R.S. 304.39-117). On a related note, Kentucky drivers must, upon request, provide proof of insurance to law enforcement officers (K.R.S. 189.636).

12. Seatbelts: Kentucky has a mandatory seatbelt law. The law requires every person operating or riding in a motor vehicle made after 1965 to wear a safety belt (K.R.S. 189.125(6)). Children under 41 inches in height must be secured in a child restraint system that meets federal child safety guidelines (K.R.S. 189.125(3)). Be aware that insurance companies may be able to deny coverage to individuals who were not wearing a seatbelt at the time of an accident, regardless of fault.

13. Traffic Violation for Not Wearing a Seatbelt: In Kentucky, operating a vehicle without wearing a seatbelt is a secondary offense, which means a law enforcement officer cannot stop your vehicle for simply not wearing your seatbelt. There must be a primary violation (speeding, driving under the influence, etc.) to prompt the stop. Once you have been stopped, you can receive a ticket for not wearing a seatbelt. \*\*\*NOTE: Failure to wear a seatbelt is a primary violation in Indiana.\*\*\*

14. Rendering Assistance in an Accident: Kentucky law requires vehicle operators to render assistance to "other persons affected by the collision," as long as doing so does not cause serious danger to that operator or passengers in their vehicle (K.R.S. 235.250).

#### AUTOMOBILE ACCIDENTS INVOLVING GOVERNMENT VEHICLES

When involved in an accident with a Government owned vehicle, make certain you follow the protocol above. Make especially certain that you obtain the names, telephone numbers, addresses, and SSNs of all parties involved. Also, you will need a detailed account of the accident (including location and time), a listing of any claimed injuries and the absence of any injuries, and a detailed description of the property damaged in the accident. **MAKE CERTAIN THAT YOU ADMIT NO FAULT.**

The United States Government is self-insured. As a result, persons with any questions about compensation for damages should be referred to the Office of the Staff Judge Advocate, Claims Division; ATTN: ATZK-JAC; Building 1310; Fort Knox, KY 40121-5000. The telephone number is (502) 624-6913.

GOV drivers involved in an accident should contact the Claims Division and provide them with a copy of the police accident report, Standard Form 91, Motor Vehicle Accident Report, and any other information you gathered at the scene.

#### INSURANCE REQUIREMENTS IN KENTUCKY

Kentucky has a mandatory insurance requirement for persons operating a motor vehicle on the state's highways. Motor vehicle owners or drivers may satisfy the requirement of the financial security law if they maintain valid liability insurance coverage of either:

1. Not less than twenty five thousand dollars (\$25,000) for bodily injury to, or death of, one person in any one accident; fifty thousand dollars (\$50,000) for bodily injury or death to two or more persons in any one accident; and ten thousand dollars (\$10,000) for property damage,

OR

2. Not less than \$60,000 for all damages whether arising from bodily injury or damages to property in a single accident.

If you drive your motor vehicle on Fort Knox, you are required by regulation to have insurance in the amount which satisfies the above mentioned financial security law (\$25,000/\$50,000/\$10,000 OR \$60,000). Failure to maintain this minimum amount can subject you to administrative and disciplinary actions including possible court-marital.

NOTE: Kentucky has a large number of persons who violate the law and operate vehicles without sufficient insurance. It is, therefore, advisable to carry uninsured/underinsured motorist insurance to protect yourself.

### DRIVING UNDER THE INFLUENCE

Kentucky has an implied consent statute. That means persons who drive on the public roadways are deemed to have given their prior consent for submission to a blood, breath, and/or urine sobriety test any time they are suspected of driving while intoxicated. You are presumed legally intoxicated if your blood alcohol content is .08% or higher. For persons under age 21, the presumption exists if your blood alcohol content is .02% or higher. You may also be guilty of driving while intoxicated if you are under the influence of any alcohol, drugs or any combination of drugs and alcohol whatsoever.

If you are stopped either on or off-post and refuse to submit to a sobriety test, your Kentucky state driver's license, or your nonresident operating privileges (if your driver's license is from a state other than Kentucky), will be revoked and/or suspended. Passing the chemical test (being under .08% or under .02% if under age 21) is only part of the story. Other evidence (failure of field tests - unable to stand on one foot, unable to count backwards, etc.) can be used to justify a ticket (and a conviction) for DUI.

The penalties for a first conviction of driving while intoxicated include a fine, imprisonment, or both. The fines range from \$200 to \$500, while the prison sentence can range from two (2) to thirty (30) days. In addition, your license will be suspended for a period of 30 to 120 days.

The penalty for a second DUI conviction within a five (5) year period is far more severe. The minimum penalty is a \$350 fine and seven (7) days in prison and the maximum penalty is a \$500 fine and six (6) months in prison. In addition, your license will be suspended for a period of one to one and one half years.

The penalty for a third DUI conviction within a five (5) year period is even more severe. The minimum penalty is a \$500 fine and thirty (30) days in prison and a maximum penalty is a \$1,000 fine and twelve (12) months in prison. In addition, your license will be suspended for a period of two to three years.

After the third DUI conviction in any five-year period, the court treats future DUI convictions as felonies, bringing about very large penalties. In addition to being a felon (which can affect employment, etc...), you must spend a minimum of 120 days in prison, and your license will be suspended for five (5) years for each offense.

Certain aggravating factors in a DUI conviction will double the minimum prison sentence. These factors include traveling at thirty (30) miles per hour or more over the speed limit, going the wrong way on a limited access highway, causing serious injury or death in a related accident, having an alcohol concentration over .18, refusing to submit to sobriety tests, or having someone under the age of twelve (12) in the car.

Courts must also impound the individual's license plates or require the installation of ignition interlock devices for the second offense during the period of license suspension.

As a result of a DUI conviction, you will most likely have difficulty keeping or obtaining car insurance. At a minimum, the premiums for your current insurance may greatly increase. Also, if you are licensed in another state, that state will be notified of your DUI conviction or your refusal to take a sobriety test. There is a strong possibility that your home state will suspend or revoke your driving privileges.

A DUI conviction will also result in a one-year suspension of on-post driving privileges as directed by Fort Knox's Commanding General, a general officer memorandum of reprimand and other possible adverse administrative action, such as administrative reduction, bar to reenlistment, QMP, or administrative discharge.

**DON'T DRINK AND DRIVE!!!**

## CHAPTER 18

### MOTOR VEHICLES - USED CARS - BUYER BEWARE

#### INTRODUCTION

Are you shopping for another car or truck? If so, a used or "previously owned" vehicle may be a bargain for you and your family. Whether you're looking to replace your primary vehicle, or simply looking for a reliable second car, a used vehicle is often considerably less expensive than a new one and is often just as reliable. There are certain disadvantages though used car buyers must keep in mind. The most important thing to remember is most used cars are sold "AS IS." That means the car is being sold without a written warranty. A warranty promises the product being sold is reasonably free of defects, and that it is fit for its ordinary uses. In the context of a car, a warranty means the vehicle's major component parts, and the car as a whole, are reliable and safe for ordinary driving. Without a warranty, the purchaser gets the vehicle without those assurances; you will have to pay for repairs out of your own pocket. The seller will not have a responsibility to fix or otherwise service the car. One note - depending on its age and on its mileage, a manufacturer's warranty or service contract may still cover the car. Be sure to ask the seller for details.

#### CAR DEALERS VERSUS PRIVATE SELLERS

Car dealers are merchants in the business of buying and selling cars. They have a responsibility to inform you a used car sale is "AS IS" and that it is without a warranty. Aside from that responsibility, salesmen working for a dealer often make statements about the quality of a used car. They may say things like; "it's a great car" or "it's a real winner." Those statements are obviously made to convince you to buy the car. The statements, however, do not constitute a warranty, and do not change the fact the sale is "AS IS." A written warranty is always your assurance the sale is not "AS IS." Oral warranties arising out of conversations with a dealer are possible, but they are rare and very hard to prove. An oral warranty would be a statement that specifically refers to the quality of the car. Such a statement might be; "the car will definitely go another 10,000 miles." Most oral statements, however, are not that specific, and do not rise to the level of a warranty. If you want a warranty, and the dealer is willing to give you one, get it in writing.

Private sellers are viewed differently by the courts and the law. If you buy a used car from a private individual (for example, through a classified newspaper ad), it will be presumed the sale was "AS IS." The seller does not necessarily have to tell you that. The seller's only obligation is to sell you a car capable of providing basic transportation - nothing more.

#### INSPECT THE VEHICLE BEFORE BUYING

Before you buy a used car, it is a good idea to have the car inspected by a professional mechanic. By doing that, you will know beforehand the true state of the car's mechanical condition. Some sellers may hesitate at the suggestion due to insurance concerns (having a

non-employee/non-customer come onto their property subjects the seller to liability if the person somehow gets injured). Under no circumstance, however, can the seller stop you from inspecting the car yourself. Remember too; without inspecting the car, you lose the opportunity to claim any type of fraud should something go seriously wrong with the car. Fraud may exist if the seller knew something was seriously wrong with the car and did not tell you about it. It could give you the right to break the contract, but you must inspect the car to preserve that right.

### USED CAR INSPECTION CHECKLIST

The following checklist may be helpful if you are shopping for a used car. You or a professional mechanic, if you hire one, should check for cracks, leaks, breaks, abnormal noises, and missing or inoperable parts in the following mechanical and structural systems (this is not an exhaustive list):

- Frame and body: Is the frame straight and solid?
- Engine: Is there excessive oil leakage? Are the belts in place? Are the belts worn? Is the block or head cracked? Does the engine look clean? Are there any strange sounds?
- Transmission and drive shaft: Is the transmission fluid level proper? Are the transmission and drive shaft in good shape?
- Cooling system: Does the radiator leak? Does the water pump work properly?
- Electrical system: Does the battery look relatively new? Do the alternator, generator, battery and starter work properly?
- Exhaust system: Check for leakage and exhaust smoke when the engine is running.
- Fuel system: Is there any visible leakage?
- Accessories: Do gauges and warning devices work? Do the air conditioner, heater, and defroster work? Are the seat belts in good condition? Do the headlights, turn signals, interior lights, etc. work? Do the horn and radio work?
- Brake system: Do the rear brake lights work? Is the brake pedal firm under pressure? Does the vehicle stop in a straight line?
- Steering system: Does the steering wheel seem too tight or too loose? Are the front wheels aligned properly?
- Suspension system: Are the ball joint seals intact? Are the structural parts solid and straight? Are springs and shock absorbers properly connected?
- Tires: Are the tires worn badly? Are they cut, cracked, or otherwise damaged?
- Wheels: Are the wheels intact? Are they cracked or otherwise damaged?

### WHAT LEGAL ASSISTANCE CAN DO

If you have questions or need additional information, please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).



## CHAPTER 19

### MOTOR VEHICLES - CAR REPAIRS

#### INTRODUCTION

Complaints about car and truck repairs are a common consumer problem. Poor or shoddy workmanship, overcharging, and deception in making repairs are among the more common concerns. As a consumer, there are several things you can do to protect yourself from mechanics and repair shops who may be out to dupe you.

#### DO YOUR HOMEWORK

A reputable mechanic or repair shop is your best protection against fraud or faulty repairs. Locating a reputable mechanic, however, may entail some work on your part, especially if you are new to an area, or if you have not had your vehicle repaired before. How do you find a reputable mechanic? The best suggestion is to ask your friends. Friends can be a great source for information like this. If a mechanic did a good job on their car, they will be more than glad to tell you. Better yet, if a mechanic did a lousy job repairing their car, they will be even happier to tell you. Also, the local Better Business Bureau, the Chamber of Commerce, or your Army Community Service office should be able to help you. If your installation has a motor craft shop (Fort Knox has one next to the Hansen Center), the professionals on staff there are usually reputable and are available to either repair your vehicle, or to recommend someone off the installation who can do the repairs. Once you locate a shop, feel free to ask them if they have a past customer or two that you can contact to verify the quality of the shop's work. A reputable shop should not hesitate to do so.

#### GET THE AGREEMENT IN WRITING

You should always insist on a written estimate. Get the estimate before the mechanic or shop starts the repair work. The estimate should list the cost of all parts and labor to be used on your vehicle. Tell the mechanic; "if my car requires additional parts or labor over the estimate, call me with the information before you do anything." With that, you will know in advance if problems come up. You will have authorized the additional parts or labor and the final bill will not surprise you. Whatever the case, your final bill should be close to the estimated price.

Question the bill if the charge is much higher than the estimate, or if the work was done without your authorization. Overcharging happens. If you suspect you have been overcharged, have the shop justify, and then write out, the reasons for the difference in cost. Keep in mind if you refuse to pay the repair bill, the mechanic may have the right to keep your car until you pay.

## COMPLAINTS ABOUT BEING OVERCHARGED

First of all, the easiest solution may be to pay the bill and negotiate a reduction in the price later on. That way you will have your vehicle and the shop will not have you "over a barrel," so to speak trying to get it. When paying an overcharged bill, make it perfectly clear you do not agree with the total. Speak to the manager and see if you can resolve it amicably. If not, he or she will know you had a complaint. After getting the car back, if the shop refuses to adjust the price, small claims court may be your best option. Small claims court has authority to listen to your side of the story, to the mechanic's side, and then make a finding according to the law.

If you believe the vehicle was not repaired correctly, and that the problem is one of poor workmanship or substandard parts (old or refurbished parts instead of new parts if new parts were promised) as opposed to price, your first step should be to take your car to another repair shop. Give the second mechanic a copy of the itemized bill from the first shop. Have the second mechanic inspect the repairs with an eye for the quality of the workmanship or for the quality of the parts. If the second mechanic agrees the repairs are not satisfactory, have him or her put that conclusion in writing. You can use that opinion to try to get your money back from the first shop. If you wish, the second shop can then do the repairs correctly. Again, get everything in writing, and keep the substandard parts as evidence of the challenge.

## MISREPRESENTATION - WHAT THE LAW SAYS

It is unlawful for a mechanic or a repair shop to: 1) knowingly make a false or misleading statement about the need for parts, replacement or repair service; 2) to represent that work has been done, or parts replaced, when that isn't true; or 3) to represent that repairs were made with new parts when, in fact, the parts were secondhand or refurbished. Those acts constitute a fraud and may authorize you to break your contract with the mechanic or shop. Your Legal Assistance Office can advise you on these matters should the situation require it.

## WHAT LEGAL ASSISTANCE CAN DO

If you have questions or need additional information about car repairs or going to small claims court, please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 20

### MOTOR VEHICLES - LEASING A CAR

#### INTRODUCTION

More and more often these days, consumers are deciding to lease a new car instead of buying one. Leasing has advantages but there are disadvantages too. Savvy consumers should know the pros and cons of a lease before agreeing to it. Remember: car dealers and car leasing companies are in business to make money. An educated consumer is a smart consumer.

#### LEASING INSTEAD OF BUYING

What is a car lease? A car lease is a contract under which you obtain possession of a vehicle and in return you agree to make monthly payments for a set period of time. At the end of the period, you generally have the right to purchase the leased vehicle for a price less than the original sticker price. In a sense it is a rent-to-own agreement. At the end of the lease, the car may become yours. The lease will usually require little, if any, money down, and the monthly payments are generally less than those for the purchase of the same vehicle. These features may alleviate a concern for consumers making ends meet on a tight budget. In addition, a leased vehicle normally will remain under warranty for the entire lease term, which may protect you against outrageous repair costs should something happen to the vehicle. The down side to the lease is that you are not acquiring equity (ownership) in the car. At the end of the lease term, if you do not purchase the vehicle at the predetermined purchase price, you walk away with nothing to show for all of the payments you made.

Buying the vehicle, on the other hand, may be a better option. Once you buy the car, even if you finance the purchase with a loan from a bank, credit union, or other financial institution, the vehicle is essentially yours. It's true, if you finance the purchase, the financial institution may hold on to the title as collateral or will require that your title show them as a lienholder. Every payment is part interest and part principal so you are acquiring equity in the car. With every payment, it is becoming more and more yours. At the end of the loan period, and with the last payment, the car will be completely yours. You can sell it, trade it in on another vehicle, or simply continue to drive it for as long as you choose.

#### NEGOTIATIONS

For consumers to determine whether leasing is an appropriate option for them, they need to understand some of the basic terms, calculations, and conditions, which constitute a lease. A lease is like any other contract. It requires negotiation and agreement. Don't let a dealer or leasing company get the best of you simply because you're not familiar with how a lease works.

First, the true purchase price of a leased vehicle is the "capitalized cost" or "cap cost." The cap cost is the figure that represents what the vehicle's "residual value" is at the end of the

lease, plus the total of all payments made during the lease term minus interest paid as a part of those payments. It sounds complicated but it really isn't.

An example may help explain the concept. The sticker price of the car is \$15,000. You negotiate a cap cost equal to the sticker price (\$15,000). The dealer and you agree to a three-year lease term. Using a professional guide such as a "blue-book," the dealer determines the car will be worth \$9,000 in three years. The car's residual value is that \$9,000. The car will depreciate \$6,000 (\$15,000 - \$9,000) over the three years, and that is the base amount of what you will pay over the three year lease term. With \$6,000 divided by 36 (3 years equals 36 months), your monthly payment would be \$166.67. That's not the end of the story though. Interest, finance fees, and sales and ad valorem (property) tax will be added to that monthly payment. The total monthly payment will likely be over \$200.00.

In addition, the dealer or leasing company may require an up front security deposit (like a landlord for an apartment - to protect against damage or loss), an acquisition fee to cover dealer costs, a disposition fee to cover dealer costs at the end of the lease, and fees for damage exceeding ordinary wear and tear. Finally, most lease agreements have mileage limitations (perhaps only up to 15,000 miles per year). Excess mileage will prompt yet another fee.

#### GEOGRAPHIC LIMITATIONS - MILITARY MEMBERS BEWARE

Most lease agreements have geographic limitations too. Military members must be very careful not to sign a lease that prevents moving the vehicle out of state. PCS moves, even if pursuant to military orders, will not override such a lease provision. The car still belongs to the lessor and the lessor will want its collateral where it can get it - in the state where the vehicle was leased.

Also, lease agreements will not allow taking the vehicle overseas. There are virtually no exceptions to this prohibition. Most dealers and leasing companies consider anything outside the continental United States as overseas. Alaska and Hawaii are considered overseas. Military members have two options in this situation: 1) walk away from the lease and lose everything paid up to that point plus penalties and fees for early termination of the lease, or 2) somehow buy the car and pay-off the lease company. Keep in mind though most lenders will not allow financed vehicles to go overseas either, so the service member may be out of luck unless he or she can come up cash to settle the lease.

#### WHAT LEGAL ASSISTANCE CAN DO

If you have questions or need additional information, please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 21

### EVALUATIONS - NCOERs, OERs, and AERs

#### THE ARMY EVALUATION REPORTING SYSTEM

The evaluation reporting system is a comprehensive career management tool used by the Army to record performance and potential information about officers and noncommissioned officers. The information is reported to the Department of the Army (DA) in the form of official officer, noncommissioned officer, or academic evaluations. Those evaluations stand as a condensed statement of what the rated individual did during a certain period of time and how well he or she did it. Completed evaluations are filed in the rated individual's permanent personnel file, and are considered prior to selection for promotion, command, civilian or military schooling, or retention on active duty. Because of their importance, and because the Army wants reliability in the evaluation process, the reporting system has certain built-in safeguards to ensure completed evaluations are fair, accurate, and objective. Those safeguards include an inquiry process and an appeals process, which allow for correction of flawed or erroneous evaluations.

#### APPLICABLE ARMY REGULATIONS (ARs)

Officer evaluations (OERs) are governed by AR 623-105.

Noncommissioned officer evaluations (NCOERs) are governed by AR 623-205.

Academic evaluations (AERs) are governed by AR 623-1.

Officer, noncommissioned officer, and academic evaluations are completed using different forms (OERs - DA Form 67-9; NCOERs - DA Form 2166-7; AERs - DA Form 1059). The inquiry process and the appeals process, however, are almost identical for all three. This information paper provides general guidance applicable to either evaluation. The individual ARs should be consulted for more precise information.

#### THE RATING CHAIN

The evaluated servicemember is the rated officer/noncommissioned officer. The person responsible for completing the evaluation is the rater. The rater is usually the rated officer's first-line supervisor. He or she has primary responsibility for making sure the rated officer has a full understanding of the duty position in which he or she will be evaluated. The rater usually works in close contact with the rated officer so that he or she has a solid grasp of the rated officer's performance. The senior rater is the rater's supervisor. The senior rater's primary responsibility is to evaluate the rated officer's potential for future Army service. The senior rater will have a broader perspective drawn from a more senior leadership position and can use that perspective to more accurately identify the rated officer's strengths and weaknesses. He or she will also review the rater's comments to ensure the evaluation remains consistent. Together, the rater and the senior rater comprise the rating chain. For noncommissioned officer evaluations, a final check is provided by a reviewer. The reviewer is usually the senior rater's supervisor. The reviewer provides yet another check ensuring the evaluation is fair, accurate and objective. For officer

evaluations, the rating chain may have an intermediate rater in between the rater and senior rater. The intermediate rater fills the void in duty situations where the rater and senior rater have little, if any, direct contact. In those circumstances, the intermediate rater provides the additional check that officer evaluations are accurate and objective.

### COMMANDER'S INQUIRY

Rated officers/noncommissioned officers who believe an evaluation is unfair, unjust, or otherwise inaccurate may request an inquiry from the next higher commander above his or her rating chain. If requested, the inquiry must be completed within 120 days of the thru date on the evaluation. The inquiry is not an appeal, and the inquiring commander is not authorized to direct that an evaluation be changed. The commander will confine his or her inquiry to matters relating to the clarity of the report, the facts contained in the report, the compliance of the report with the applicable AR, and the conduct of the rated officer and the rating officials. The purpose of the commander's inquiry is to provide a greater degree of command involvement in preventing obvious injustices to the rated officer. In a sense, the inquiring commander provides what is arguably a more objective view of the rating situation. The rating chain is authorized to use the inquiry as deemed appropriate.

### APPEALS

Appeals are appropriate if the rated officer/noncommissioned officer firmly believes the evaluation is inaccurate or unjust and that it is not a fair appraisal of his or her performance and potential. Being dissatisfied with the quality of a report, or feeling that it should have been better, do not create grounds for an appeal. Clear and convincing evidence of error is required, and that can be hard to obtain. Statements from third parties knowledgeable of your performance are needed to substantiate an appeal. Even with those statements, it is very difficult to challenge the judgment of your rating chain. Once filed, evaluations are presumed to be correct administratively and in content (substantively). Overcoming that presumption requires solid reliable information to the contrary.

Timeliness: Administrative errors, including deviation from the established rating chain, insufficient period of observation by the rating chain, errors in the cited report period, and errors in height/weight or physical fitness test information, may be appealed regardless of the time elapsed since completion of the evaluation. Substantive errors, including allegations of prejudice, partiality, etc., must be appealed within 5 years of completion of the evaluation. NOTE: under the new OER regulation, officers have 3 years to appeal evaluations completed under the new AR. The 5-year suspense applies to OERs completed under the old AR.

### WHAT LEGAL ASSISTANCE CAN DO

We can help with the preparation of commander inquiry requests and evaluation appeals. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 22

### POWERS OF ATTORNEY and WORLDWIDE DEPLOYMENT

#### INTRODUCTION

Soldiers who are PCSing, deploying, or anticipating extensive field time, often provide family members and/or friends with legal authority to manage financial or other matters during their upcoming absence. Powers of attorney, signed by the grantor and notarized by a notary public, formalize the legal relationship created between the soldier and the person selected to help with those matters. Whether the soldier chooses his or her spouse, a different family member, a friend, or perhaps even a fellow soldier, the power of attorney defines the scope of the arrangement. In legal terms, the power of attorney creates an "agency" relationship.

#### THE AGENCY RELATIONSHIP - A "PRINCIPAL" AND AN "AGENT"

The agency relationship legally binds you, the principal, and the person you name in the power of the attorney, the agent. With the power of attorney, you authorize the agent to do certain things or to perform certain acts on your behalf. Providing your designated agent with a power of attorney gives notice to third parties (banks, businesses, creditors, etc.) that the named agent has permission to act for you.

#### THIRD PARTIES - NO OBLIGATION TO ACCEPT POWERS OF ATTORNEY

Third parties are not required to honor powers of attorney, but most will. The third party will most likely require presentation of the original power of attorney before allowing the agent to act for you. For that reason, be sure you give the original power of attorney to your agent. Photocopies are not an acceptable substitute.

\*\*\*NOTE: banks and other financial institutions often draft and make available their own unique powers of attorney. Those institutions may not accept powers of attorney prepared by other offices. The individual financial institution can answer questions about acceptance of other powers of attorney.\*\*\*

#### TYPES OF POWERS OF ATTORNEY

Powers of attorney are designated as either "general" or "special" depending on what you empower your agent to do. A general power of attorney authorizes your agent to do just about everything, and to do it all in your name. That includes authority to borrow money in your name, to buy or sell things in your name, and to make contracts in your name. Because the agent's authority is almost without limit, it is vitally important you select only persons you trust without reservation. You must be confident they will act in your best interests only. A spouse or a parent may be the wisest choice. Do not give general powers of attorney to friends or fellow soldiers known for only a short period of time. Do not set yourself up for failure.

Special powers of attorney grant limited authority to do specific things. For example, a special power of attorney can authorize someone to register your car, to clear your quarters, to ship household goods, or to buy or sell a house without granting authority to do anything more. The focus is on the performance of one or two isolated acts. As with a general power of attorney, be sure the named agent is someone you trust without reservation.

### CONSIDERATIONS TO REMEMBER

First, make sure you choose agents wisely. This is the cardinal rule. It is a rule that cannot be repeated too often. Powers of attorney should be given to the persons you trust the most, and to no one else. Avoid problems from the outset by protecting yourself at the beginning.

Second, plan ahead and determine what acts you will need to have your agent accomplish on your behalf. This will allow you to provide your agent with one or more special powers of attorney instead of a general power. This will limit your agent's ability to perform unauthorized acts on your behalf. As a rule, you should avoid giving general powers of attorney.

Third, determine approximately how long you will need the agent to act for you. Powers of attorney should list an expiration date on which the agent's authority ends. It is advisable to keep the time frame the shortest possible; if you later find you need to give the agent more time, you can always execute another power of attorney and mail it back to your agent. Remember - think before you authorize someone to act for you. The person will be acting in your name. It's your name, your credit, your reputation, and your money on the line.

### REVOCATION

A power of attorney may be revoked at any time prior to its stated expiration date. The principal must give notice to the agent that the power is revoked. Thereafter, the agent will lack authority to bind the principal. Notice should be given in writing, although an oral revocation can be effective. Notice of the revocation should be given to all third parties that previously relied on the power of attorney and to all third parties that may unwittingly rely on it in the future. Tearing up the power of attorney is the most effective method of revocation. To do that, the principal obviously has to receive it back from the agent. One final note; if the power of attorney was somehow recorded as part of a public record, a properly acknowledged revocation should be recorded as well.

### WHERE TO GO FOR A POWER OF ATTORNEY

The Legal Assistance Office can answer questions about powers of attorney and can assist in their preparation. Powers of attorney are executed on a walk-in basis. An appointment is not necessary. Our office is located in Pike Hall, Building 1310, at the corner of Knox Street and 3<sup>rd</sup> Avenue. Telephone 624-2771 for more information.



## **CHAPTER 22, PART II - WORLDWIDE DEPLOYMENT**

### **SOLDIER READINESS**

The Army has experienced a dramatic rise in operational tempo since the end of the Gulf War. Deployments and operations other than war have become the norm as opposed to the exception. Soldiers must be ready for deployment on short notice. Even personnel at a training installation such as Fort Knox, could get the call to deploy with little, if any advance notice. Because of that ever-present possibility, soldiers have an obligation remain vigilant in making sure they are ready for worldwide deployment.

### **PERSONAL AFFAIRS**

The following personal and/or family concerns affect readiness:

1. Military Identification Card: All soldiers need a valid ID card and two sets of identification tags. If you need a new ID card, contact the ID card section at the One-Stop Building (White Hall) located on Fort Knox's main traffic circle. Their telephone is 624-8123. Your unit S1 is the point-of-contact for additional identification tags.

2. Finances: Can family members access your bank accounts in your absence? Do you and your spouse have a joint checking and/or savings account? Does your military pay direct deposit into one of those accounts? Should you set-up an allotment(s) to pay monthly bills? Who will pay your bills in your absence? Do those persons need a power of attorney(s)?

3. SGLI: Have you designated your life insurance beneficiaries? Do you need additional coverage? The full \$200,000 in SGLI coverage is available to all pay grades at a flat rate of \$16.00 per month.

4. Personal Property: Use a power of attorney to designate an agent to take control of your POV and any personal property at the unit.

5. Medical/Dental Affairs: Do you have your up-to-date shot records? Are you current with your shots? Have you had a dental exam in the past year? Do you have two pair of glasses and optical inserts for your protective mask?

6. Legal Matters: Do you need a power of attorney, a will, or a living will? Be sure you read Chapters 22 and 28 for information about the need for, preparation of, and execution of powers of attorney, wills, or living wills. Telephone the Legal Assistance Office at 624-2771 for more information or to schedule an appointment.

7. Officer Record Brief/Enlisted Record Brief - 201 File: Is your emergency data card (DD Form 93) current? Do you have the correct person(s) listed for notification in case of your injury or death? Is your SGLI beneficiary form accurate and up-to-date? Your unit S1 or the

Military Personnel Office (MILPO) are points-of-contact to update these records and other documents in your personnel file.

8. Important Papers: Does your spouse or next of kin know the location of your important papers? Specifically, does he or she know the location of your will, living will, marriage certificate, birth certificate, insurance policies, bank account documents, real estate deeds, vehicle titles, and other important documents?

### DEPLOYMENT CHECKLISTS AND SOLDIER READINESS PROGRAMS

Your unit S1 can provide you with a pre-deployment checklist which condenses these issues into clear and easy to understand review sheet. In addition, Fort Knox's tenant and reserve units conduct periodic soldier readiness drills to make sure personnel are ready for deployment. The Legal Assistance Office enthusiastically supports the installation soldier readiness program (SRP) and frequently sets-up a station at the SRP site. We can prepare and execute wills, powers of attorney, and living wills at the SRP site so that soldiers leave the drill with those legal affairs in order. Telephone 624-2771 for more information. Your Legal Assistance Office is here to serve - Hooah!!!

## CHAPTER 23

### DEPARTMENT OF THE ARMY BARS TO REENLISTMENT QUALITATIVE MANAGEMENT PROGRAM (QMP)

#### BARS TO REENLISTMENT

A bar to reenlistment is the administrative tool used to deny reenlistment to substandard soldiers (see Chapter 3). Army Regulation (AR) 601-280 sets forth policies and procedures for the Army's retention/reenlistment program. The AR is clear that only soldiers of "high moral character, personal competence, and demonstrated adaptability" to the requirements of military service will be reenlisted into the Army. With that standard, the AR authorizes bars for soldiers whose immediate separation is not warranted but whose reenlistment is not in the best interest of the Army.

#### LOCAL BARS VERSUS DEPARTMENT OF THE ARMY IMPOSED BARS

Local bars to reenlistment are imposed by a soldier's chain of command. The focus is on whether the soldier should be allowed to serve beyond ETS, not on forcing the soldier out prior to ETS. DA imposed bars (QMPs) are different. The focus of a QMP is separation. The rationale: the soldier's personnel file contains negative information which will prevent promotion. Without the possibility of promotion, the soldier should be separated from the Army. In a sense, a DA-imposed bar is a part of the Army's "up or out" philosophy.

#### QUALITATIVE MANAGEMENT PROGRAM

The Army periodically reviews the official files of noncommissioned officers, staff sergeant and above, for possible promotion. The Sergeant First Class selection board, and the Master Sergeant selection board, examine the performance portion of a soldier's Official Military Personnel File (OMPF) for negative information (weaknesses) which will prevent promotion. Examples of negative information include non-judicial punishment (Article 15s), General Officer Reprimands (GOMORs), and poor career evaluations (NCOERs). Once the board identifies the negative information, the soldier may be identified for separation under the Qualitative Management Program.

#### PROCEDURES

The QMP bar and a statement of option are forwarded from the US Army Enlisted Records and Evaluation Center (USAEREC) down through the chain of command to the soldier's battalion-level commander. That commander presents the bar to the soldier. The soldier has 5 days to select an option. Those options include 1) to appeal the QMP with the goal of having the bar removed; 2) to be separated from the Army; 3) to request immediate retirement (soldiers over 20 years active Federal service); or 4) to be scheduled for retirement (soldiers with at least 17 years and 9 months of active Federal service). Appeals must be returned to the battalion-level commander within 45 days. The chain of command then has 15 days to forward it, with

recommendations for approval or disapproval, back to USAEREC. The promotion board, which initiated the QMP, will consider the appeal and render a decision.

## APPEALS

Appeals must argue material error or improved performance. Material error usually exists where something has been misfiled in a soldier's OMPF. For example, an Article 15 belonging to John Smith is mistakenly filed in James Smith's file. The appeal simply points out the material error, and asks that the mistake be corrected.

Improved performance is the more common ground on which to appeal. Improved performance simply means the soldier has overcome the weakness cited by the selection board, and that separation is not in the best interests of the Army. An example may be a staff sergeant who received an Article 15 ten years earlier as a private. The staff sergeant has been promoted several times since, has received several awards, and has received a number of excellent evaluations. Improved performance exists in the form of the motivation, hard work, and commitment to excellence, which prompted those promotions, the awards, and the excellent NCOERs. In addition, however, the soldier needs as many supporting statements as possible. The statements should support removal of the bar and should be from past commanders, supervisors, or anyone else knowledgeable of the quality of the soldier's duty performance. The goal is to paint the picture of a dedicated soldier who wants to stay in the Army, and that it is in the best interest of the Army to have the soldier stay.

Favorable chain of command endorsements are crucial for a successful QMP appeal. If the battalion-level commander, brigade-level commander, and a general officer provide favorable recommendations, the selection board may well remove the bar. Without favorable chain of command action, removal of the bar is unlikely. In every situation, the selection board will evaluate the soldier's potential for future service and promotion, along with the soldier's service record up to that date. In that sense, it truly is a total picture decision.

## WHAT LEGAL ASSISTANCE CAN DO

We can help evaluate your QMP options and assist with preparation of an appeal statement. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 24

### COMPASSIONATE REASSIGNMENTS

#### INTRODUCTION

Soldiers stationed overseas or in a distant part of the continental United States may, in certain limited circumstances, be granted reassignment to a location closer to their family. Reassignment prior to scheduled permanent change of station (PCS) requires a showing of substantial family need. Need usually exists in the form of a family emergency or some other extraordinary situation which requires the soldier's presence closer to home. The soldier must provide documentation detailing the nature of the situation along with an explanation as to why the soldier's presence is needed. With that documentation, the local military personnel office is the point-of-contact to apply for compassionate reassignment. The soldier's personnel branch has authority to grant or deny the request.

#### EMERGENCIES ARISING DURING LEAVE

Personnel in a leave status may, in emergency situations only, apply directly to the closest Army installation for compassionate reassignment. In those situations, the soldier can sign-in off of leave at that installation, and have his or her application for reassignment processed through that installation's military personnel office. Absent a truly extraordinary situation, soldiers are expected to request compassionate reassignment through appropriate channels at their home station/installation.

#### DOCUMENTATION

The soldier requesting reassignment must prepare an informal statement (in paragraph format) containing the following information:

1. present unit of assignment;
2. if on leave - type of leave, number of days, and date due back at home assignment;
3. pay grade/rank, MOS, and component (active-duty, AGR, etc.);
4. DEROS (if stationed overseas) and current ETS;
5. leave address and telephone number;
6. assignment/location requested;
7. reason for request;
8. relationship, age, and location of immediate family members;

9. whether the soldier wishes to be considered for hardship discharge if compassionate reassignment is disapproved; and
10. whether reassignment has been requested before, and if so, when and what, if any, action was taken on the request.

#### ADDITIONAL DOCUMENTATION

The application for reassignment *must* contain the following documentary information in support of the soldier's statement:

1. if the request is based on the health of a member of the soldier's family, a signed statement from the family member's attending physician detailing the person's specific medical condition, the severity of the illness, and whether the soldier's presence closer to home would impact the condition and family situation;

\*\*\*NOTE: permanent medical conditions do not provide justification for compassionate reassignment. The family member's condition must be one that is temporary in nature. The long-term view is the medical situation will end, and the soldier will return to a normal assignment rotation.\*\*\*

2. if legal problems are involved, a signed statement from an attorney justifying the need for the soldier's presence; or

3. if other problems are involved, supporting statements (notarized) from reliable persons with knowledge of the situation.

Finally, the application for reassignment *should* contain a statement from the soldier's chaplain, minister, priest, or other member of the clergy (depending on the soldier's religion) detailing the family situation.

#### WHAT LEGAL ASSISTANCE CAN DO

We can help soldiers prepare the required statement and we can coordinate with the Military Personnel Office (MILPO) to ensure appropriate processing and consideration for the assignment request. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 25

### RENTING A HOME OR APARTMENT - LANDLORD-TENANT RELATIONSHIPS

#### INTRODUCTION

Off-post housing can be a tremendous challenge for soldiers and their families. Most installations have Government housing available for servicemembers of all pay grades, however, the amount of housing may be limited. Fort Knox is blessed with an abundance of on-post housing. For various reasons, some soldiers and their families elect to reside off-post. This chapter provides general information about landlord-tenant relationships. The goal is to educate the reader about common pitfalls that often surface with the renting and/or leasing of non-Government housing.

The Fort Knox Housing Referral Office, Customer Service Division is a point-of-contact for soldiers looking to rent off-post. Their office is located at 1383 Vine Grove Road and the telephone number is (502) 624-4663. Their representatives have knowledge and expertise about the local housing market, which may be helpful in locating suitable, off-post quarters.

#### SOLDIER ELIGIBILITY FOR OFF-POST HOUSING

Permanent party personnel often prefer on-post housing. In situations, however, where it is either unavailable and/or undesirable, personnel qualify for off-post housing with basic allowance for housing. Commanders may require soldiers to live on-post in Government housing. In general though, soldiers, staff sergeant and below, can receive authorization from the installation commander to live off post. This is usually allowed in situations where there is a shortage of suitable on-post housing or when the soldier owns a house off-post. Sergeants first class and above who are entitled to a BAH at the “without dependent” rate usually have the option to reside off-post. Special authorization is usually not required. Exceptions to the general rule may apply if the use of off-post housing would adversely affect mission, military discipline, and/or unit or personal military readiness.

#### FACTORS TO CONSIDER BEFORE SIGNING A RENTAL AGREEMENT

The landlord-tenant relationship is a business relationship. It is governed by a contract signed by the tenant. In that contract, the landlord agrees to provide certain services (a safe home or apartment reasonably free of defects where the tenant can live with relative satisfaction). In return, the tenant will agree to perform certain acts such as the payment of periodic rent and to ensure the rented dwelling remains at or near the same condition as it existed at the time of rental. Before entering into (signing) that business contract, the potential tenant should consider, among others, the following factors:

1. The Lease: The lease is the rental contract, which sets forth the duties and responsibilities of both the landlord and the tenant. In most instances you should insist on a written lease. Oral leases may be acceptable for an extremely short period of time (a month or

less) but a written lease is preferable. Read the entire lease completely and carefully before signing it. The Legal Assistance Office is available to review the proposed lease with you. Telephone 624-2771 to schedule an appointment or for more information.

2. **Inspect the Property:** Inspect the premises before you sign the contract and again before you move in. Make a note of, and inform the landlord about, all pre-existing damage to the property. Examples may include marks on the walls, stained carpet, broken kitchen or bathroom fixtures or appliances, etc. Have the landlord present when you inspect the property if possible. If the dwelling is furnished, make a list of those furnishings including the number of chairs, tables, refrigerator, etc. Have the landlord sign and date the list of defects and the list of furnishings. Conduct a second inspection just prior to moving in. Compare this inspection with your initial entrance inspection list. Conduct an exit inspection just prior to moving out. Again, have the landlord present if at all possible. If the landlord is not available, have an impartial third-party present so that you have a witness who can attest to the condition of the premises.

3. **Military (PCS) Clause:** Kentucky does not have a statutory provision protecting servicemembers compelled to break a rental agreement (move out early) due to military orders (reassignment - PCS). Soldiers must look out for themselves. How? Insist on a PCS clause in your rental agreement, which allows you to terminate the lease early if you are reassigned due to PCS orders. This is called a military clause. The Radcliff/Elizabethtown area has a large military community. Most landlords are familiar with the purposes and workings of a military clause. Do not let a landlord convince you a military clause is not needed. Get it in writing!

A military clause can be as flexible as you and the landlord agree. It should allow you to terminate a lease or rental agreement upon presentation of proper military orders. Many landlords do not consider the availability of on-post housing as sufficient “military orders” to justify termination of a lease. If your plan is to move into on-post quarters at a later date, you need to clarify that with the landlord. Put your plan in writing. Include it as a written statement in your lease.

4. **Damage/Security Deposits:** Most, if not all, landlords require payment of deposits to cover potential costs for damage and/or cleaning. The damage and/or security deposit is usually refundable if the premises are left in good condition. If the landlord fails to return your security deposit when you move out, and he or she refuses to tell you why or to provide a legitimate reason for keeping the deposit, you should contact the Legal Assistance Office (624-2771) for assistance.

5. **Rental Term - Lease Period:** Most rental agreements will state the length of the lease. Most leases extend for either 6 months or for 1 year. It is possible, however, to rent for an indefinite period of time. Indefinite rentals are referred to as month-to-month because rent is usually payable each month. Either the landlord or the tenant may terminate the rental by giving the other written notice within a reasonable time before the rent is due (perhaps by the 15<sup>th</sup> day of the month if rent is due on the 1<sup>st</sup> day). Most fixed time leases will also require notice to the landlord of intent to move out or to otherwise terminate the lease. Be sure to provide notice, in writing if possible, as specified in your lease.



## LANDLORD RESPONSIBILITIES

Your landlord has a duty and a responsibility to make sure your home or apartment is safe and fit for human habitation. The landlord must ensure the dwelling complies with local housing ordinances; that adequate measures are taken to control infestation of insects and rodents; that the stove, refrigerator, furnace, wiring, and plumbing are all in good working order; and that the dwelling is kept weather-tight. The landlord must perform all repairs, which may result from ordinary wear and tear on the dwelling. The tenant, however, has a duty to pay for damages resulting from deliberate or intentional actions and/or neglect beyond ordinary wear and tear.

The tenant must notify, in writing if possible, the landlord of problems with the dwelling so that the landlord will have an opportunity to make repairs. If the landlord fails, after proper notice, to make repairs or to otherwise keep the premises safe and fit for human habitation, the tenant may have the right to terminate the lease early. Keep in mind, however, a landlord is allowed a reasonable period of time to repair defects once they have notice of the problem. In Kentucky, landlords usually have fourteen (14) days to repair conditions that materially affect health and safety (K.R.S. 383.625).

As a tenant, you have the right to notify the proper authorities of a landlord's code violations. You also have the right to demand the repair of certain basic necessities in the rental unit. The landlord must comply with the law and may not retaliate against a tenant in any way for asserting these rights. If the landlord does retaliate against the tenant, that is a violation of Kentucky State law.

## TENANT OPTIONS IF THE LANDLORD FAILS IN HIS/HER DUTIES

Generally, tenants have the following options/remedies if their landlord refuses to make timely repairs after receiving written notice. Soldiers and their families should consult the Legal Assistance Office before taking action. Telephone 624-2771 for more information or to schedule an appointment.

1. Constructive Eviction - Move out: If a landlord fails to make timely repairs and conditions deteriorate to the point where the dwelling is not fit for human habitation, the landlord may have fostered a situation so shocking as to create a constructive eviction. A constructive eviction may be present where the landlord's inaction renders a tenant's dwelling unfit or unsuitable for occupancy. The standard to prove a constructive eviction is very high. The Legal Assistance Office should be consulted before taking action. In a legitimate situation of constructive eviction, the tenant may have the right to move out of the dwelling without forfeiting prepaid rent and without forfeiting return of any deposits. The tenant must provide the landlord with adequate notice of his or her intent to move out.

2. Repair and deduct (K.R.S. 383.635): If the premises are in need of repairs which will require the expertise of a licensed contractor or repairman, and if the repairs will cost more than \$100 or 1/2 a month's rent (whichever is more), the tenant may authorize the repairs without approval from the landlord and then deduct the cost from rent payable. Tenants in this situation

must be careful to follow certain formalities. First, the tenant must provide the landlord with written notice at least fourteen (14) days in advance. The notice should state the alleged defects, the tenant's intention to repair those defects, and the intention to deduct the cost from the following month's rent. Second, the tenant should obtain several bids to justify that the costs were reasonable and competitive.

### TENANT RESPONSIBILITIES

In addition to those already mentioned, tenants have, among others, the following responsibilities:

1. Pay rent as agreed in the lease;
2. Keep the premises clean;
3. Properly dispose of garbage and other waste;
4. Properly use all fixtures and appliances supplied by the landlord;
5. Leave the premises in the same condition as when the rental began with the exception of normal wear and tear.

### DISCRIMINATION IN HOUSING

With limited exceptions, the law forbids discrimination in housing based on sex, marital status, race, creed, age, disability or national origin. However, landlords are generally allowed to discriminate against potential tenants on other grounds. Examples include your ability to pay rent or your belongings that might increase their maintenance or insurance costs (i.e. pets, waterbed). The Fort Knox Housing Referral Office should be notified if you believe you have been the victim of housing discrimination. Their telephone number is 624-4663.

### COMPLAINTS AGAINST LANDLORDS

Tenants residing in Hardin County who have valid complaints against their landlord, and who have been unable to resolve the situation with their landlord directly, may seek assistance from these area agencies. In addition, these agencies can aid those who have been unfairly and illegally discriminated against.

1. Fort Knox Housing Referral Office: Located at 1383 Vine Grove Road. Their telephone number is (502) 624-4663.
2. Kentucky Fair Housing Council: Located at 835 West Jefferson Street, Room 100 in Louisville, Kentucky 40202. Their telephone number is (502) 583-3247.
3. Kentucky Commission on Human Rights: Located at 332 West Broadway, 7<sup>th</sup> floor in Louisville, Kentucky 40202-0069. Their telephone number is (502) 574-3190.
4. Louisville and Jefferson County Human Relations Commission: Located at 200 South 7<sup>th</sup> Street, Suite 120 in Louisville, Kentucky 40202. Their telephone number is (502) 574-3631.

## CHAPTER 26

### REPORTS OF SURVEY

#### INTRODUCTION

Soldiers and Department of the Army civilian employees may have to pay for Army property they lose or damage. Under Army Regulation (AR) 735-5, 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. The report of survey is the administrative tool used by the Army to establish liability.

#### STATEMENT OF CHARGES VERSUS REPORT OF SURVEY

A report of survey is not required in every situation where 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 report of survey is used in situations where responsibility for the loss is in question, or where the amount to be charged is in dispute.

#### PROCEDURES - SUBMITTING A REBUTTAL

The report of survey process starts when the appointing authority, usually a lieutenant colonel or above (most often a battalion or squadron commander), appoints a survey officer to investigate the facts surrounding the loss. The survey officer will be a commissioned or warrant officer, a noncommissioned officer with the rank of sergeant first class or above or a civilian employee GS-7 or above. The survey officer must be senior in grade to the individual subject to potential liability unless war or military exigency requires otherwise.

The survey officer investigates and makes initial findings as to what happened. A copy of those initial findings is then given to the individual subject to potential liability. That individual has seven days to prepare and submit a rebuttal back to the survey officer. The person will have fifteen days if the findings are mailed to him or her. Mailing may be appropriate if the survey officer and the individual are not assigned to the same installation (perhaps the individual PCSed during the survey process). The survey 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 report of survey packet, comments on the survey officer's recommendation, and forwards it to the approving authority. The approving authority, usually a colonel or above (most often a brigade or regiment commander or a division or installation chief of staff), approves or disapproves the survey officer's recommendation. Before

making his decision, the approving authority receives a legal opinion that the findings are legally sufficient and that the survey was completed in accordance with AR 735-5.

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. The notification will be in memorandum format and will inform the person they have the right to request reconsideration of (appeal) the approving authority's decision.

#### APPEALS - REQUESTS FOR RECONSIDERATION

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 survey 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.

#### WAIVERS OF LIABILITY - GOVERNMENT VEHICLES

AR 735-5 authorizes the waiver of financial liability for Government vehicle accidents caused by "simple negligence." The chain of command can use the survey 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 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.

#### POST-SURVEY OPTIONS

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 survey 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 LEGAL ASSISTANCE CAN DO

We can help with the preparation of rebuttals, requests for reconsideration, or post-survey documents. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 27

### REPRIMANDS

#### INTRODUCTION

Reprimands are an administrative tool used by commanders to censure a soldier for substandard personal conduct. Soldiers are expected to demonstrate high moral character on and off duty. Reprimands are appropriate when soldiers fall short of that expectation by engaging in questionable behavior. Reprimands are authorized by the Uniform Code of Military Justice, and may be used as a punitive measure in conjunction with judicial or non-judicial punishment. More commonly though a reprimand is issued as an administrative action under Army Regulation (AR) 600-37. Administrative action is not punishment in the strictest sense of the term. Confinement, restriction, or extra duty are punishments. In contrast, administrative action involves the filing of unfavorable information in a soldier's personnel records. Unfavorable information such as a reprimand can have severe implications for career soldiers. A reprimand may well prompt non-selection for promotion, a bar to reenlistment, or separation under the Qualitative Management Program (QMP). Because of that, a reprimand may potentially end of a military career.

#### FILING UNFAVORABLE INFORMATION

Filing of the reprimand is the most important consideration for a career soldier. Location is everything. A local filing in a soldier's Military Personnel Records Jacket (MPRJ) has no long-term effect on the soldier's career. The reprimand does not become a part of his overall service record, and will be destroyed when the soldier is reassigned (PCSEs). On the other hand, if the reprimand is filed in the soldier's Official Military Personnel File (OMPF), the effect may be career ending. Army Regulation (AR) 600-37 sets forth policies and procedures for filing unfavorable information in a soldier's official file. In accordance with the AR, only general officers have authority to order placement of a reprimand in a soldier's OMPF. The soldier is afforded the opportunity to submit a rebuttal statement for command consideration before a filing decision is made. The AR indicates reprimands associated with "minor behavior infractions or honest mistakes" ordinarily are not filed in a soldier's OMPF.

#### DRIVING UNDER THE INFLUENCE AND REPRIMANDS

Army Regulation 190-5 *requires* issuance of a written general officer reprimand for commissioned and warrant officers, and noncommissioned officers, including corporals, for the following conduct: 1) conviction for driving under the influence of alcohol or drugs; 2) refusal to take, or failure of, a test designed to measure the presence of alcohol in the blood, breath, or urine; 3) operating a vehicle with a blood alcohol level of .10 percent or higher on a military installation or operating a vehicle with a blood alcohol level above the state limit (.08 in Kentucky starting July 2000) off-post; or 4) operating a vehicle after taking illegal drugs or strong prescription drugs which impair driving ability and with those drugs still present in the

body. Issuance of a written general officer is *optional* for specialists and below. Soldiers will be notified of their right to submit a rebuttal statement before a filing decision is made.

### TRANSFER OF REPRIMANDS

The Department of the Army Suitability Evaluation Board (DASEB) has authority to review a soldier's OMPF, and order transfer of unfavorable information from the soldier's performance fiche to his or her restricted fiche. Promotion and other selection boards ordinarily examine only the performance fiche. Thus, transfer to the restricted fiche is beneficial for the career soldier.

In submitting an appeal for transfer, the soldier must show that the reprimand's intended purpose has been served, and that transfer is in the best interests of the Army. Ordinarily, the following criteria must be met before the DASEB will consider an appeal: 1) the soldier is a staff sergeant or above; 2) at least one year has passed since imposition of the reprimand; and 3) an evaluation (OER or NCOER), dated after the reprimand, has been filed in the OMPF.

Service of intended purpose may be hard to prove. The soldier needs to show that he or she addressed the conduct which prompted the reprimand, accepted responsibility for it, corrected it, and then moved on to excel in the Army. An example may be a staff sergeant who received a reprimand ten years earlier as a private. The staff sergeant has been promoted several times since, has received several awards, and has received a number of excellent evaluations. Service of intended purpose exists in the form of the motivation, hard work, and commitment to excellence, which prompted those promotions, the awards, and the excellent NCOERs. The soldier learned his or her lesson and moved on to excel in the Army. In support of the appeal for transfer, the soldier should obtain statements from past commanders, supervisors, or anyone else knowledgeable of the soldier's performance and, perhaps more importantly, potential for the future. The goal is to paint the picture of a dedicated soldier who displays high moral character and who is dedicated to the life of a professional member of the military. With those attributes, and with potential for advancement in rank and responsibility, it is in the best interests of the Army to transfer the reprimand and allow the soldier to advance.

### WHAT LEGAL ASSISTANCE CAN DO

We can help with the preparation of rebuttal statements and with transfer appeals. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 28

### SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

#### INTRODUCTION

The Soldiers' and Sailors' Civil Relief Act (SSCRA) affords active-duty servicemembers (soldiers, sailors, airmen, marines, and coast guardsmen) a number of important legal protections which arise out of, and are directly connected to, military service. The protections are available to ensure military service will not compromise the servicemember's ability: 1) to remain current with certain financial obligations; or 2) to appear and participate in certain ongoing court proceedings. First enacted by Congress in 1918, the law was reenacted in 1940 just prior to America's involvement in World War II. Periodic amendments have been added over the years to clarify and strengthen the law. In its present form, and with the still unpredictable nature of military service (combat, operations other than war, deployments, field training, etc.), the SSCRA's far-reaching protections are as important as ever.

As an overview, the SSCRA does not extinguish a servicemember's obligations. The act, however, can be invoked to expand a servicemember's rights. Specifically, the SSCRA authorizes suspension of non-criminal legal proceedings, and it can be relied upon to alter certain financial obligations that existed prior to entry onto active duty. The consistent focus is on the material affect military service has had, or is having, on the servicemember's life. Has military service affected the servicemember's ability to appear in court? Has military service affected the servicemember's ability to pay his/her bills? Is the servicemember living in a state other than his or her home state due to military service? If the answer to either question is "yes," the SSCRA may be applicable.

#### APPLICABILITY

The act applies to persons in the "military service of the United States." That definition includes personnel in the active-duty component of their individual military service (it includes members of the Coast Guard during war and peacetime), and members of the reserve components on active-duty. For members of the reserve components, the SSCRA will become effective as of the date of the orders bringing the person onto active-duty. SSCRA coverage will end at the end of active-duty service. There is no distinction between the manner of entrance (voluntary or involuntary) or rank (officer or enlisted).

SSCRA legal protections can be exercised against all levels of government, against businesses, and against individuals (creditors).

Military dependents are, as a general rule, not protected by the SSCRA. In limited situations, however, a family member may be able to invoke the SSCRA if their sponsor's military service somehow materially affects the family member's ability to honor an obligation. The act may also apply in limited circumstances to protect certain civilians involved in financial transactions with military personnel (such as a co-signer on a promissory note).

## PENDING COURT ACTIONS

The SSCRA authorizes a delay or "stay" of pending civil court proceedings. The stay is not automatic. The servicemember has to request the stay and then the court may, in its discretion, grant it. In considering a request for delay under the SSCRA, the court will consider whether military service (being away from home in combat, on a deployment, in the field, etc.) has materially affected your ability to prosecute or defend the suit. Simply being in the military on active-duty is not enough. The delay is appropriate only if military service is interfering with your ability to appear in court and to defend yourself.

The SSCRA stay provisions do not apply in criminal proceedings. If you are charged with a crime (including minor traffic offenses), you must appear in court on the date and time indicated. You may be able to negotiate a continuance or you can work out some type of arrangement under which personal appearance is not required. The SSCRA, however, is not applicable.

The SSCRA applies in civil proceedings only. Civil proceedings include ordinary lawsuits and most domestic relations-type cases. The SSCRA stay provisions can be invoked whether you are the plaintiff or defendant in the action. That is, it can be invoked whether you brought the suit against someone else, or someone brought it against you.

In order to grant the stay, the presiding judge must be convinced of two things. First, the judge must find that military duty is interfering with the soldier's ability to appear in court. Secondly, the judge has to find that the soldier's absence would have a substantial affect on the proceeding's fairness.

\*\*\*NOTE: Servicemembers usually cannot invoke the SSCRA stay provisions without assistance from their commander. The servicemember's commander should contact the judge presiding over the suit and request the stay. A short letter to the judge is sufficient. The letter should describe the military situation that is materially affecting the servicemember's ability to appear in court along with a timeline for when the matter can be rescheduled. The courts are usually willing to comply with this type of commander's request. The Legal Assistance Office can draft the letter for your commander's signature. Telephone 624-2771 for more information or to schedule an appointment. \*\*\*

## CONCLUDED COURT ACTIONS

In certain circumstances, servicemembers may request a court order staying execution and/or enforcement of a previously entered court order. The stay may be appropriate if military service is materially affecting the servicemember's ability to comply with the court's requirements. The stay will not change the order or modify the rights of other parties under it. If granted, the stay would halt execution of the order until a point in time where the servicemember is no longer materially affected by military service, and is, thus, in a position to comply with the order.



## DEFAULT JUDGMENTS

Defendants to a lawsuit have a legal right to appear in court and to defend the case against them. In civil suits, the court may order a default judgment against a defendant who fails to appear. The defendant must have had notice of the court action, and he or she must have been afforded the opportunity to appear. If the defendant simply chose not to appear, the plaintiff has the right to ask that he or she be declared the winner even though the defendant never appeared. That is a default judgment. In a sense, the plaintiff wins by forfeit.

The SSCRA provides limited protection against default judgments. Under the SSCRA, before a plaintiff can get a default judgment, that plaintiff must file an affidavit with the court stating the defendant is 1) not in military service; or 2) if in the military, military service did not materially affect his or her ability to appear in court. Technically, the court can grant the default judgment without filing of the affidavit. In that situation, however, the military defendant can void the judgment and force the plaintiff to start the court action all over again.

## REDUCTION OF INTEREST PAYMENTS

The SSCRA sets a maximum rate of interest for debts incurred by servicemembers prior to entry onto active duty. The maximum rate of interest (including service charges) is 6% per annum (per year). Creditors must reduce a higher interest rate to the 6% ceiling if military service is materially affecting the servicemember's ability to honor the obligation (the 6% interest cap is not automatic). In requesting a reduction in an applicable interest rate, the servicemember must demonstrate that his or her financial situation has worsened due to military service. In simple terms the servicemember has to show that he/she is making less money in the military than he/she was in the civilian workforce prior to coming into the military. Once a servicemember invokes the SSCRA, and requests a reduction in the applicable interest rate, the burden is on the creditor to prove military service is not affecting ability to pay.

The SSCRA limitation on interest does not apply to debts incurred while on active-duty. The debts must have been incurred prior to military service.

To request an interest rate reduction, servicemembers should forward a short letter to the creditor(s) explaining that they are on active-duty in the military, and that a reduction of the applicable interest rate is in order.

Interest and fees collected by creditors over and above the 6% must be forgiven by the creditor and, if appropriate, refunded back to the debtor or credited to his or her account. Interest and fees above the 6% ceiling must be forgiven not accrued or delayed until the military obligation ends. Some creditors may try to postpone payment of the excess interest and actually attempt to add it onto the end of the amount(s) owed. That is inappropriate. The SSCRA authorizes forgiveness of interest not delayed payment.

\*\*\*NOTE: There is one category of pre-active-duty loan exempt from the 6% limitation on interest. Federally insured student loans (Stafford Loans, SLS Loans, etc.) may continue to

have a higher interest rate. In contrast, privately insured student loans (Law Access Loans, Bar Examination Loans, etc.) are covered by the 6% limitation.\*\*\*

## HEALTH CARE

The SSCRA gives you the right to suspend your pre-military civilian health insurance coverage instead of dropping it prior to being called to active duty. If you notify the provider that you intend to purchase health insurance from them again upon your release from the military, the insurer will put you in a non-paying holding pattern. Your coverage, and your obligation to pay premiums, will pick-up after your release from active-duty and after you notify the insurer of your change in status. Once you leave the military then, you will receive the same care for the same price (plus any normal rate increases as they occurred over time).

## LEASES

The SSCRA authorizes early termination of residential leases for renters called to active-duty. To invoke protection under the SSCRA, the servicemember must 1) have signed the lease prior to being called to active-duty; 2) have orders bringing them onto active-duty; and 3) notify the landlord (within 30 days) in writing that they have been called to active-duty. Being called to active-duty does not end responsibility to pay rent. The servicemember may, with proper notice, however, have the right to terminate the lease early without penalty.

## EVICCTIONS

If the soldier is renting a residential property for \$1,200 or less per month, neither the soldier nor the family members may be involuntarily evicted without a court order. The court may stay the eviction for up to three months if it finds the military service has had a material effect on the soldier's or his family's ability to pay the rent.

## TAXES

Forty-one states and the District of Columbia tax individual income. Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington State, and Wyoming do not. Under federal law, only one state can tax your individual income. Specific to the SSCRA, only your state of legal residence (domicile) has authority to tax your military income. If your home state does not tax individual income, you do not have pay state income tax. This is true regardless of where you are stationed. Hooah!!!

Nonmilitary income earned on the local economy is not protected from taxation in the state where you are serving.

Likewise, real property, such as a house located off-post, is subject to local real property taxes. You may, however, retain your home state vehicle registration(s) so long as you pay the license fee or excise tax required by your home state. Also, you are required to continue paying your home state's tax on personal property (ad valorem tax).

## WHAT LEGAL ASSISTANCE CAN DO

We can answer questions about SSCRA protections and can assist with the preparation of correspondence requesting court stays and interest rate reductions. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

## CHAPTER 29

### TAXATION

#### INTRODUCTION

As the old saw goes, nothing is more certain than death and the payment of taxes. Soldiers unfortunately are not exempt from the payment of individual income tax, or from the payment of sales, use, real property, personal property, or other taxes. For soldiers, the real issue is which government (federal, state, or local) has the authority to collect tax.

Soldiers, just like members of the civilian workforce, are required to pay federal tax on all income from whatever source derived. Military pay and income from secondary sources such as a part-time job are taxable. In addition, soldiers who are legal residents of states having a personal income tax must pay tax to that state as well. Soldiers from a state without a personal income tax (Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington State, or Wyoming) do not owe state tax on their military income. Those soldiers may, however, owe tax on secondary income earned in a state with personal income tax.

#### COMMANDING GENERAL'S INSTALLATION INCOME TAX ASSISTANCE PROGRAM

#### FORT KNOX'S INSTALLATION TAX CENTER

The Office of the Staff Judge Advocate operates the installation income tax assistance program and the installation Tax Center every spring. The Tax Center's mission is to provide free, timely, efficient, and effective tax assistance for permanent party active-duty military personnel, their ID card holding dependents, and to retired military personnel. Tax assistance includes counseling, assistance with return preparation, and electronic filing for federal and state income taxes. All returns are also suitable for mailing if electronic filing is conducted (not possible or not desired by the taxpayer).

Preparation of the state returns is limited to the jurisdictions which participate in the joint federal/state electronic filing program. The following jurisdictions (34) participated for tax year 1999.

Alabama	Montana
Arizona	Nebraska
Arkansas	New Jersey
Colorado	New Mexico
Connecticut	New York
Delaware	North Carolina
Georgia	North Dakota
Idaho	Ohio
Illinois	Oklahoma
Indiana	Oregon

Iowa  
Kansas  
Kentucky  
Louisiana  
Michigan  
Mississippi  
Missouri

Pennsylvania  
Rhode Island  
South Carolina  
Utah  
Virginia  
Washington, DC  
West Virginia.

The remaining jurisdictions either do not participate (7 states) in the program, or do not tax individual income (9 states). The Tax Center obtains and has available for distribution paper returns, instruction booklets, and other tax forms required by the IRS and the states (those offering electronic filing and those without electronic filing) with an individual income tax.

The Office of the Staff Judge Advocate coordinates the installation unit tax advisor (UTA) program under the umbrella of the overall tax assistance program. Coordination includes provision of required tax training and support during tax filing season. UTAs attend a week-long IRS conducted volunteer income tax assistance (VITA) course held at Fort Knox. The course provides the UTAs with a working knowledge of income tax law and filing requirements. Each company-size unit plus brigade level headquarters are encouraged to select a unit tax advisor (UTA). Once selected and trained, the mission of the UTAs is to assist fellow unit members and personnel in a training status complete simple tax forms (Form 1040EZs).

## FEDERAL TAXES

Most soldiers are required to file a federal income tax return. Income from all sources is taxable, unless specifically excluded from taxation by law.

There are three primary federal income tax returns; Form 1040, Form 1040A, and Form 1040EZ. The following general guidance applies to use of these forms:

Form 1040 is the standard "long form." It is designed for taxpayers who cannot file a simpler form because of the amount or kind of income received, filing status, number of exemptions, or because of the need to file other support forms or schedules to adjust income, claim tax credits, report other taxes or to itemize deductions.

Form 1040A is the standard "short form." It is for taxpayers whose entire income is from wages, salaries, tips, unemployment compensation interest, and dividends and who do not file any of the more complicated schedules or forms to adjust income or to claim deductions.

Form 1040EZ is the easiest form to complete. It is available to single or married taxpayers who claim no special exemptions or deductions and have taxable income from wages less than \$50,000.00 and interest less than \$400.00.

## STATE INCOME TAXES

The Legal Assistance Office has information on file explaining the various state income tax requirements with addresses and contact telephone numbers for each state tax authority. It is the soldier's obligation to ascertain and comply with the tax laws of his or her state of legal residence.

The following states (9) do not tax individual income:

Alaska	Tennessee
Florida	Texas
Nevada	Washington State
New Hampshire	Wyoming.
South Dakota	

A number of other states have special provisions, which may reduce or eliminate the amount of tax payable on military income. The following is a partial list of those states:

Arkansas	North Dakota
California	Ohio
Illinois	Oklahoma
Indiana	Oregon
Maryland	Pennsylvania
Montana	Vermont
New Jersey	West Virginia.
New York	

State tax laws are constantly changing. Be sure you recheck your tax status each year.

\*\*\*CAUTION\*\*\* Soldiers often attempt to change their state of legal residence to avoid payment of individual income tax. Extreme care must be used to ensure severance of all ties with the former state. The new (non-taxing) state must be your true state of legal residence. See the chapter on Legal Residence, Home of Record and State Income Taxes for additional information or call the Legal Assistance Office at 624-2771.

## CHAPTER 30

### WILLS, ESTATE PLANNING AND LIVING WILLS

#### INTRODUCTION

A last will and testament is usually the central document in an individual's estate plan. It sets out your wishes and directives for distribution of personal and real property, for creation of financial management arrangements to ensure proper administration of money-related matters after your death, and can even be used to specify guardians for minor children. As difficult as it may be to think about, proper planning can ensure that your family's affairs are in order should something happen to you.

Not everyone needs a will. Those who definitely need one include soldiers with small children, with extended or non-traditional families, or with extensive property or holdings. Make sure your family is prepared. Protect their future by making sure things are planned now.

The Legal Assistance Office can answer questions and help with the preparation of wills, powers of attorney, and living wills. Legal assistance is free. It is a benefit made available to eligible persons as a part of their military service, and on this particular issue, is a valuable resource which can be used to ensure your family is protected when the inevitable arrives.

#### ORGANIZE THINGS - PLAN AHEAD

Organize your financial and personal records so your family and/or personal representative can locate and understand them should something happen to you. Your personal representative is the person who will administer your estate and tie-up all the loose ends left behind. To make that process as easy as possible, your personal records should contain detailed information about your own individual history and about all of your financial and business dealings. Specifically, the records should include your full legal name along with information about name changes if your name did, in fact, change during your life; your Social Security number; place(s) of residence; length of time at that residence(s); date and place of birth; names and addresses of your spouse and children; the location of your vehicle's ownership certificates and property deeds for real estate; the location of your will; details about bank accounts and life insurance policies; details about your stock portfolio or other investments; locations of your birth, marriage, divorce, and/or citizenship certificates; a list of your employers and dates of employment; your military and education records; the name of your church or synagogue; names and addresses of close friends, relatives, lawyers, doctors, and financial advisors; membership information for organizations you belong to; and your burial preferences and information about prearranged burial plans.

Additional financial records may include your sources of income and assets; insurance information and policy numbers for health, life, and property policies; your bank account information (including checking, savings, credit union and IRA account locations and numbers); a listing of your safe deposit boxes and their locations and contents; any financial liability

information (who is owed, the amount owed, and the payment schedule); credit and charge account information; property tax information; copies of former income tax returns (federal and state); and the location of personal items of significant value (jewelry, family heirlooms, antiques, etc).

## ESTATE PLANNING

Estate planning refers to the continuous process of coordinating an individual's financial affairs to assure the greatest economic security to the individual and the individual's family. A well designed estate plan not only provides for an orderly transfer of assets at the owner's death, but also takes into account the individual's own need for retirement income, the possibility of mental or physical disability, and any special problems which could result from advanced age or disability. The objective is to anticipate problems and to provide for them before the actual situation and/or need arises. Minimizing the expense and delay of probate and estate tax avoidance are also considerations, which enter into the estate planning process.

In a simple case, effective estate planning may entail no more than preparation of a standard will and review of the beneficiary provisions of life insurance policies and employee or retirement benefit plans. At the other extreme, it could be an extremely complex procedure involving a series of legal documents and transfers of property while the estate owner is still living. All of this can be very complex especially if estate tax avoidance is a main consideration. Because of the complexities at issue, persons with estates valued at more than \$675,000, the federal estate tax threshold, should seek the assistance of a qualified civilian attorney to work-up a satisfactory estate plan. The Legal Assistance Office can refer you to such an attorney. In most situations, the Legal Assistance Office can handle cases where the estate is valued at less than \$675,000. Consult the Legal Assistance Office at 624-2771 for more information.

## ESTATE

A person's estate consists of all the property in which he or she has a legal interest at the time of his death including:

- a. Separate Property - separate property is property in which no one else has a legal interest.
- b. Community Property - community property is property acquired as the result of work by you or your spouse during marriage if you are a legal resident of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington State, or Wisconsin. If the property was earned or received while a resident of another state, then the property is separate or joint property. Inherited assets and assets received as a gift by either spouse are separate property.
- c. Joint Property - property owned jointly with another person due to deliberate choice or action (not by statute like community property). The joint owner can be anyone; it does not have to be a spouse. An example may be if you buy a piece of land with a partner. You and your partner will own the property jointly.



d. Life Insurance Policies - benefits to be paid in accordance with a life insurance or other annuity policy.

### GROSS ESTATE

"Gross estate" is the legal term which refers to the assets subject to estate tax at the time of your death. A person's gross estate includes every asset in which he or she has any type of ownership interest. It includes the value of trusts and other financial arrangements in which the person has an income and/or management interest. Currently, the federal estate tax threshold is \$675,000. Gross estates worth less than that amount are not taxed. The federal tax code provided for a unified credit, which offsets what would otherwise be payable. Large gifts made during one's lifetime also count against the unified credit so the \$675,000 is not set in stone as the absolute ceiling on gross estates subject to taxation.

### PROBATE ESTATE

State law determines how property passes to heirs under a will or by statute in the absence of a will. The "probate estate" is different from the gross estate. The probate estate refers to property and assets that pass to heirs or other persons under a will or with supervision from a state court. The gross estate is usually larger than the probate estate because certain assets are conveyed to next of kin or to named persons without court involvement and/or supervision. For example, life insurance proceeds are paid to beneficiaries as named on the policy. The state court is not involved. For that reason, life insurance proceeds ordinarily are not a part of the probate estate. Those proceeds, however, are included in the gross estate for taxation. Another example includes joint bank accounts and bank accounts with paid on death (POD) provisions. The actual accounts (and the arrangements made with the caretaker financial institutions) control who gets that money. The state court is not involved, thus, those accounts are not in the probate estate. In contrast, the gross estate will include the money in those accounts.

### THE IMPACT OF COMMUNITY PROPERTY LAWS

The laws of the nine community property states vary somewhat, but they generally affect estate planning in the same way. Basically, all property acquired while the married couple is domiciled in (legal residents of) a community property state is presumed to be community property. Each spouse has only an undivided one-half interest in that community property. That one-half interest is all he or she can dispose of in a last will and testament.

Property acquired before marriage or while a couple resides in a non-community property state remains the acquirer's separate property until or unless that person makes a gift of it to the other spouse (called a gift to the community) or it is commingled (mixed) with community property such that it cannot be traced or identified. Property obtained through inheritance or gifts during the marriage is separate property and belongs to the spouse who received it. Each spouse has the right to dispose of his or her separate property in any way he or she desires in a will.

## WILLS

A last will and testament is a written declaration of a person's desires concerning the settlement of his or her affairs and distribution of his or her property at death. When a person dies without a valid will, he or she is said to die "intestate." Without a will, settlement of the estate and distribution of property is administered in accordance with the state's laws of descent and distribution. The law provides a formula for dividing property among surviving relatives. Distribution schemes vary from state to state. This procedure often results in added time, hassle, and expense in closing the estate and it frequently creates a result contrary to what the decedent would have wanted. A properly executed will avoids that and ensures property is distributed as the person would have wanted.

The "testator" is the person who makes the will. In his or her will, the testator can do the following:

a. Specify who gets what; specify property distribution. Any number of beneficiaries can be named with an equal or unequal distribution of property. Secondary or contingent beneficiaries can be named as well in case the primary beneficiaries die before the testator.

b. Name a person(s) who will serve as guardian for minor children. A guardian may be responsible for raising minor children or managing any property the child(ren) inherit until they reach majority. The age of majority varies from state to state. Although the court has final authority with respect to naming a guardian, it will usually follow the testator's wishes as expressed in a will.

c. Name a person(s) or financial institution to manage any property a child(ren) may inherit. The testator is free to set-up what the law calls a trust. Property can be placed in the trust until the named beneficiary(s) reaches a certain age (the age of distribution) or until a certain event happens (completion of college or getting married). The person/financial institution named to manage trust is the trustee. The trustee is required to manage the property in the best interests of the named beneficiary(s).

\*\*\*NOTE: Servicemembers often designate that their SGLI or proceeds from other life insurance will pay into a trust where it will be administered for their minor children. In setting up the arrangement, the servicemember must be careful that the insurance beneficiary designation form(s) clearly indicates the proceeds are payable to the child(ren) IN TRUST. That is the only way to ensure the money is paid into the trust and not to the children directly. The following language should be used: "to my children (names of the children), IN TRUST, as specified in my Will.\*\*\* Consult the Legal Assistance Office at 624-2771 for more information.

d. Nominate a trusted relative, friend or institution to serve as personal representative in settling the estate. The personal representative (also known as the executor) is responsible for making funeral arrangements, collecting and safeguarding assets, paying debts, filing necessary tax returns or other official reports, distributing property in accordance with the testator's will, and with doing other administrative duties as specified by the court.

## EXECUTION OF A WILL

Strict legal requirements prescribe the formalities for executing a will. If those requirements are not satisfied, the will may not be effective and it may not be binding on those left behind. What are the requirements? First, the will must be in writing. The testator must sign the will in front of at least two (preferably three) disinterested witnesses who are over age 18 and who are in full possession of their faculties. The testator needs to "publish" the will. That means he must inform the witnesses that they are witnessing his or her will. The witnesses are not required to, and indeed perhaps should not, read the will. The witnesses sign the document and by so doing attest that the testator was competent and signed the document of his or her own free will. Upon the death of the testator, the witnesses may be called to testify about the circumstances under which the will was signed. They may be asked to testify about their observations and their opinion of the testator's competence and state of mind.

If the witnesses die or move away, it may be difficult to "prove" the will. To avoid that problem, some states (including Kentucky) permit execution of "self-proving" wills. A self-proving will is signed by the testator and by the witnesses just like a traditional will. In addition, however, a Notary Public also signs the will after observing the testator and the witnesses sign. With that, the will is "self-proving" because it was attested by an official authorized to take oaths and to authenticate documents.

A will can be changed at any time before death, but all changes must be made with the same formalities, as the original will. This can be accomplished by a new will or by a codicil, which is a written amendment to a will. Do not alter your executed will in any manner. Erasures, crossing sections out, or other changes are not effective and may even void the entire will. If changes are needed, contact the Legal Assistance Office to prepare and execute an entirely new will.

Do not make photocopies of your will. The court will honor the original copy only. Photocopies can create confusion in case you revoke an old will without destroying the copies you made. Avoid the confusion by not making copies. Along that line, only the original will should be signed. Do not sign duplicate will copies. Store the will in a safe place where your family can get it should something happen to you.

A change in life circumstances may revoke a will by operation of law. Marriages, divorces, births, deaths, and the purchase or sale of real property may make it necessary, if not desirable, to execute a new will.

\*\*\*NOTE: Living wills are completely separate from your Last Will and Testament. Living wills, also known as advance medical directives, deal with medical care in the event of a traumatic or life-threatening illness. Living wills are explained later in this chapter.\*\*\*

## GUARDIANSHIP

The law regards certain persons as incapable of managing their own affairs. These individuals (known as "wards") may simply be under the legal age of majority (age 18 in

Kentucky in most cases) or, by reason of mental or physical incapacity, may be incapable of managing their own property or caring for themselves.

In each such case, a guardian is appointed by the court to manage the ward's affairs and care for his or her personal needs. While any adult can petition the court and request appointment as guardian, usually a family member or friend will do so. Parents frequently name a person or persons whom they hope will serve as guardian(s) of their minor children in their will, and courts usually honor their wishes. If the ward's estate will be substantial, it may be desirable to separate the financial management and parental functions of the guardian by appointing a financial institution as "guardian of the ward's estate" and a family member as "guardian of the person."

The guardian is responsible for collecting all of the ward's property, investing it, making expenditures for the ward's benefits and filing a periodic accounting of such transactions with the local court. A guardian is usually required to post a bond to ensure he or she acts appropriately in conducting his or her duties and the court will supervise the guardian's activities. Guardians, however, usually have tremendous discretion to act as they deem appropriate. \*\*\*NOTE: If the testator named a trustee in his or her last will and testament, the trustee will perform these money-related functions, which may otherwise have been performed by the guardian.\*\*\*

Ordinarily, the guardianship will terminate when the incapacity has been removed (by attainment of legal age of a minor or adjudication of competency by a court) or upon the death of the ward. Upon termination of the guardianship, the guardian relinquishes all control over the property, which passes to the ward or the ward's estate.

## TRUSTS

A trust is a legal entity created when someone (the grantor) transfers property or assets to another person or to an entity (perhaps a bank - the trustee) that manages and controls the property for the benefit of yet another person (the beneficiary). The grantor designates the beneficiary in advance. Grantors may establish trusts during their life (an inter vivos trust) or through their last will and testament at death (a testamentary trust).

The object of a trust is to set aside property for a particular purpose when an outright transfer to the beneficiary is either impossible or undesirable. Perhaps the beneficiary is under age 18 or perhaps tax avoidance is somehow a motive. The terms of the document creating the trust and state law govern its creation and management. Since a trust can be tailored to serve almost any purpose, and permits significant discretion to be vested in the trustee, this device is more flexible than an outright transfer during life or at death. For example, a trust can provide that the income from the trust property be paid to the beneficiaries in one lump sum or accumulated for a certain period. A trust can also authorize a trustee to use discretion and make unequal distributions based on the needs of the beneficiaries.

## PROBATE AND ESTATE ADMINISTRATION

A person in custody of a decedent's will must deliver it to the court or to the person named as the personal representative (also known as the executor) as soon as possible after learning of the person's death. Named personal representatives should contact the county probate court where the testator lived at the time of his or her death to determine the process for settling the estate. Most states have special simplified procedures for settling smaller less complex estates.

In Kentucky, probate is handled by each county's circuit court. On most issues, the court clerk will assist with the preparation of necessary documents. For probate matters, however, the clerk's office does not provide that assistance. The Legal Assistance Office is available for initial counseling and preliminary guidance. A civilian attorney is usually required especially if it looks to be a complicated proceeding.

### WHAT EXACTLY IS PROBATE?

Probate is the legal procedure through which a court supervises the settlement of a decedent's estate. The extent of the decedent's property and debts/obligations are determined. Taxes are assessed and paid. Thereafter, property is distributed to persons named in the will or to heirs under the state's law of descent and distribution.

The first step is for the court to appoint a person to settle the decedent's affairs (the personal representative - either an executor or an administrator). Executors are named in a will. Administrators perform the same functions but are appointed by the court if the person did not have a will.

The personal representative has a number of routine functions. He or she has to notify heirs that the person has died (if those persons didn't already know) and that the estate is pending probate. In addition, the personal representative has to notify creditors and typically publishes a death notice in the local newspaper. The personal representative is responsible for completing an inventory and appraisal of the assets in the decedent's estate that must be filed with the court within short order. Debts and other claims submitted are paid if they appear to be valid and any necessary federal income tax and estate tax returns and state inheritance tax returns are filed. After a certain period of time, the right to contest the will and creditors' rights to submit claims against the estate are cut off. The personal representative is then authorized to distribute property to the heirs. Unless the will expressly requires court supervision or the estate is insolvent, the personal representative, upon the conclusion of administration, may distribute the property on his own authority and file a declaration of completion with the court. In the alternative, to protect them, they may request the court to issue a decree settling the estate prior to distribution. In either event, the effect of probate is to pass clear title of the decedent's property to his heirs in accordance with his expressed wishes and to protect these heirs from later claims against the estate.

The probate process takes time and involves a number of detailed legal procedures. Almost inevitably it is necessary to retain legal counsel to advise the personal representative and

assist in the preparation of legal documents at various stages in the proceedings. Since this process may take many months, the law of nearly every state provides for allowances from the estate to be made available for support to the family and children of the decedent. In each case however, a formal request must be made to the court before cash necessary to meet the family's basic needs can be released during the dependency of the estate. To avoid expense and delay, and in order to insure adequate liquidity during this period, it may be desirable to arrange one's property so that certain assets pass outside of probate and immediately upon one's death. A bank account held in joint tenancy or life insurance payable to one's spouse or children are two means of accomplishing this.

### ALTERNATIVES TO PASSING PROPERTY THROUGH A WILL

Much of the time, hassle, and expense of the probate process can be avoided. Avoidance entails the use of convenient non-probate arrangements for passing property without court supervision and/or permission. These alternatives include joint ownership of assets (ownership with right of survivorship), bank accounts with paid on death (POD) provisions, life insurance policies and annuity contracts, and living trusts with contingent beneficiaries.

### DURABLE POWERS OF ATTORNEY

Most powers of attorney become void if the grantor (principal) becomes disabled or incompetent. Kentucky, however, like a number of other states, allows the use of "durable" powers of attorney which remain effective even after a person becomes disabled or incapacitated to the point he or she is unable to continue with the management of his or her own personal affairs. The durable power of attorney will remain effective until the person's death. At death, the personal representative assumes the management function.

### LIVING WILLS

A living will is a legal document completely separate from a person's last will and testament. A last will and testament specifies how a person's property will be distributed at death, and can be used to specify guardians for minor children. A living will, also known as an advance medical directive, sets forth a person's wishes for continued medical treatment in the event of a life-ending illness or injury. It embodies the person's choice to continue or forgo continued treatment. In a sense, the person is looking forward, and expressing the desire to be disconnected from that life prolonging equipment or the desire to remain connected. A living will is signed and either witnessed or notarized. If done correctly, it is binding on the hospital, the doctors, and the family.

If the patient does not have a living will, family members and physicians may be placed in the very difficult position of deciding whether and when to "pull the plug." Quite possibly there will be opposing viewpoints with bitterness inevitable. The stress and emotions of the situation will make the decision that much more difficult to make. The physician will have to balance what he believes are the desires of the patient with his or her own best medical judgment. In addition, the doctor will consider potential civil or criminal liability as well. A

living will is a definitive statement of the individual's intent, relieving both the doctor and the family from the burden of having to decide.

Depending on the state in which you live, the living will may be your opportunity to name what the law calls a health care surrogate. In Kentucky, individuals, in their living will, can name a family member, friend, or anyone else as their surrogate. The living will may (if you want) direct that the surrogate to take certain actions. Those actions include discontinuance of life-prolonging treatment and the withholding or withdrawal of artificially provided food, water, or other nourishment or fluids. The surrogate is authorized to carry-out those decisions only after the attending physician determines the person is permanently unconscious or is otherwise in a vegetative state and that consciousness will not be restored. Other states may or may not require the naming of a surrogate. Those states may, by default, leave the health care decision(s) up to your closest family member, usually a spouse or child. Or, the living will may simply direct that the hospital and/or doctor take (or not take) certain actions. In all cases, a doctor or doctors must determine that the person has a terminal condition and that the chance for recovery is slim, if not impossible. Once you make a living will, a copy of the document should be given to your physician and made a part of your medical records.

#### WHAT LEGAL ASSISTANCE CAN DO

The Legal Assistance Office is available to assist with the preparation and execution of wills, powers of attorney, and living wills. Wills are prepared on a by-appointment basis only. Powers of attorney and living wills are completed on a walk-in basis. A civilian attorney should be consulted for guidance about complex estate planning. The Legal Assistance Office maintains an up-to-date civilian attorney referral list and can assist with pointing you towards a qualified estate planning attorney. The referral list is available on a walk-in basis. Telephone 624-2771 for more information or to schedule an appointment. Our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the Post Office on Knox Street).

## CHAPTER 31

### **IMPORTANT POINTS-OF-CONTACT**

#### **FORT KNOX SERVICES**

Army Community Services  
1384 Vine Grove Road  
(502) 624-1996

Fort Knox Credit Union (main office)  
1174 Pershing Drive  
1-800-285-5669

Housing Referral Office  
Customer Service Division  
1383 Vine Grove Road  
(502) 624-4663

Inspector General's Office  
Building 1001, Brooks Field  
(502) 624-4427 (IG Hotline)  
(502) 624-2273 (IG I-Care Line)

**Legal Assistance Office**  
**Building 1310, Pike Hall, Room 129**  
**Third Ave. and Knox St.**  
**(just north of the Post Office)**  
**(502) 624-2771**

Magistrate Court  
Building 1310, Pike Hall  
Third Ave. and Knox St.  
(502) 624-2086

Military Pay Office  
63 Quartermaster Street  
(502) 624-8019

One-Stop Center  
(ID Card Section and other inprocessing)  
White Hall (on the Main Traffic Circle)  
(502) 624-5010



## **LOCAL COURTS**

Bullitt County Courthouse  
Office of the Circuit Court Clerk  
P.O. Box 746  
Shepherdsville, KY 40165  
(502) 543-7104  
Fax: (502) 543-7158

Hardin County - two Courthouse locations

Elizabethtown Court House  
(Circuit Court and District Court)  
100 Public Square  
Elizabethtown, KY 42701  
(located just off the town circle)  
(270) 766-5041  
FAX: (270) 769-6505

Radcliff Court House  
(District Court only)  
220 Freedom Way  
Radcliff, KY, 40160  
(located off of West Lincoln Trail Boulevard, parallel to Wal-Mart)  
(270) 351-1299  
Fax: (502) 351-1301

Meade County Courthouse  
Office of the Circuit Court Clerk  
317 Fairway Drive  
Brandenburg, KY 40108  
(502) 422-4961  
Fax: (502) 422-2147

US District Court, Western Dist. of Kentucky  
(Civil, Criminal, and Bankruptcy Court)  
Federal Courthouse  
601 West Broadway, Room 601  
Louisville, KY 40202  
Telephone: (502) 625-3500  
Fax: (502) 625-3880

## **GOVERNMENT AGENCIES**

Federal Trade Commission, Branch Office  
55 East Monroe St., Suite 1860  
Chicago, Illinois 60603-5701  
(312) 960-5633

Federal Trade Commission  
Consumer Response Center  
600 Pennsylvania Avenue, NW  
Washington D.C. 20580  
1-877-FTC-HELP (382-4357)

Immigration and Naturalization Service - Louisville Division  
Gene Snyder United States Courthouse and Customhouse, Room 601  
601 West Broadway  
Louisville, Kentucky 40202  
1-800-375-5283

Kentucky Attorney General  
Consumer Protection Division  
9001 Shelbyville Road, Suite 3  
Louisville, Kentucky 40222-8003  
(502) 425-0536

Motor Vehicles (vehicle tags and  
registration)

Hardin County (Radcliff)  
351-4714

Hardin County (Elizabethtown)  
765-4115

## **PRIVATE AGENCIES**

Better Business Bureau  
844 South 4<sup>th</sup> St.  
Louisville, Kentucky 40203-2186  
(502) 583-6546  
1-800-388-2222

Consumer Credit Counseling Service  
1-800-278-9219 (Louisville)

Equifax Credit Agency  
1-800-685-1111

Experian Credit Agency  
1-800-682-7654

Kentucky Commission on Human Rights  
332 West Broadway, 7<sup>th</sup> Floor  
Louisville, Kentucky 40202-0069  
(502) 595-4024

Kentucky Fair Housing Council  
835 West Jefferson St., Room 100  
Louisville, Kentucky 40202  
(502) 583-3247

Louisville and Jefferson County Human Relations Commission  
200 South 7<sup>th</sup> St., Suite 120  
Louisville, Kentucky 40202  
(502) 574-3631

Trans Union Credit Agency  
1-800-888-4213