

LEGAL ASSISTANCE



PREVENTIVE LAW BRIEF



WHAT IS PREVENTIVE LAW?

AN ATTEMPT TO PREVENT LEGAL PROBLEMS BEFORE THEY ARISE.

EDUCATION AND TRAINING TO LEADERS AND SOLDIERS ON COMMON LEGAL PITFALLS THAT SOLDIERS FACE.

FREE LEGAL ASSISTANCE IS ONE OF THE BENEFITS OF BEING A SOLDIER...USE IT BEFORE YOU GET YOURSELF INTO A LEGAL PROBLEM.



THE LEGAL ASSISTANCE “LANE”

WE ASSIST SOLDIERS, MILITARY FAMILY MEMBERS,
AND MILITARY RETIREES WITH CIVILIAN LEGAL
MATTERS AND MILITARY ADMINISTRATIVE
PROBLEMS.

BIG LIMITATION – NO CIVIL REPRESENTATION; NOT
LICENSED TO PRACTICE IN TEXAS.

IF WE CANNOT ASSIST YOU BEYOND ADVICE, WE
CAN AT LEAST ASSIST WITH A REFERRAL TO
SOMEONE WHO CAN HELP.



THE LEGAL ASSISTANCE “LANE”

- FAMILY LAW – DIVORCE, PATERNITY, CUSTODY, SUPPORT, ADOPTION, CONSERVATORSHIPS, ETC.
- LANDLORD/TENANT AND ADVICE ON REAL ESTATE
- ECONOMIC PROBLEMS – DEBTS, DEBT COLLECTORS, BANKRUPTCY, INSURANCE PROBLEMS
- MILITARY ADMINISTRATIVE – HARDSHIP CASES AND REBUTALLS FOR LOD, ROS, NCOER, OER, LOR
- CONSUMER LAW – CONSUMER PROTECTION
- WILLS AND ESTATES – WILLS, LIVING WILLS, POAs, MEDICAL POAs
- CIVILIAN CRIMINAL MATTERS – GENERAL ADVICE
- TAXES – TAX CENTER
- NOT UCMJ OR CLAIMS



THE LEGAL ASSISTANCE OFFICE (LAO)

- LOCATION: 4ID HEADQUARTERS, BUILDING 410, FIRST FLOOR, ROOM 175
- CONTACT: 287-1850
- HOURS: M-TH 0900-1630; CLOSED FRIDAYS; APPOINTMENTS WITH ATTORNEYS TAKEN FOR M, TU, AND TH; 1ST COME 1ST SERVED WALK-IN ON WED
- ALWAYS WALK-IN FOR NOTARIZATIONS AND POAs
- DIVORCE BRIEFING EVERY WED, 0900
- 3 27A ATTORNEYS AND 3 27D PARALEGALS
- LAWYER-CLIENT CONFIDENTIALITY



LANDLORD TENANT LAW



LANDLORD TENANT LAW – COMMON SCENARIO

Soldier and spouse live off-post in a rental house.

They want to move into government quarters, so they give the landlord notice that they are going to move out in 30 days. The landlord says no, but the couple moves anyways. What will happen?



LANDLORD TENANT LAW – BREACH PENALTIES

- Getting post housing does not enable a soldier to get out of a lease
- Lease is a legally binding contract – can get sued for a “breach”
- Texas Property Code
- Texas Apartment Association Lease
- Lease is for a full year
- Re-letting charge
- Damages
- Everyone that signs the lease is “jointly and severally liable”



LANDLORD TENANT LAW – MORE SCENARIOS

Soldier and spouse live in an off-post apartment, but they decide to get a divorce. Soldier moves into the barracks, and spouse stays in the apartment. What happens to the lease?

- Divorce does not enable a soldier to get out of a lease
- Joint and several liability
- Will talk about AR 608-99 family support later
- Who is going to live there after the divorce?
- Same breach penalties apply



LANDLORD TENANT LAW – MORE SCENARIOS

Soldier's spouse alleges physical abuse, and the chain of command moves the soldier back into the barracks.

- Same as above

Soldier living off-post is having financial difficulty, so chain of command moves the soldier back into the barracks.

- Will probably make it worse. Same as above.

Soldiers are roommates living off-post, and one soldier moves out.

- Remember joint and several liability



LANDLORD TENANT LAW – MORE SCENARIOS

Soldier and spouse live in an off-post rental house, and soldier gets orders to PCS. Can the soldier terminate the lease?

- Yes! Servicemembers Civil Relief Act (SCRA - December, 2003)
- Beware of effective termination date

Same situation, but soldier gets orders to deploy for 90 days or more. Can the soldier terminate the lease?

- Yes! This is a new protection in the SCRA
- Never waive your SCRA rights



LANDLORD TENANT LAW – WHAT WE CAN DO FOR YOU

- Bring your lease into the LAO for review before you sign it
- Bring your lease into the LAO for review before you terminate it
- We will contact landlords in a dispute
- We will write proper notices for termination or repairs
- Will advise you about suing your landlord in small claims court



SERVICEMBERS CIVIL RELIEF ACT (SCRA)



SCRA PROTECTION SCENARIOS

Soldier notices that money was taken out of his paycheck, and he finds out DFAS is garnishing his wages. Soldier finds out that they are taking money out for child support, but he had no idea that he had been sued for child support. Can the soldier do anything?

- Yes. The SCRA protects soldiers against “default judgments”
- We will write the appropriate letters to the judge and get the hearing re-opened
- Judge must re-open the case if soldier has a defense and military service affected his ability to appear
- Does not make the problem go away



SCRA PROTECTION SCENARIOS

A soldier gets sued in another state, and she gets notice from the court. Is there anything she can do?

- Soldier can request a “stay” in the case
- She can apply for a stay for at least 90 days if:
 - current military duty materially affects her ability to appear
 - CDR writes to say she can’t appear and leave is not authorized
- Can reapply for longer stay
- Does not make the lawsuit go away



SCRA PROTECTION SCENARIOS

A soldier has a car loan that he got before he entered the service. The loan has 12% interest, and the soldier is having a hard time paying for the car. Can he do anything?

- Yes! The SCRA allows a soldier to reduce any pre-service debt obligations to 6%
- Effective as of date you entered service; creditor must adjust/credit
- Deployment does not give you the right to get your interest rates reduced – common misinformation
- Some creditors do reduce interest for any AD SM, but SCRA doesn't require it



SCRA PROTECTION SCENARIOS

A soldier and his spouse have a lease for an off-post apartment, and he cannot pay his rent. The landlord enters the property and physically evicts the soldier and his family. Can the LL do this?

- Landlord may not evict a soldier or his dependents from primary residence without a court order if rent is under \$2400 per month
- A notice of possible eviction proceedings is not an eviction
- Criminal and civil remedies



SCRA PROTECTION SCENARIOS

4ID soldier got back from the deployment in March '04 and entered into an automobile lease for a shiny new BMW. The UEx deploys again in August '05, and the soldier wants out of the lease. Can he get out?

- If you get OCONUS PCS orders or orders to deploy for 180 days or more, you can lawfully terminate an automobile lease.
- New protection in the SCRA
- **DO NOT CONTRACT THIS RIGHT AWAY WHEN YOU SIGN YOUR LEASE! DO NOT SIGN AN SCRA WAIVER!**
- Do you really have a lease or is it a balloon loan?



CONSUMER LAW



CONSUMER LAW – USED CAR SCENARIO

Soldier goes to a local used car dealer and buys a used car. He finances through the dealer and gets his insurance through the dealer. A few days later the soldier realizes that he cannot afford the car. Can he turn the vehicle in?

- Not without breaching the contract
- There is no cooling off period with automobile sales!
- A “voluntary repossession” is just as bad as an involuntary one.
- What is the soldier liable for?
- I haven't seen a good deal yet from a local used car dealer



USED CAR SCENARIO CONTINUED



- The insurance does not fully cover you and it is expensive
- Do your research and be patient. Use a free source like www.edmunds.com
- Before you sign the contract, bring it to us or to Consumer Affairs (Bldg. 9001, 287-2489)
- Get a used car inspected before you buy it (Sprocket Craft Shop)
- Never, ever buy a car “As Is”
- Texas Lemon Law covers new cars only



USED CAR SCENARIO CONTINUED

- Ask dealer about known defects in the vehicle...must disclose
- If the dealer is not willing to give you at least a 90-day bumper to bumper warranty, the car is not worth buying
- We all want a nice car, but all can't afford one...know your limit
- Paying double digit financing? If you have good credit, you are getting ripped off
 - Building a credit history
 - Co-signer?
 - Know your credit rating
 - Get private financing
 - If you have down payment, consider securing loan instead
- MILES Program



CONSUMER LAW - PROTECTIONS



- Texas Deceptive Trade Practices-Consumer Protection Act.

This Act protects you against:

- false, misleading, and deceptive business practices
 - unconscionable actions
 - breaches of warranty
-
- If you feel that you have been ripped off by shady business dealings, come to the LAO to see if you have a case
-
- You can sue a violator of the Act. You may be entitled to three times the amount of your economic damages caused by the violation, and you may be entitled to damages for mental anguish. You will also be entitled to court costs and attorney's fees!



DEBTOR-CREDITOR LAW



DEBT COLLECTION SCENARIO



A soldier receives a call from a debt collector. The debt collector does not stop calling. The debt collector starts calling the 1SG, and starts threatening the soldier. The debt collector calls at 2200 or 0500. What can the soldier do?

- You are protected by both federal and Texas laws
- Within 5 days of communication with you, the debt collector must send a written notice explaining the debt
- You then have 30 days to request verification of the debt
- You can tell them to stop contacting you, and they must do so



MORE LEGAL PROTECTIONS FROM DEBT COLLECTORS

- They cannot contact you at unusual or inconvenient times
- They can only contact third parties (e.g. your chain of command) in an effort to find your location and should only contact once – cannot refer to the debt!
- If you have a legal assistance attorney, they must only contact the attorney once they have notice
- They cannot harass, oppress, or abuse you in collection of the debt
- They cannot use any false, deceptive, or misleading representations in collection of the debt



YOUR REMEDIES FOR DEBT COLLECTOR VIOLATIONS

- You can sue them, and be awarded attorney's fees and court costs!
- For violations of TX Debt Collection Act, you can recover \$100 for each violation. Some federal courts allow \$1000 per violation of the Fair Debt Collection Practices Act
- You can contact the Texas Attorney General about violations and they could pursue action against the debt collector. The Federal Trade Commission also pursues violators.
- In Texas, it is also a crime to violate the Texas Debt Collection Act.



DEBT COLLECTION – WHAT WE CAN DO FOR YOU

- Letter of representation to debt collector
- Letter demanding verification of debt
- Get them to stop contacting you and your chain of command
- Advise you of collection violations and refer you to an attorney
- Negotiate a settlement of your valid debts



FAMILY LAW



DIVORCE SCENARIO

Soldier and his spouse decide to get a divorce. The soldier moves back into the barracks. What can we do for the soldier and what kind of support is the soldier required to give his wife?

- Weekly Divorce Briefing on Wednesday morning at 0900
- Pro Se Divorce Program
- Requirements: No children, no property, uncontested divorce



FAMILY SUPPORT REQUIREMENTS – AR 608-99

- The trigger: when either party voluntarily moves out
- BAH Type II With Dep. based on rank – NOT FULL BAH!
- “Interim support” if there is no court order or agreement
- What if the spouse is in government quarters?
- Effect of other family members
- Payment in kind – rent/mortgage and essential utilities
- Punitive regulation that CDR is required to enforce
- Narrow exceptions for release from BC or BDE CDR



CHILD SUPPORT

- Each state has different laws on child support
- Contact the child support enforcement office in the state where the child is located
- Never sign an acknowledgement of paternity or similar document if you have any question that the child is yours
- Each state will help you establish paternity, and if the child is yours they will enter a child support order
- You are required by state law and by army regulation to pay court ordered child support
- If you don't pay ordered support, they will find you...



CONSERVATORSHIPS



- Basically the same thing as a guardianship
- Established through the Texas court system; we can help
- Allows you to establish them as a dependent
- Requirements for our program



WILLS AND POWERS OF ATTORNEY



WILLS AND POWERS OF ATTORNEY

- If you are single, you don't have any kids, and you want all of your assets to go to your parents, you don't need a will...everyone else does
- Not a requirement to have a will or POA and can't be forced
- Update your wills when you have significant life changes
- General POAs – BEWARE!
 - Many agencies on post don't accept them
 - Nobody has to accept a POA
 - Stories from last deployment...
- Special POAs – a better choice and more likely to be accepted



Legal Resources

- www.texastenants.org - Landlord Tenant Law
- www.texasbar.com - Texas Bar Association; information on various subjects including divorce, bankruptcy, consumer law, etc
- www.consumer.gov/idtheft/ - Identity Theft
- www.oag.state.tx.us - Texas Attorney General; info about consumer protection, child support, paternity, and more
- www.capitol.state.tx.us/statutes/statutes.html - Texas laws
- www.uscis.gov - Citizenship and Immigration Services
- Child Protective Services -
www.tdprs.state.tx.us/Child_Protection/About_Child_Protective_Services/default.asp
- www.gclf.org/ - Lonestar Legal Aid
- www.acf.hhs.gov/programs/cse/ - links to state child support
- www.edmunds.com - car buying
- www.bbb.org - Better Business Bureau
- <http://www.ftc.gov/bcp/online/pubs/credit/fdc.htm> - Fair Debt Collection
- Consumer Credit Counseling Services – 1-800-374-2227 ask for FT Hood



QUESTIONS?