

# LEGAL ASSISTANCE HOT TOPICS

## Fort Leavenworth Legal Assistance Office

### How to Prevent Landlord-Tenant Problems

When searching for housing, take your time. Take the time to find out as much as you can about your prospective landlord before you sign a lease. Sit down and talk to the landlord, check with the housing office to see if any complaints have been filed against him, or talk to fellow Soldiers and current residents to find out if this landlord is one you can trust.

Before you sign a lease, do a walk through inspection of the property with the landlord and document any and all damage that you find. Examine the property carefully. It is worth a few minutes of your time at the start of the lease to prevent a landlord from charging you for damages you did not cause at the end of it. **Keep a copy of all paperwork for your records.** If the landlord does not do a walk through inspection with you, then immediately do one yourself and bring someone along who can testify to the results of the inspection. If possible, have someone from housing or your platoon sergeant serve as the witness. Document all damage and have the witness sign the documentation. Other things that you can do to protect yourself include sending a copy of the inspection results to the landlord by certified mail so that he or she can not claim to have not received it, and to take pictures of the property as it is inspected.

In addition to doing a thorough inspection of the property before signing the lease, you should also do a thorough inspection of the lease itself before you sign it. Make sure you know everything that is in the lease, and that you understand all of it. Also, make sure that you can live with each and every clause provided in the lease. Pay particular attention to the terms which dictate what your responsibilities are with respect to the property, such as amount of payment, payment dates, repair obligations, etc. If you don't understand any part of the lease or if you find any portion of it objectionable, do not sign the lease. Legal Assistance attorneys can review your lease and can help answer any questions you might have. Additionally, do not rely on promises the landlord makes unless they are written into the document. If it is not in the writing of the lease, then it is not worth the paper it's written on.

If problems with the rental property arise after you have moved in, be sure to notify the landlord of the problem in writing. Verbally telling the landlord of the problems will not protect you if he fails to do anything about them. Contact the Legal Assistance Office or the housing office for information about how to properly give this notice. If there is such a severe problem with the rental property that you feel it poses a threat to you and your family, you should contact your county health department. They will document any illegal conditions and take further appropriate action. Also, be sure to ask the housing office on post to document the problem.

Many other problems can potentially arise, as well. Be alert in all your dealings with your landlord. If you protect yourself to the fullest extent possible, your time renting will hopefully be relaxing and trouble-free. If you wish to speak to a Legal Assistance Attorney about any landlord/tenant problem, please make an appointment by calling 684-4944.

# Kansas Consumer Complaints

## Kansas Consumer Complaints

**Consumers in Kansas:** Complaints by consumers against businesses in Kansas can be made to the Office of the **Attorney General**: Consumer Protection/Antitrust Division. 120 SW 10<sup>th</sup> Street, 2nd Floor, Topeka, Kansas 66612-1597. Phone: 785-296-3751, fax 291-3699. Consumer Hotline: 1-800-432-2310. A consumer complaint form is available online at:

<http://www.ink.org/public/ksag/contents/consumer/complaint.htm>.

You can also contact the **Better Business Bureau** to make a complaint.

For consumers in Leavenworth County, you can make a complaint to the Better Business Bureau using the consumer complaint form online at: <http://kansascity.app.bbb.org/search?complaint=Y>

The address information for the Better Business Bureau in Kansas City is:

Better Business Bureau of Greater Kansas City  
8080 Ward Parkway, Suite 401  
Kansas City, MO 64114  
(816) 421-7800 (816) 472-5442 (fax)

**Consumers on Fort Leavenworth** can generally contact the Post Exchange Manager (913-684-3249) for guidance on how to address businesses that operate on base **UNDER AAFES. NON-AAFES** businesses can be addressed through one of the other two above methods.

**Other Complaints.** If you are dissatisfied, exercise your rights. Communicate with the other party. Write a letter and keep a copy. If you unable to resolve the matter, seek legal assistance. Businesses that defraud Fort Leavenworth Soldiers may be referred to the Armed Forces Disciplinary Control Board at Fort Riley. The board is a committee appointed by the Commanding General to help preserve the safety, health, morals, welfare, morale, and discipline of servicemembers off-post. Refer complaints to the IG or Legal Assistance Office.

Single copies of the current **Consumer Action Handbook** are available by writing Handbook, Federal Consumer Information Center, Pueblo CO 81009 or by calling 1 (888) 8 PUEBLO, that's 1-888-878-3256. The **Handbook** can also be ordered on the FCIC website, [www.pueblo.gsa.gov](http://www.pueblo.gsa.gov), and viewed there free of charge.

## Separation and Divorce

### What Is "Separation?"

If you voluntarily live apart from your spouse, you are considered to be separated. During a period of separation, spouses continue to be legally married, and the non-military spouse remains entitled to any military benefits.

### What are my obligations if my spouse and I have separated?

If you are the military spouse, you have a specific support obligation under Army regulations. AR 608-99 requires you to provide a certain amount of support to your family members. The amount depends primarily upon your rank. For dual military families, special rules apply regarding support. Military personnel are subject to prosecution for adultery under the UCMJ. Furthermore, once affirmative steps are taken toward separation and once the "cooling off" period has ended, the family is required to move out of government quarters.

### How Does Divorce Work?

Kansas does not require a period of separation before one of the parties is permitted to file for divorce. If you file a divorce action in Kansas state court, the end result will be that the court will issue an order

declaring the marriage terminated, dividing all property of the parties, and setting an amount of child support and/or spousal maintenance. To file for divorce in Kansas state court, you must have resided in Kansas or have been at Fort Leavenworth for at least 60 days. Once the divorce petition has been filed, a mandatory 60-day period must pass before the divorce can become final. Divorce laws may be different in other states.

### **Who Will Get Custody?**

Kansas has a preference for joint custody. Normally the child or children will have a primary residence with one of the parents. The other parent will be granted parental visitation (called "parenting time" in Kansas). Under a joint custody arrangement, both parents are equally responsible for raising the children and making decisions about them. In some instances, one parent will receive sole custody. The court will ultimately order the custody arrangement that is in the "best interests" of the children.

### **What About Support?**

The court can set an amount for child support based upon who has primary custody and what the parties' respective incomes are. The court may order spousal maintenance (alimony) under some circumstances.

### **What About Our Property?**

Any property owned prior to the marriage by either party is typically not subject to division by the court. Any property acquired during the marriage by either party is subject to division by the court. The court can divide this property, and it need not be split equally. Kansas law merely requires that the property division be equitable. The court can also divide the parties' debts. Creditors, however, can still pursue either spouse on joint debts that become delinquent.

### **What About Military Benefits?**

After the divorce is finalized, the children will retain some military benefits, including PX and health care. The non-military spouse will not retain any military benefits. However, if the marriage lasted at least twenty years, the soldier served at least twenty years on active duty, and twenty years of active duty military service overlap with twenty years of the marriage, then the spouse can retain most military benefits. Any children will need to obtain an ID card to be able to receive their benefits. Check with the ID Card Section to inquire about the procedure to obtain an ID card.

### **Can I Sue For Divorce In A State Other Than Kansas?**

That depends. Each state has its own divorce laws regarding who can or cannot file for divorce there. Before trying to file in another state, you should check that state's divorce laws. Be aware that some states may have longer residency requirements than Kansas does.

### **If My Spouse Sues Me For Divorce, Do I Need An Attorney?**

You are not required to hire a civilian attorney, and it may be tempting to avoid having to pay an attorney. If you do appear in court without an attorney, however, be prepared to lose every issue. Appearing without an attorney will probably be detrimental to you in the long run.

### **What Services Does The Legal Assistance Office Provide?**

We can provide you with general advice about divorce and separation and referrals to civilian attorneys. ***Our office cannot prepare a separation agreement for you or represent you in the divorce. You will need a civilian attorney who can represent you in Kansas state court.*** We can, however, help you find a civilian attorney. The Legal Assistance office can only see whichever spouse seeks advice from our office first. Attorneys in other divisions of the Office of the Staff Judge Advocate are available to provide legal advice to the other spouse.

### **What is a Separation Agreement?**

A separation agreement is a contract signed by you and your spouse. The separation agreement can divide your property and debts, determine how child custody will be arranged, set child support and maintenance (alimony), and arrange for tax preparation and responsibility. *A separation agreement will*

*not work unless you and your spouse can agree on all of these issues.*

### **What Can A Separation Agreement Do For Me?**

The separation agreement can alter the support requirements set by Army Regulation 608-99 and it may be incorporated into your divorce decree if you are subsequently divorced.

### **What Are The Downsides To A Separation Agreement?**

Because the separation agreement is a contract, both you and your spouse must sign it. Also, a court is not obligated to incorporate every aspect of the agreement into a divorce decree.

### **Is THE SEPARATION AGREEMENT A LEGAL SEPARATION?**

No. A separation agreement is a contract. You do have some legal remedies if the other spouse breaches this contract. A legal separation ("separate maintenance") involves getting a court order, which can be more easily enforced than a separation agreement. Legal Assistance Attorneys cannot help you to get separate maintenance. You must seek assistance from civilian counsel.

Domestic relations laws can be very complicated. The above information was not meant to replace legal advice. There is also a helpful divorce information video available on our website. This video may help answer many of your questions. Our website address is:

<http://usacac.army.mil/cac2/Staff/osja/LegalAssistance.asp>. If you have further questions and would like to talk with an attorney, please call the Legal Assistance Office at 684-4944 and schedule an appointment.

## **SCRA Common Issues**

### **What about the lease on my apartment?**

I live alone and I came down on orders to deploy to Afghanistan next month, prior to the termination of my lease. I want to let my apartment go and put my furniture in storage. Can I get out of my lease? Generally - **yes**. If you have a lease for a house, apartment, or even a business location, you may be able to get out of the lease when you come down on deployment or PCS orders. Here are the requirements:

- You have received your deployment (or PCS) orders.
- You gave written notice to your landlord that you want to terminate your lease and a copy of your orders. You will still have to pay rent for a short while. Your landlord can charge you rent for 30 days after the date your next rent is due, after the date you give your written notice. Example: You give notice on 15 December. Your next rent is normally due 1 January. The landlord can make you pay rent until 31 January. The key is to get the written notice in the landlord's hands just as soon as possible.

### **I have to go to court on a lawsuit that came up over an auto accident last year. Can I get the lawsuit delayed?**

If you are a party (one of the people suing or being sued) in a civil case (not a criminal case), the court must grant you an initial delay of 90 days upon your request explaining how your military duties materially effect your ability to appear, your date of availability, and a letter from your commander. Generally, your commander will have to show that military duty is keeping you from going to court. This is a tricky legal area - I recommend you have your civilian lawyer contact a Military Legal Assistance Attorney to discuss the best way to proceed in your case.

## Jury Duty

Generally, active duty soldiers should fulfill their civic responsibility by serving on State and local juries, provided it does not interfere with their military duties. Army regulations do provide a blanket exemption from civilian jury service for general officers, commanders, trainees, and soldiers assigned overseas or to forces engaged in operations. Other active duty soldiers may be exempted from serving on local civilian juries if it would either:

- Interfere unreasonably with performance of the Soldier's military duties.
- Affect adversely the readiness of a summoned Soldier's unit, command, or activity.

Soldiers with questions about Army policy or obtaining an exemption may consult a Legal Assistance provider for assistance or advice.

Usually, the commander exercising special court-martial convening authority (SPCMCA) over a unit may determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a State or local jury.

Soldiers receiving a summons to serve on a civilian jury should inform their commander immediately. Active duty soldiers served with a summons to serve on a State or local jury will advise their commander promptly and provide copies of pertinent documents.

Normally, the unit commander will evaluate the summons considering both the individual soldier's duties and the unit mission, often coordinating with the staff judge advocate (SJA) or legal adviser. If the soldier is not exempt as explained above, the commander will process the soldier for permissive temporary duty under AR 630-5.

If the soldier is exempt, the unit commander will forward the summons and any related documentation, with recommendations, through the chain-of-command to the commander with exemption determination authority over the soldier concerned who will determine whether the soldier is exempt and will inform responsible State or local officials of the federal exemption (10 USC 982).

## WILL PACKAGES (WILL, SPRINGING POA, MEDICAL POA FOR HEALTH CARE, LIVING WILL)

### 2 appointments are required for a Will draft.

- The first appointment is a 30 minute appointment with the attorney to go over the completed Will worksheet (worksheets must be completed by the client prior to the first appointment).
- The second appointment is a 60 minute appointment to execute the Will and other estate planning documents. This appointment is typically scheduled with other will signing clients in a group setting.
- The entire process takes approximately two weeks. Please do not wait until the last minute to get your Wills drafted and executed. Start planning to get your wills drafted and executed at least two months before you depart from Fort Leavenworth to ensure that we can accommodate you.**

# **FORT LEAVENWORTH TAX CENTER**

- Open for business January-April
- Scope of Services – free tax prep for most individual income scenarios to include:
  - ☞ Sch A (itemized deductions), Sch B (interest and dividends)
  - ☞ Sch D (stock/mutual fund sales, basis calculation assistance)
  - ☞ Sch E (rental home income & sales)
  - ☞ Sch C (some limitations and only if substantially completed by client)
  - ☞ Family Child Care Providers
  - ☞ Military Spouses Residency Relief Act information
  - ☞ Amended Federal and State returns
  - ☞ Assistance with IRS and State audits & correspondence
  - ☞ Limitations to service may apply
  - ☞ IRS trained tax preparers with supervising attorneys
  - ☞ Website - <http://usacac.army.mil/CAC2/Staff/osja/TaxCenter.asp>
- Appointments preferred, walk-ins of E-5 and below welcome
- 615 McClellan Avenue, Bldg 55, Fort Leavenworth, Kansas
- For appointments and info call 684-4986 (during tax season)
- Off-season assistance available by appointment (684-4944)