

ATTORNEY REFERRAL



prepared by

HURLBURT FIELD
COMMANDO LEGAL OFFICE



INTRODUCTION

The Base Legal Office cannot represent you on legal matters of a personal and civil nature. Thus, it may be necessary for you to find, hire, and work with a civilian lawyer. This handout is developed to assist you in finding a lawyer and assisting him/her in properly representing you.

HOW TO FIND A LAWYER

The best way to find a good lawyer is to check with friends, neighbors, co-workers, or relatives who have hired lawyers in the past. Recommendations from people you know will help in selecting a good, competent attorney.

The Florida State Bar Lawyer Referral Service will refer you to attorneys living in your area who are able to handle your type of legal problem - 1-800-342-8011.

Attorneys run ads and have listings in the yellow pages of all telephone directories under the heading "Attorneys." Another resource is Martindale-Hubbell's Lawyer Locator (www.martindale.com).

The Florida Bar has pamphlets on family law matters, legal aid, and finding an attorney on its website, www.floridabar.org. There are many

family law forms available on the court's website, www.flcourts.org.

REMEMBER: The Legal Office cannot refer you to a lawyer or recommend particular lawyers.

ATTORNEY FEES

Attorneys usually charge by one of three methods:

1. An **hourly rate** based on the number of hours devoted to the representation.
2. A **flat fee** to perform a certain task. These fees are usually assessed if the matter is routine or standard, but if complications develop that require additional work, an additional fee may be charged.
3. A **contingent fee** based on a percentage of any award or recovery received on your behalf. Contingent fees are usually charged in cases where people are attempting to recover damages for injuries received due to the acts of another person. Be sure to understand the percentage that the attorney is charging under a contingency fee arrangement. Also, you need to know if the fee is calculated before or after the expenses incurred in handling the matter are paid. You also need to know if you will be expected to reimburse the lawyer's

expenses in the event there is no recovery on your behalf.

Be sure that there is a written fee arrangement between you and your lawyer in order to avoid any dispute as to what the fee is and how it is paid. This agreement protects both you and your lawyer.

THE INITIAL VISIT

The initial visit with a lawyer is an opportunity for you and the lawyer to get to know one another. Do not think that you have to hire the lawyer as a result of the visit. Some lawyers do not charge for the initial visit. It is important that you and the lawyer are comfortable with one another. The following matters should be discussed during the initial interview:

1. A brief description of the legal problem and what it will take to handle or resolve the problem.

2. How much the lawyer will charge or how he/she will set the fee.

3. Whether a retainer is required. A retainer is an amount of money deposited with a lawyer against which the lawyer bills his/her services. It acts as a guarantee that the lawyer will get paid for his/her services.

4. How long it will take to conclude the legal matter. If the matter involves litigation, the lawyer may not be able to give you an accurate estimate of time.

5. The lawyer's experience in handling matters similar to yours and any

references of past clients that you can contact.

If you decide to hire the lawyer during the initial interview, you probably will spend additional time discussing the details of your legal problem.

HOW TO ASSIST YOUR LAWYER

The more you can do to assist your lawyer, the more efficient he/she will be. This will help minimize your legal costs. Organizing a summary of the facts and relevant names, addresses, and phone-numbers prior to the visit, and bringing all documents relating to the problem would be helpful. Be honest with your lawyer; tell all facts, both good and bad. The lawyer can assist you better if he/she knows the bad aspects of your situation in advance rather than be surprised by them at a later time. If new information comes to your attention, let your lawyer know immediately.

Arrive on time for your appointments or call his/her office if you anticipate being late or have to cancel an appointment.

Tell the attorney what you would like to accomplish. Set realistic goals and expectations. The lawyer will tell you whether your expectations can be realized. Finally, don't be afraid to ask questions if you don't understand something.

*The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations. (Oct 07)

AUTO SERVICE CONTRACTS



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

When you buy a car, new or used, the dealer will ask you if you want to purchase an auto service contract, sometimes referred to as an extended warranty contract. This handout discusses auto service contracts so you can decide whether to buy such a contract when you buy a car.

THE CONTRACT IS NOT A WARRANTY

An auto service contract is not a warranty as defined by federal law. A warranty comes with a new car and is included in the original price. An auto service contract is purchased separately and usually may be arranged for at any time. An auto service contract is an agreement between you and the service contract provider to perform or pay for certain repairs and services.

QUESTIONS TO ASK

Before deciding whether to buy an auto services contract, the Better Business Bureau (“BBB”) suggests you ask the following questions.

- *Who backs the service contract?* It may be the manufacturer, dealer, or an independent company. Many service contracts sold by dealers are handled by independent companies called

administrators. Administrators act as claims adjusters, authorizing the payment of claims to any dealers under the contract.

- *What’s the cost of the auto service contract?* Usually, the price of the service contract is based on the car make, model, condition (new or used), depth of coverage and length of contract. The cost of the service contract can range from several hundred dollars to more than \$2,000. In addition, you may need to pay a deductible each time your car is serviced or repaired.

- *What is covered and not covered?* Few auto service contracts cover all repairs. Watch out for absolute exclusions that deny coverage for any reason. For instance, if the contract specifies that only “mechanical breakdowns” will be covered, problems caused by “normal wear and tear” may be excluded.

- *How are claims handled?* When your car needs to be repaired or serviced, some service contracts permit you to choose among several service dealers or authorized repair centers. Others require the car owner to return the vehicle to the selling dealer for service. Find out if you will need prior authorization from the contract provider for any repair work or towing services. Ask how long it will take to obtain authorization and whether you can get authorization outside of normal business hours.

- *What are your responsibilities?* Under the contract, you may have to follow all the manufacturer's recommendations for routine maintenance, such as oil and spark plug changes. Failure to do so could void the contract. To prove you have maintained the car properly, keep detailed records, including receipts. Find out if the contract prohibits you from taking the car to an independent station for routine maintenance or performing the work yourself. The contract may specify that the selling dealer is the only authorized facility for servicing the car.

- *What is the length of the service contract?* If the service contract lasts longer than you expect to own the car, find out if it can be transferred when you sell the car, whether there's a fee, or if a shorter contract is available.

Consumers should check with the BBB for a reliability report on the business offering the contract, and with any regulatory agencies that oversee this type of company. Make sure you read and thoroughly understand the agreement and check that all verbal promises have been included. Do not sign a contract with blank spaces that could be altered or changed. Finally, once the contract is signed, keep a copy of it for your records.

CONTRACT IS NOT A CONDITION TO PURCHASING A VEHICLE

If the dealer tries to sell you an auto service contract, it must clearly disclose to you that the contract is not required either to purchase the vehicle or obtain financing for the vehicle.

PROHIBITED ACTS

A motor vehicle service contract provider may not:

- Use any words that indicate it is in the insurance, casualty, or surety business, or use any names that would imply that it is an insurance or surety company.
- Make, or permit to be made, any false or misleading statements concerning the auto service contract or deliberately omit any material information.

While an auto services contract may add additional cost to the purchase of a vehicle, if you know the right questions to ask when faced with the option, you can potentially save yourself hundreds or even thousands of dollars if your car needs repairs.

*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07)

BANKRUPTCY



prepared by

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INTRODUCTION

Bankruptcy is a federal court proceeding that might allow a person with large debts to get a “fresh start” by freeing him or her from many or all of the debts. At the same time, a trustee of the court can sell the person’s property (unless it is exempt) and divide the proceeds to pay off the person’s creditors.

SHOULD I CONSIDER BANKRUPTCY?

Bankruptcy should only be considered as a method of last resort for handling your debts. It can be difficult to obtain reasonable credit once you have filed bankruptcy. It is better to work with your creditors to avoid bankruptcy.

If most or all of your property is exempt, then filing bankruptcy serves no real purpose. If your creditors obtain a judgment for a past due debt, they cannot foreclose against exempt property to satisfy the judgment. Only non-exempt property can be seized to satisfy judgments.

Bankruptcy is not free. The court charges a filing fee, and your attorney will charge for his or her services. The attorney will require advance payment. Otherwise, he or she becomes a creditor as well.

EXEMPT PROPERTY IN FLORIDA

Only certain property is exempt from being seized and sold to pay creditors. The following property is exempt in Florida:

- Homesteads owned for more than 40 months – no \$ limit. Homesteads owned for less than 40 months – up to \$137,000.
- Miscellaneous personal property including furniture, cloths, tools, and estimated cash on hand up to \$1,000.
- One motor vehicle, \$1,000 or less.
- Pensions, 401K plans, tax deferred retirement plans, Social Security income, disability income, IRAs, annuities, cash value of life insurance, college investment plans (including 529 Plans), health savings accounts, and hurricane savings accounts.

In some cases, a married couple may be able to claim a double exemption amount.

NOTE: There are exceptions to the exemptions if you owe child support, spousal support, or state and federal taxes.

HOW DOES BANKRUPTCY WORK?

Bankruptcy begins by filing a petition in federal bankruptcy court listing your debts and property. A bankruptcy trustee then holds a hearing to review the

petition, determine your debts, and plan repayment.

Non-exempt property may then be sold and the proceeds divided among the creditors. Property worth more than the exempt amount may be sold and the exempt amount returned to you. For example, using the state exemptions, if you own a car worth \$4,000, the trustee can sell the car and give you back \$2,000, the exempt amount.

Later, a second hearing will be held where you may receive a final discharge from your debts.

WILL BANKRUPTCY CANCEL ALL DEBTS?

No. It does not cancel spousal or child support, state or federal taxes, most student loans, and any debts that you failed to list in your bankruptcy petition. Also, any debts procured by fraud are not discharged by the bankruptcy. It may not cancel “secured debts.” A debt is secured if you gave the seller or the money-lender the right to repossess the property or goods used as collateral.

If you are married and your debts arose during the marriage, both spouses need to file bankruptcy or all the debts will be transferred to the other spouse.

BANKRUPTCY AND CREDIT

Not all creditors react the same way to bankruptcy, but your credit will be hurt. This does not mean that you will not be able to obtain credit. Some companies extend credit to individuals who have declared bankruptcy because they know that bankruptcy can only be filed once every six years. However, you can expect

the interest rates on such credit to be abnormally high.

ALTERNATIVES TO BANKRUPTCY

New bankruptcy law requires that debtors attend a credit counseling course before filing bankruptcy. This may be an opportunity to contact your creditors, explain your financial situation, and ask that they agree to restructure your debts so that you can meet the revised payments.

Another alternative is a “Debt Adjustment Plan” under Chapter 13 of the Bankruptcy Code. This court-controlled plan allows you to pay your bills through the court over a period of time. It stops interest from accruing on some debts, and you may not have to pay 100% of the amount owed on other debts. This plan keeps creditors from suing you, garnishing your wages, or taking other legal action to collect while you are making payments under the plan.

Avoid finance companies which offer debt-consolidation plans. Such companies charge high interest rates and tie up much of your property as non-exempt collateral.

***The information in this handout is general in nature. Please also see this office’s handout on the Servicemember’s Civil Relief Act. It is not to be used as a substitute for legal advice from an attorney regarding individual situations (Oct 07)**

BUYING A NEW CAR



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Buying a new car is the second most expensive purchase many consumers make, after the purchase of a home. This brochure is designed to help acquaint you with some terms that might help you with the process.

CHOOSING YOUR NEW CAR

Leave yourself plenty of time to shop for a new vehicle so you can research models, pricing and financing. Before you buy, make a realistic assessment of your transportation needs and your financial resources -- how much you can afford to spend for down and monthly payments. Books and magazines in the library, as well as the Internet, can help you compare different cars. After doing some research, you should narrow your search down to a set of cars and test drive several different ones. If you cannot find the model you want with the options you require, you may be able to order a vehicle to your specifications. After you have selected a vehicle, be prepared to negotiate and perhaps visit several different dealerships in order to get the best price that you can.

Terms of the Trade

There are several important terms to understand before you look to buy a new car. They are listed in increasing order of price.

INVOICE PRICE is the manufacturer's original price to the dealer. This is usually higher than the **dealer's final cost** because dealers often receive rebates and holdbacks from the manufacturer. Invoice always includes freight (destination & delivery) so make sure freight is not added on to a deal offered at \$100 above invoice. It is possible to obtain the manufacturer's invoice price from a variety of sources. The National Automobile Dealers Association (NADA) provides this information at www.nadaguides.com. Knowing how much a particular vehicle cost the dealer will put you in a much better bargaining position. Dealers can often

afford to somewhat reduce their profit margin on a vehicle in order to make a sale.

BASE PRICE is the cost of the car without options. This includes standard equipment, factory warranty & freight.

STICKER PRICE appears on a label affixed to the car window and is required by federal law to show the base price, manufacturer's installed options, manufacturer's suggested retail price (MSRP), and transportation charges. Only the purchaser can remove this label.

DEALER STICKER PRICE is usually a supplemental sticker. It equals the sticker price, plus the suggested retail price of dealer installed options and additional dealer markup for car preparation and undercoating. This amount can also include additional dealer profit. When in doubt, ask for an explanation.

FINANCING YOUR NEW CAR

If you are looking to finance your new car, take the time to check the dealer's rates against those rates being offered by banks, credit unions and/or other dealers. Because interest rates vary widely among institutions, comparing them can save you a lot of money. You will also generally pay less in total interest with a shorter financing agreement than with a longer one. You will likely qualify for a lower rate if you can make a substantial down payment.

Some dealers will offer very low finance rates on certain models of cars. As a result, the dealer may be unwilling to negotiate on the price of the car. These conditions may lead you to decide to pay higher financing charges on a car that is lower in price. If you are financing a car, always look to find the **TOTAL SALES PRICE** of the arrangement. This will be the cost of the car plus the cost of the loan -- the true bottom line figure. It shows you how much the car loan really costs. Remember, if this amount exceeds what you can afford to pay, walk away from the deal!

Beware of signing a contract that fails to specify what the interest rate for the purchase will be or that states that your interest rate is contingent on lender approval!!! Tell the dealer that you will wait to take delivery of your new vehicle until you can receive guaranteed financing terms. If you sign a “contingent” contract, the dealer may contact you later and tell you that you were not approved for the previously quoted rate of interest and that new financing terms must be arranged. If you have signed such a contract and this happens to you, consider whether you are willing and able to accept the new financing terms. If you are not, tell the dealer you wish to return the new car, cancel the deal, and get your trade in back. If the dealer refuses, contact the legal office immediately for an evaluation of your situation.

You should also be aware that there are dangers involved in financing cars over periods of time that exceed their useful life (five or six years). You may find yourself in a situation where you need to get rid of a car that is worth less than the amount of money you owe on it. You might have to finance part of the cost of your old car “into” your new car. If the process repeats, there is a danger that you will go deeper and deeper into debt with each car you purchase. This phenomenon is another reason that it is to your advantage to make a down payment on a car because you will generally finish paying off a car sooner if you make one.

TRADING IN YOUR OLD CAR

There are two options here: let the dealer take your old car on trade and assign a value to it, or sell it yourself. In order to make that decision, you need to know the value of your old car. You can find that information through the NADA car guide, available at www.nadaguides.com. Car dealers rarely give top value for trade-in vehicles. It is often to your financial advantage to sell your vehicle privately. However this method takes longer and requires more “legwork” on your part so it may not be best in all cases.

SERVICE CONTRACTS

These are contracts offered by manufacturers, dealers and independent companies that run concurrently with the manufacturer’s warranty. Before you decide on a service contract, consider the following questions:

What is the difference between the coverage under the warranty and the coverage under the service contract?

What repairs are covered?

Who pays for labor and parts and in what percentages?

Who performs the repairs? Do you have a voice in selection?

What is the area in which the warranty is accepted? Will mechanics where you live or travel perform repairs and bill the warranty provider or must you pay for all repairs out of your own pocket and submit a claim to the warranty company?

How long does the service contract last?

What is the cancellation and refund policy?

FINAL WORD

If you have any doubt about your purchase, WALK AWAY FROM THE DEAL! Don’t sign anything until you have read it, understand it and want to close the deal. Get assistance in reviewing the sales agreement. The legal office and the family services center are two places to start. It may also be wise, especially if you are purchasing your first car, to consult a more senior Air Force member or supervisor who has more experience in financial matters than you do. Ask for advice or assistance before you sign a contract. Being over 18 years of age and signing your name is all it takes to buy a car.

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BUYING A USED CAR



prepared by

HURLBURT FIELD
COMMANDO LEGAL OFFICE



INTRODUCTION

Americans spend billions of dollars every year buying millions of used cars. Rules exist to protect you, but common sense and early preparation are essential when buying a used car. Know how much you can spend, have a buying strategy, and budget ample time to look around.

When considering a used car, you should always examine both its market value and its mechanical condition. Various reputable services provide estimated market values for used cars. One that is considered reliable in this area is the NADA “Yellow Book,” which is available online at www.nadaguides.com. The value of any given vehicle will vary depending on its mileage and overall condition, as well as other factors. However, if a seller of a used car asks a price that is substantially above the vehicle’s estimated value, you should be very cautious. You should also check and make sure that what you are being offered for your trade is consistent with your old vehicle’s estimated trade-in value.

The mechanical status of a used vehicle is also a very important factor in any purchase decision. It is always a good idea to have any used vehicle inspected by an independent mechanic before you buy it. If the seller of a used car refuses to let you do this, then consider buying your vehicle elsewhere.

You can obtain a title history report for a used vehicle from www.carfax.com, which will tell you every owner of a used vehicle and reveal many, but not all, substantial problems that a car may have suffered, such as water damage.

WARRANTIES

As Is: When a car is sold “as is,” there is no warranty. If you have problems with the car, even moments after you sign the papers, you must pay for the needed repairs yourself. However, a dealer always has a duty to disclose known defects that might affect the safety of a particular car.

Implied Warranty: In most states this means that the seller promises that the product will do what it is supposed to do. In the case of a car, it must run. A written disclaimer can overcome this warranty.

Warranty of Fitness for a Particular Purpose: This warranty applies when you buy a specific vehicle from a dealer, for a particular purpose or job. For example, if you ask a dealer for a vehicle with a heavy duty towing capacity for pulling your boat, the dealer, in filling your request, warrants that the vehicle sold to you meets those needs.

Express Warranty: If a dealer offers a warranty on a used vehicle, they must fill

in the warranty portion of the **buyer's guide** that comes with the vehicle. Examine the warranty carefully before buying the car or truck. Determine what is covered and what is not. The warranty (or lack thereof) might give you the best insight into what the dealer really thinks of the vehicle's condition. If a dealer makes any statement, promise, or representation regarding repairs or warranties that are not written down - **get them in writing or forget them!** Oral statements made by car dealers are almost never binding and may be denied later.

READ THE BUYER'S GUIDE

The buyer's guide, which should be posted on any used car, contains information of critical importance to the buyer. When you buy a car, always retain a copy of the buyer's guide for your records. When a warranty is offered, check whether the offer is *full* or *limited*. A full warranty provides the following terms and conditions:

- Warranty service will be provided for anybody who owns the vehicle during the warranty period when a problem is reported.
- Warranty service will be provided free of charge, including costs like returning the vehicle or removing or reinstalling a system covered by the warranty.
- At your choice, the dealer will provide either a replacement or a full refund if the dealer is unable, after a reasonable number of tries, to repair the vehicle or system covered by the warranty.

- Warranty service is provided without requiring you to return a warranty registration card.
- No limitation is placed on the duration of implied warranties.

If any of the above statements is not true, then the warranty is "limited." A limited warranty tells you there are some costs or responsibilities the dealer will not assume for systems covered by the warranty.

Check the percentage of the repair cost the dealer will pay. For example, "The dealer will pay 100% of the labor and 100% of the parts."

Check to see if specific systems are covered. The exact systems (the frame and body, the brake system, etc.) covered must be listed.

Check the duration of the warranty for each covered system. For example, "30 days or 1,000 miles, whichever occurs first."

UNEXPIRED MANUFACTURER'S WARRANTIES

If the used vehicle is still covered under the terms of the original manufacturer's warranty, the dealer may add the following language in the warranty disclosure space: MANUFACTURER'S WARRANTY STILL APPLIES

This does not mean the dealer is offering a warranty, it refers only to the original warranty on the car. If you have questions about the warranty coverage,

ask the dealer to let you examine any unexpired warranty on the vehicle.

SERVICE CONTRACTS

A service contract, like a warranty, provides reimbursement for repairs that the vehicle may need during the contract's duration. Unlike a warranty, a service contract must be purchased separately from the vehicle. The agreement may be offered directly by the dealer or the dealer may sell it on behalf of a third party warranty company. To decide if you should purchase a service contract you should read the contract carefully while asking the following questions:

What is the difference between the coverage under the warranty and the coverage under the service contract? Does the service contract really provide me with any additional coverage?

What repairs and/or maintenance services are covered?

Who pays for labor and parts and in what percentages?

Who performs the repairs? Do you have a voice in selection?

What is the area in which the warranty is accepted? Will mechanics where you live or travel perform repairs and bill the warranty provider or must you pay for all repairs out of your own pocket and submit a claim to the warranty company?

How long does the service contract last?

What is the cancellation and refund policy?

FINANCING YOUR CAR

The financing terms you receive on a car are very important as they determine the total cost of the car to you – the cost of the vehicle plus the interest cost of the loan. The higher the interest rate and the longer the term of the loan the more money you will have to pay in interest. For a more detailed discussion of financing, please see this office's "BUYING A NEW CAR" pamphlet.

REMEMBER

Spoken promises are difficult, if not impossible, to enforce. Forget dealer promises unless they are in writing.

Never sign a single document until you are certain you want to buy a specific car and you have read and understand what you are signing. The legal office reviews contracts as part of our legal assistance program. Be wary of any dealership that will not let you have a copy of one of its contracts for review. It is also a good idea, particularly if you are buying your first car, to consult a more senior Air Force member with car-buying experience before you make a purchase.

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LEASING A CAR



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INTRODUCTION

When shopping for a car, one choice is whether to lease or buy. The number of new car leases is rapidly increasing. Before deciding to lease a car, it is important to ask questions, nail down the details, read the fine print, and shop around. This handout provides helpful information for those who may be thinking about leasing their next new car.

LEASING vs. BUYING

Leasing a car is not the same as buying one. If you buy a car, you own it. With a lease, you are paying to drive someone else's car. One advantage of a lease is that it may result in lower monthly payments than a loan. However, at the end of the lease you will have no ownership interest or equity in the car.

SOME HELPFUL HINTS

1. *Shop as if you are buying a car*

Be sure to negotiate all of the lease terms, including the price of the car. A lower lease price means lower monthly payments. Additionally, be sure to get all of the lease terms in writing.

2. *Know the terminology*

With a CLOSED-END LEASE, you return the car at the end of the lease period and walk away. However, you will probably still be responsible for certain end-of-lease charges, such as excess mileage, wear and tear, and disposition.

With an OPEN-END LEASE, you will pay the difference between the value of the car stated in your contract and the lessor's appraised value at the end of the lease.

LEASE INCEPTION FEES are payments that must be made at the beginning of the lease. These may include a down payment, security deposit, acquisition fee, first month's payment, taxes and title fees. Be sure to ask for a list of these charges. Also, keep in mind that some or all of the terms related to these charges may be negotiable.

The term CAPITALIZED COST means the price of the car for leasing purposes, plus taxes and extra charges such as service contracts and registration fees.

CAPITALIZED COST REDUCTION is like a down payment. If you trade in a car, make sure the dealer applies the trade-in value to the price upon which your lease is based. The credit from your

trade may reduce your down payment or monthly payment.

3. Find out what extra charges may be assessed

You may be charged extra for excessive mileage, wear and tear, disposition, and early termination of the lease. Most leases allow for driving 12,000 to 15,000 miles per year. If you put on extra miles, expect a charge of 10-25 cents per additional mile.

You should also find out what the penalties are for returning the car early. You should expect to pay a substantial charge if you give up the car before the end of the lease. It is also important to note that the lease may prohibit you from taking the car out of the United States. However, the Servicemembers Civil Relief Act (“SCRA”) provides for early termination of a vehicle lease when a servicemember receives PCS orders outside of the United States or orders to deploy for more than 180 days. Even still, there may be some charges involved with the early termination of a lease covered by the SCRA.

4. Consider where you will be required to return the car at the end of the lease

Upon termination of the lease, you may be required to return the car to the dealer who originally leased it to you. This may be extremely inconvenient if, for example, you lease a car in Florida and are later stationed on the west coast.

5. Look at the manufacturer’s warranty

Make sure the warranty covers the entire term of the lease and the number of miles you expect to drive.

6. Consider “gap insurance”

“Gap insurance” is designed to cover the difference between what you owe on the lease and what the car may be worth if it is stolen or totaled in an accident. The difference can sometimes amount to thousands of dollars.

7. Review the contract before signing

Before signing on the dotted line, take a copy of the contract home, away from dealer pressure, and carefully review it. Look for charges that were not disclosed at the dealership, such as conveyance, disposition, or preparation fees. It is also a good idea to have an experienced friend, supervisor, or attorney review the contract.

MANDATORY DISCLOSURES

As of October 1997, federal law requires lessors to provide lease cost information to you before you sign the lease. Be sure to ask for this information if it is not offered to you by the dealer.

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CAR RENTAL GUIDE



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Car-rental agents use some puzzling terms. This fact sheet will familiarize you with some of the terms and options you face when you rent a car.

CHOOSING A CAR-RENTAL AGENCY

Before you reserve a car, know what model and options you need, and how much you can spend. This will help you avoid hasty or expensive decisions you will later regret. Before you choose, consider the following:

- Call several car-rental agencies for price estimates; most have toll-free numbers and websites. Many offer weekly, weekend and Internet-only specials. If your plans are flexible, you may save money by renting a car when you can get a discount. Ask about any restrictions on special offers.
- Decide what model and size car you want, but realize that each car-rental agency may have its own classification system. The terms “compact,” “mid-size,” and “luxury” often differ among agencies.
- Additional fees could substantially increase an advertised base rate. Such fees include: collision damage waiver fees; refundable charges; airport surcharges and drop-off fees; fuel charges; mileage fees; additional-driver fees; under-age driver fees; out-of-state charges; equipment rental fees, and local special taxes on tourism and travel services.

LEARNING THE TERMS

Definitions of common additional fees follow. Asking about these fees before you sign your rental agreement may help you save money on

your trip and avoid disputes when it is time to pay.

Collision Damage Waiver (CDW), in states that allow it, is an optional charge of \$10-\$20 a day. Car-rental agents may encourage you to buy it. Although they call it “collision damage” coverage, it is not technically collision insurance. Instead, it is a “guarantee” you buy from the agency that it will pay for damages to your rented car. However, under CDW, the agency will not pay for bodily injuries or damages to personal property. If you do not buy CDW coverage or are not covered by your own auto insurance policy, you could be liable for the full value of the car.

Some CDWs exclude coverage in certain circumstances. For example, coverage may be revoked if you damage the car when driving negligently, on unpaved roads, or out of the state where you rented the vehicle. Some companies void their CDW coverage if a driver drinks alcoholic beverages or someone is driving other than the one authorized on the rental contract.

The coverage offered by rental agencies may duplicate what you already have in your auto or homeowner’s insurance policies. Your medical plan will probably cover bodily injury. Check your policies and medical plan. If you are traveling on business, your employer may have insurance that covers you. Also, some credit-card companies provide free rental protection when you use their card to pay for the rental.

Most companies charge your credit card an extra refundable charge when you pick up the car, but do not process the amount against your account unless you do not properly return the car. Until you return the car, the spending limit on your card may be reduced by the amount of the deposit. This may be important if you intend to

place large charges on your credit-card and are approaching the credit limit.

Airport Surcharges and *Drop-off Fees* can add considerably to a base rental rate. Surcharges apply when airport authorities impose fees for airport use even when car-rental agencies shuttle you to an off-airport site. Drop-off charges may apply if you drop off the car at a location different from your pick-up point.

A *Fuel Charge* is the amount many rental agencies add to your bill for gasoline. If you do not pre-pay for fuel, you will probably be required to return the car with a full tank. If you fail to refuel the car, you will be charged the agency's price for gasoline, which is often higher than you would find at a local station.

Mileage Fees are usually assessed on a cents-per-mile basis or a flat fee if you exceed the allotted free mileage cap. Knowing how far you will drive will help you select the agency with the best mileage terms.

Additional Driver Fees and *Underage Driver Fees* are costs that an agency assesses when you share the driving with a companion or when a driver is under a certain age (often 25).

Out-of-State Charges, as the name suggests, are fees an agency adds when you drive the car out of the state where you rented it.

Equipment-Rental Fees are costs that an agency assesses for such extras as ski racks or car seats. If you need these items, be sure to request them in advance.

CHECKLIST

Here are some other checkpoints that may save you money.

- Determine where you will pick up and drop off the car and if these locations are without special fees.
- Find out about any blackout dates that could affect an advertised special.

- Ask about the weekly rate if you are considering a rental for more than four days. The daily rate for rentals of more than four days, but less than seven, is often higher than the weekly rate.
- Ask about mandatory additions to the quoted price, such as mileage rates, fuel charges, airport surcharges, and taxes.
- Ask about charges for optional CDW coverage. Find out if your own auto insurance policy covers rental cars.
- Ask about charges for additional drivers, underage drivers, and equipment.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07)**

CHANGING YOUR STATE OF DOMICILE



prepared by
HURLBURT FIELD
COMMANDO LEGAL OFFICE



Explanation of Terms

“**Domicile**” is the state where one has his or her true and permanent home. For military members, it is the place to which the member intends to return at the conclusion of his or her military service.

“**Residence**” is used frequently as a synonym of “domicile.” However, a person may become a resident of a state for certain purposes without changing his or her domicile.

“**Home of record**” is not necessarily a person’s domicile. It is merely the Air Force term for the address you listed when you entered active duty.

HOW WILL A CHANGE OF DOMICILE AFFECT YOU?

Taxes: Federal income tax laws apply to your military pay no matter where your domicile is located. However, **your military pay is subject to state income tax only in your state of domicile.** Some states do not tax military pay, others do. Tax rates vary from state to state. Some states tax only your basic pay. Others tax military entitlements and special duty pay as well.

Florida does not tax the military pay of active duty Floridians stationed either inside or outside the state of Florida. If you are considering changing your domicile to Florida, check with Accounting and Finance or your legal assistance officer to find out how it will affect the taxes on your military pay.

Income from other sources, or earned by family members not in the military, is subject to taxation in the state where the money is earned. Personal property used in a private business or trade can also be taxed in accordance with the laws of the state wherein it is used.

Property law varies from state to state. Check with your legal assistance officer to find out how changing your domicile may affect your property.

Resident tuition rates apply at state colleges and universities in the state of your domicile. Florida entitles military members and their dependents stationed in the state to resident tuition rates.

Non-Military spouses’ state of legal residence will be Florida if he/she is living in the state of Florida.

CHANGING YOUR STATE OF DOMICILE

Three things are required to change your domicile:

- (1) **Actual presence** in the state where you desire to establish a new domicile;
- (2) **An intention to remain** there permanently or indefinitely; and
- (3) **An intention to abandon** your old domicile.

Proof may be required if you attempt to take advantage of benefits offered to persons domiciled in a state, or if you claim a different domicile for the purpose of avoiding taxes.

Proof of domicile includes:

1. Where you file your state income tax return.
2. Where you own real property.
3. Where you are registered to vote.
4. Where you hold professional licenses or maintain a place of business.
5. Where your car is licensed and which state issued your driver's license.
6. Your home state when you entered military service.
7. Your family's home - the place you visit when you are on leave or making a PCS move.
8. Total length of time you have been present in the state.

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PROOF OF YOUR DOMICILE

CHILD SUPPORT ENFORCEMENT



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Every child has a legal right to the financial support of both parents. This is true regardless of whether the parents are divorced, separated, or never married. If you need to establish a child support order, or are attempting to collect child support payments under an existing order, it is important to know where to turn for help.

THE CHILD SUPPORT ENFORCEMENT PROGRAM

The Child Support Enforcement (CSE) Program is a federal, state and local partnership designed to collect child support. Established in 1975 as Title IV-D of the Social Security Act, it functions in all states through state and county Social Services Departments, Attorney General's Offices, or Departments of Revenue. State CSE programs locate noncustodial parents, establish paternity, establish and enforce support orders, and collect child support payments. Although programs vary from state to state, their services are available to all parents who need them.

By law, CSE programs cannot be used to enforce court orders pertaining to property settlement, or visitation and custody, because these issues are not, by themselves, child support enforcement issues. Parents must handle these issues

through the local court system with the aid of a private attorney.

ELIGIBILITY and FEES

Any parent or person with custody of a child who needs help establishing a child support obligation or collecting support payments can apply for CSE services. Those receiving assistance under the Aid to Families with Dependent Children (AFDC), Medicaid, or Foster Care programs do not have to pay for CSE services. For others the fee is \$25. States can also recover all or part of the actual costs of their services from those who are not AFDC recipients. These may include the cost of legal work done by agency attorneys and costs for locating a noncustodial parent. Such costs may be deducted from the child support that is collected, or may be collected from the noncustodial parent.

FINDING THE NONCUSTODIAL PARENT

To establish paternity, obtain an Order for Support. To enforce that order, you must know where the other parent lives or works. Information such as the parent's social security number, current employer's name and address, as well as names, addresses and phone numbers of friends or relatives who might know his or her whereabouts is helpful. If the parent cannot be found locally, the CSE

office can ask the State Parent Locator Service and/or Federal Parent Locator Service to search. The Federal Parent Locator Service can, for example, provide the current duty station of a parent who is in any of the uniformed services.

ESTABLISHING PATERNITY

A support order cannot be established for a child who is born to unmarried parents until the alleged father acknowledges paternity or is proven to be the father. Establishing paternity is generally a matter of state law. Voluntary acknowledgment of paternity creates a presumption of paternity and is the basis for seeking a child support order in all states. Alternatively, if the man denies that he is the father, genetic testing can be ordered. All parties in a contested paternity case must submit to such testing at the request of either party. Finally, if the alleged father is found and fails to respond to a formal complaint served upon him, a default judgment establishing paternity can be entered in court and an order for support issued.

ENFORCING THE SUPPORT ORDER

There are a number of ways to enforce child support orders: withholding wages, seizing of state and federal income tax refunds, liens on property, intercepting unemployment compensation, retirement and worker's compensation benefits, reporting unpaid child support to credit reporting bureaus, and suspending drivers, professional, occupational or recreational licenses.

If the parent is in the military, Federal law provides for voluntary and involuntary

allotments for support and for garnishing the wages of active duty, reserve and retired members of the military. The amount of support required from each parent is calculated using a worksheet. This worksheet is available on-line at: <http://dor.myflorida.com/dor/childsupport/pdf/poz8.pdf>

INTERSTATE COOPERATION

Every state has a law which allows it to refer cases to other states, and requires it to work cases sent to it by other states. Under these laws, an enforcement official or private attorney can refer a petition to establish paternity, or to establish, modify, or enforce a support order, for filing in another state.

Other interstate enforcement methods include withholding wages, if the noncustodial parent's employer is known, and criminal prosecution. Under the Child Support Recovery Act of 1992, a parent's willful failure to pay support for a child living in another state is a federal crime.

HOW DO I GET HELP?

Contact your state or local CSE office. In Florida, contact:

Child Support Enforcement Customer Service Toll-free number:
(800) 622-KIDS (5437)

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CHOOSING CREDIT CARDS



prepared by

HURLBURT FIELD
COMMANDO LEGAL OFFICE



INTRODUCTION

Chances are you have received offers in the mail asking you to open credit card accounts. The offers often say you are “pre-approved” for the card, with a line of credit already set aside for your use. They urge you to accept quickly, before the offer expires. Before you accept a credit card offer, understand the card’s credit terms and compare costs of similar cards to get the features you want.

Credit card offers may seem attractive, but remember a credit card is a form of borrowing that always carries a “finance charge” -- for the convenience of borrowing -- and often other charges also.

TERMS

Understanding credit card agreement terms will help you decide which card to get. Before selecting a credit card, learn which terms and conditions apply. Each affects the overall cost of the credit you will be using. Consider and compare the following terms.

Annual Percentage Rate (APR) - The APR is disclosed when you apply for a card, again when you open the account, and it is noted on each bill you receive. It is a measure of the cost of credit, expressed as a yearly rate. The card issuer must also disclose the *periodic rate* -- that is, the rate the card issuer applies to your outstanding account balance each billing period.

Some credit card plans allow the card issuer to change the annual percentage rate on your account when interest rates or other economic indicators (called indexes) change. These plans are commonly called “variable rate” plans. Rate changes raise or lower the amount of the finance charge you pay on your account. If a credit card has a variable rate feature, the card issuer must tell you the rate may vary, how the rate is

determined, including which index is used, and what amount (the “margin”) is added to the index to determine your new rate. You must also be told how much and how often your rate may change. Even if you have a “fixed rate” card, the lender may, depending on the terms of your agreement, be able to change the rate from time to time, although it must give you notice before doing so.

Grace Period - A grace period -- also called a free period -- allows you to avoid the finance charge by paying your current balance in full before the “due date” shown on your statement. Knowing whether a credit card plan gives you a grace period is especially important if you plan to pay your account in full each month. If there is no grace period, the card issuer will impose a finance charge from the date you use your card or from the date each transaction is posted to your account. If your credit card plan allows a grace period, the card issuer must mail your bill at least 14 days before payment is due to ensure you have time to make your payment by the due date.

Annual Fees - Most credit card issuers charge annual membership or other participation fees.

Transaction Fees and Other Charges - A credit card may also involve other costs. For example, some cards carry a fee when you use them for a cash advance, when you fail to pay on time, or when you exceed your credit limit. Some require a monthly fee whether or not you use them.

BALANCE COMPUTATION METHOD FOR THE FINANCE CHARGE

If your plan has no grace period, or if you plan to pay for purchases over time, it is important to know how the card issuer will calculate your finance charge. The charge will vary depending on the method the card issuer uses to figure your balance. The lender must disclose to you the

method it uses to calculate your balance and finance charge. The method used can make a difference in the finance charge you pay -- even when the APR is identical to that charged by another card and the pattern of purchases and payments is the same. Your credit card company may use virtually any balance computation method, but it must describe it to you in-depth in the credit card agreement and certain advertising materials. Federal regulations define several different balance computation methods that a credit card company is permitted to identify by name and describe in less depth in its disclosure materials. These include:

Average Daily Balance (including or excluding new purchases) - The average daily balance method gives you credit for your payment from the day the card issuer receives it. To compute the balance due, the card issuer totals the beginning balance for each day in the billing period and deducts any payments credited to your account that day. New purchases may or may not be added to the balance, depending on the plan, but cash advances are typically added. The resulting daily balances are totaled for the billing cycle and the total is then divided by the number of days in the billing period to arrive at the "average daily balance." This is the most common method used.

Adjusted Balance - This balance is computed by subtracting the payments you made and any credits you received during the present billing period from the balance you owed at the end of the previous billing period. New purchases that you made during the billing period are not included. Under the adjusted balance method, you have until the end of the billing cycle to pay part of your balance to avoid the interest charges on that portion. Some creditors exclude prior, unpaid finance charges from the previous balance. The adjusted balance method is usually the most advantageous to card users.

Previous Balance - This balance is simply the amount you owed at the end of the last billing period. Purchases made during the new billing period do not affect your balance but neither do payments that you make or credits you receive.

Two-cycle average daily balance including new purchases - This balance is the sum of the average daily balance for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

Two-cycle average daily balance excluding new purchases - This balance is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

COSTS AND FEATURES

Credit terms differ among card issuers, so shop around for the card that is best for you. Which one is best may depend on how you use it. If you plan to pay bills in full each month, the size of the annual fee or other fees, and not the periodic and annual percentage rate, may be more important. If you expect to use credit cards to pay for purchases over time, the APR and the balance computation method are important terms to consider. In either case, keep in mind that your costs will be affected by whether or not there is a grace period.

When shopping for a credit card, you will probably want to look at other factors besides costs, such as whether the credit limit is high enough to meet your needs, how widely the card is accepted, and what services and features are available under the plan.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07) Note: The definitions of balance computation methods are found in 12 CFR § 226.5a (2007) -- pursuant to statutory authority in 15 USC § 1637 (2007). The "fourteen day" rule on sending statements derives from 12 CFR §§ 226.5 and 226.7. See generally Title 15 of the USC and accompanying administrative regulations for law concerning consumer credit transactions.**

THE COOLING-OFF RULE



prepared by

HURLBURT FIELD
COMMANDO LEGAL OFFICE



INTRODUCTION

When you buy something at a store and later change your mind, you may not be able to return the merchandise. But if you buy an item in your home or at a location that is not the main or permanent place of the business or local address of the seller, the Cooling-Off Rule gives you three days to cancel purchases of \$25 or more. With the Cooling-Off Rule, your opportunity to cancel for a full refund extends until midnight of the third business day following the sale.

Locations not considered the seller's place of business include temporarily rented rooms, restaurants, and home "parties." The Cooling-Off Rule applies even if you invite the salesperson to make a presentation in your home, unless the sale is covered under the exemptions noted below.

Under the Cooling-Off Rule, the salesperson must orally inform you of your cancellation rights at the time of sale. The salesperson also must give you two copies of a cancellation form (one to keep and one to send) and a copy of your contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain your right to cancel. The contract or receipt must be in the same language as that used in the sales presentation.

EXCEPTIONS

Some sales cannot be canceled even if they occur in your home. The Cooling-Off Rule does not cover sales that:

- are under \$25;
- are not goods or services primarily intended for personal, family, or household purposes. (The Rule **does apply** to courses of instruction or training regardless of the purpose for which they are taken);
- are made entirely by mail or telephone;
- are the result of prior negotiations made by you at the seller's permanent business location where the goods are regularly sold;
- are needed to meet an emergency, such as the sudden appearance of insects in your home, and you write and sign an explanation waiving your right to cancel;
- are made as part of your request for the seller to perform repairs or maintenance on your personal property (although, any purchase made beyond the maintenance or repair request is covered);
- involve real estate, insurance, or securities;

- are of automobiles sold at temporary locations, provided the seller has at least one permanent place of business;
- involve arts and crafts sold at fairs or other locations, such as shopping malls, civic centers, and schools.
- cancel and return any papers you signed;
- refund all your money and tell you whether any product left with you will be picked up; and
- return any trade-in.

HOW TO CANCEL

To cancel a sale, sign and date one copy of the cancellation form. Then mail it to the address given for cancellation so that the envelope is post-marked before midnight of the third business day after the contract date. (Saturday is considered a business day but Sundays and most federal holidays are not). Because proof of the mailing date and proof of receipt are important, consider sending the cancellation by certified mail so you get a return receipt. If you prefer, you may hand deliver the cancellation notice before midnight. Keep the other copy of the cancellation form for your records.

If you are not given cancellation forms, write your own cancellation letter, but remember it also must be post-marked within three business days of the sale. Again, for proof of mailing, consider sending your letter by certified mail.

You do not have to give a reason for canceling your purchase. Under the law, you have a right to change your mind.

WHAT THE SELLER MUST DO IF YOU CANCEL

If you cancel your purchase, the seller must, within ten days:

Within twenty days, the seller must either pick up the items left with you, or, if you agree to send back the items, reimburse you for mailing expenses. If you do not make the items available to the seller or if you agree to return the items but fail to do so, then you remain obligated under the contract.

WHAT TO DO ABOUT PROBLEMS

One of the best safeguards against problems in this area is to take your time when you buy and to make sure you really want what you purchase. However, if you have a complaint about sales practices that involve the Cooling-Off Rule, write: Consumer Response Center, Federal Trade Commission, Washington D.C. 20580. You can find the FTC on the web at www.ftc.gov.

You may also wish to contact a local consumer protection agency such as the Office of The Florida Attorney General at 1-866-966-7226.

*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. Note: The cooling off rule is an FTC regulation, 16 CFR 429.0 et seq. (Oct 07)

COSIGNING A LOAN



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

What would you do if a friend or relative asked you to cosign a loan? Before you answer, make sure you understand what cosigning involves. Under a Federal Trade Commission rule, creditors are required to provide a notice to help explain your obligations. The cosigner's notice says:

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

COSIGNERS OFTEN PAY

Some studies of certain types of lenders show that for cosigned loans that go into default, as many as three out of four cosigners are asked to repay the loan. That statistic should not surprise you. When you are asked to cosign, you are being asked to take a risk that a professional lender will not take. The lender would not require a cosigner if the borrower met the lender's criteria for making the loan.

In most states, if you do cosign and your friend or relative misses a payment, the lender can collect from you immediately without pursuing the borrower first. The amount you owe may be increased -- by late charges or by attorney fees -- if the lender decides to sue to collect. If the lender wins the case, he or she may be able to take your wages or property.

IF YOU DO COSIGN

Despite the risks, there may be times when you decide to cosign. Perhaps your son or daughter needs a first loan, or a close friend needs help. Following are a few things to consider before you cosign.

- Be sure you can afford to pay the loan. If you are asked to pay and cannot, you could be sued or your credit rating could be damaged.

- Before you cosign a loan, consider that even if you are not asked to repay the debt, your liability for this loan may keep you from getting other credit you may want.
- Before you pledge property, such as your car or furniture, to secure the loan, make sure you understand the consequences. If the borrower defaults, you could lose these possessions.
- You may want to ask the lender to calculate the specific amount of money you might owe. The lender does not have to do this, but some will if asked.
- You may be able to negotiate the specific terms of your obligation. For example, you might want to have your liability limited to paying the principal balance on the loan, but not late charges, court costs, or attorney fees. In this case, ask the lender to include a statement in the contract like this: “The cosigner will be responsible only for the principal balance on this loan at the time of default.”
- You may want to ask the lender to agree, in writing, to notify you if the borrower misses a payment. In this way, you will have time to deal with the problem or make back payments without having to repay the whole amount immediately.
- Make sure you get copies of all important papers, such as the loan contract, the Truth-in-Lending Disclosure Statement, and any warranties if you are cosigning for a

purchase. You may need these if there is a dispute between the borrower and the seller. Because the lender is not required to give you these papers, you may have to get copies from the borrower.

- If you are cosigning a loan in a state other than Florida, check the local state law. Some states have laws giving you additional rights as a cosigner.

If you have questions or concerns regarding a bank, finance company or a loan company, you should contact the Florida Department of Banking and Finance at **(904) 487-2583** or **(800) 848-3792**. You may also wish to write to the FTC, Public Reference, Washington, DC 20580, to obtain these free publications: Credit Practices Rule and Solving Credit Problems. These tips and additional information on other consumer-related issues are provided by the Federal Trade Commission at www.ftc.gov or 1-877-FTC-HELP.

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CREDIT & CHARGE CARD FRAUD



prepared by

**HURLBURT FIELD
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INTRODUCTION

The cost of credit and charge card fraud, to card holders and companies alike, is in the hundreds of millions, if not billions, of dollars annually. Everyone pays for credit and charge card fraud in higher prices, whether or not they are personally defrauded.

While fraud is usually by theft, it also occurs in other ways. For example, someone may use your card number (not the card itself) without your permission. This may occur in a variety of ways:

- A thief rifles through trash to find discarded receipts or carbons to use the card numbers illegally.
- A dishonest clerk makes an extra imprint from your credit card or charge card for his or her personal use.
- You receive a postcard or a letter asking you to call an out-of-state number to take advantage of a free trip or a bargain-priced travel package. When you call, you are told you must join the travel club first. You are asked for your credit card number so you can be billed for the membership fee. The catch? New charges continue to be added at every step and you never get your free or bargain-priced vacation.

HOW TO GUARD AGAINST CREDIT AND CHARGE CARD FRAUD

Here are some suggested precautions you can take to help protect yourself against credit and charge card fraud. You may also want to instruct any other person who is authorized to use your account to take the same precautions.

- Sign your new cards as soon as they arrive.
- Cut up or destroy old cards before throwing them away.
- Keep your card in view after you give it to a clerk. Retrieve your card promptly after using it.
- Avoid signing a blank receipt. Draw a line through blank spaces above the total when you sign card receipts.
- Void or destroy all carbons and incorrect receipts.
- Save your card receipts to compare with your billing statements.
- Open billing statements promptly and reconcile your card accounts each month, just as you would your checking account.

- Report promptly and in writing any questionable charges to the card issuer.
- Notify card companies in advance of a change in address.
- Keep a record of your card numbers, their expiration dates, and the phone number and address of each company in a secure place. Some authorities also recommend carrying your cards separately from your wallet.

DO NOT ...

In addition, here are some things you should not do:

- Never lend a credit or charge card to anyone.
- Never leave your cards or receipts lying around.
- Never put your card number on a postcard or on the outside of an envelope.
- Never give your number over the phone unless you are initiating the transaction with a company you know is reputable. If you have questions about a company, check with the local Attorney General's office or Better Business Bureau before ordering.

WHAT TO DO IF YOUR CARDS ARE LOST OR STOLEN

If your credit or charge cards are lost or stolen, call the issuer(s) immediately. Most card companies have a toll-free

number for reporting missing cards. Some companies provide 24-hour service. By law, once you report the loss or theft, you have no further liability for unauthorized charges. In any event, your maximum liability under federal law is \$50 per card.

WHAT TO DO ABOUT SUSPECTED FRAUD

If you suspect that someone has illegally used your credit card, call the card issuer immediately. Use the special telephone number that many card issuers list on their billing statements. You also may want to follow up your phone call with a letter.

You may be asked to sign a statement under oath that you did not make the purchase(s) in question.

*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07) The liability of card holders for fraudulent use of their cards is capped by 15 USC § 1643 (2007).

DEBT & DIVORCE



prepared by

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INTRODUCTION

Jane and John recently divorced. Their divorce decree stated that John would pay the balance of their three joint credit card accounts. Some months later, after John neglected to pay off these accounts, all three creditors contacted Jane for payment. She referred them to the divorce decree, insisting that she was not responsible for the accounts. The creditors stated, correctly, that they were not parties to the divorce decree and that Jane was still legally responsible for paying off the couple's joint accounts. Jane later found that the late payments appeared on her own credit report.

If you have recently been through a divorce -- or are contemplating one -- look closely at issues involving credit. As the above example illustrates, you may discover unanticipated problems.

Understanding the different kinds of credit accounts opened during a marriage may illuminate the potential benefits -- and pitfalls -- of each.

There are two types of credit accounts: individual and joint. With either type, you can permit authorized users to use the account. When you apply for credit you will be asked to select one kind.

APPLYING FOR ACCOUNTS

INDIVIDUAL: When you apply for an individual account, only your own income, assets, and credit history are considered by the creditor. Whether married or single, you alone are responsible for paying off the debt on this account. The account will appear on your credit report.

JOINT: The income, financial assets, and credit history of both spouses are taken into consideration for a joint account. No matter who actually handles the household bills, both spouses are responsible for seeing all debts are paid. A creditor who reports the credit history of a joint account to credit bureaus must report it in both names (if the account was opened after June 1, 1977).

A joint application combining the financial resources of two people may present a stronger case to a creditor for granting a loan or credit card. But because two people apply for the credit, each spouse is legally responsible to the creditor for the entire debt accumulated. This is true even if a divorce decree assigns separate debt obligations to each spouse. A former spouse can adversely affect another spouse's credit history on a jointly-held account, for example, by running up bills and not paying for them.

ALLOWING "USERS" ON YOUR ACCOUNT

If you open an individual or joint account, you may authorize another person to use that account. You apply for credit based on your own financial information and are fully responsible for paying any debt. If you authorize your spouse to "use" your individual account, a creditor who reports the credit history to a credit bureau must report it in the name of your spouse as well as in your name.

WHAT TO DO IN THE EVENT OF DIVORCE

If you are contemplating divorce or separation, pay attention to the status of your credit accounts. If you maintain joint accounts during that time, it is important to make regular payments -- so your credit record won't suffer.

As long as there is an outstanding balance on any joint account, both you and your spouse are liable for it.

You should also ask creditors to close any joint accounts or accounts in which your former spouse was an authorized user. Or, preferably, ask the creditor to convert these accounts to individual ones or to the name of the spouse handling that debt. Under Florida law, neither a husband nor a wife is liable for the debts of the other, if the debts were contracted before marriage (Fla. Stat. § 708.05). Generally, neither a husband nor a wife is liable for the debts of the other, contracted during marriage, if the services extended to the other were based solely on the other's credit and financial status. In community property states, spouses may be held liable for the debts contracted by the other during marriage. However, some exceptions exist. One must look to the laws of each particular state.

By law, a creditor cannot close a joint account because of a change in marital status, but can do so at the request of either spouse. A creditor, however, does not have to agree to change joint accounts to individual ones. The creditor can require you to reapply for credit on an individual basis and then, based on your new application, extend or deny you credit. In the case of a mortgage or home equity loan, a lender is likely to require refinancing to remove a spouse from the obligation.

CARS

Spouses often buy automobiles together, listing both of their names on the financing agreement. One way to avoid potential joint accountability following a divorce is to require one spouse to refinance the car in his or her name alone. Although this is not always possible, it's worth considering.

WHAT GOOD IS THE DECREE?

As illustrated in the example at the beginning of this handout, creditors are not bound by divorce decree divisions of debt. The divorce decree is only binding on Jane and John, the former spouses. As such, the creditor can require Jane to

pay, even though the decree obligates John with the debt. Once Jane pays, her only recourse is reimbursement from John via lawsuit or agreement.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07)**

DIVORCE & MILITARY BENEFITS



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Divorces involving a military member or retired military member create issues not found in typical divorces. Members and their spouses often have questions about division of retired pay, commissary and exchange privileges for former spouses, and medical care for former spouses. This handout addresses these issues.

RETIREMENT PAY

In 1982, Congress enacted the Uniformed Services Former Spouses' Protection Act (USFSPA), which enables state courts to divide **disposable military retired pay** between the member and spouse **if** the state court desires. Disposable military retired pay is defined as the member's monthly retired pay minus qualified deductions, such as certain disability compensation.

USFSPA does not set any limits on the amount of retirement pay that can be awarded to a former spouse. Courts are required only to make an equitable division. The definition of "equitable" will be different in every case. Depending on the facts of the case, it may range from zero to more than fifty percent. The court will consider the length of the marriage

and the number of married years coinciding with retirement-creditable military service, but there is no magic number. Essentially, states are allowed to treat military retired pay as a piece of marital property, similar to civilian pensions. Division of retired pay does not affect an award of alimony.

DIRECT PAYMENT TO FORMER SPOUSE

If a court does award division of retired pay, the former spouse may be able to receive the payment directly from the military pay center. This way, the former spouse is not left to rely on their ex-spouse for payment. Direct payment is available if the military member and former spouse were married for at least ten years during which the military member performed retirement-creditable service.

Direct payment is limited to fifty percent of the military member's disposable retired pay. The court is not limited to awarding fifty percent, but any portion of an award exceeding fifty percent must be paid by the military member.

A certified copy of the court order providing division of retired pay is necessary to receive direct payment.

COMMISSARY & EXCHANGE

Former spouses are entitled to commissary and exchange privileges only if they meet the following requirements of the 20/20/20 rule:

- The former spouse and military member must have been married for 20 years.
- The member must have performed at least 20 years of retirement-creditable service.
- At least 20 years of the marriage must have overlapped with 20 years of retirement-creditable service.

Furthermore, exchange and commissary privileges terminate, regardless of whether the 20/20/20 rule is met, if the former spouse remarries. The privileges can, however, be regained upon dissolution of the disqualifying marriage.

MEDICAL BENEFITS

Former spouses are eligible for space available medical care if they meet the following requirements:

- They must remain unmarried;
- They must not have medical coverage under an employer sponsored health plan; and
- They must meet the requirements of the 20/20/20 rule outlined above. (If you were divorced prior to 1 April 1985, check with an attorney to see whether the 20/20/15 rule applies to you).

This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07)

EQUAL CREDIT OPPORTUNITY



prepared by

HURLBURT FIELD
COMMANDO LEGAL OFFICE



INTRODUCTION

Credit is used by millions of consumers for a variety of purposes. Every loan is a form of credit. Every use of a credit card is a credit transaction.

The Equal Credit Opportunity Act prohibits creditors from discriminating against applicants based on sex, marital status, race, national origin, religion, age, or because they get public assistance income. This doesn't mean all consumers who apply for credit will get it. Creditors can still use factors like income, debts, and credit history to judge applicants.

The law applies to any creditor who regularly extends credit, including: banks, small loan and finance companies, department stores, credit card companies, and credit unions. The law covers anyone participating in the decision to grant credit, such as real estate brokers who arrange financing.

Consumers have equal rights in every phase of the credit application process.

WHEN YOU APPLY FOR CREDIT A CREDITOR MAY NOT:

- Discourage your application based on sex, marital status, age, national origin, or because you receive public assistance income.
- Ask your sex, race, national origin, or religion. A creditor may ask you to voluntarily disclose this information if you are applying for a real estate loan or under certain other limited circumstances. A creditor may also ask your residence or immigration status.
- Ask if you are divorced or widowed.

- Ask about your marital status if you are applying for a separate, unsecured account, unless you live in a "community property" state. (These states are: Idaho, Washington, Wisconsin, Alaska, California, Nevada, Arizona, New Mexico, Texas and Louisiana.)
- Ask for information about your spouse. A creditor may ask about your spouse (or former spouse) if: your spouse is applying with you; your spouse will use the account; you rely on a spouse's income or on alimony or child support from a former spouse; if you reside in a community property state.
- Ask about your plans for having or raising children.
- Ask if you receive alimony or child support. A creditor may ask for this information if you are first told that you don't have to reveal it if you won't rely on it to get credit. A creditor may ask if you have to pay alimony or child support.

WHEN DECIDING TO GIVE YOU CREDIT, A CREDITOR MAY NOT:

- Consider your sex, marital status, race, national origin, or religion.
- Consider whether you have a telephone listing your name. A creditor may consider whether there is a phone in your home.
- Consider the race of the people in the neighborhood where you want to buy or improve a house on credit.
- Consider your age, with certain exceptions (minority, retirement, etc.).

WHEN EVALUATING YOUR INCOME, A CREDITOR MAY NOT:

- Discount reliable public assistance income.
- Discount income because of your sex or marital status. A creditor may not assume a woman of childbearing age will stop work to raise children.
- Discount income from part-time employment, pension, annuity, or retirement benefits programs.
- Discount reliable alimony or child support payments. A creditor may ask for proof the income is reliable.

YOU ALSO HAVE THE RIGHT:

- To have credit in your birth name, your married name, or your first name and a combined last name.
- To get credit without a co-signor, if you meet the creditor's standards.
- To have a co-signor other than your spouse, if one is necessary.
- To keep your own accounts after you change your name, marital status, reach a certain age, or retire, unless the creditor has evidence you are unable or unwilling to pay.
- To know whether your application was accepted or rejected within 30 days of filing it.
- To know why your application was rejected. The creditor must either immediately give you the specific reasons for your rejection or tell you of your right to learn the reason if you ask within 60 days.
- To learn the specific reasons you were offered less favorable terms than you applied for, unless you accept the less favorable terms.

- Complain to the creditor. Tell them you are aware of the law. The creditor may reverse the decision.
- Call the state Attorney General's office. The creditor may have violated state laws and the state may sue the creditor.
- Sue the creditor in Federal district court. If you win, you can recover your damages and be awarded a penalty. You can also recover reasonable attorney fees.
- Join with others in a class action suit. The class may recover punitive damages up to \$500,000 or 1% of the creditor's net worth, whichever is less.
- Report violations to the appropriate government agency. If you are denied credit, the creditor must give you the name and address of the agency.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07). ECOA is codified at 15 USC § 1691 et seq. (2007) See also 12 CFR § 202 et seq. – "Regulation B."**

IF YOU SUSPECT ILLEGAL DISCRIMINATION:

FAIR CREDIT REPORTING



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Credit Reporting Agencies" (CRAs). The most common type of CRA is the credit bureau. The information sold by CRAs to creditors, employers, insurers, and other businesses is called a "consumer report" or "credit report." This report generally contains information about where you work and live and your bill-paying habits.

The Fair Credit Reporting Act gives consumers specific rights in dealing with credit bureaus and other CRAs. All CRAs are under a general duty to avoid reporting inaccurate information about you. Likewise, organizations that provide information to credit bureaus (credit card companies, finance companies, etc.) must take steps to ensure that what they report is accurate. If your consumer report contains errors, you can demand that a credit bureau investigate any transaction you believe to be reported inaccurately.

HOW DO I LOCATE THE CRA THAT HAS MY FILE?

If your application for credit or employment was denied because of information supplied by a CRA, the company you applied to must provide you with the name, address, and telephone number of the CRA that provided the report. You can also contact the three major national credit bureaus directly and obtain your report (Equifax, 800-685-1111, www.equifax.com; Experian 888-397-3742, www.experian.com;

and Trans Union, 800-916-8800, www.transunion.com). Services now exist that offer to obtain your credit information, or abstracts thereof, from all three major bureaus for one flat fee. Use care in approaching any such service and make sure you know what you are getting before you "buy."

DO I HAVE THE RIGHT TO KNOW WHAT THE REPORT SAYS?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report, including medical information, and in most cases, the sources of that information. You also have the right to be given a list of everyone who has requested your report within the past year. If your inquiry concerns a job application, you can get the names of those who received a report during the previous two years. Certain exceptions apply to national security related inquiries made by government agencies.

IS THIS INFORMATION FREE?

Yes, if your application for credit, insurance or employment was denied because of information furnished by the CRA, and if you request it within 60 days of receiving the denial notice. You are also entitled to one free report per year if you can prove that (a) you are unemployed and plan to look for a job within 60 days; (b) you are on welfare; or (c) your report is inaccurate because of fraud. Otherwise, you may be charged a fee of around \$10. Many states now offer their residents the opportunity to check their credit report for free one time each year.

WHAT CAN I DO IF THE INFORMATION IS INACCURATE?

Notify the CRA and the creditor or other information provider in writing if you discover inaccurate information on your credit report. When you inform a credit bureau directly that an

item of information about you is wrong, the bureau must investigate and delete or amend that information if it finds it to be inaccurate or unverifiable. The CRA must notify you of the results of its investigation and provide you with an up-to-date copy of your consumer report if the investigation resulted in any changes. If you dispute an item and the CRA, after investigation, maintains that it is accurate, the CRA must indicate in future reports that you dispute the item and provide a brief summary of the dispute if you request that it do so.

If a CRA deletes information from your file after a reinvestigation, it must provide notice of the change to anyone who requested your report for employment purposes during the past two years and to anyone who requested your report for other purposes during the past six months if you so request and identify the specific organization or individual. The same notification rules apply if you require a CRA to include a statement that you dispute a piece of information (and summary of the dispute) in your file.

EMPLOYERS, INSURERS, and INVESTIGATIVE CONSUMER REPORTS

Information about you may not be given by a CRA to your employer, or a prospective employer, without your written consent. Also, creditors, employers or insurers cannot get a report that contains medical information about you without your approval.

“Investigative consumer reports” are reports that may be used in connection with an insurance or job application. They are much more detailed than regular consumer reports, and often involve interviews with acquaintances about your lifestyle, character, and reputation. You will be notified in writing when a company orders an investigative report about you. This notice will explain your right to ask for certain information about the report from the company you applied to. If your application is rejected, you may obtain additional information by contacting the CRA. However, the CRA does not have to reveal its sources of investigative information.

HOW LONG CAN A CRA REPORT UNFAVORABLE INFORMATION?

Generally, seven years. Adverse information cannot be reported after that, with certain exceptions:

- Bankruptcy information can be reported for 10 years;
- Information reported because of an application for a job with a salary of more than \$75,000 has no time limitation;
- Information reported because of an application for more than \$150,000 worth of credit or life insurance has no time limitation; and
- Information concerning a lawsuit or a judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer;
- Information about criminal convictions has no time limit.

CAN ANYONE GET A COPY OF THE REPORT?

No, it is only given to those with a legitimate business need. Government agencies also have the authority to request your credit report or other information from a CRA under certain circumstances.

REPORTING VIOLATIONS

The Federal Trade Commission (FTC) enforces the Fair Credit Reporting Act. Although the FTC cannot act as your lawyer in private disputes, information about your experiences and concerns is vital to enforcement of the Act. The FTC is on the Internet at www.ftc.gov and can be reached by phone at 1-877-382-4357. Do not hesitate to contact the legal office if you have a problem with a CRA.

This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07) The Fair Credit Reporting Act is located at 15 USC § 1681 et seq.

FAIR DEBT COLLECTION



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

If you use credit cards, have a loan, or are paying off a mortgage, you are a “debtor.” Most people are. You may never have occasion to come in contact with a debt collector, but if you do, the law is there to ensure you are treated fairly. Congress passed the **Fair Debt Collection Practices Act** in 1977 to prohibit “debt collectors” from attempting to collect debts in certain ways. It does not, however, eliminate legitimate debts.

WHAT DEBTS ARE COVERED?

Personal, family, and household debts are covered under the Act. This can include money borrowed for any reason, like for a car, home, education, medical care, or charge accounts.

WHO IS A DEBT COLLECTOR?

A debt collector is any person other than a creditor (the original person you owe money to) who *regularly* collects debts owed by an individual to others. For example, if you default on your loan from a bank, the Act does not apply to the efforts of the bank to collect the debt. However, if the bank hires a debt collection agency to pursue the debt for it, the Act applies to the efforts of the debt collection agency.

HOW MAY A DEBT COLLECTOR CONTACT YOU?

A debt collector can contact you by telephone, mail, or telegram, but not at an inconvenient time (before 8 a.m. or after 9 p.m.) unless you agree. A debt collector may not contact you at work if he knows that your employer does not approve.

You do need to tell the collector if that is the case. If you want the collector to stop contacting you entirely, you must send a letter to the agent or agency and tell them to stop. There will be no future contact regardless of further action taken.

CONTACTING OTHERS

A debt collector may contact your family or friends to ascertain your whereabouts only and for no other reason. Further, such contact by the debt collector can generally be made only once and the collector may not contact others if the debt collector knows you are represented by an attorney.

REQUIRED DISCLOSURES

The collector must send you, within five days of contact, a written notice telling you the amount of money you owe, to what creditor, and what to do if you believe you do not owe the debt in question. If you send a reply that you do not owe the debt, the collector may not contact you again, unless they first send you proof of the debt, such as a copy of your bill.

PROHIBITED COLLECTION PRACTICES

Harassment, oppression, and abuse are prohibited. Prohibited practices include:

- Threats of harm to the person, property, or reputation of a person;
- Publication of a list of persons who refuse to pay, except to a credit bureau (This restriction may not apply to taxes and monies owed to public services and governmental bodies or some transactions involving real estate);

- Use of obscene/profane language;
- Repeated telephone calls to harass;
- Telephoning people without giving meaningful disclosure of the caller's identity;
- Advertising the debt.

Collectors cannot use false statements to collect a debt. For example, debt collectors cannot:

- Imply they are an attorney (unless they are) or government representative;
- Imply you have committed a crime;
- Imply they work for a credit bureau;
- Misrepresent the amount of the debt;
- Misrepresent the legal nature of paperwork presented to you.

Further, debt collectors may not:

- Say you will be arrested for failure to pay;
- Say they will seize, garnish, attach, or sell your property or wages unless they legally intend to do so;
- Say actions will be taken against you which legally may not be taken;
- Give false credit information about you to anyone;
- Use a false name;
- Use symbols or words indicating "debt collection" on postal correspondence;
- Send you something that looks like an official document from a court or government agency if it is not.

WHAT CAN YOU DO IF YOU BELIEVE A DEBT COLLECTOR HAS BROKEN THE LAW?

You have the right to sue a debt collector in state or federal court within one year from the date of the violation. If you win, you can recover actual money damages, and possibly court costs and attorney's fees. If a group of people have been damaged and sue collectively, they can recover up to \$500,000 or one percent of the collector's net worth, whichever is less.

The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations. (Oct 07) See 15 USC § 1692 (2007).

ADOPTION IN FLORIDA



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Military members thinking about adoption are entitled to some unique benefits under federal law. In order to make a sound decision on whether to adopt, there are two primary legal considerations: 1) Florida adoption law; and 2) DoD policy on adoption reimbursement.

WHO CAN BE ADOPTED?

Any minor (a person under 18 years) present within the state when the petition for adoption is filed may be adopted. Sibling groups may also be adopted together. Adults can also be adopted by other adults if written consent is given by the adult to be adopted, by his or her spouse, and by his or her natural parents (if living).

LIMITATIONS ON THE RIGHT TO ADOPT

Consent of Parents, Guardians, and others.

Certain parties must either execute written consent or be served notice of the adoption. Consent must occur after the birth of the child. The birth mother is one such party. This also applies to the biological father if he was married to the mother of the child during conception or

birth, he adopted the child, or a court established him to be the father of the child. If there is no father that meets these conditions, there may be other men whose consent or notice is required prior to adoption, depending on whether the mother has reason to believe he is the father of the child, whether the father has acknowledge he is the father of the child, and whether he has provided support to the mother and child. Consent and notice is also required for any party in a pending paternity, custody, or termination of parental rights proceeding. In Florida, children over the age of 12 must consent to their own adoption. If the child has lived with a grandparent for six months or more, that grandparent may have priority rights to adopt the child.

FILING A PETITION TO ADOPT

Once you decide to pursue adoption, you will begin the approval process. The process varies slightly in different parts of the state of Florida. The purpose of this process is to help prospective adoptive parents decide whether they truly want to adopt, what kind of child they want, and to get the tools they need to be successful. The process is also used to screen prospective parents and eliminate those who should not adopt.

Early in the process every prospective adoptive parent must complete the Model Approach to Partnership in Parenting

training (MAPP) to explore the issues of adoption. Case workers will visit your home one or more times to do a home study to determine your suitability as an adoptive parent. They will interview you and your spouse, if you have one, and will contact friends and employers for character references. You will be asked to complete a physical examination to determine your state of health.

When your application has been approved, your name will be put on a waiting list. A case worker will provide information about potential children. After you have been matched with a child, you will have a trial period of living together, during which time a case worker will make monthly visits to monitor and help with adjustment problems.

Finally, the adoption will be finalized before a judge. Your child will receive a new birth certificate with your last name on it as your child's last name. Then you and your child are a family in the eyes of the law.

LEGAL EFFECT OF ADOPTION

An adopted child or adult may take the name of the person adopting and from then on the two will sustain the legal relation of parent and child, each having all of the rights and duties of that relation. The adopted child shall have the same right to inherit as a natural child.

INTERNATIONAL ADOPTIONS

Florida recognizes adoptions granted in other states and in foreign countries.

DoD ADOPTION REIMBURSEMENT

Any active duty member who adopts a child under 18 years of age, and who incurs expenses for the adoption of a child, may be reimbursed up to two thousand dollars per child (with a maximum reimbursement to one servicemember, or married couple where both spouses are members, of five thousand dollars in any calendar year) for qualifying expenses.

There are some limitations to the program. In order to qualify, the adoption in question must take place through a state agency, a licensed private adoption service or another source authorized by a state to carry out adoption services and supervised by a court. No more than one member of a dual military couple may be reimbursed for adoption of any given child and no benefit will be paid until the adoption is completed. For more information and an application, please contact your military personnel flight.

Additionally, money you receive as reimbursement may be excluded from your gross income for federal tax purposes and you may be eligible to take a credit for non-reimbursed expenses.

*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07) For adoption reimbursement see 10 USC § 1052 (2007) and DoD Instruction 1341.9.

ANNULMENT PROCEEDINGS IN FLORIDA



prepared by
**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



WHAT IS AN ANNULMENT?

An annulment is a legal proceeding where a person may nullify his/her marriage. Annulment of a marriage is different than dissolution of a marriage (no-fault divorce) because an annulment establishes that a valid marriage never existed. Annulments are generally granted in cases where the legal requirements for a valid marriage were not met, for instance if one of the parties to the marriage was too young to legally marry. There are varieties of other reasons a court might allow an annulment of marriage. Persons interested in an annulment should speak with a licensed Florida attorney to see if they might qualify.

CAN I GET AN ANNULMENT?

An individual must file for an annulment in the county where his/her spouse lives, citing the grounds or reasons for the annulment. Generally speaking, only the person in the marriage who actually has the legal ground can file for an annulment. In some situations, that person's parent or legal guardian may file for them.

WHAT CAN THE LEGAL OFFICE DO FOR ME?

Legal assistance is available to military members and their dependents. Such assistance, however, is limited to explaining the law and helping you understand how the law applies to your situation. Legal assistance attorneys cannot prepare your complaint or represent you or your spouse in court.

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CHILD SUPPORT IN FLORIDA



prepared by

**HURLBURT FIELD
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Obtaining Child Support

If a married couple has a child and then subsequently divorces, the divorce proceedings will include orders for child custody and child support. However, unmarried parents may also incur support obligations.

The first step for an unmarried parent to obtain child support from the other biological parent of the child is to establish the paternity of the child. This may be done in one of two ways:

- **Administratively.** The birth parents sign an affidavit stating that the child is theirs. This can be done free of charge at the hospital when the child is born, or at a later time at the Department of Children and Families office, Child Support Enforcement office, or local public health unit. This affidavit should not be signed if the identity of the father is uncertain.
- **Judicially.** One birth parent may petition the court to establish paternity. The court may accept a stipulation from the noncustodial parent establishing paternity, or may hold a hearing to establish paternity. If the paternity of the child is disputed, the court may order genetic testing.

Florida uses administrative and court orders to obtain genetic testing when necessary. If ordered to undergo genetic testing, the noncustodial parent may either agree to paternity or to undergo the genetic test. If the test excludes the alleged father, a case may not be filed against him for support. If it does not exclude him, the court may hold a hearing concerning whether he is the father and enter a final order of paternity if it finds him to in fact be the father.

In Florida, the test used for paternity cases is usually the buccal swab, which involves obtaining genetic material by rubbing a cotton swab on the inside of the mouth. It does not involve having any blood drawn. Two labs provide testing services in Florida through a contract with the state: Orchid/GeneScreen and LabCorp of America Holdings. The cost of testing ranges from \$45 to \$51 per person. Testing costs are initially paid for by the Department of Revenue, but will be collected from the alleged father if he is in fact found to be the actual father of the child. These contract labs are responsible for genetic testing in military paternity cases as well as civilian cases. It usually takes 11 days to receive the results.

Once paternity is established, the noncustodial parent must be located. The Florida Department of Revenue is responsible for this. They search, and request, information from a variety of sources, including the military, in order to locate noncustodial parents.

Once parentage is established, and the noncustodial parent is located, the custodial parent may bring an action for child support. The Department of Revenue Child Support Enforcement Program will also obtain court orders for child support and the provision of health insurance, if necessary.

Calculating Child Support

Florida statutes establish guidelines governing child support amounts. These guidelines take into account all income and earnings of both the custodial and noncustodial parents, as well as the health care needs of the child. The amount of support required from each parent is calculated using a worksheet. This worksheet is available on-line at:

www.dor.myflorida.com/childsupport/pdf/poz8.pdf.

The child support guidelines may be deviated from only if the court makes a written finding that the guidelines would be inappropriate in a particular case.

Modifying Child Support

Either the custodial or noncustodial parent may request that a child support order be reviewed for possible upward or downward modification. An order can be modified if it was at least three years since the last modification, or if there has been a significant change in circumstances. To petition the court for modification when it has been less than three years since the previous modification, the difference between the current amount of support and the proposed amount must be at least \$50 per month or 15%, whichever is greater.

Enforcing Child Support

Florida will take steps to enforce payment of a child support order if payment is 30 or more days delinquent. Noncustodial parents who do not pay their court ordered child support may face:

- Suspension of Florida driver's license
- Suspension of hunting, fishing, or other state licenses, including professional licenses
- Interception of IRS tax refunds
- Interception of Florida lottery winnings
- Collection through income deduction (wage garnishment)
- Issuance of an arrest warrant
- Liens on real and personal property
- Bank account levies and garnishment
- Reporting the child support debt to credit bureaus, affecting the noncustodial parent's credit rating

Child support debts may be enforced across state lines; a federal law called the Uniform Interstate Family Support Act (UIFSA) ensures this. However, the other state's support enforcement office and court system may process the case within their time frames.

When the noncustodial parent lives in another country, child support orders are only enforceable if there is an international agreement or reciprocity between Florida and that country. There are several such agreements in place with various Canadian provinces and foreign nations. The current list of countries that have child support reciprocity agreements with Florida is available on-line at:

www.dor.myflorida.com/dor/childsupport/international.html.

For additional information, you can access the Florida Department of Revenue's child support web site at:

www.dor.myflorida.com/dor/childsupport.

Contact information:

Child Support Enforcement Customer Service
Toll-free number
(800) 622-KIDS (5437)

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FLORIDA DIVORCE LAW



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



GETTING STARTED

WAYS TO DISSOLVE A MARRIAGE IN FLORIDA

Florida does not recognize legal separation. While spouses may of course choose to reside in different locations, this is not a legal status. The couple's rights and obligations are the same as if they were married and living together, and there is no legal mechanism to force one spouse to support the other while the spouses are living separately.

In Florida, the only way to end a marriage is through a "dissolution of marriage" or annulment. A dissolution of marriage may be granted if the marriage is irretrievably broken (commonly referred to as "no-fault divorce"), or if one of the parties has been held by a judge to have been mentally incompetent for a period of at least three years. Either the husband or wife may file for the dissolution of the marriage. Florida does not recognize divorces based on "fault," including those based on adultery, abandonment, or any other "fault" ground.

A marriage may also be "annulled" in Florida. Annulment of a marriage is different than dissolution of marriage because an annulment establishes that a valid marriage never existed. Annulments are generally granted in cases where the legal requirements for a valid marriage were not met, for instance if one of the parties to the marriage is too young to legally marry. There are varieties of other reasons a court might allow an annulment of marriage. Persons interested in an annulment should speak with a licensed Florida attorney to see if they might qualify.

THE COMPLAINT

If you decide to have your marriage dissolved in Florida, you will have to meet several legal requirements before the Florida court system will hear your case.

Residency: Either of the parties must have resided in Florida for 6 months immediately preceding the filing of the petition for divorce. If a military member maintains his or her Florida domicile when stationed out of state, the member can still file for divorce in Florida.

However, even if no personal jurisdiction exists over the defendant spouse, individuals still can obtain an ex parte divorce. When an ex parte divorce is granted, the legal binds of marriage are broken and both spouses are free to remarry. However, because the court did not have jurisdiction over related issues such as child support and property division, either you or your ex-spouse must go to a court of proper jurisdiction at a later time to settle all of these obligations.

LEGAL ASSISTANCE is available to military members and their dependents. Such assistance, however, is limited to explaining the law and helping you understand how the law applies to your situation. Legal assistance attorneys will not prepare your complaint, nor can they represent you or your spouse in court.

Attorney Referral Service: This is a state-wide service you can call and they will find an attorney in the local area who is familiar with divorce law. For a 30-minute consultation, there is a \$25 fee. For certain low-income individuals the fee can be either reduced or waived. You can contact them at 1-800-342-8011.

WHILE THE DIVORCE IS PENDING

TEMPORARY SUPPORT may be ordered by the Court in amounts and on terms determined by the Court to be just and proper given the circumstances of the parties.

RECONCILIATION: Upon application of one party, the Court may require the parties to explore the possibility of a reconciliation. If there are minor children, the Court may delay the proceedings for 90 days to determine the practicability of reconciliation.

THE DECREE

SETTLEMENT AGREEMENTS may be entered into by the parties, and such agreements are usually accepted by the Court and made a part of the final divorce decree.

PROPERTY is divided in two ways if there is no agreement between the parties. Separate property (property owned by either party prior to the marriage, gifts, inheritances) remains the separate property of each party and is divided accordingly. Community property (all property which does not qualify as separate property) is divided either in accordance with any agreement which may exist between the parties, or it is divided *equitably* by the Court between the parties. “*Equitably*” means that in certain circumstances, the Court may divide the community property unequally so as to make the division fair.

WHAT ABOUT THE CHILDREN

“JOINT CUSTODY” will be awarded by the Court unless the Court finds specific reasons why it is not in the best interest of the child for joint custody to be awarded. Joint custody awards custody of minor children to both parents and provides that physical custody shall be shared by the parents in such a way as to assure each child has frequent and continuing contact with both parents. Parents are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of each child.

A PARENTING AGREEMENT may be required by the Court before entry of the final decree. Parents are required to attend a parenting class after which the parents negotiate the parenting agreement between themselves. These agreements are incorporated into the decree.

CHILD SUPPORT PAYMENTS are made to the parent having primary physical custody, and the amount of child support is determined in accordance with guidelines handed down by the Florida Supreme Court. Child support guidelines in Florida are discussed in depth in a separate pamphlet.

MILITARY PAY may be garnished to pay child support or alimony.

FAILURE TO COMPLY with a child custody or visitation order is a felony.

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GUARDIANSHIP OF MINORS IN FLORIDA



prepared by
**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



WHEN CAN GUARDIANSHIP BE GRANTED?

A guardian may be appointed for an unmarried minor (1) if all parental rights have been terminated; (2) the child is neglected, abused, or abandoned; or (3) the parents are unable to provide a stable home environment.

WHAT DOES GUARDIANSHIP MEAN?

Guardians have the same powers and responsibilities as a child's parent except they are not legally obligated to provide for the minor from their own funds. A guardian must take reasonable care of the minor's personal effects. A guardian may seek financial support from the minor's parents; however, the guardian must use the funds to support the child. A guardian has the power to make decisions about the minor's education, social and other activities, and to authorize medical or other professional care, treatment, or advice. Finally, a guardian must report the condition of both the minor and the minor's property under the guardian's control to the court and any other person as ordered by the court.

WHO MAY PETITION TO BE A GUARDIAN?

A person is qualified under Florida law to serve as a guardian if he or she:

- Is over the age of 18 years of age; and
- Is a Florida resident; or a non-resident who is:
 - Related by lineal consanguinity to the ward;
 - A legally adopted child or adoptive parent of the ward;
 - A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or
 - The spouse of a person otherwise qualified above; and
 - Has never been convicted of a felony.

WHERE SHOULD I FILE FOR GUARDIANSHIP?

Petitions for guardianship should be filed with the magistrate court in the county where the minor child lives.

WHAT IS THE COURT PROCESS TO APPOINT A GUARDIAN?

Upon the filing of a Petition to Determine Incapacity, the court appoints three individuals to serve as members of an examining committee. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, a licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee.

The examining committee members each meet independently with the alleged incapacitated person to evaluate his or her abilities and make a written report, which is filed with the court.

The court also appoints an attorney to represent the alleged incapacitated person. The alleged incapacitated person may substitute their own attorney to represent them throughout the proceeding.

If a family member is appointed by the court to serve as guardian, said family member will be required to attend an eight (8) hour educational course for guardians, and must also submit to criminal and credit background checks,

proof of which must be filed with the court. It is possible for non-Florida residents to "attend" the educational course by listening to audio tapes.

HOW DOES A GUARDIANSHIP END?

A guardian's responsibility ends upon the death, removal or resignation of the guardian, or the minor's death, adoption, marriage, or upon reaching the age of majority. A guardian cannot resign until the court gives approval.

*Note – Guardianship does not necessarily entitle a member to military benefits for the minor.

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FLORIDA LEMON LAW



prepared by

**HURLBURT FIELD
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WHAT IS THE LEMON LAW?

Florida's "Lemon Law" helps new car buyers who have continuing problems with warranty repairs. If a new vehicle is defective and has not been properly repaired after a reasonable number of attempts, the law requires that the manufacturer provide a refund or replace the vehicle.

TO QUALIFY UNDER THE LAW

Florida's Lemon Law only applies to NEW or demonstrator vehicles sold in the state of Florida. New or demonstrator vehicles that are leased in Florida are also covered, if they are lease-purchased, or if the lease is for one year or more and the lessee is responsible for taking the vehicle in for repair. If the vehicle is transferred from one consumer to another during the first 24 months after delivery to the original consumer, and both consumers use the vehicle for personal, family or household purposes, the consumer to whom the vehicle is transferred may be covered under the Lemon Law.

Florida's Lemon Law applies for the first 24 months after the date of delivery of the motor vehicle to the consumer.

WHAT ARE THE MANUFACTURER'S RESPONSIBILITIES?

- If a defect or problem is reported, the manufacturer, its agents, or its authorized dealers must repair the vehicle in accordance with the terms of the warranty.

If the manufacturer fails to conform the vehicle to the warranty after a reasonable number of attempts to repair these defects, the law requires the manufacturer to buy back the defective vehicle and give the consumer a purchase price refund or a replacement vehicle. **DO NOT DELAY** in reporting a problem as this may cost valuable time and protection.

WHAT IS A REASONABLE NUMBER OF ATTEMPTS?

A manufacturer is presumed to have made a reasonable number of attempts if:

- There have been three or more unsuccessful attempts to repair the *same* defect; or
- The vehicle has been out of service for warranty repairs for 30 or more cumulative business days.

SITUATIONS WHEN REFUNDS OR REPLACEMENTS ARE NOT GIVEN

- The law does not cover defects that result from accident, neglect, abuse, modification or alteration by persons **other than** the manufacturer or its authorized service agent.

WHAT MUST YOU DO TO BECOME ELIGIBLE FOR A REFUND OR REPLACEMENT?

You do not become eligible for a refund or replacement just because a number of unsuccessful attempts have been made to fix your vehicle. First, you must write to the manufacturer, zone representative, or authorized dealer notifying them of the problem and giving them one opportunity to cure the defect. You should specifically state in your notification that your car is a lemon and that you want a buy-back under the lemon law. You should also send your notification via certified mail, return receipt requested. This notification gives the company an opportunity to repair the defect after notification and also lets the company know of your intention to use the lemon law if the defect is not properly repaired.

Also, be aware that the manufacturer may require you to go through an arbitration process prior to filing a lawsuit under the lemon law.

HOW DO YOU PREPARE FOR A LEMON LAW DISPUTE?

- Keep copies of all purchase orders, sales receipts, lease agreements, warranties, detailed repair invoices, letters, and other documents

concerning your vehicle and any of its problems or potential defects.

- If your vehicle is in the shop for repairs for more than one day at a time, make sure the repair invoice shows the date it was brought in and the date you were notified that it was ready to be returned to you.
- Remember the law requires written notice if you believe you are eligible for a refund or replacement under the presumption relating to a reasonable number of attempts to repair the vehicle. Send your letter by certified mail, return receipt requested and, if you send your letter to the dealer, send a copy to the manufacturer and always keep a copy for your records.

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ESTABLISHING PATERNITY IN FLORIDA



prepared by

HURLBURT FIELD
COMMANDO LEGAL OFFICE



WHO CAN ASK THE COURT TO ESTABLISH PATERNITY?

The child's mother, the guardian, someone acting as the child's father, or the next of kin may begin proceedings to establish paternity and child support.

WHEN CAN PATERNITY BE ESTABLISHED?

Proceedings to establish paternity *may* begin only after the child is born and *must* begin before the child reaches the age of majority. The age of majority in the State of Florida is 18.

WHAT IF THE OTHER PARENT LIVES IN ANOTHER STATE?

Paternity can be established, but it usually takes longer because the Department of Revenue must work with the other state.

HOW DOES A FATHER ACKNOWLEDGE PATERNITY?

For a Florida birth, a person believed to be the father of a child may acknowledge he is the father by signing a voluntary acknowledgment of paternity in front of a notary or at one of the following locations:

- hospital or birthing center
- county public health unit

- Department of Children and Families office
- Department of Revenue, Child Support Enforcement office.

The court may then order child support without further proceedings.

WHAT EVIDENCE IS NEEDED TO PROVE PATERNITY?

Evidence of paternity includes: (1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception; (2) an expert's opinion on the statistical probability of the alleged father's paternity; (3) the statistical probability of the alleged father's paternity based on genetic tests; (4) medical, scientific, or genetic evidence relating to the alleged father's paternity based on tests performed by experts; or (5) a voluntary acknowledgment of paternity.

CAN GENETIC TESTING BE ORDERED?

Yes. The court may require the child, mother, alleged father, or others who have had sexual relations with the mother to submit to genetic testing. The refusal to submit to testing may subject the party to court sanctions. The person requesting the test must pay the expenses, but the costs may be recovered if that individual wins the case.

WHAT DO THE RESULTS OF GENETIC TESTING MEAN?

A genetic test result with a probability of at least 98% creates a presumption of paternity. On the other hand, whenever the results exclude someone from possible paternity, the result is conclusive evidence of non-paternity.

WHAT EFFECT DOES AN ORDER ESTABLISHING PATERNITY HAVE?

Establishing paternity will give your child the same rights and benefits as children born to married parents. These rights and benefits may include:

- Legal proof of each parent's identity
- Information on family medical history in case of inherited health problems
- The child knowing the identity of both parents
- The father's name on the birth certificate
- Medical or life insurance from either parent (if available)
- Financial support from both parents, including child support, Social Security, veteran benefits and military allowances (if applicable) and inheritance.

Establishing paternity gives the father and mother legal rights. You can:

- Seek a court order for child support

- Seek a court order for custody or visitation
- Have a say in some legal decisions about the child.

For written responses to any questions you may have, write your local child support office. For general information, call, toll free, **1-800-622-5437**.

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THE PROBATE PROCESS IN FLORIDA



prepared by
HURLBURT FIELD
COMMANDO LEGAL OFFICE



INTRODUCTION

WHAT IS PROBATE? Probate is the court process to transfer titles of the decedent's (the person who has died) property to his or her beneficiaries and to pay any outstanding debts to creditors.

WHY IS PROBATE NECESSARY?

Probate is necessary to wind up the affairs the decedent leaves behind. It ensures that all of the decedent's creditors are properly paid. Probate also serves to transfer assets from the decedent's individual name to the proper beneficiary. Florida has had probate laws in force since becoming a state in 1845. Florida law provides for all aspects of the probate process, but allows the decedent to make certain decisions by leaving a valid will.

WHY HAVE A WILL? Florida law does not require you to make a will but it is usually best for a property owner to have a will. It will assure you and those concerned that, when you die, your property will be disposed of as you desire. You may also name in your will the person who will administer your estate, and guardians and trustees to provide for the needs of minor children.

You can also make special provisions for adult members of your family or for disabled children, and make charitable bequests in your will. Estate taxes may

also be substantially reduced by a properly drawn will. You may provide in your will for a separate document that indicates who should receive certain items of personal property, such as jewelry or furniture. (If you do not have a will, such a list is not legally enforceable.) In your will, you may also leave specific directions for dealing with any interest you have in a business.

WHAT IF THE DECEDENT HAD A WILL?

Probate will be necessary to declare the will valid and to appoint the personal representative named in the will. The personal representative can then carry out the wishes expressed in the will.

WHAT IF THE DECEDENT DID NOT HAVE A WILL?

Without a will, the laws of the state in which you are a resident at the date of your death will determine who receives your property, who administers your estate, and who becomes the guardian of your minor children. If you do not leave a will and you die a Florida resident, the law requires your property to be distributed as discussed below, depending upon who the nearest surviving relatives are:

--Surviving spouse and/or lineal descendants

--If your spouse survives you, and you have no children or other lineal descendants who survive you, your spouse will receive your entire estate.

--If you are survived by a spouse and lineal descendants all of whom are also lineal descendants of your spouse, your spouse will receive the first \$60,000ⁱ of your estate plus one-half of the rest of your estate.

--If you are survived by a spouse and lineal descendants, at least one of whom is not also a lineal descendant of your spouse, then your spouse will receive one-half of your estate.

--The part of your estate which does not pass to your spouse (or your entire estate if you are not survived by a spouse) will be inherited by your lineal descendants. Each of your children (or, in place of a deceased child, the child's lineal descendants) will receive an equal share of your estate.

If you die unmarried and with no lineal descendants surviving, your surviving parents will receive your real and personal property. If neither parent survives you, then your brothers and sisters, or the descendants of any deceased brother or sister, will receive your property in equal shares, one share for each brother or sister.

If no parents, brothers, sisters, or descendants of any of them survive you, then your estate will be divided equally between your paternal and maternal relatives, in the following order of priority as to each side of the family:

1. To your surviving grandparents;
2. If neither grandparent survives you, in equal shares to your uncles and aunts or the descendants of any deceased uncle or aunt, one share for each aunt or uncle; and

3. If only maternal relatives or only paternal relatives survive you, to those relatives in the order stated above.ⁱⁱ

If you have neither maternal nor paternal relatives who survive you, then your entire estate will be inherited by the relatives of your last deceased spouse as if your spouse had survived you and then died without leaving a will. If none of the foregoing persons survive you, then your property will go to the state of Florida.

ⁱ Fla. Stat. § 732.102 (2007)

ⁱⁱ Fla. Stat. § 732.103 (2007)

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FLORIDA SMALL CLAIMS



prepared by

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WHAT IS SMALL CLAIMS COURT?

Small Claims Court is a way to settle legal disputes of a civil nature in which the amount of damages or value of the property involved does not exceed \$5,000 (not counting prejudgment interest, attorney's fees, and costs). There are certain advantages to resolving a dispute by going to small claims court: (1) Generally, you don't need an attorney to represent you because the procedures are usually simple enough for a lay person to understand; (2) The filing fees are small; and (3) You can obtain a decision usually within a short period of time. Also, there are usually no juries.

WHO CAN USE SMALL CLAIMS COURT?

Anyone 18 years of age or older, or a parent or guardian for anyone under 18 years of age, having a claim that does not exceed \$5,000 can make a claim in small claims court.

If the individual you are suing lives in Florida, then a Florida court will have power to hear a case against that individual. If he or she lives outside of Florida, that individual must have acted in a manner to subject him or her to the power of the Florida courts before Florida will hear the case. Florida statute § 48.193 lists the acts which will subject a nonresident person to the jurisdiction of a Florida court:

- 1) Operating, conducting, engaging in, or carrying on a business or business venture in Florida or having an office or agency in Florida;
- 2) Committing a tortious act in Florida;
- 3) Owning using, or possessing any real property in Florida;
- 4) Breaching a contract in Florida by failing to perform the acts required by the contract to be performed in Florida;

- 5) A defendant who is engaged in substantial and not isolated activity within Florida, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of Florida, whether or not the claim arises from that activity.

WHEN TO USE SMALL CLAIMS COURT

Small claims court is for money debts, personal injury, or personal property damages, up to \$5,000. However, a small claims court cannot award damages for pain and suffering or punitive damages. Examples of when you may use small claims court include: a landlord refuses to return your security deposit; a laundry loses or damages your clothing; a store refuses to refund your money when it sold you defective goods; or someone owes you money on bad checks or past-due bills.

WHERE TO FILE

Once a Florida court has power over a defendant, whether a Florida resident or an out-of-state resident, then one has to determine which court in Florida is the appropriate court to bring the suit. The following is a list of places where you can sue an individual:

- 1) Where the contract was entered into;
- 2) Where any one or more of the defendants reside;
- 3) If the suit is to recover property or to foreclose a lien, where the property is located;
- 4) Where the event giving rise to the suit occurred;
- 5) Any location agreed to in a contract;
- 6) In an action for money due, if there is no agreement as to where suit may be filed, where payment is to be made;

7) If the suit is on an unsecured promissory note, where the note is signed or where the maker resides.

This means you can sue someone at the Okaloosa County Courthouse if the defendant lives in Okaloosa County or any of the above factors apply. Note this is important if the defendant no longer lives in Okaloosa County or in Florida. If the above factors are satisfied, you may be able to bring the defendant back to Florida.

HOW TO START A SUIT

To start your small claims suit, fill out the small claims complaint, which is available from the court clerk. The complaint must include complete names and addresses, the amount you are seeking, when it became due, and a brief statement of why the amount is owed.

The court clerk will explain the various ways the complaint may be served on the defendant.

HOW MUCH DOES IT COST?

You may file in person or by mail. All necessary forms, filing fees and sheriff’s fees must be included. Filing fees can be paid by money order, cashier’s check, personal check, or by cash if you file in person. All money order/checks should be made payable to the Clerk of Court.

Fees:

Up to \$100.00	\$55.00
\$100.01 to \$500.00	\$80.00
\$500.01 to \$2,500.00.....	\$155.00
\$2,500.01 to \$5,000	\$255.00

PREPARING FOR TRIAL

Be sure you find out the exact date and time of your trial. Show up on time!

Gather all papers, documents, pictures, or other items of evidence that relate to your case. Contact and interview any witnesses who may be able to support your case. Make sure your

witnesses know the exact date and time that they must appear for trial.

A defendant who does not wish to contest the plaintiff’s claim may make an out-of-court settlement with the plaintiff before the trial. If this is done, the plaintiff should file a dismissal with the court before the trial date.

If you fail to attend your trial, you will lose by default. Call the court clerk to arrange a “continuance” if you must miss your scheduled trial date.

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HOME EQUITY CREDIT LINES



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Credit lines against the equity in homes have become a popular source of consumer credit. Lenders offer a variety of home equity credit lines.

Most loans come with variable interest rates, some come with low introductory rates, and a few come with fixed rates. You may find most loans have large one-time up-front fees, others have closing costs, and some have continuing costs. Some loans have large balloon payments at the end of the loan.

Review the home equity contract carefully **before** you sign it. Be sure to ask questions about the terms and conditions of your financing.

IS IT FOR YOU?

If you need to borrow money, a home equity line may be one source. Initially, it may provide you with large amounts of cash at a relatively low interest rate. It may provide you with certain tax advantages unavailable with other loans. (Check with a tax advisor for details).

At the same time, home equity lines of credit require you to use your home as collateral. This may put your home at risk if you are late or cannot make your monthly payments. Those loans with a large final payment may lead you to borrow more money to pay off this debt. If you sell your home, you may have to pay off your credit line at that time.

Remember, there are other ways to borrow money, i.e., second mortgage installment loans. Although these plans place an additional mortgage on your home, second mortgage money is usually loaned in a lump sum, with fixed interest rates and payment amounts.

HOW MUCH CAN YOU BORROW?

Depending on your credit-worthiness and your amount of outstanding debt, home equity lenders may let you borrow up to 85% of the appraised value of your home minus the amount you still owe on your mortgage. Ask the lender about the length of the home equity loan, whether there is a minimum withdrawal requirement when you open your account, and whether there are minimum withdrawal requirements after your account is opened.

HOME EQUITY INTEREST RATES

Interest rates for loans differ, so it pays to check with several lenders for the lowest rate. Compare the annual percentage rate (APR), which indicates the cost of credit annually. The advertised APR for home equity credit lines is based on interest alone. For a true comparison of credit costs, compare other charges, such as points and closing costs, which will add to the cost of your home equity loan. This is especially important if you are comparing a home equity credit line with a traditional installment (or second) mortgage where the APR includes more of the total costs of the loan than does the APR in a home equity loan.

UP-FRONT CLOSING COSTS

When you take out a home equity line of credit, you pay for many of the same expenses as when you financed your original mortgage. These include items such as an application fee, title search, appraisal, attorney fees, and points. These expenses can add substantially to the cost of your loan, especially if you ultimately borrow little from your credit line. You may want to negotiate with lenders to see if they will pay some of these expenses.

CONTINUING COSTS

In addition to up-front closing costs, some lenders require continuing fees through the life of the loan. These may include an annual membership or participation fee, which is due whether or not you use the account, and/or a transaction fee, which is charged each time you borrow money.

TERMS DURING THE LOAN

As you pay back the loan, your payments may change if your credit line has a variable interest rate, even if you do not borrow more money from your account. Find out how often and how much your payments can change. Determine whether you are paying back both principal and interest, or interest only. Even if you are paying back some principal, ask whether your payments will cover the full amount borrowed or whether you will owe an additional payment of principal at the end of the loan. Ask about penalties for late payments and under what conditions the lender can consider you in default and demand immediate full payment.

BEWARE OF “BALLOON” PAYMENTS

Ask whether you might owe a large payment at the end of your loan. If so, and you are not sure you will be able to afford this “balloon” payment, you may want to renegotiate your repayment terms. When you take the loan, ask about the conditions for renewal of the plan or for refinancing the unpaid balance. Ask the lender to agree ahead of time and in writing to refinance any end-of-loan balance or extend your repayment time, if necessary.

SAFEGUARDS AND CANCELLATION

One of the best protections you have is the Federal Truth in Lending Act, which requires lenders to inform you about the terms and costs of the plan at the time you are given an application. Lenders must disclose the APR and payment terms and must inform you of charges to open or use the account, such as an appraisal, a credit report, or attorney fees. Lenders must

also tell you about any variable-rate feature and give you a brochure describing the general features of home equity plans.

The Truth in Lending Act also protects you from changes in the terms of the account (besides variable-rate features) before the plan is opened. If you decide not to enter into the plan because of a change in terms, all fees you paid earlier must be returned to you.

Because your home is at risk when you open a home equity credit account, you have three business days to cancel the transaction for any reason. To cancel, you must inform the lender in writing. If you notify the lender through the mail, be absolutely certain that your letter is postmarked no later than midnight on the third day. Consider sending the letter by certified mail with a “return receipt requested.” Following that, your credit line must be canceled and all fees you have paid must be returned. If you did not receive the required disclosures when you opened the line of credit, your right to cancel the contract extends for three years from the date you concluded the deal. However, if the lender provides you with the correct required disclosures *after* the deal is completed, you then only have three days from the date you receive the materials to cancel. If you are attempting to cancel a home equity line of credit you should immediately send your written notice and contact the legal office for assistance.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07) See generally the Truth In Lending Act 15 USC § 1601 (2007) et. seq. See particularly 15 USC § 1635 (2007) concerning a borrower’s rights to rescind a transaction.**

HOME FINANCING PRIMER



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

If you are buying a house, especially your first one, you may have some basic questions about home financing. The following information may help.

HOW MUCH CAN I GET?

A general rule is that you can usually qualify for a mortgage loan of two to two and one-half times your family's income. For example, if your family has an annual income of \$30,000, you can usually qualify for a \$60,000-\$75,000 mortgage.

Lenders use many other factors to determine how large a mortgage they will give you. For example, lenders generally prefer that your housing expenses (including mortgage payments, insurance, taxes, and special assessments) not exceed 25-28% of your gross monthly income. Other long-term debt (monthly payments extending more than 10 months) added to your housing expenses should not exceed 33-36% of your gross monthly income. Federal Housing Administration (FHA) and Veteran Affairs (VA) mortgage loan percentages may vary. Lenders will also want to know about your employment and credit history.

DOWN-PAYMENT AND CLOSING COSTS

Lenders usually expect between 10-20% of the house's price as a down-payment. Closing costs are often three to six

percent of the loan amount. VA loans require no down-payment but closing costs still apply. However, larger down-payments lead to smaller monthly payments.

SHOP AROUND

Mortgage packages vary widely, and it is important to investigate the options. Compare the mortgages offered by several lenders before you apply for a loan. Most lenders require a fee when you file your loan application. The amount of this fee varies, but can reach \$100-\$300. Some lenders do not refund this fee if you are not approved for the loan, or if you decide not to accept the loan terms offered. Before you apply, ask the lender whether they charge an application fee, how much it is, and under what circumstances it is refundable.

WHAT KIND OF MORTGAGE IS BEST?

There are two major types of mortgage loans: those with fixed interest rates and payments and those with changing rates and payments. However, there are many variations of these plans on the market, and you should shop carefully for the mortgage that best suits your needs.

Common fixed-rate mortgages include 30-year, 15-year, and bi-weekly mortgages. The 30-year mortgage usually offers the lowest monthly payments of fixed-rate loans, with a fixed payment schedule. A 15-year fixed-rate mortgage

allows you to own your home in half the time and for less than half the total interest costs of a 30-year loan. These loans, however, require higher monthly payments.

Bi-weekly mortgages shorten the loan term from 30 years to 18-19 years by requiring a payment for half the monthly amount every two weeks. While you pay about 8 percent more a year toward the loan's principal than you would with the 30-year, one-payment-per-month loan, you pay substantially less interest over the life of the loan. Keep in mind, however, that with shorter-term loans, you trade lower total costs for smaller mortgage interest deductions on your income tax.

Mortgages with changing interest rates and/or monthly payments exist in many forms. The adjustable rate mortgage (ARM) is probably the most common, and there are many types of ARM loans available. The ARM usually offers interest rates and monthly payments that are initially lower than fixed-rate mortgages. But these rates and payments can fluctuate, often annually, according to changes in a pre-determined "index."

COMPARING FEATURES

Probably the single most important factor to look for when shopping for a home mortgage is the annual percentage rate, or "APR." The APR should include virtually all the costs of credit, including such items as interest, "points" (fees often charged when a mortgage is closed), and mortgage insurance (when included in the loan). Lenders must disclose the APR under the Truth in Lending Act. The lower the APR, generally the lower the cost of your loan. Advertisements that

state other rates such as "simple" interest rates, do not include all the costs of the loan.

If you shop for a mortgage loan with interest rates or payments that change, be sure to compare:

- Initial interest rates;
- The "cap" -- or how much the interest rate can increase/decrease over the life of the loan, and how much the rate can change at each adjustment;
- How often the interest rate can change;
- How much and how often the monthly payments and term of the loan can change;
- What index is used to determine the rate changes;
- What "margin" is used -- or how much additional a lender can add to the adjusted interest rate;
- The limits, if any, on "negative amortization" -- the loss of equity in your home when low monthly payments do not cover fully the interest rate charges agreed upon in the mortgage contract; and
- Any "balloon" payments -- a large payment at the end of your loan term, often after a series of low monthly payments.

*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07)

HOME MORTGAGE ESCROW ACCOUNTS



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Like millions of homeowners, your monthly mortgage payments cover principal and interest and, probably, something called an escrow account. But, like many people, you may not know why you pay into an escrow account each month, how the amount is determined, or how your lender disburses funds from the account.

WHAT IS AN ESCROW ACCOUNT?

An escrow account is a fund your lender establishes to pay property taxes and hazard insurance as they become due on your home during the year. In this way, the lender uses the escrow account to guard its investment in your home. For example, if you did not pay your property taxes, your municipality could sell your home at a foreclosure sale. Similarly, if you neglected to pay the hazard insurance premium, a fire or flood that destroyed your home would also destroy the lender's security for the loan.

MUST I HAVE AN ESCROW ACCOUNT?

Most mortgage loans require escrow accounts, but not all do. In some cases, if your mortgage contract does not specifically require an escrow account, you may be able to negotiate with the

lender for the right to pay your own taxes and insurance. This ability can help you avoid having your money tied up until it is needed. However, if you have a mortgage insured or guaranteed by the Department of Housing and Urban Development or certain other federal agencies it may not be possible to negotiate the right to make your own tax and insurance payments, and these payments will have to be held in an escrow account until the lender disburses them on your behalf. This inflexibility is the result of regulations governing federally subsidized mortgages.

HOW MUCH SHOULD THE LENDER CHARGE?

The goal of the escrow account is to have enough money to pay taxes and insurance when they become due. To achieve this, the lender adds one-twelfth of the tax and insurance amount to your mortgage payment each month. For example, if your taxes and insurance are \$1200 per year, the lender would collect \$1200 in twelve installments of \$100 per month. To cover possible tax or insurance increases, the federal Real Estate Settlement Procedures Act (RESPA) permits the lender to add to the yearly amount two months of extra payments prorated monthly. So, the lender would collect an additional \$200 divided by 12,

or \$16.67 per month, for a total escrow payment of \$116.67 per month.

To determine whether you are being charged correctly, compare your escrow payments with what you owe annually on your hazard insurance and property taxes. You can get this information from your local tax authority and your insurance company. If the lender charges you substantially less than the required amount, you will need to pay an additional lump sum at the end of the year. If the lender charges you substantially more, it may tie up your money unfairly, as well as violate the RESPA regulations.

WHY DO MORTGAGE PAYMENTS CHANGE?

Most lenders will analyze your escrow account at least yearly to make sure they are collecting enough money to pay your taxes and insurance. If your taxes or insurance premiums change during the year, your lender will need to adjust your payments accordingly.

DOES THE LENDER HAVE TO PAY INTEREST ON ESCROW MONEY?

In most cases no, but this is determined by state law where your property is located. Check with the state banking commission or consumer protection office concerning state requirements. Florida law is silent concerning home mortgage escrow accounts.

Most lenders provide an annual statement indicating the amount paid out of the escrow account and the balance in the account. Read this carefully. If you have any questions, ask the lender. If the statement shows the lender has collected more in escrow payments than it has paid out, ask to have the money refunded to you, unless you prefer to have it applied toward next year's payments.

COMPLAINTS

If you have a complaint about how your escrow account is being handled, first try to resolve it with your lender. If you cannot resolve your problem with the person handling your account, talk to a supervisor or an officer of the company. Be sure to keep a copy of any correspondence you may have with the lender.

Often, your state banking agency will be able to help you, or at least direct you to the state agency that can.

*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. RESPA is codified at 12 USC § 2601 et seq. (2007). (Oct 07)

ESCROW STATEMENTS

LAST WILL & TESTAMENT



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



WHAT IS A WILL?

A will is a document that directs the distribution of your property after death. The will says who will administer your estate and who will act as guardian for your children if you and your spouse die. If you want, your will can also state what to do with your remains. Wills do nothing if you are alive but incapacitated by illness or injury.

WHY HAVE A WILL?

- If you die without a will (called dying intestate), your state of legal residence may distribute your property in ways you never imagined. For example, your spouse may be entitled to only a share of your property while your children inherit the rest.
- If you die intestate, the court will name a person to administer your estate, pay your debts and taxes, and distribute your property.
- Finally, if you and your spouse die intestate, leaving minor children, the court will appoint a guardian for the children. A will gives you the chance to name the guardian of your choice.

HOW DO I GET A WILL?

- Come to the legal office to pick up a worksheet that will help you answer questions necessary to draft your will.
- Bring your completed worksheet and any questions you have during our walk-in legal assistance hours. Before you leave, we will schedule an appointment to execute (sign) your will in front of witnesses and a notary

public.

- After your appointment, our office will prepare the will. Before you execute your will, you should read it carefully and ask the attorney any questions you may have. Make sure you understand your will.

THE PEOPLE IN YOUR WILL

- Beneficiaries are the people who will inherit your property.
- A Personal Representative (PR) is the individual you choose to handle your estate after you die. This person is often also known as the executor or sometimes, if female, executrix. The PR should be trustworthy and capable of handling finances and property. Your will should name an alternate PR in case your first choice is unable or unwilling to perform. The PR is entitled to receive compensation from the estate for the service they provide. The amount of compensation is normally a reasonable amount set by the court. The duties of the PR may include:
 - 1) Collecting and preserving your property;
 - 2) Preparing and filing an inventory of your estate;
 - 3) Having your property appraised;
 - 4) Giving notice to your creditors;
 - 5) Paying all debts of the estate;

- 6) Preparing and filing state and federal tax forms;
 - 7) Paying any taxes due on the estate;
 - 8) Distributing your estate to your named beneficiaries; and
 - 9) Hiring professional attorneys, accountants, appraisers, realtors, investment managers, cleaners, repairers and the like to assist with all of this.
- A guardian is the person you name to care for any minor children who survive you. The court will normally honor your choice of a guardian unless it would not be in the best interests of the child(ren). Ask potential guardians whether they will be willing to take your child(ren) before you name them in your will.
 - A trustee manages the trust which is created for your surviving minor children. Most parents realize that a young child would not be capable of managing thousands of dollars. Thus, if a parent is survived by minor children, the estate is normally kept in trust for the children. The will indicates at what age the estate should be distributed. This normally occurs somewhere between the ages of 18-21.

Distribution beyond age 25 may result in heavy taxes. The trustee must wisely invest the estate and use the interest to provide for the children's needs. When a child reaches the distribution age, the trustee distributes their portion of the estate and the child can use the money as they please. It is sometimes best to choose someone other than the guardian to serve as a trustee.

It is important to choose an honest, responsible, and financially smart trustee and a loving guardian. Some people may know an appropriate individual who can fill both roles and some people should name separate trustees and guardians.

LARGE ESTATES

Estates that exceed \$2 million in value are subject to federal estate taxes if you die in 2007. This dollar amount will increase to \$3.5 million in 2009. There will be no estate tax if you die in 2010 and, unless amended, in 2011 the estate tax threshold will be lowered to \$1,000,000. Gifts given to any single person with a cumulative value of \$11,000 or more during any taxable year may count toward the \$2 million limit, meaning your estate tax exemption is reduced when you die. Let your legal assistance attorney know (1) if your assets total more than \$1 million, (2) if you have relatives from whom you may inherit such an amount, or (3) if you have the potential for significant asset growth. It may be necessary to refer you to a civilian attorney that specializes in estate planning. In addition, note that the taxable value of your estate includes (1) the proceeds of some life insurance policies, (2) the value of certain annuities payable to your estate or your heirs, and (3) the value of certain property that you transfer during the three years before your death. Your estate may also be subject to taxes by your state of legal residence or by states in which the property making up your estate is located. This area of law is in a state of flux so you should have your estate plan reevaluated every few years.

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LIVING WILL & DURABLE POWER OF ATTORNEY FOR HEALTH CARE



prepared by

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INTRODUCTION

Although nobody likes to discuss death or terminal illness, these are possibilities that will confront you or a loved one at anytime, regardless of your present health.

LIVING WILL

A living will is a document that allows you to appoint someone to act in accordance with your wishes should you be rendered unable to make competent decisions concerning your health care.

A living will does two things. First, it allows you to designate what type of medical care you wish to receive, or not receive, if you become terminally ill or mortally injured. Second, a living will allows you to designate the person (your "agent") who will insure that your attending health care provider carries out your wishes. A living will becomes effective only after two physicians declare that you are terminally ill and beyond recovery. At that point, your agent becomes empowered to act in accordance with your wishes.

DURABLE POWER OF ATTORNEY

A durable power of attorney (DPOA) for health care is a document that allows you to appoint an agent to make health care decisions for you if you are rendered incapable of making those decisions

yourself. This includes the authority to execute the wishes of your living will. For a DPOA to become effective, you need only be incapacitated as opposed to terminally ill. For example, if a car accident renders you unconscious, your agent can authorize necessary surgery. Your DPOA can also authorize your agent to donate organs and perform similar functions if that is what you want.

AGENTS

For both your living will and durable power of attorney, you must appoint an agent to carry out your wishes and the agent should generally be the same person for both documents. This decision is important because your agent will be authorized to terminate your life on your behalf. Technically you can choose anyone except the following: (1) your treating health care provider; (2) a non-relative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a non-relative employee of an operator of a community care facility.

Your agent should be someone who knows you well enough to make health care decisions in accordance with your wishes. At the same time, your agent will need to be able to overcome the emotions of your death. Your living will expresses your desires but cannot serve as a tool to force your agent to act. It authorizes the withdrawal of treatment but does not

require it. It is a good idea to talk with your prospective agent to make sure they are comfortable with the task you are asking them to perform. You should also name an alternate agent or two should your first choice be unavailable if called upon. Because these documents might not be used for many years, make sure to update them as needed.

DRAFTING LIVING WILLS & DURABLE POWERS OF ATTORNEY

Living wills and durable powers of attorney are legal documents that must meet strict formal requirements of the law to be valid. Unlike a standard will, which is drafted to the specifications of your state of domicile, a living will is drafted in compliance with the state law where you currently reside. Therefore, all living wills prepared by this office are specific to Florida law.

A federal statute, 10 USC § 1044(c), provides that living wills prepared in military legal offices are enforceable even if they do not comply with a particular state's required formalities. Thus, even though certain states normally require specific wording in living wills, they are required to recognize any living will we prepare here. However, other states that simply do not permit living wills are not required to recognize even living wills prepared by military legal offices. If you permanently relocate to a different state, it is a good idea to consult with a military legal office or civilian attorney in that jurisdiction concerning the validity of any living will we prepare here.

WITHOUT A LIVING WILL

If you do not have a living will, health care providers will assume you want them to do everything in their power to prolong your life artificially, regardless of your prognosis. Your family will be practically powerless to take you off life-support, even if you have no chance of recovery. Although it is not the primary concern in these situations, the expense of using artificial life-support systems can drain an average estate in a matter of days.

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(Oct 07)

MAGAZINE TELEPHONE SCAMS



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

If a telephone caller offers you a “special deal” on magazine subscriptions, listen carefully before you answer. A hurried “yes” may bind you to years of monthly payments for magazines you don’t want or could purchase elsewhere for less. In some states, an oral agreement to buy magazines may legally obligate you to pay for them.

Of course, thousands of consumers buy magazines from legitimate salespeople over the phone every year. Yet, according to the Federal Trade Commission (FTC), some consumers are tricked by fraudulent salespeople into paying hundreds of dollars for multi-year subscriptions.

RECOGNIZING DECEPTIVE SALES TECHNIQUES

Sales techniques for these magazine subscriptions vary. Sometimes, instead of an initial phone call, you may receive a postcard that mentions nothing about magazine subscriptions. The postcard may ask you to call about a contest, prize, or sweepstakes entry. If you call, you may be told about drawing dates or prizes. However, the conversation may soon turn into a sales talk about buying magazine subscriptions.

Examples of other deceptive sales tactics include the following:

- The caller may encourage you to buy without giving you total costs. They may offer magazines for small weekly payments. It may sound like a bargain until you find that you could be paying hundreds of dollars for subscriptions that regularly sell for less.
- The caller may say you are buying multi-year subscriptions for several magazines, when, in fact, the subscriptions will be for a shorter time.
- The caller may say they are “approved” or “regulated” by the federal, state, or local government; in fact, no governmental body actually approves magazine-selling operations.

HANDLING TELEPHONE CALLS

Listen carefully to the initial telephone sales presentation. If you are not interested in the offer, reject the offer and hang up. If you are interested but busy, ask the caller to contact you at a later time when you can focus on the sales offer. Some sellers may ask to tape your telephone conversation, saying it is for your protection. In reality, they might use the recording to “prove” you legally agreed to buy the magazines. Remember, an oral agreement can be a legally binding contract in some states.

To protect yourself, be suspicious when anyone tries to sell you something over the phone. Ask detailed questions to gain

complete information about what is being sold and the total costs involved. If your questions are not answered completely, dismiss the caller.

The following are questions to ask and tips to use when you get a telephone solicitation for magazines:

- Ask the caller's name, and the name, address, and phone number of their company. Ask what magazines they sell. Contact the company for verification before you place an order.
- Ask the total yearly cost of each magazine and the whole package.
- Always ask for a **written** copy of the sales terms to be sent to you before you agree to buy.
- Never give your credit card number over the phone or online unless you initiate the call or are familiar with the company.
- If you initially order magazines through a telephone solicitation, you may be called again. They may say they are calling to be sure you are satisfied, but they may also try to sell you more. Listen carefully.
- Be wary of giving your bank account number or sending your signature to telemarketers. Fraudulent sellers may say they need the information to send you a "gift." They may actually use it to debit your checking account.

CANCELING SUBSCRIPTIONS

Once you agree to buy a subscription over the phone, you cannot simply call to cancel your order. If you want to cancel a

verbal magazine subscription, take the following steps:

- When your sales agreement arrives, often in a plain or "junk mail" envelope, find the provision in the agreement that allows you to cancel your subscription (generally within 3 days of receipt). The cancellation notice may be difficult to find. It is often attached to an inside page of multiple copies of the sales agreement.
- Sign and return the cancellation notice by certified mail to the proper address, which may also be difficult to find because several addresses may be listed. If you cannot send it certified, photocopy the signed and dated notice for your records.
- Once you mail the cancellation, promptly contact your bank or credit card company to stop unauthorized payments.
- If the cancellation period has passed, the magazine company may not have to refund your money upon cancellation. If you fail to meet the contract terms for payment, you may receive notices and calls from collection agencies, or you may be threatened with legal action and a bad credit rating.

If you believe you have been victimized by a magazine telephone scam, call your state Attorney General or consumer protection office.

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MARRIAGE AND CREDIT HISTORIES



prepared by

**HURLBURT FIELD
COMMANDO LEGAL OFFICE**



INTRODUCTION

Each year, many people are denied credit because their “credit history” is incomplete. The record of your payments on credit cards, charge accounts, installment loans, and other credit accounts makes up your credit history. Your credit history is a major factor for most companies in predicting your success using credit. Having an accurate and complete credit history is essential to being able to obtain credit in the future.

KNOW YOUR RIGHTS

Two federal laws give you specific rights that help protect your credit history and make it easier for you to obtain credit:

- The Equal Credit Opportunity Act (ECOA) prohibits a creditor from discriminating against you on the basis of sex or marital status in any aspect of a credit transaction.
- The Fair Credit Reporting Act (FCRA) protects consumer privacy and safeguards the accuracy of credit bureau reports.

ASK THE CREDIT BUREAU TO HELP

Credit bureaus gather and sell credit information about consumers. Creditors usually rely on credit bureau reports before issuing a line of credit. There are three major national credit bureaus: Equifax, 800-685-1111, www.equifax.com; Experian, 888-397-3742, www.experian.com; and Trans Union, 800-916-8800, www.transunion.com. You should periodically check your reports from all three of these major agencies to make sure that they are not reporting inaccurate “bad” information or failing to report accurate “good” information, such as credit cards that you have always paid on time. Services

now exist that offer to obtain your credit information, or abstracts thereof, from all three major bureaus for one flat fee. Use care in approaching any such service and make sure you know what you are getting before you “buy.” In addition, Florida residents can obtain a yearly free credit report by visiting www.annualcreditreport.com/cra/index.jsp.

While the files kept on you by the national bureaus are the most important, it may also make sense to ask your local credit bureaus for your report. You can find them listed in the Yellow Pages under “Credit Bureaus” or “Credit Reporting Agencies.” Both local and national credit bureaus will report whatever they have on file, which might include what credit accounts you have, how punctually you pay your bills, and whether you have ever filed for bankruptcy. The report may include other credit references you can use in new credit applications. Please see this office’s “Fair Credit Reporting” brochure for more information on disputing inaccuracies in your credit report.

Some credit references may not appear in your file simply because the creditor may not report the information to the credit bureaus. Credit bureaus obtain most of their information from those creditors who send them monthly reports. Some creditors only report delinquent accounts.

FILL AN EMPTY CREDIT FILE

If you never had credit in your own name, or if a creditor fails to supply information to your credit report, the “empty” report can cause your application to be rejected.

For example, if you become separated, divorced, widowed, or simply want credit in your own name, a credit bureau may report “no file” exists for you. You might have a great credit history,

but all in your spouse's name. You may have the same problem if you marry and change your name. Old accounts held in your maiden or prior name are not automatically transferred to a file listed under your married or changed name. For all practical purposes your credit history is lost. It is important to check with credit bureaus after a name change to ensure that old account information has transferred to a file under your new name.

BUILD YOUR CREDIT FILE

Prevent credit history "evaporation" by taking steps to fill an empty file with your past credit history or to build the file with new information.

- If you have never had credit, start building a good record now. A local bank or department store may approve your credit application even if you do not meet the standards of large creditors. Be sure not to apply for too many accounts at one time. Credit bureaus keep a record of each creditor who inquires about you. Some creditors may deny your application if they think you are trying to open too many accounts and may exceed your ability to pay for them.
- If you have had credit before under a different name, make sure the national credit bureaus have complete and accurate information about you in a file under your current name. You may wish to take this step with local bureaus too, as well as making sure that local bureaus have accurate information on you if you have just moved into a given area. Most cities have two or three bureaus. Call each bureau to find out if they have a file on you. They may charge a small fee for checking your file.
- If you were married or divorced recently and changed your name, ask your creditors to change your name on your accounts. Once you verify the accounts are in your new name, your complete credit history should be reported correctly to credit bureaus.

GIVE YOUR BEST REFERENCES

List your best credit accounts, open and closed, on any credit application -- including accounts you shared with your spouse or former spouse.

Ask the creditor to consider the credit history of accounts that are reported in your spouse's or former spouse's name only. The creditor must consider this information if you show it reflects your ability to manage credit. If your spouse's credit history on a shared account was *bad*, the company will consider that credit history yours as well. If any previous history was unfavorable but does not accurately reflect your creditworthiness, explain this to the creditor.

CREDIT HISTORY FOR MARRIED PEOPLE

When creditors report histories to credit bureaus or to other creditors, they must report information on accounts shared by married couples in both names. This is true *only* for accounts opened *after* June 1, 1977. If you and your spouse opened an account *before* that time, or the creditor is not reporting the information under both your names because of an oversight, ask the creditor to use both names.

ASK QUESTIONS IF DENIED

Federal law gives you the right to know the specific reasons for denial if you receive notice that your credit application was denied. If the denial was based on a credit report, you are entitled to know the specific information in the credit report that led to the denial. After you receive this information from the creditor, you should contact the local credit bureau to find out what information was reported. The bureau cannot charge for disclosure if you ask to see your file within 60 days of being notified of a denial based on a credit report. You can demand that the bureau investigate any inaccurate or incomplete information and correct its records.

This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. ECOA is codified at 14 USC § 1691 et seq. (2007). Also see "Regulation B," at 12 C.F.R. 202 et seq. (Oct 07).

REAL ESTATE BROKERS



prepared by

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INTRODUCTION

If you are selling a home, you may wish to consider using a real estate broker. Although you are not required to do so, many homeowners do. Real estate “brokers” and real estate “salespersons” (also known as “agents”) are both licensed, but salespersons / agents must be supervised by brokers.

Before selecting a broker to help you sell your home, you might want to interview several firms and ask the following questions:

- What are current asking and sales prices for comparable homes?
- What kind of financing packages are you aware of that I, as a seller, could offer a buyer?
- Is your commission rate negotiable?
- Will you charge a commission if I find the buyer without your help?
- Will the commission rate be reduced if you (broker) sell without the aid of another broker?
- Will the commission rate be reduced if a buyer is not found in the agreed upon time?

- Will you list my home with a Multiple Listing Service (MLS)?
- Will you use additional methods of advertising my home?
- How long do you think it will take to find a buyer?
- Will you write in the listing contracts all of my terms that are important to me?
- Can I have some references for your company?

MARKETING YOUR HOME

Using MLS is one way to sell your home. MLS is a computerized broker information network that brokers rely on to show homes to potential buyers. This network also provides a database for a realistic determination of a fair market value for your house.

Brokers also rely upon newspaper and specialty magazine ads, and “open houses” as means of attracting buyers.

Ask prospective brokers about what assistance they give in locating financing. Lenders offer different rates and a good broker will tell you the most attractive financing packages available in the area. You may also wish to discuss self-

financing options as a means of attracting buyers.

PAYING FOR THE BROKER

As the seller, you will ordinarily bear the broker's commission costs. Many brokers will agree to split the commission with any other broker who locates a buyer as a part of using the MLS. While commission rates may appear to be standardized in your community, they are not set by law and you may be able to negotiate the commission price. Some brokers might accept a lower fee to get your business or develop a foothold in the market. Some might agree to lower the rate and provide some lesser service, like no newspaper ads. There may be a reduction if the broker is able to locate a buyer without the aid of another broker.

You can also add a clause reducing the fee if the house is not sold within a reasonable period of time. For example, you might offer a broker 6% commission provided the house sells in 60 days, 5% if sold in 61 to 120 days, etc.

DRAWING UP THE CONTRACT

A listing contract is used to outline the terms for the sale of your home - asking price, brokerage arrangements, expiration date of the contract and terms of commission if you want them. There are two basic kinds of contracts:

Exclusive right to sell contract. You agree to pay your broker a commission, no matter who finds the buyer -- **even if you find a buyer independently.** Most brokers prefer this contract. In this type of

contract, your broker always benefits, no matter who finds the buyer.

Exclusive agency contract. You agree to pay the commission if your broker, or any other broker, finds a buyer. If you find the buyer, you don't have to pay a commission. You can still get an MLS listing; this just means the broker doesn't get a guaranteed commission regardless of effort. Many brokers are reluctant to enter into exclusive agency contracts.

A FINAL THOUGHT

Your broker is supposed to work for *you*, the seller. Make sure you get a written agreement, spelling out the details of the relationship. If you have a bottom price, you don't want a broker who is willing to sell your house for that price just to make a quick commission. A written agreement binds the parties and is proof in the event a dispute arises. All real estate brokers are licensed to practice by the State. Questions can be directed to:

Florida Real Estate Commission
1940 North Monroe Street
Tallahassee FL 32399
850.487.1395

<http://www.myflorida.com/dbpr/re/frec.html>

BUYERS BEWARE

If you buy a home through a broker, remember, most brokers are working for a seller. If you really want a broker of your own, check the yellow pages for a buyer's broker.

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SERVICEMEMBERS' CIVIL RELIEF ACT



prepared by

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INTRODUCTION

Active duty members of the Armed Forces have been afforded special rights by the Servicemembers' Civil Relief Act (the "Act"). The Act works to *postpone* certain civil obligations when the military member's ability to represent himself or herself is materially affected by their service. The Act applies to numerous specific areas with varying requirements for each. The purpose of this fact sheet is only to provide general information. Be sure to consult an attorney regarding individual situations.

LANDLORD/TENANT

Eviction: If a military member is **unable** to pay rent due to military service, the Act may protect the member from eviction. The following requirements must be met:

- The eviction must be attempted during military service.
- The premises must be occupied as a dwelling, not a business.
- The monthly rent must not exceed \$2,720.95 (adjusts annually).
- The ability to pay must be materially affected by military service.

If all of the above requirements are met, the court may stay the eviction for up to three months and provide other "just" relief.

Terminating Leases: The Act permits a new military member to terminate a lease for a private dwelling 1) **if** it was entered **before** entering military service; or 2) if you receive

PCS orders or TDY orders for over 90 days. Florida statute

also allows for members to terminate a lease if they are moving into government housing. Written notice of the termination must be provided after entering active duty or receiving orders. The effective date of termination for month-to-month rentals is 30 days after the next rental payment is due after the notice of termination is delivered. The effective date of termination for all other leases is the last day of the month following the month the notice of termination is delivered.

INTEREST RATES

If you had interest-bearing debts before entering active duty, you may be able to reduce the interest rate to six percent. A pre-military creditor is required to reduce your interest rate to six percent upon receipt of written notice the debtor has entered active duty military service. To return to the previous higher interest rate, the creditor must petition the court and prove that entering active duty did not materially affect the debtor. Courts normally compare the debtor's pre-service and service income to determine material affect in this instance. If the debtor is making equal or more money after entering active duty, the reduction to six percent interest will not likely apply.

CIVIL LAWSUITS

Default Judgments: A default judgment is like a forfeit in a lawsuit; if you are sued but fail to appear, you may lose by default. If you are ever sued while on active duty, you have certain protections against losing by default. These protections include:

- Before a court enters a default judgment, the plaintiff is required to inform the court, by affidavit, of the defendant's military status. Failure to file the affidavit makes any default judgment voidable. Knowingly filing a false affidavit is a crime.
- The court **must** appoint an attorney to represent a defendant if the judge determines the defendant is in the military and has not made an appearance. The attorney is responsible for obtaining a stay and making contact with the defendant. Acts of the court-appointed attorney are not binding on the military defendant.
- If a default judgment is entered against a military defendant, the defendant may petition the court to reopen the case. To reopen a case, the defendant must show: 1) they were materially affected in presenting a defense; and 2) they have a meritorious defense to the lawsuit.

Stay of Proceedings: Where military service prevents a plaintiff or defendant from asserting or protecting a legal right, the Act permits a delay of **civil** court proceedings. The Act affords no protection in criminal matters. Consider the following factors:

- The stay request may be made at any stage of the court proceeding, as long as it is made during military service or within 60 days thereafter.
- The maximum duration of the stay is the period of active duty service plus three months. Courts often grant shorter stays.
- The key requirement to obtaining a stay is showing the military service has a *material affect* on your ability to prepare for and attend court. Factors used to determine material affect include geographic and economic challenges, amount of available leave, and specific duty requirements.

Statutes of Limitations: Normally, once the statute of limitations runs on a civil action, a once-potential plaintiff can no longer sue, and

the intended defendant can no longer be sued. However, if military service prevents filing or defending suit, the statute of limitations is stayed during periods of active duty. Thus, if a military defendant successfully postpones a suit for two years, the running of the statute of limitations is also postponed during that time.

WHAT ELSE?

The Act has too many applications to include on this fact sheet. As a general rule, if you feel your military service prevents you from enforcing or defending yourself in a civil matter, contact an attorney to determine whether the Act can help you.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (Oct 07) The SCRA is found at 50 USC app. §§ 501 et seq.**

SERVICEMEMBERS' GROUP LIFE INSURANCE



prepared by
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INTRODUCTION

When it comes to Servicemembers' Group Life Insurance (SGLI) benefits, many military members simply sign the form and never think about it again. However, there are many nuances to SGLI that you need to consider. SGLI is a group term life insurance for members of the Armed Forces, purchased by the government from private insurers, and partially subsidized by the government. SGLI coverage is available in \$50,000 increments up to the maximum of \$400,000. If you would like to lower coverage or don't want the coverage, you will need to opt out in writing. Your personnel office will have the necessary forms to do this.

WHY CHOOSE SGLI?

SGLI is specifically tailored to meet the needs of military members. It is subsidized by the government, making it very affordable. Most importantly, however, it does not contain clauses on pre-existing conditions, war, or suicide, like many private plans. SGLI covers you while you are on active duty and keeps you insured for 120 days after you separate.

DESIGNATING A BENEFICIARY

SGLI and other insurance policies are ordinarily not distributed through estate or probate proceedings. For this reason, a last will and testament will not necessarily determine the beneficiaries of insurance policies. Likewise, other agreements, such as separation agreements or divorce decrees, may not be binding as to beneficiary designations.

Why is this? The reason is that insurance policies are separate contracts between the insured and the insurance company.

An eligible beneficiary can be any person or legal entity designated by the military member on an appropriate VA form. You can choose any person to be a beneficiary.

However, if you choose not to designate a specific person and opt to write "by law" in the beneficiary section, you should be aware of potential problems. Most significantly, in some cases the designation led to SGLI benefits going to unintended people.

Under the "by law" provision, SGLI proceeds are paid in the following order: Widow/widower; children; parents; executor/administrator; and lastly to other next of kin.

Consider the following example:

“Joe” military member had been raised by his stepfather. “Joe” indicated on his SGLI form that he wanted his proceeds to be distributed “by law.” However, when “Joe” died, this designation precluded his stepfather from sharing the proceeds. The money went to “Joe’s” natural father and mother who had nothing to do with raising him. It is fairly safe to say that “Joe” would have preferred the money go to the man who raised him.

As this example makes clear, you should use caution in choosing the “by law” designation.

Also, it is critical that service members keep SGLI beneficiary designations current as life changes occur (e.g., marriage, divorce, and birth of children). Chances are you would like to avoid your ex-spouse or parents from sharing in the payments when you intended others to be beneficiaries instead.

DESIGNATING MINORS AS BENEFICIARIES

Generally speaking, while it is possible to designate a minor as your SGLI beneficiary, the proceeds cannot be paid to a minor. Therefore, if you designate the proceeds go to a minor child, you must set up the appropriate trust in your will or UGMA/UTMA account to hold the money for the child until he/she reaches the age of majority. If you simply designate a minor as the beneficiary, the SGLI proceeds will not be released and used for the benefit of the minor until an adult petitions the court to act as guardian

and is then authorized to administer the proceeds.

CHOOSING A CUSTODIAN OR TRUSTEE

In determining the appropriate vehicle to disperse the SGLI proceeds, there are two potential choices. First, you may establish a trust. Among the disadvantages of doing so, however, are court and legal expenses which will be incurred and deducted from the SGLI funds. Also, all proceeds must be paid to the beneficiary at the age of majority regardless of the minor’s maturity level.

Your second option is to appoint a custodian for your child under the UGMA/UTMA. By setting up a UGMA/UTMA account, you will avoid the expenses associated with a trust and can directly appoint the person who will act as custodian and make all financial decisions for your child based on their needs and maturity. Furthermore, there is no delay period between the distribution of SGLI proceeds to the custodian and the administration of your estate. In trust situations, you must provide for a trust in your will. Funds will be dispersed only after the will is probated.

For more information, contact the legal office or the military personnel flight.

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Tax Tips from your Air Force Tax Assistance Center

1. Electronic filing is your best option. It is fast, easy, and accurate. No more last minute trips to the Post Office – with e-file, just hit Send! E-file checks for errors and necessary information, increasing the accuracy of your return and reducing the need for correspondence with the IRS to clarify errors or omissions. Generally, when you use e-file, your refund will be issued in about half the time it would take if you filed a paper return. Those who choose Direct Deposit will get their refund in even less time. You also have peace of mind with e-file, once the return is accepted for processing, the taxpayer is notified electronically, acknowledging the IRS received the return. And, you can file your return early but wait to pay any balance due by the April deadline. You can also pay electronically, using a credit card, electronic funds withdrawal or, in some cases, the Electronic Federal Tax Payment System.

2. Choose the simplest federal tax form for your needs. The three forms used for filing individual federal income tax returns are Form 1040EZ, Form 1040A and Form 1040. If you are filing a federal income tax return on paper, use the simplest form you can. Using the simplest allowable form will reduce the chance of an error that may cost you money or delay the processing of your return.

You may qualify to use Form 1040EZ, the simplest form, if:

- * Your taxable income is below \$100,000
- * Your filing status is Single or Married Filing Jointly
- * You (and spouse) are under age 65 and not blind
- * You are not claiming any dependents
- * Your interest income is \$1,500 or less

You may be able to use Form 1040A if:

- * Your taxable income is below \$100,000
- * You have capital gain distributions
- * You claim certain tax credits
- * You claim deductions for IRA contributions, student loan interest, educator expenses or higher education tuition and fees

If you cannot use either a 1040EZ or 1040A, you probably need Form 1040. You must file form 1040 if:

- * Your taxable income is \$100,000 or more
- * You claim itemized deductions
- * You are reporting self-employment income
- * You are reporting income from sale of property

3. Deployment extensions. The deadline for filing tax returns, paying taxes, filing claims for refund, and taking other actions with the IRS is *automatically* extended if you are serving in a combat zone. These rules apply to your stateside spouse as well, if you will be filing a joint return. The duration of this extension can be a bit complicated to calculate but put simply it is:

1. The duration of your service in the combat zone (or while hospitalized due to injuries received in the combat zone); plus
2. 180 days after you leave the combat zone; plus
3. The number of days that you had to take the action (e.g., file the return) when you entered the combat zone. If for example, you entered the combat zone on April 1st, your tax return was due on April 15th. But you can add to your time in 1. and 2. above the 15 days that you had left to file the return on time. If you entered the combat zone on December 25th, you can add 105 days (1 January to 15 April) to the other extension times.

4. Don't extend unless absolutely necessary! Just because you can extend the filing of your tax return does not make it a good idea! If you are due a refund, Uncle Sam will pay you a modest interest rate on returns filed under these provisions, but wouldn't you rather have the money now? File when you are able to, rather than waiting until years later. It will make things much simpler!

5. Signing joint returns. The non-military spouse can file a joint return without the necessity of the servicemember's signature. This can be done by use of an IRS power of attorney (Form 2848), a military power of attorney that authorizes tax actions, or by simply submitting a signed statement indicating that the spouse is currently serving in a combat zone. These returns can be e-filed, but the tax preparer will need to attach the power of attorney or writing to a Form 8453 and send it to IRS.

6. Special combat zone tax benefits regarding Earned Income Tax Credit, IRAs, TSP contributions, and reserve personnel. Most retirement contributions will be treated differently while in the combat zone (and regular contribution limits don't apply). Reserve personnel receiving compensation from their civilian employer ("differential pay") in particular need to consult IRS Publication 3, Armed Forces Tax Guide, to ensure they understand their tax liability. Your local tax center has very helpful information on combat zone tax benefits and should be consulted before filing your return.

TELEMARKETING FRAUD



prepared by

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INTRODUCTION

Fraudulent telemarketers swindle American consumers out of more than a billion dollars each year. These professional con-artists peddle everything from overpriced and useless water “purifiers” to “gold mines” that are nothing more than piles of dirt.

Of course, selling products or services by phone is not in itself a crime. Most telemarketers represent honest, reputable businesses. But because so many customers enjoy the ease and convenience of shopping by phone, it is an attractive tool for unscrupulous salesmen.

Anyone with a telephone is vulnerable to the high-pressure sales tactics and enticing offers of the dishonest telemarketer. Stockbrokers have been lured into phony investment schemes. Real estate professionals have bought into worthless land deals.

Federal and State authorities work hard to put fraudulent telemarketers out of business. Unfortunately, fraudulent telemarketers are hard to track down. Most are “fly-by-night” operators working out of so-called “boilerrooms” -- leased space with banks of telephones staffed by professional scam artists. Once under investigation, they can easily shut

down and move -- virtually overnight -- to another town or state, changing their name to cover their tracks.

Because enforcement is so difficult, it is essential for today’s consumer to be informed. The following tips can help you detect telemarketing fraud and avoid becoming a victim.

TIPS FOR SPOTTING FRAUD

Certain elements are common to most scams. Beware of the following:

- “Free” gifts that require you to pay “shipping and handling” charges, “redemption” fees, or “gift taxes,” before delivery.
- “High-profit, no-risk” investments. No high-profit investment is free of any risk.
- High-pressure sales tactics and demands for you to “act now.”
- A request for your credit card number for “identification” purposes or to “verify” that you have won a prize.
- Refusal to provide written materials or even the most basic details about the organization, such as its exact location or names of its officers.
- Organizations that are unfamiliar to you or that have only a P.O. Box for an address. (Some organizations use a

P.O. Box so you will not know their location).

DON'T BE A VICTIM!

To avoid being swindled, follow these precautions:

- Don't give out your credit card number over the phone unless you know the organization is reputable.
- Insist on getting written information about the organization. At the same time, don't assume an organization is legitimate solely on the basis of impressive brochures or enthusiastic testimonials.
- Find out if any complaints have been registered against the company from your state Attorney General or local Better Business Bureau (www.nwfl.bbb.org). But remember, scam artists frequently change names and locations. Just because there are no complaints on file does not mean a business is trustworthy.
- In the case of charitable organizations, you have the right to know if the caller is a volunteer or a professional telemarketer/fundraiser. Don't commit yourself over the telephone. Ask for written information about how much of your donation will actually go to the charity and how much will be spent on administrative costs.
- Take time to make a decision before investing. Consult someone whose financial advice you trust. Have them review any contract or prospectus before you commit yourself.
- If a caller is uncooperative in answering your questions, simply hang up

the phone. Remember, you have a right to know specifics. They have no right to your money.

Above all, follow the advice: **“If it sounds too good to be true, it probably is!”**

IF YOU ARE VICTIMIZED

The nation's leading consumer protection enforcers, the Federal Trade Commission and the state Attorneys General, have declared telemarketing fraud as a high priority. Together they are working to end this plague that robs American consumers of more than a billion dollars each year.

If you get swindled by a telemarketer, don't be embarrassed to report it or assume it's not worth your time. By reporting the incident, you can help ensure that others aren't victimized.

Contact:

Federal Trade Commission
<http://ftc.gov/bcp/consumer.shtm>
(877) FTC-HELP

or

Florida Attorney General
<http://myfloridalegal.com/>
1-866-966-7226

Another option to avoid unwanted phone calls from telemarketers is to register your phone numbers with the National Do Not Call Registry at www.donotcall.gov.

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TIMESHARE RESALES



prepared by

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INTRODUCTION

If you own a vacation timeshare, be cautious about people who offer to help you resell your timeshare for a fee. Some sales programs of this type may be bogus. Be careful to deal only with legitimate sales companies.

A vacation timeshare gives you the right to use a vacation home for a limited, pre-planned period over a number of years. Consumers own about 1.5 million timeshares. One survey estimates that about 870,000 of these timeshares are currently available for resale. Some of these owners could get taken in by timeshare resale scams.

HOW BOGUS TIMESHARE RESALE COMPANIES OPERATE

Bogus timeshare resale companies operate like many other telemarketing scams. You might be contacted by a telephone salesperson or through a postcard asking you to call a particular telephone number about your timeshare. The salespeople are likely to tell you that the market for resales is "hot" and that their company has a high success rate in reselling these units. They may claim they have extensive lists of sales agents and potential buyers for timeshares. For an advance "listing" fee, often around \$300 to \$500, these salespeople promise to

sell your timeshare for a price equal to or greater than the amount you originally paid. To entice you, these companies may offer a money-back guarantee or a \$1,000 government bond if they cannot sell your timeshare within a year.

The market for resales is actually poor because there is no secondary market for timeshares. In fact, a survey found that only 3.3% of owners reported reselling their timeshares during the last 20 years. Also, the market for resales may vary considerably, depending on the location and season of the year for the unit. Phony lists of sales agents and buyers may consist of people who have never heard of the company or have no interest in buying a timeshare. It may be unlikely that the company can sell the timeshare at all, let alone at a price equal to or greater than the consumer's original purchase price. In addition, many consumers whose timeshares are not resold after a year may find that either their fee is not returned or they are presented with a bond worth as little as \$60 or \$70.

WHAT TO DO IF YOU ARE INTERESTED IN RESELLING YOUR TIMESHARE

If you want to resell your timeshare and are approached by a company offering to help, you may want to take the following precautions:

- Do not agree to anything over the telephone until you have had a chance to check out the company.
- Ask the person to send you written materials to study.
- Ask for company references, such as the names, addresses, and telephone numbers of several consumers who have used their services.
- Ask where the company is located and in what states it does business.
- Ask if the company's salespeople are licensed to sell real estate by the state where your timeshare is located, and check with the state licensing board if this is so.
- Be cautious of any company charging an advance "listing" fee for its services. Consider opting for a company that offers to sell for a fee only **after** the timeshare is sold.
- Ask the Better Business Bureau, state Attorney General's office, and local consumer protection agencies in the vicinity of the sales company whether any complaints have been lodged against the company.

OPTIONS

If you are interested in reselling your timeshare, you have several other options. You may want to try selling it yourself, by placing an advertisement in a newspaper or magazine read by potential timeshare buyers (i.e., travel magazines). Or, you may want to contact a real estate

agent familiar with the area where your timeshare is located. As an alternative, you may want to contact an organization that will try to exchange your timeshare with someone who has a unit you might find more useful or attractive.

THE BOTTOM LINE

If you receive an unsolicited offer from somebody to resell your timeshare for you -- BEWARE! The resell market for timeshares is simply not good enough to make legitimate salespeople actively look for timeshares to sell. If you want to resell your timeshare, do it yourself or find your own salesperson -- don't let the salesperson come to you.

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VEHICLE REPOSSESSION



prepared by
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INTRODUCTION

When you buy a car, truck, or other vehicle on credit, be aware that, until you have made the last payment, your creditor retains important rights in your vehicle. These rights are established by the contract you signed and by the law of your state. Your failure to make timely payments gives your creditor the right to repossess your car.

SEIZING THE CAR

Normally, your creditor has legal authority to seize your car as soon as you “default” on your loan. “Default” will be defined in your contract, but failure to make a payment on time would certainly be an example.

Once you are in default, the laws of most states, including Florida, permit the creditor to repossess your car at any hour of the day or night, without prior notice, and to come onto your property to do so. However, when seizing the vehicle, your creditor may not commit a “breach of the peace” by using physical force or threats of force. Taking your car over your protest or removing it from a closed garage without your permission may constitute a breach of the peace. If a breach of the peace occurs, your creditor may be required to pay a penalty or compensate you for any harm done to you or your property.

Your creditor may also obtain a court order to repossess the car. If you refuse to relinquish control of the car after being served with the court order you will be held in contempt of court and may face severe penalties.

RESELLING THE CAR

Once your car has been repossessed, your creditor may decide to keep the car as full compensation for your debt or to resell it in either a public or private sale. In any case, your creditor must notify you of what will happen to the car. Your creditor must tell you if it wants to keep the car because you have the right to demand that the car be sold instead. You may want to exercise this right if the car is worth more than what you owe on it. Most creditors prefer to sell the car rather than keep it. If your creditor chooses to resell the car at public auction, it must notify you of the date so that, if you wish, you can attend and participate in the bidding. If the vehicle is to be sold privately, you are entitled to a notice of the date after which it will be sold.

In any of these circumstances, you are entitled to buy back the vehicle by paying the full amount owing on it, plus the expenses connected with its repossession, such as storage and preparation for sale.

Any resale of a repossessed car must be conducted in a “commercially reasonable manner.” This does not mean that your creditor must get the highest possible price (or even a good price) for the vehicle. A resale price that is below fair market value, however, may indicate that the sale was not commercially reasonable. A sale made according to standard custom in a particular business or in an established market will be considered commercially reasonable in almost all cases. Failure to resell your car in a commercially reasonable manner may give you either a claim against your creditor for damages or a defense against a deficiency judgment.

Whatever method is used to dispose of a repossessed car, a creditor may not keep or sell any personal property found inside. (This does not include most improvements made to the car itself, such as the addition of a stereo player or luggage rack).

PAYING THE DEFICIENCY

Any difference between what you owe on your loan and what your creditor gets for reselling the vehicle is a “deficiency.” For example, if you owed \$2,500 on the car, and your creditor sells it for \$1,500, the deficiency is \$1,000. If the creditor has followed proper procedures for repossession and sale, it can sue you for a “deficiency judgment” to collect the loan balance. Once a deficiency judgment is entered by the court, the creditor can normally garnish your wages to recover the deficiency.

If you are sued for a deficiency judgment, you will be notified about the date of the court hearing. It may be important for you to appear at this hearing because it will be your only chance to use any legal defenses you may have. If your creditor breached the peace when seizing the vehicle or failed to resell the car in a commercially reasonable manner, these may be defenses against a deficiency judgment.

TALKING WITH YOUR CREDITOR

Because it is difficult to dispute a repossession once it has occurred, you should contact your creditor when you first realize you will be late with a payment. Many creditors will agree to a delay if they believe you will be able to pay later.

Sometimes, it may be possible to negotiate with your creditor to improve your position. If you do reach an agreement to modify your original contract, be sure it is in writing so that it cannot be questioned later.

VOLUNTARY REPOSSESSION

Your creditor may refuse to accept late payments and may demand that you return the car. By agreeing to a “voluntary repossession” you may reduce your creditor’s expenses in retaking the car, which you otherwise would be responsible for paying. But remember, even if you return the car voluntarily, you are still responsible for any deficiency on your loan, and your creditor may still enter the repossession on your credit report.

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WARRANTIES



prepared by

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INTRODUCTION

Before your next major purchase, consider the warranty -- the manufacturer or seller's promise to stand behind a product. Warranty coverage varies widely. Just as you compare style, price, and other characteristics of products before you buy, you should compare their warranties.

WRITTEN WARRANTIES

Written warranties come with most major purchases, though they are not legally required. Some questions to keep in mind when comparing warranties include:

What parts and repair problems are covered by the warranty?

Check to see if any parts or repairs are excluded from coverage.

Are any expenses excluded from coverage?

Some warranties require you to pay labor charges.

How long does the warranty last?

Verify when the warranty expires.

Does the warranty cover "consequential damages?"

Many warranties do not cover consequential damages. This means that the company will not pay for any damage the product caused to other property, or your time and expense in getting the damage repaired. For example, if your freezer breaks and the food spoils, the company will not pay for the food you lost.

Are there any conditions or limitations on the warranty?

Some warranties only provide coverage if you maintain or use the product as directed. For example, a warranty may cover only personal uses -- as opposed to business uses -- of the product. Make sure the warranty meets your needs.

Whom do you contact to obtain warranty service?

Either the seller or the manufacturer may provide service.

What will you have to do to get repairs?

Look for conditions that could prove expensive, such as a requirement that you ship a heavy object to a factory for servicing.

What will the company do if the product fails?

Find out if the company will repair it, replace it, or return your money.

SPOKEN WARRANTIES

Some salespeople make oral promises, such as claiming that the seller will provide free repairs. However, if this claim is not in writing, you may not be able to get the promised service. Have the salesperson put the promise in writing. Otherwise, don't count on the service.

IMPLIED WARRANTIES

Although written warranties are not required by law, "implied warranties" are. Implied warranties are created by state law, and all states have them. Almost every purchase you make is covered by an implied warranty.

The most common type of implied warranty is the “warranty of merchantability.” This means the seller promises the product will do what it is supposed to do. For example, a car will run, and a toaster will toast.

Another type of implied warranty is the “warranty of fitness for a particular purpose.” This applies when you buy a product on the seller’s advice that it is suitable for a particular use. For example, a seller who suggests you buy a certain sleeping bag for zero-degree weather warrants that the sleeping bag will be suitable for zero degrees.

If your purchase does not come within a written warranty, it is still covered by implied warranties **UNLESS** the product is marked “as is,” or the seller otherwise indicates in conspicuous writing that no warranty is given.

RESOLVING DISPUTES

If you face problems with a product or with obtaining the promised warranty service, consider the following:

- Read your product instructions and warranty carefully. Do not expect features or performance that your product was not designed to give, or assume warranty coverage that was never promised. Having a warranty does not mean you automatically get a refund if a product is defective. The company may be entitled to try to fix it first. Further, if you reported a defect to the company during the warranty period and the product was not fixed properly, the company must correct the problem, even if your warranty has expired.
- Discuss your complaint with the seller. Disputes can usually be resolved at this level. But if you cannot reach an agreement, write the manufacturer. Your warranty should list the company’s mailing address. Send all letters by certified mail and keep copies.

- If you are not satisfied by either the seller or manufacturer, contact your local consumer protection agencies.
- Inquire about dispute resolution organizations to arbitrate issues when both you and the company are willing to participate. The company or local consumer protection office can suggest organizations to contact. Consult your warranty -- dispute resolution may be required before going to court.
- If the amount of money in dispute is less than \$5,000, you can file a lawsuit in Florida small claims court. The costs are low, procedures are simple, and lawyers are not required.
- If none of these actions resolves your dispute, you may want to consider a lawsuit. You can sue for damages or for any other type of relief the court awards, including legal fees.

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