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LEGAL ASSISTANCE

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BUSINESS, BANKRUPTCY, AND CONSUMER PROTECTION ISSUES

Below is a compilation of Frequently Asked Questions and Answers that address business, bankruptcy, and consumer protection issues. This material was adapted from a series of articles written by Mr. Anthony R. Tempesta, Chief of Legal Assistance at the Fort Moore Legal Assistance Office.

Q. I saw an ad in a magazine that stated I can earn up to \$5,000 a week working part-time from my house. Is this a scam?

A. This sort of “work from home” posting sounds extremely suspicious. Ordinarily, if it seems too good to be true, it often is so. Unfortunately, “work from home” job postings have become so common that they are now listed on the National Consumer League’s list of Top 10 Frauds.

Work from home scams claim that you can make thousands of dollars at home, stuffing envelopes, for example, for up to \$3 to \$4 per envelope. Since machines can stuff, seal, and stamp envelopes much faster and for far less cost than a person, it should be obvious that such claims are too good to be true. If you reply to the ad, however, you may be asked to send in a small fee (such as \$30), and, in return, you will receive a brochure or letter that directs you to place “envelope stuffing” ads and charge a fee to people who respond, then send them a copy of the brochure or letter you received.

Another example is home-based work assembling products, like dolls or pens. If you reply to such an ad, you will typically be asked to pay a small up-front fee or purchase several hundred dollars’ worth of parts and equipment. If you get so far in the process as to pay for materials and assemble the products, a typical outcome is that the company claims that your work is of poor quality and terminates your employment.

Consumer protection experts often advise, “Never pay money to make money.” This is a good rule of thumb, along with “If it sounds too good to be true, it probably is.” Before you send any money to a company that claims it will hire you to work from home, you should thoroughly investigate the company by contacting the Better Business Bureau and Federal Trade Commission, or other publicly available references and references that the company provides at your request.

Q. I run a small business out of my house selling air purifiers. Can I go to JAG for legal advice on my business?

A. No, because such a private business is outside the scope of the Army’s Legal Assistance Program (see Army Regulation 27-3). Legal advice and assistance on private business activities is specifically prohibited by Army Regulation 27-3. The only exception is that Army legal assistance attorneys can provide income tax preparation assistance to “family child care providers” (defined by Army Regulation 608-10, as individuals certified by Army Child Development Services to provide childcare).

Individuals who own a business commonly come to JAG for one or two reasons. One reason is that someone owes them a debt as a result of the business, and they are looking for an attorney's help to collect that debt. As stated earlier however, Army legal assistance attorneys cannot assist a client on private business activities, even if the client is a military ID card holder. In such a case, the client must be referred to a civilian attorney at the client's expense.

The second most common case is when a client comes to the installation Tax Center and asks for help in completing income tax forms related to the business. Since the Army Legal Assistance Program and the Tax Program are designed to assist clients with their individual income taxes, advice and assistance cannot be offered in completing business returns or business-related forms (except for family childcare providers, as explained above). If, for example, a small business owner needed to complete an IRS 1040 Schedule C and a Schedule SE, the Army Legal Assistance Program or Tax Program would not be able to assist.

Q. I just received notice in the mail that I am a winner in the Canadian lottery, and the envelope contained a check for several thousand dollars. Should I cash the check?

A. Unfortunately, the "Canadian lottery scam" is another version of the scams that have been around for years. This scam is more deceptive because the letter that claims to inform the target of the scam of the lottery winnings being accompanied by an official-looking check. Anyone who receives such a letter should be aware that it is almost certainly a scam, and should not cash the check.

If you receive such a lottery letter, it is a sure bet that it is a scam. You should not cash any such check without fully investigating the source of the check, and not simply by calling a telephone number listed on the check. Most importantly, do not send any money to the sender of the letter until you can verify the validity of the alleged winnings and the viability of the financial institution of the alleged winning lottery check.

Q. What is bankruptcy?

A. Bankruptcy is legal protection from your creditors. Normally, a contract defines the duties and responsibilities between a borrower and a lender. Bankruptcy, however, can require a lender to accept a lower payment than set out in the contract, or eliminate the debt entirely.

Two different types of bankruptcy are available to individuals, which are most commonly known by their chapter number in the federal Bankruptcy Code. The first is Chapter 7, often called a "straight" or "liquidation" bankruptcy. Under Chapter 7, all nonexempt assets are applied to all debts, and the debts are eliminated. For example, \$5,000 in assets might be applied to \$30,000 in debts, and the other \$25,000 is cancelled.

The second is Chapter 13, often called a "wage earners" or "reorganization" bankruptcy. Under Chapter 13, the court approves a three to five-year repayment plan which the creditors must accept.

Bankruptcy can be expensive though, and not all debts can be discharged (such as child support arrearages). Recent bankruptcy reforms have also significantly changed this area of the law. Consult with an attorney if you are having difficulty paying your bills and you think bankruptcy is an option.

Q. If I file for bankruptcy, will my credit be ruined? Also, can I be punished under the UCMJ for filing for bankruptcy?

A. As strange as it may sound, a bankruptcy filing can actually help restore an individual's credit. Generally speaking, by the time an individual gets to the point of filing for bankruptcy, it is because there is a significant amount of debt or money owed (usually in the tens of thousands of dollars) and payments are significantly behind. By this time therefore, there has already been a great amount of damage to the individual's credit.

While bankruptcy tends to eliminate debt by discharge rather than repayment, the benefit of bankruptcy is that it can wipe the slate clean and allow the borrower to make a fresh new start. Obtaining new credit is usually not easy at the beginning, but many individuals have recovered from a bankruptcy and restored their credit over time.

Soldiers are required by Army Regulation 600-15 to pay their debts. If they do not, Soldiers can be punished under Article 134, UCMJ, for dishonorably failing to pay a just debt. Soldiers cannot be punished for filing for bankruptcy, however. Bankruptcy is a perfectly legal proceeding, and Soldiers cannot be prosecuted for seeking protection from their creditors where circumstances warrant it.

Q. “What is a “bill of sale”?

A. A bill of sale is a legal document that records the sale of property between a buyer and a seller. It should state certain things, such as the names of the parties, the item or items sold, the selling price, etc.

Legal problems can arise after a bill of sale has been executed and delivered to the buyer however, because the full purchase price is rarely paid up front. For example, if “Harry” makes out a bill of sale to “Gary” for the sale of his riding mower for \$500, the fact that the \$500 purchase price will be paid \$100 a month for five months generally does not appear on the bill of sale. Once the completed bill of sale is in the buyer’s hands, all indications are that he is the legal owner of the property.

If the buyer fails to make the promised payments, the seller may have a number of problems. First, if there is no record of the payment arrangement, the buyer may not even be able to prove such an agreement existed. A bill of sale is usually written in the past tense, saying some like “for \$500” or “for value received,” which therefore reads that payment has already been made.

Second, the seller may have a difficult time collecting the money still owed, especially if the buyer has left the area. A sale that occurs in Georgia for example is generally subject to the jurisdiction of Georgia courts, so if the buyer moves back to his or her home state of Nebraska for example, it will be challenging and expensive for the seller to bring a lawsuit, obtain a judgment, and attempt to enforce that judgment.

It is very risky to sell property simply with a bill of sale and an oral promise to pay. Such “handshake deals” frequently end with one of the parties in Legal Assistance complaining about the other party’s failure to pay or failure to deliver. A better option is either (1) a simple contract with the terms of the sale (parties, sale item(s), cost, payment terms, and if there is a warranty or sold “as is”) or (2) a bill of sale and a “promissory note,” which is a legal document in which the buyer promises to make payments according to certain terms. For added protection, such as for high-dollar transactions, the parties should draft a more detailed contract for sale. A legal assistance attorney can then review the contract prior to signing.

Q. What does it mean to be “upside-down” on a loan?

A. Being “upside-down” on a loan means owing more on the loan than the item being financed is worth. The most common situation for borrowers to be upside-down is in the beginning of a car financing agreement, when the value of the car depreciates faster than money is repaid on the loan. If the resale or trade-in value of a car was \$18,000 for example, but the borrower owed \$23,000 on the loan, that borrower would be considered upside-down.

If a buyer wants to trade in a car with a greater trade-in value than the remaining balance on the loan, that positive difference is added as a credit to the new car contract, which reduces the overall price of the new car. If the borrower is upside-down on a trade-in however, that negative amount must be paid off before the car is traded-in for a new vehicle. If for example, the trade-in value of a car was \$12,000, but \$15,000 remained on the car loan, the \$3,000 difference would have to be paid lump-sum or “rolled into” the new

car purchase. It sounds much easier to just add the \$3,000 into the new car loan rather than come up with \$3,000 in cash, but there are potential dangers in doing so.

First, adding the balance of an old car loan to a new car loan increases the amount of the new car loan. This means that the monthly payment on the new car loan will increase, or the repayment period will be extended to keep the monthly payment down. Extending the repayment period means more interest will be paid over the life of the loan.

Second, adding the balance of an old car loan to a new car loan means the old loan's balance will be subject to the new loan's interest rate. If for example, the old car loan was financed at an annual interest rate of 7.9%, but the new car loan has an annual interest rate of 12.9%, then the balance from the old car loan will now be subject to a higher interest rate. Consumers should be careful when negotiating financing agreements, because what seems easiest may end up costing more in the long run.

Q. What is meant by the term “grandparent scam?”

A. The “grandparent scam” is used by con artists to swindle the elderly. The con artist pretends to be the victim's grandchild, and persuades him or her to wire money or give financial information in response to a claimed emergency.

In a typical case, the elderly victim receives a desperate telephone call from the purported grandchild, who says for example that she was in a car accident and needs \$500 right away to pay for towing and repairs. The purported grandchild may ask the victim to wire the money, or ask for the victim's credit card information. As in so many scams, the urgency of the situation leads the victim to react first and analyze what happened later, and by the time the victim realizes there has been a scam the money and the scammer are gone.

Some scammers are fiendishly clever in targeting their victims, using the telephone book for example to search for old-fashioned sounding first names. They also trick the victim into revealing a grandchild's name, and then claim to be that person. A typical phone conversation might be:

Scammer: “Hello grandma.”

Victim: “Who is this?”

Scammer: “It's your favorite grandson.”

Victim: “Michael?”

Scammer: “Yes grandma. It's Michael. Grandma, I'm in real trouble and need...”

People, especially the elderly, need to be aware of this scam, and never give financial information over the phone or hastily wire money for a claimed emergency. Taking the time to verify the situation and the caller's identity can avoid financial harm to the victim.