Consumer Protection Guide for Military Servicemembers

Brought to you by the Commonwealth of Kentucky

Office of the Kentucky Attorney General

Disclaimer

The information contained within this guide is intended to be used for educational purposes and is not provided as a substitute for legal advice of any kind. To the best of our knowledge, the law contained in this guide is current through August 2014.

Publication

This guide is offered free of charge by the Kentucky Attorney General's Office to military personnel and staff in digital format upon request. For more information, please contact the office in writing or by phone at:

Office of Kentucky Attorney General
1024 Capital Center Drive
Frankfort, Kentucky 40601

Phone: (502) 696-5389

Dear Current Servicemembers and Veterans:

I, along with our fellow Kentuckians, would like to thank you for the sacrifices you have made in order to maintain the safety and freedoms of our Commonwealth and our country. Your selflessness, bravery, and service are an inspiration to us all.

In recent years, scam artists and fraudsters have targeted their deceptive business practices at servicemembers and their families. Servicemembers across the United States have fallen victim to abusive lending practices, paying for poor quality educational instruction, unlawful debt collection practices, identity theft, and a host of other unfair business practices.

In response to this trend, my office has developed this toolkit to allow you to combat those businesses and individuals that seek to do you and your family financial harm. It is my hope that this information will prevent the servicemembers and veterans of our Commonwealth from being taken advantage of by those who wish to profit by scamming our men and women in uniform..

Thank you, again, for your service and please do not hesitate to contact our Office of Consumer Protection at 1-888-432-9257.

Sincerely,

JACK CONWAY

ATTORNEY GENERAL

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Introduction[1]

Servicemembers represent a unique target for scammers. They receive paychecks on a regular basis and are targeted by those who want to make a quick buck at the servicemember's expense. Servicemembers also face challenges in their ability to research consumer transactions due to the high demands of military service. The stress of service and strain on the family may make consumer protection issues less of a priority in the servicemembers' minds. Additionally, young military members may not have the expertise and experience necessary to guard against scammers and predatory business practices. Often, in military families, the military spouse will be in one location while his or her family is in another. This separation occurs not only when the solider is deployed but also when the solider is scheduled to be moved to a different base in the United States. Protecting servicemembers and their families is crucial to a fair marketplace and important to force readiness. The last thing a deployed soldier needs to be worried about is a problem back home.

[1] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

Chapter 1

Automobile Issues

Automobile Issues

Almost every servicemember will purchase a new or used automobile during his or her time of service.[2] Vehicle purchases cause more problems for servicemembers than almost any other financial transaction.[3] Servicemembers should be cautious when making a decision to purchase a vehicle. Some car dealerships engage in "Yo-Yo" scams, loan packing, and "buy here, pay here" schemes. Servicemembers also receive protections under the Kentucky Lemon Laws.

The following sections deal with the rights afforded to servicemembers with relation to automobile purchases and common scams to watch out for as you begin looking for a new vehicle.

Yo-Yo Scam[4]

A "Yo-Yo sale" is a form of bait and switch scam that takes advantage of the accepted practice of spot delivery in automobile sales. A spot delivery sale is an automobile sale wherein the purchaser signs a tentative financing agreement and takes the vehicle off the lot pending credit approval for the agreed-upon terms.[5] In a "Yo-Yo sale," an unscrupulous dealer will then inform the buyer a few days later that the buyer's credit has not been approved and he or she will have to make a concession in the form of a higher interest rate, higher monthly payment, higher down payment, or some combination thereof. If a buyer traded in their original vehicle as part of the sale, the dealer will often claim that the trade-in has already been sold and the buyer will not

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[2] National Association of Consumer Advocates, Auto-Dealers' Predatory Practices Target Our Troops, available at http://www.nclc.org/images/pdf/special_projects/military/fact-sheet-auto-dealers-targeting-troops.pdf

[3] *Id.*

[4] Information taken from NAGTRI: Military Veterans and Servicemembers Legal Issues Training Manual

[5] *Spot Delivery Pitfalls*, GOVERNOR'S OFFICE OF CONSUMER PROTECTION, http://consumer.georgia.gov/consumer-topics/spot-delivery-pitfalls (last visited May 5, 2014).

be able to recover the value of the trade-in if he or she wants to keep the original terms of the deal.[6]

In order to avoid being the victim of a Yo-Yo sale, a buyer should not pay a down payment, hand over the keys to a car, sign a purchase agreement, or drive the new car off the lot until financing is finalized.[7] Alternatively, if the buyer urgently needs the vehicle, he or she should insist in advance on a written assurance that, if the financing should fall through, the deposit and trade-in will be returned; or, if credit terms change, he or she be allowed to cancel the deal.[8]

Loan Packing

Servicemembers should take the time and effort to read all sales paperwork and confirm that no additional products or services are being paid for over what was initially discussed with the dealership. Oftentimes, car dealerships will, unbeknownst to the car purchaser, include additional products and services that have not been discussed or requested. This practice is called "loan packing." Add-ons to watch out for include extended warranties, limited warranties, tire protection, gap insurance, Vehicle Identification Number (VIN) etching, fabric protection, and paint protection. Non add-on items that are typical to every car purchase include tax, title, license, and registration fees. While contracting for the purchase of the car, remember that it is perfectly reasonable to request that the dealer slow down, answer your questions, and explain each add-on that you may have a question about.

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[6] National Consumer Law Center, In Harm's Way, *available at http://www.nclc.org/images/pdf/special_projects/military/report-scams-facing-military.pdf.*
[7] MICHAEL S. ARCHER, RIPPED OFF: A SERVICEMEMBER'S GUIDE TO COMMON SCAMS, FRAUDS, AND BAD DEALS 195 (2014).
[8] *Spot Delivery Pitfalls, supra* note 83.

Buy Here, Pay Here Dealerships[9]

"Buy Here, Pay Here" used car dealerships target those with poor credit for automobile sales with high monthly payments designed to make the buyer default, allowing the dealer to repossess and resell the vehicle. Dealers sell old used cars for a large down payment, often equal to the objective value of the car, plus monthly or bi-weekly payments for the remainder of the purchase price.[10] Interest rates on the remainder can reach 30 percent APR or more.[11] When a buyer defaults on a payment—which roughly 25 percent of buyers do—the dealer repossesses the vehicle and simply resells it to another vulnerable customer. Although "Buy Here, Pay Here" dealerships can and do target any and all vulnerable consumers, they are often found near military installations.[12]

Kentucky Lemon Laws

When you purchase a new automobile, you may have the right to participate in an arbitration system with the manufacturer and, perhaps, have your car repurchased as a "lemon." The statutes providing for arbitration, as compared to the repurchase of a lemon, were written separately so your car may not qualify as a "lemon," but you may still be entitled to an arbitration hearing. These laws apply to the manufacturers and not to the dealers. New cars leased after July 15, 1998, will be covered under the New Car Lemon Law. The full text of the lemon laws and arbitration statutes are outlined in KRS Chapter 367, sections 840-846.

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[9] Information taken from NAGTRI: Military Veterans and Servicemembers Legal Issues Training Manual
[10] In Harm's Way, *supra* note 66, at 4.
[11] Ken Bensinger, *A Vicious Cycle in the Used-Car Business,* LOS ANGELES TIMES (Oct. 30, 2011), www.latimes.com/business/buy-here-pay-here/la-fi-buy-here-pay-here-part1-storyb,0,4616431,full.story#axzz2vZsVnRVN.
[12] In Harm's Way, *supra* note 66, at 40-41.

Qualifications for Arbitration

Kentucky requires manufacturers of new motor vehicles to provide purchasers of new motor vehicles with a cost-free informal dispute resolution system. The decision is binding on the manufacturer but not the consumer. You qualify if:

•The motor vehicle has at least four wheels and is used primarily for personal, family, or household purposes and has never been sold or transferred before.

•The dispute occurred during the first two years or 25,000 miles, whichever occurs first.

•You are a Kentucky resident AND you purchased the car in Kentucky.

Motor vehicles *leased* after July 15, 1998, are subject to the terms of this statute only under the New Car Lemon law; i.e., they are only covered for 12 months or 12,000 miles.

Qualifications for Lemon Law Claims

In Kentucky, manufacturers are required to repurchase an automobile if it is determined to be a "lemon." You can file a suit in a circuit court but you must first go through the manufacturer's arbitration system. To qualify as a lemon:

•The automobile must have been purchased new in Kentucky by a Kentucky resident and not have more than two axles and cannot be a motorcycle, motor home, conversion van, or farm equipment. New automobiles leased after July 15, 1998, are also covered.

•The consumer must report the failure to repair the non-conformity to the manufacturer within the first 12 months or 12,000 miles, whichever is first.

•The problem must substantially impair the use, value, or safety of the automobile.

•The automobile has been out of service for the same problem for a cumulative total of 30 days or more or the problem was not corrected within a reasonable number of attempts. Four attempts to repair the same problem is presumed to be reasonable.

Chapter 2

Kentucky Consumer Protection Act

Kentucky Consumer Protection Act

The Kentucky Consumer Protection Act (KCPA) was enacted by the General Assembly in order to protect "the well-being of both the consumer public and the ethical sellers of goods and services[.]"[13] The KCPA declares unlawful any "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce."[14]

Resolving Complaints with a Business

Few things are more frustrating than paying hard-earned money for a product or service only to discover it doesn't measure up to promises or expectations or that it is just a plain rip-off. When that happens, consumers rightfully expect to have the problem resolved or their money returned. Even careful buyers get stuck now and then. If it happens to you, you will want to know how to proceed to get the best results. Below is a list of steps that may facilitate a resolution to your issue.

1. **Contact the business**

Take your problem to the salesperson, manager or the company's customer service representative. Most problems are resolved at this level. If you are still not satisfied, contact the owner or the company's headquarters.

2. **File a Complaint**

If the business will not resolve a problem directly, consumers can file a complaint with the Office of the Attorney General, the Better Business Bureau, or a small claims court. The complaint should explain in detail, with documentation, what the problem is, who it is with, what you have done, and what you want. In particular it should:

[13] KY. REV. STAT. ANN. §367.120 (West 2014)
[14] KY. REV. STAT. ANN. §367.170 (West 2014)

•Identify the Business

Include the name and current address of the business. An agency will not be able to help very much without the firm's current address.

•Describe the Problem

Describe as completely as you can the problem with the product or service you have purchased. Were you told something that was untrue? Describe what you were told and how it was untrue. Is it defective? Explain what is wrong. Did the business refuse to honor a warranty? Explain what needs repair and include a photocopy of the warranty.

•Explain What You Want

Explain what you want the business to do, how much money should be refunded, or exactly how you want a product fixed or a service performed.

•Include Photocopies

Always include photocopies of documents relevant to your complaint receipts, warranties, both sides of cancelled checks, contracts, etc. Do not send originals. Only send copies except upon request of the agency to which you are making your complaint.

3. How To File a Consumer Complaint with the Office of the Attorney General

The office has consumer complaint forms to ensure adequate information is contained in your complaint. It is not mandatory that you use these complaint forms, but all complaints must be in writing. If you want a complaint form, email us, download a form online, or call the

Consumer Protection Division at (502) 696-5389. You can also simply write to the office so long as adequate information is contained in the letter and supporting documents are attached.

Write to:

Consumer Protection Division
1024 Capital Center Drive
Frankfort, KY 40601

4. What May Happen After You File a Complaint with the Attorney General's Office

You may be Referred to Another Agency

Often a state, federal or local agency will have more expertise than our office to handle a particular consumer problem. In such a case, we refer the complaint to the agency best able to help.

The Attorney General's Office May Attempt to Mediate Your Complaint

If the Attorney General's office decides your complaint is appropriate for mediation, it will ask the business to respond to your allegations. The office generally gives the business 30 days to respond. If they do not respond or refuse to cooperate, there is generally nothing the office can do except track this information for reporting and monitoring purposes.

If at any time the office needs more information, a representative from the office will contact you. If you need to provide the office with additional information, please do so in writing. The office does not have the staff to handle numerous telephone inquiries.

If your complaint is not appropriate for mediation, or if the office refers your complaint to another agency, the office will advise you of the decision. In any event, your complaint will be kept on file so that the office can monitor illegal practices in the area.

We Cannot Act as a Consumer's Private Attorney

State law prohibits the Kentucky Office of the Attorney General from giving individual citizens legal advice or opinions or acting as their private attorney. If you feel that you need legal advice, you will have to turn to another source such as a private attorney, legal aid society or other organization.

The Kentucky Office of the Attorney General can only file suit to protect the public interest.

The Kentucky Office of the Attorney General cannot file a lawsuit whose only purpose is to recover money or property for an individual consumer. The office does file suits against companies that violate the laws protecting consumers. However, the office files these lawsuits primarily to protect the public interest, not private interests. Whether a lawsuit is in the public interest depends on several factors.

Private Litigation

The KCPA authorizes individual consumers to bring suit to enforce its provisions.[15] It is important to note that a private action must be initiated within two years of a consumer experiencing an "unfair, false, misleading, or deceptive act or practice" by a business. Servicemembers should contact a private attorney immediately if they believe they have been the victim of an "unfair, false, misleading, or deceptive act or practice" under the KCPA.

[15] KY. REV. STAT. ANN. §367.220 (West 2014)

Chapter 3

Military Lending Act

Military Lending Act[16]

Servicemembers are vulnerable to predatory lending practices because they receive regular paychecks that are typically directly deposited. Also, many servicemembers have jobs that require a security clearance. Late payments on debts can cause servicemembers to lose their clearance and subsequently their jobs. This means servicemembers usually try very hard to pay their debts on time. Because servicemembers are so vulnerable to predatory lenders, the Department of Defense (DOD) conducted a study of the impact of predatory lending on their troops. The DOD found that "[p]redatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force."[17]

Because of those findings by the DOD, the law which came to be known as the Military Lending Act (MLA)[18] was passed. Payday loans, vehicle title loans, and tax refund anticipation loans are covered by this law. The MLA says covered loans may not have an annual percentage rate (APR) of more than 36 percent. The MLA defines a payday loan as a loan that qualifies as closed-end credit,[19] has a term of 91 days or less, does not exceed $2,000, and the borrower must provide a check or give permission for automatic debit authorization that is deferred for one or more days. A vehicle title loan is defined as closed-end credit, has a term of 181 days or less,

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[16] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

[17] "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents" August 9, 2006, available at www.defense.gov/pubs/pdfs/report_to_congress_final.pdf (last visited November 20, 2013).

[18] Military Lending Act, 10 U.S.C. § 987 (2013); Department of Defense Military Lending Act Regulations, 32 C.F.R. pt. 232 (2013).

[19] Under the MLA, "closed-end credit" means all consumer credit other than "open-end credit" as defined in the Truth in Lending Act (TILA). 12 C.F.R. pt. 226.2. Under the TILA, "open-end credit" means consumer credit extended by a creditor under a plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

and is secured by a car licensed to operate on roadways. In addition to the 36 percent military APR cap, the MLA requires lenders to include a disclosure statement in loan applications to identify borrowers. The MLA covers borrowers who are regular or reserve members of the Army, Navy, Marine Corps, Air Force and Coast Guard serving on active duty under a call or order that specifies longer than 30 days, as well as their card-carrying dependents.

It is crucial that servicemembers are aware of the MLA because of the protections it provides; however, lenders have found ways around it to take advantage of servicemembers. Because the MLA is limited to closed-end credit transactions, these lenders simply offer revolving lines of credit, much like a credit card. A revolving line of credit has an overall cap on borrowing, and the servicemember can borrow up to the cap, then pay down the loan, and then borrow money again up to the cap, at any time. Some lenders charge as much as 500 percent for an open ended payday loan. The MLA helps servicemembers avoid costly financial mistakes; however, some gaps in the law's ability to protect servicemembers remain.

The National Defense Authorization Act for Fiscal Year 2013 (NDAA) includes provisions that address federal enforcement of the MLA. The NDAA makes clear that the Consumer Financial Protection Bureau (CFPB) has enforcement authority under the MLA. Further, the NDAA gives the CFPB an opportunity to weigh in on how MLA laws will work, including what they will cover. The NDAA adds the CFPB to the list of agencies with which the DOD must consult about how the MLA works and provides that such consultation must occur at least every two years. These changes add new force to the MLA and provide additional support for the CFPB and DOD to work together on servicemember protection issues.

Chapter 4

Servicemembers Civil Relief Act

Servicemembers Civil Relief Act[20]

The Servicemembers Civil Relief Act (SCRA)[21] is a federal law enacted to provide specific consumer protections to active duty servicemembers. Under the SCRA, active duty servicemembers include members of the uniformed services as well as reserves of the five main branches of the military. National Guard members are also included when they are called to active duty for more than 30 consecutive days. The SCRA provides that the United States Attorney General and private attorneys have authority to enforce certain parts of the SCRA. The following sections detail some of the benefits of the SCRA for servicemembers.

6% Interest Rate Cap

Under the SCRA, an obligation or liability bearing interest at a rate of more than 6 percent per year incurred by a servicemember or spouse before the servicemember enters military service shall be reduced to not more than 6 percent. In cases involving a mortgage, trust deed, or other security in the nature of a mortgage, this interest rate cap shall be enforceable during the period of military service and one year thereafter. For all other obligations or liabilities, the rate cap is enforceable only during the servicemember's active duty service.

Any interest rate in excess of 6 percent that would have otherwise been incurred is required to be forgiven by the lender under the SCRA. In order for the interest rate cap to apply, the servicemember must provide the creditor with written notice including a copy of military orders calling the servicemember to service no later than 180 days after termination or release from active duty service. A sample letter for the servicemember to send the lender can be found at the end of this section.

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[20] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

[21] 50 U.S.C. App. §§ 501 *et seq*.

Auto Lease Termination

Under the SCRA, a servicemember has the ability to terminate an automobile lease if it was entered into prior to the servicemember's active duty status and the servicemember is called to active duty for 180 days or longer or the automobile lease was entered into while the servicemember was on active duty status and the servicemember receives orders outside of the continental United States or will deploy with a military unit for 180 days or longer. The servicemember is required to return the vehicle to the dealer 15 days after giving notice. A sample letter for a servicemember to send to a dealer can be found at the end of this section.

Residential Lease Termination

Servicemembers also have the ability to terminate lease agreements under the SCRA if they entered into the lease prior to going into active duty status or if they entered into the lease while on active duty and receive Permanent Change of Station (PCS) orders or orders to deploy for a period of longer than 90 days. Under the SCRA, servicemembers are required to provide a written notice of the termination of the lease and a copy of their orders. A sample letter for a servicemember to send to the landlord can be found at the end of this section.

Default Judgment Protection

Under the SCRA, servicemembers are granted protections from the entering of default judgments against them while they are serving on active duty. Specifically, a servicemember may reopen a default judgment entered against him or her up to 60 days after his active duty period has ended.

Stay of Civil or Administrative Proceedings

A servicemember has the right to ask for a stay of civil or administrative proceedings for a minimum of 90 days if he or she is on active duty or 90 days after release from military

service. The servicemember must have notice of the action or proceeding in order to assert the right. An application for a stay must include either a letter or other communication from the servicemember's attorney setting forth facts demonstrating how military duty requirements affect his or her ability to appear and stating a date when he or she can appear, or a letter or communication from a commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized. Sample letters to be sent by the servicemember's attorney and/or commanding officer can be found at the end of this section.

Cell Phone Contracts

Under the SCRA, a servicemember may terminate a cellular phone service contract at any time after the date the servicemember receives orders to relocate for a period of 90 days or more to a location that does not support the contract. The servicemember must provide written or electronic notice of such termination and a copy of the military orders in order to receive the protections of the SCRA. A sample letter to be sent by the servicemember can be found at the end of this section.

Sample SCRA Letters

Below are sample letters that servicemembers may wish to use when contacting businesses or courts about their rights under the SCRA.

6% Interest Rate Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Institution)

Re: SCRA Interest Rate Reduction for Acct # _____

To Whom It May Concern:

I was placed on active duty with the Armed Forces of the United States effective (active duty date). I request that my monthly payments and interest on my account be reduced pursuant to my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq*. Military service has materially affected my ability to meet this obligation incurred prior to my active duty at the original interest rate or as it exists currently.

The SCRA (50 U.S.C. App. § 527) sets a 6 percent per annum ceiling on interest charges (including charges and fees) during the period of a servicemember's military service for obligations made before active duty when the active duty materially affects the ability to pay. Thus, the balance of my obligation may not have interest charged at a rate greater than 6 percent per annum and any interest above 6 percent must be forgiven and not accrued. Note that compliance with this law is mandatory for the creditor once the servicemember makes a request. Failure to comply with such a request may subject the creditor to damages.

Please amend or correct your records to reflect that my obligation has been reduced to no more than the statutory ceiling rate of 6 percent and that any excess charge is withdrawn. Some business entities have reduced their original interest rate to less than 6 percent as a good faith gesture in support of our country's military personnel and the important mission they serve. Please be further advised that you may not repossess for non-payment of an installment obligation without first complying with the provisions of the SCRA (including Section 532).

Thank you for your prompt attention to this matter. Should you have any questions, do not hesitate to contact me at the address above.

Sincerely,

(Servicemember's name)

Enclosure:
Deployment Orders

Termination of Automobile Lease Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Lessor)

Re: Return of Vehicle VIN#_____ Pursuant to the SCRA

To Whom It May Concern:

I was placed on active duty with the Armed Forces of the United States effective (active duty date). I am the lessee of (year, make, model, and VIN) and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq*. My deployment has materially affected both my ability to pay for and my need for the vehicle.

Section 535(b)(2) of the SCRA allows a servicemember to terminate an automobile lease if the servicemember receives deployment orders for greater than 180 days. In this case, I will be deployed to (place deployed to) for at least (number of days of ordered deployment). I have attached a copy of my orders for your file.

In compliance with 50 U.S.C. App. § 535(c), I have mailed this notice via certified mail, return receipt requested and have already left the vehicle with (lessor and contact representative). The representative with whom I have been working at (name of lessor) is (name of contact representative), and (he/she) may be reached at (phone number). Therefore, in accordance with 50 U.S.C. App. § 535(d)(2), the effective date of termination is the postmark date of this letter.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at (servicemember's phone number or the number of someone holding a power of attorney for the servicemember).

Sincerely,

(Servicemember's Name)

Enclosures:
Deployment Orders
Lease Contract

Termination of Rental Property Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Landlord)

Re: Termination of Residential Lease Pursuant to the SCRA

To Whom It May Concern:

I was placed on active duty with the Armed Forces of the United States effective (active duty date). I lease a (home/apartment) at (address of rental residence) and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq*. My deployment has materially affected my need for this rental property. Section 535(b)(1) of the SCRA gives a servicemember the right to terminate a residential lease if the servicemember receives deployment orders for more than 90 days. In this case, I will be deployed to (place of deployment) for at least (number of days). I have attached a copy of my orders for your file.

Pursuant to 50 U.S.C. App. § 535(c), I have mailed this notice via certified mail, return receipt requested (or hand delivery). Therefore, pursuant to 50 U.S.C. App. § 535(d)(l), the effective date of termination is 30 days after the first date on which the next rental payment is due and payable after the date on which this notice was delivered (or agreed termination date).

I will (mail or drop) off my keys when I have vacated the rental premises. All security deposits and prorated future rents paid must be returned to me within 30 days of the termination date of this lease. Please mail these monies to: (address of servicemember).

Thank you in advance for your cooperation in this matter, and please feel free to contact me at (servicemember's phone number or the number of someone holding a power of attorney for the servicemember).

Sincerely,

(Name of servicemember)

Enclosures:
Deployment Orders
Lease Contract

Stay of Proceeding Letter from an Attorney to Opposing Counsel

(Date)

(Name and Address of Attorney)

(Name and Address of Opposing Counsel)

Re: Requesting a Stay of Proceedings in (Name of proceeding)

To Whom It May Concern:

I am an attorney with (firm/agency). I am writing on behalf of (servicemember), who contacted me because he is the defendant in the case of (case caption) in which you have been hired to represent (opposing counsel's client).

(Servicemember) is on active duty and is assigned to (unit information and location). As such, (he/she) is afforded certain rights under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501 *et seq*. Section 522 of the SCRA states that a court shall, upon application by the servicemember, grant a stay in a civil action for a period of not less than 90 days.

Therefore, (servicemember) applies for protection from any further proceedings in the referenced civil action pending against him for a 12 month period. Please find attached a letter from (servicemember)'s commanding officer stating that (his/her) military service materially affects (his/her) ability to defend this action. Based on (servicemember)'s current military deployment, (he/she) will not be able to attend any proceedings scheduled in this action.

Pursuant to 50 U.S.C. App. § 522(c), an application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense for a lack of personal jurisdiction. This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of (servicemember). Additionally, this letter is not to serve as any form of answer to any petition, motion or complaint filed against (servicemember).

Thank you in advance for your help in affording (servicemember) an opportunity to participate in the legal process while meeting (his/her) obligations to the defense of our nation.

Sincerely,
(Attorney's signature)

Enclosure: Memorandum from Commander
cc: (Servicemember)

Stay of Proceeding Letter from an Attorney to Presiding Judge

(Date)

(Name and Address of Attorney)

(Name and Address of Presiding Judge)

Re: Requesting a Stay of Proceedings in (Name of proceeding)

Dear (Judge's name):

I am an attorney with (firm/agency). I am writing on behalf of (servicemember), who contacted me because he is the defendant in the case of (case caption) in which you are currently presiding.

(Servicemember) is on active duty and is assigned to (unit information and location). As such, (he/she) is afforded certain rights under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501 *et seq*. Section 522 of the SCRA states that a court shall, upon application by the servicemember, grant a stay in a civil action for a period of not less than 90 days.

Therefore, (servicemember) applies for protection from any further proceedings in the referenced civil action pending against him for a 12 month period. Please find attached a letter from (servicemember)'s commanding officer stating that (his/her) military service materially affects (his/her) ability to defend this action. Based on (servicemember)'s current military deployment, (he/she) will not be able to attend any proceedings scheduled in this action.

Pursuant to 50 U.S.C. App. § 522(c), an application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense for a lack of personal jurisdiction. This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of (servicemember). Additionally, this letter is not to serve as any form of answer to any petition, motion or complaint filed against (servicemember).

Thank you in advance for your help in affording (servicemember) an opportunity to participate in the legal process while meeting (his/her) obligations to the defense of our nation.

Sincerely,
(Attorney's signature)

Enclosure: Memorandum from Commander
cc: (Servicemember)

Stay of Proceeding Letter from Military Commander

(Date)

(Name and Address of Commander and Unit)
(Name and Address of Opposing Counsel/Judge)

Re: Requesting a Stay of Proceedings in (Name of Action/Caption)

To Whom It May Concern:

I am an officer in the United States (name of branch) writing on behalf of (name of servicemember), who is a defendant in the case of (case caption). (Servicemember) is currently deployed in support of (OIF/OEF and where stationed). He is assigned to my command.

(Servicemember) will be unable to attend any hearings, present any type of defense, or effectively protect (his/her) interests in the matter in question until (estimated date of return) because of (his/her) military duties. Until this date, (servicemember) is essential to the mission of our unit as a (duty title/position). My legal officer advises me that federal law allows a stay of proceedings for servicemembers on active duty when their ability to defend themselves is materially affected by their military service (50 U.S.C. App. § 521). In this instance, (servicemember)'s critical role in the national security mission of this command precludes (his/her) participation in court proceedings until not earlier than (estimated date of return). (He/She) will be unable to present any defense at all due to (his/her) deployed status.

I understand that my letter is part of an application to provide protection from further proceedings in the civil action pending against (him/her) for a period of (length of time deployed) to properly attend to both (his/her) obligation to (his/her) unit. I will ensure that (he/she) is available upon return from deployment to appear at the next scheduled court date after (estimated date of return).

Please note I am not an attorney and am not making this request based on any attorney-client relationship between (servicemember) and me. I am not representing (servicemember) with regard to the proceedings pending. This letter should not be considered an appearance by (servicemember). Rather, it is a request in my capacity as a commander charged with a mission supporting the national security of this nation that you delay the proceedings to allow this soldier to perform (his/her) critical part in that mission.

Thank you in advance for your assistance in this matter. I request that you inform me or (servicemember), at the above address, of any action taken regarding this request.

Sincerely,
(Name of Commander and Signature Block)

Enclosure: Deployment Orders
cc: (Name of servicemember)

Termination of Cellular Phone Contract Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Institution)

Re: Termination of Cellular Phone Contract, Phone # _____

To Whom It May Concern:

I have been placed on active duty with the United States (name of branch) effective (active duty date). I currently have a cellular phone contract with your institution, Phone#_____, and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. § 535(a).

The Servicemembers Civil Relief Act allows a servicemember to terminate a cellular phone contract without an early termination charge if the servicemember receives orders to relocate for more than 90 days to a location that does not provide coverage under the contract. I will be relocated to (place of relocation) for at least (number of days of ordered relocation). It is my understanding that your institution does not provide coverage in this area. I have attached a copy of my orders for your file.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at (servicemember's phone number or persons holding power of attorney for the servicemember).

Sincerely,

(Name of servicemember)

Enclosure:
Deployment Orders

Chapter 5

Payday Lending and Rent-to-Own

Payday Lending & Rent-to-Own[22]

A payday loan is a loan that consumers can get from a business that is not a bank but usually a loan store. It is called a payday loan because consumers generally borrow just enough to get through to their next payday, at which date the money is due. Payday loan businesses operate under a wide variety of titles and may take postdated checks as collateral.

Payday loan businesses cause consumers to become reliant on them because they charge large fees and expect quick repayment of the money. This can make it difficult for a consumer to pay off the loan and still be able to meet monthly expenses. Many borrowers have loans at several different payday loan businesses, which worsens the situation.

It is not uncommon to find a large number of payday lenders located near military bases. This is not by accident. Payday lenders target servicemembers for a variety of reasons. Servicemembers receive regular monthly paychecks in the form of allotments that are deposited directly into the servicemembers' bank accounts, making the money readily available to the payday lender. Because servicemembers may struggle with being paid on a monthly or bi-monthly basis, they often find themselves needing extra money between paychecks. Unfortunately, this "quick fix" could wind up costing the servicemember serious money. Finance charges and fees can often make the payday loan's annual percentage rate (APR) as high as 500 percent. These charges fluctuate from state-to-state due to differences in lending laws.

Under the Military Lending Act (MLA), payday lenders must cap the APR—which incorporates all fees and costs associated with the loan—at 36 percent when lending to servicemembers. In order for the MLA to apply, the payday loan must be closed-end credit with a term of 91 days or less in an amount of not more than $2,000. The consumer must incur

[22] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

interest or be charged a fee and, at the same time, provide a payment instrument (a check) to the lender who promises not to deposit it for one or more days or to initiate a debit to the consumers deposit account after one or more days.

In addition to capping the APR at 36 percent, the MLA prohibits payday lenders from "rolling over" the payday loan, unless the new transaction results in more favorable terms for the servicemember. Unfortunately, many servicemembers may not know about this specific protection offered to them, and dishonest payday lending companies may employ strategies like extending the term of the loan to avoid being covered by the MLA. The MLA also bans lenders, including payday lenders, from requiring servicemembers to repay their loans by allotment. The servicemember may elect to do this but may not be required to do so. When servicemembers pay by allotment, they lose certain consumer protections as well as their flexibility to adjust their budget if a financial emergency comes up. The MLA prohibits lenders from making servicemembers waive their rights under the SCRA or other state or federal laws that provide critical consumer protections. The MLA also prohibits lenders from requiring servicemembers to waive their right to seek resolution of any legal claims in court.

Another form of borrowing often used by servicemembers is the bank account overdraft protection provided by their financial institutions. Servicemembers may choose to overdraft their account and be charged a flat fee rather than turn to a payday lender. While banks usually disclose the amount of the fee, some servicemembers are not aware that they may be charged the fee each time they draw from their account if it does not have sufficient funds. Usually, the same fee is charged regardless of the amount of the purchase or withdrawal. When the servicemember receives his or her paycheck or makes a deposit, the funds could be used to satisfy the amount

overdrafted, including fees. Using overdraft protection as a way to borrow money may put the servicemember in a worse position.

When in debt, it is generally a bad idea to take on more debt to pay creditors, especially at a high rate of interest. Nevertheless, many financially stressed servicemembers fall prey to predatory lending practices in an effort to consolidate debt.

Rent-to-Own

Just like payday lenders, rent-to-own stores are often located near military bases. This is also no accident. Servicemembers are a very mobile population, who are called upon to endure long deployments and frequent relocations. Therefore, they need to travel light. This means that belongings are often left behind out of necessity. When moving to a new base or returning from a long deployment, servicemembers may find themselves without the basic furniture and appliances needed to furnish their new space. Although some base housing is considered furnished, those furnishings may have been worn out by many owners and need to be replaced.

The rent-to-own industry practice is to enter into an agreement with a consumer that allows the consumer to rent furniture, appliances, and other goods for a defined period of time. The consumer is only responsible for paying the periodic rental fee for that defined time, which can be as short as a week or month but may be continued if the consumer chooses to renew it. However, sometimes a condition in the rental agreement provides the consumer with an opportunity to buy the rented goods by continuing to pay the rental fee for a length of time or by paying a lump sum payment. Also, if the consumer decides they no longer want the particular item, they can return the item and walk away without penalty or damage to their credit score.

But sometimes that agreement comes with a very steep price tag. An example[23] given by Consumer Reports is the following: A $612 Toshiba laptop is bought at a rent-to-own store for $38.99 per week for 48 weeks, for a total of $1,872, excluding sales tax and other charges. That's the same as buying the laptop at the manufacturer's suggested retail price and financing it at an interest rate of 311 percent. A consumer could buy three of the same laptops for that total amount of $1,872. It is important that servicemembers do the math in these transactions. Also, many times actual prices of items are not on display in the rent-to-own store, so it is difficult to do the math on the spot and make an informed decision. For servicemembers and all consumers alike, it is a better idea to take that same $38.99 per week and put it aside until the item can be bought without having to finance it.

Many states, including Kentucky, have laws regarding rent-to-own transactions. In Kentucky, the law is called the Kentucky Rental-Purchase Act.[24] It lays out the disclosures that rent-to-own stores must make to consumers when advertising and entering into a rental purchase agreement. Covered agreements must be for the use of personal property for personal, family, or household purposes for an initial period of four months or less that are automatically renewable with each payment and allow the consumer to own the property. For each agreement, the business must disclose:

- A brief description of the property;
- The number, amount, and timing of all lease payments necessary to own the property;
- The maximum amount of all initial and periodic payments and charges to own the property;
- A statement that the property is not owned until all payments have been made;

[23] *Consumer Reports Investigation: Would you pay the equivalent of 311 percent interest to own a big-screen TV,* ConsumerReports.org, www.consumerreports.org/cro/money/shopping/rentacenter/overview/index.htm (last visited November 6, 2013).

[24] Ky Rev. Stat. Ann. §367.976 *et seq*. (West 2014)

- A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, and that the consumer should review the contract;
- If applicable, a statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed;
- A statement indicating whether the property is new or used; however, a statement that indicates new property is used is not a violation of the Kentucky Rental-Purchase Act;
- A statement of the cash price of the property. When the agreement involves a lease for five or more items, a statement of the total cash price of all items will satisfy this requirement;
- The total of initial payments required to be paid before completion of the agreement or delivery of the property, whichever is later;
- A statement clearly summarizing the terms of the consumer's options to purchase;
- A statement identifying the party responsible for maintaining or servicing the property while it is being leased, with the description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the leased property at the time the consumer receives ownership of the property, it will be transferred to the consumer, if allowed by the warranty; and
- The date of the transaction and the names of the consumer and business.

If an advertisement for a rental-purchase agreement states the amount of any payments or the right to receive ownership of an item, the advertisements must clearly and conspicuously state:

- That the advertised transaction is a rental-purchase agreement;
- The total of payments necessary to receive ownership; and
- That the consumer does not have ownership of the property unless the total amount necessary to have ownership is received.

An action alleging violations of the Kentucky Rental-Purchase Act must be brought within one year of the date of the violation or within six months of the time the rental-purchase agreement was no longer effective, including any renewals or extensions.

Chapter 6

Identity Theft

Identity Theft[25]

The United States Department of Justice defines identity theft as "a crime in which someone wrongfully obtains or uses another person's personal data in some way that involves fraud or deception, typically for economic gain." This crime has been steadily on the rise, especially with the growing popularity of the Internet for buying products and online banking. Although this crime is devastating to everyone, it can be even more so for servicemembers. Beginning in the 1960s, servicemembers' and their family members' Social Security numbers have been printed on their identity cards, making the numbers especially vulnerable to theft. In 2008, the military recognized that this practice caused servicemembers to be at risk for identity theft and began phasing out printing Social Security numbers on servicemembers' identity cards. Since 2012, servicemembers have been issued a new ID card without the Social Security number printed on the back. Instead, servicemembers are assigned a DOD number that is unique to them and associated with their Social Security number. Because each military base is different, there may still be some servicemembers who have outdated ID cards. If so, servicemembers may want to work with their administrative officer to obtain an updated card that doesn't put them at risk for identity theft.

The consequences of identity theft require a great deal of time, money and energy to handle properly. It has potentially more serious implications for servicemembers because credit worthiness is linked to security clearances. If a servicemember's identity is stolen, he or she may potentially lose their security clearance.

[25] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

Free Annual Credit Reports

In addition to using their Social Security numbers as part of their daily routines, servicemembers are required to move frequently based on their assignment. This creates open or revolving business accounts that may stretch across state lines or international borders. Open or revolving accounts can make it difficult for a servicemember to keep track of the account information, especially if the servicemember is deployed. It is important to maintain a secure record of all open accounts and to monitor credit reports at least once a year. But make sure to not get duped into paying for credit reports or accidentally signing up for credit monitoring services unless you have a need for the additional services, like a credit score, that they provide. Truly free credit reports by each of the three major credit reporting agencies can be obtained once per year at www.annualcreditreport.com.

Identity Theft Prevention

Servicemembers on active duty may be less able to respond to fraudulent activity on bank and credit card accounts in a timely manner. An amendment to the Fair Credit Reporting Act (FCRA) allows a servicemember to place an "active duty alert" in his or her credit report to help prevent identity theft. When servicemembers are away from their usual stations, placing an active duty alert on a credit report may help minimize the risk of identity theft while deployed. This active duty alert requires creditors to verify the applicant's identity before granting credit in the servicemember's name. Additionally, the servicemember's name will be removed for two years from the nationwide consumer reporting companies' marketing list for prescreened offers of credit and insurance, unless that active duty alert is removed by the servicemember. To place an active duty alert on a credit report, servicemembers need only contact one of the three nationwide consumer reporting companies: Equifax, Experian or TransUnion. Each agency is

required to notify the other two. It is important to keep the servicemember's contact information updated for as long as the alert is placed on the account.

The best ways to prevent identity theft are relatively simple. Servicemembers should avoid giving out any personal information like Social Security numbers and bank account numbers to anyone unless the servicemember initiated the contact. Banks and credit card companies will never make contact via email or telephone seeking to verify personal information. When credit card offers arrive in the mail, don't toss them in the trash without shredding them first. Keep all personally identifiable information like Social Security cards, bank statements, birth certificates, and driver's license information in a secure location. Avoid clicking on links in emails that come from an unknown sender. Never give out personal information in an email or over the phone unless the contact was initiated by the servicemember.

Any consumer or servicemember should submit a report to the Federal Trade Commission (FTC) if he or she is a victim of identity theft. Consumers should print and keep a copy of the identity theft report, which will be the consumer's Identity Theft Affidavit. Consumers should also file a police report about the identity theft and get a copy of the police report or the report number. When filing the police report, make sure to bring a government-issued photo identification card, proof of address, a copy of the FTC Identity Theft Affidavit, and any other proof of the identity theft. The FTC Identity Theft Affidavit and the police report together make an Identity Theft Report. Creating an Identity Theft Report can help consumers deal with credit reporting companies, debt collectors, and businesses that gave credit to the person who stole the consumer's identity. The FTC can be contacted toll-free at 877-FTC-HELP (877-382-4357) or online at www.ftc.gov.

For a complete guide to dealing with the consequences and aftermath of identity theft, please refer to the FTC's Guide "Taking Charge" which is available for free on the FTC's website at www.consumer.ftc.gov/articles/pdf-0009-taking-charge.pdf or by calling the FTC. Consumer Affairs Counselors may be able to help servicemembers work through this Guide.

Chapter 7
Nonprofit and For-Profit Schools

Education[26]

Deciding where to use hard-earned GI Bill benefits is not easy. When making this decision, it's important to research all the options. Choosing between a nonprofit school and a for-profit school is easier if servicemembers know the differences and similarities of these types of schools. Both categories of schools accept GI Bill benefits but may not provide the same advantages to the servicemember student.

Nonprofit Schools

A nonprofit school can be either public or private, but neither makes a profit from students' tuition. A public university's funding comes partly from the state's taxpayers. The largest universities in the country are all public, and the size of public universities varies widely. For example, the University of Louisville, Kentucky State University, and the University of Kentucky are public universities. Public universities may charge tuition that is considerably lower than private universities, especially for in-state students. Public universities generally have more commuter and part-time students. A large number of community colleges are public. Community colleges tend to be smaller and have either two-year associate's degree programs or gear students toward transferring to a larger four-year university to complete a program. Tuition at community colleges is often cheaper, and the smaller classes may be less intimidating, especially for nontraditional or older students. It is important to verify that credits earned at a community college will transfer to other four-year universities if a student's plan is to obtain a bachelor's degree.

A private nonprofit university is a university that gets its funding from tuition, investments, and private donors. Because of this, tuition at private universities tends to be more

[26] Portions of this section were used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

expensive than at public universities. For example, Georgetown College and Centre College are private colleges in Kentucky. For the most part, the majority of students at private universities live at college and attend full-time. Far more commuter students and part-time students attend public universities and community colleges than private universities. Private universities also tend to be smaller in size than public universities.

For-Profit Schools

For-profit colleges and universities, unlike nonprofit universities, are managed and governed by private businesses or corporations. For-profit schools are attracting a large and growing population of students entering the education market—particularly working adults, part-time students, students with children, and servicemembers. While these for-profit colleges seem to offer an attractive alternative to public and private universities for some students, it is crucial to make sure that the program being offered fits a student's needs.

Pitfalls of For-Profit Colleges

For reasons explained in detail below, servicemembers and veterans are disproportionately targeted by for-profit college recruiters. While there is nothing inherently wrong with pursuing higher education at a for-profit college, ample data suggests that students at for-profit colleges have, on average, inferior outcomes compared to students at public and community colleges. Moreover, students are sometimes pressured to enroll at for-profit colleges under false pretenses. This section provides a brief overview of the data on outcomes for students at for-profit colleges and discusses for-profit colleges' focus on recruiting above student outcomes, particularly with respect to veterans.

Inferior Outcomes for Students at For-Profit Colleges

In 2012, the Senate Subcommittee on Health, Education Labor, and Pensions (HELP Committee) reported on its two-year investigation of the for-profit college industry. The HELP Committee found that, while for-profit colleges do play an important role in satisfying demand for higher education among non-traditional students (including military veterans), for-profit colleges often focus more on recruiting students than ensuring they complete their programs. As a result, many students are left with student loan debt but without the increase in earning power that comes from completing a degree.[27] Indeed, the HELP Committee found that over 54 percent of students who enrolled in for-profit colleges in 2008-2009 withdrew without a degree.[28]

The problem of high withdrawal rates is exacerbated when put into context of the high cost of for-profit education. Simply put, programs offered by for-profit colleges are typically more expensive than comparable public university and community college programs.[29] At for-profit colleges, bachelor's degree programs are on average 20 percent more expensive than analogous programs at flagship public universities, while associate degree and certificate programs are four times more expensive than comparable community college programs.[30]

Due at least in part to the high cost of the programs, 96 percent of students at for-profit colleges take out student loans.[31] This number includes veterans whose military benefits are inadequate to cover the high costs of their programs.[32] Since over half of students withdraw before earning their degree, student loan default rates are high. Indeed, while "[s]tudents at for-

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[27] *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, U.S. SENATE HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE (July 20, 2013), 1, http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf [hereinafter "HELP Report"].
[28] *Id.*
[29] *Id.*, at 3.
[30] *Id*.
[31] *Id.*, at 6.
[32] *See id.*, at 55.

profit colleges make up 13 percent of the total higher education population, they account for nearly half of all loan defaults."[33] Making matters worse, even students who complete their degrees at for-profit colleges are more likely to experience unemployment or underemployment after leaving school.[34]

For-Profit Colleges' Focus on Recruiting & Targeting of Veterans

Many students are drawn to for-profit colleges by aggressive and sometimes misleading recruiting practices. The HELP Committee found that the recruiting process at for-profit colleges is essentially a high-pressure sales pitch.[35] The focus on recruiting is borne out in the average for-profit college's expenses and staff makeup. On average, for-profit colleges employ one recruiter per 53 students and spend almost 23 percent of all revenue on recruiting and advertising.[36] To put this in context, they employ about a third as many support services staff, a tenth as many career services staff, and only a little over 17 percent of their revenues go toward instruction.[37] The HELP Committee also found that, in order to convince students to enroll, some for-profit college recruiters mislead prospective students about program costs, the availability of financial aid, the completion rates of other students, job placements rates, the transferability of credits, and the accreditation status of the school.[38]

Veterans in particular are common targets of recruitment efforts. The HELP Committee found that for-profit colleges pay "lead generators" to gather information on veterans interested

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[33] Stephanie Simon & Caitlin Emma, *Barack Obama Cracks Down on For-Profit Colleges*, POLITICO (Mar. 13, 2014), http://www.politico.com/story/2014/03/barack-obama-education-for-profit-colleges-104661.html.
[34] HELP Report at 120-121.
[35] *Id*. at 52.
[36] *Id*. at 2, 5.
[37] *Id*. at 1, 5.
[38] *Id*. at 3-4.

in pursuing higher education.[39] In pursuing these leads—and in addition to the deceptive tactics previously mentioned—some recruiters attempt to enroll veterans by misleading them about whether their tuition would be fully covered by military benefits.[40] Some even target particularly vulnerable veterans at Wounded Warrior Centers and veterans hospitals.[41]

Veterans are aggressively targeted due to a loophole in the so-called "90/10 Rule" of the Higher Education Act. On average, nearly 80 percent of for-profit college revenues come from Department of Education grants, loans, and work study programs (collectively "Title IV Funds").[42] Under the 90/10 Rule, a for-profit college will lose its eligibility to continue receiving Title IV Funds if more than 90 percent of its revenue consists of Title IV Funds for two consecutive years.[43] However, educational assistance programs for military servicemembers and veterans—such as the Department of Defense's Tuition Assistance Program and the VA's Post-9/11 GI Bill—do not count as Title IV Funds for the purposes of the 90/10 Rule.[44] Thus for every dollar from the Tuition Assistance Program or the Post-9/11 GI Bill that a for-profit college brings in, they can bring in nine dollars of Title IV Funds and still remain in compliance with the 90/10 Rule.

By incentivizing for-profits colleges to disproportionately target veterans, the loophole in the 90/10 Rule puts veterans at heightened risk of suffering the inferior outcomes associated with certain for-profit colleges. Further, it puts them at risk of wasting their hard-earned military benefits.

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[39] *Id*. at 4. These lead generators are websites often featuring military-inspired imagery and language to draw in veterans. They purport to advise veterans on potential educational opportunities, but in reality they are gathering information on users to sell to for-profit colleges for recruitment purposes.
[40] HELP Report at 4.
[41] HELP Report at 4.
[42] *Id*., at 2.
[43] *See Ass'n of Private Colleges & Univs. v. Duncan*, 870 F. Supp. 2d 133, 152 (D.D.C. 2012) (explaining 20 U.S.C. § 1094(a)(24)).
[44] HELP Report at 8.

Key Questions to Help Select the Right College

The Federal Trade Commission (FTC) states that getting the answers to eight key questions can help servicemembers and other consumers avoid pitfalls as they pick the college that's right for them.[45]

1. Is the school committed to helping veterans?

Many schools claim to be military- or veteran-friendly. How do they back that up? Is there access to academic and career support? Mental health, disability and medical services? What are the housing options for veterans? Student Veterans of America, whose website is located at www.studentveterans.org, has chapters on nearly 300 campuses; their Connect Alumni program, located at www.studentveterans.org/what-we-do/student-veteran-meetup.html, can put servicemembers in touch with veterans from the schools being considered. Over 3,600 institutions have also agreed to follow the Department of Veterans Affairs (VA) Principles of Excellence program, located at www.benefits.va.gov/gibill/principles_of_excellence.asp, which includes designating a veteran's point of contact for academic and financial counseling and stopping misrepresentations or aggressive recruiting at their school. Bear in mind that some organizations use names, seals, and logos that look or sound like those of respected, legitimate military or educational institutions. Using the words "veteran" or "military-approved" doesn't necessarily mean the schools are benefitting veterans or servicemembers.

[45] FTC Poses Eight Questions to Ask When Choosing a College After Military Service, www.ftc.gov/opa/2013/10/choosingcollege.shtm (last visited November 12, 2013).

2. What's the total cost? How should a servicemember pay for tuition or expenses that his or her VA benefits don't cover?

Find out if payment is required by course, semester, or program. Are there fees for dropping or adding a class? How much will books, equipment, uniforms, lab fees, or graduation fees cost? In addition to post-9/11 GI Bill benefits, servicemembers may be eligible for federal financial student aid that may offer more favorable terms than a private loan. The Department of Education administers several major student aid programs in the forms of grants, loans, and work-study programs. Get details at www.studentaid.gov. Community colleges often offer a more affordable choice.

3. Of the recent graduates who borrowed money to attend the school, what percentage are delinquent in paying back their loans?

A high default rate could be a tip-off that students are burdened by too much debt or having trouble finding jobs in their field. Get information about student borrowers' default rates at College Navigator, located at nces.ed.gov/collegenavigator/, and the United States Department of Education's Federal Student Aid website, located at studentaid.ed.gov/about/data-center/student/default.

4. Will a degree from this school get the servicemember where he or she wants to go?

Will a certificate, a two-year degree, or a four-year degree be earned at that school? What percentage of students graduate? Use the Department of Education's College Navigator, located at nces.ed.gov/collegenavigator/, to compare graduation and loan default rates, average

debt at the school, tuition and expenses, and accreditation among schools. Servicemembers should ask the schools they are interested in to provide written information about job placement and average salaries for their graduates for the program(s) they are interested in studying. Schools may paint a glowing picture of student success and try to convince servicemembers that credentials from their institution will lead to a high-paying career in their chosen field. But some schools manipulate the data about how well their graduates fare. Do some research using the United States Department of Labor's Occupational Outlook Handbook at www.bls.gov/ooh. This handbook has information about the average salary that workers in a particular field are earning, the education or training needed, and careers with the most new jobs, so servicemembers can evaluate whether the results the school claims are realistic.

5. Is there pressure to enroll?

Is a recruiter rushing the servicemember to commit? Is the school pressuring the servicemember to decide before having a chance to research the program and confirm the details of financial aid? While against the law, recruiters may be paid based on how many students they bring in. Before deciding on a program, read the materials, including the contract. Determine whether, if necessary, the contract can be canceled within a few days of signing up, and, if so, whether the materials explain how to cancel? If the school refuses to provide paperwork with all of this information to review before committing, don't enroll.

6. Can servicemembers get credit for their military training?

The American Council on Education (ACE) has a guide to help schools give all possible credit for military training. Servicemembers should ask if a school follows the ACE Military

Guide, located at www.acenet.edu/news-room/Pages/Military-Guide-Online.aspx, and whether the school will grant credit for military training. Some schools offer credit for military coursework but not for occupational specialties.

7. Can servicemembers transfer credit earned at this school to other schools?

If a transfer to another college may be in the future, find out whether that school would accept the credits earned at the first school. If a servicemember attends a community college, ask about its "articulation agreement," which is a formal statement of what community college courses and credits can be transferred to a particular four-year college. Be aware that credits from nationally accredited for-profit colleges are unlikely transfer to other schools.

8. Is the school accredited?

Accreditation is usually through a private education agency or association that evaluates the school's educational program and verifies that it meets certain requirements. Accreditation can be an important clue to a school's ability to provide appropriate levels of training and education—but only if the accrediting body is objective and reputable. Many institutions consider regional accreditation as the highest stamp of approval and may not accept the transfer of credits from a school with national accreditation. Accreditation also may affect how prospective employers view the graduate's credentials. Two reliable sources of information on accreditation are the Department of Education's Database of Accredited Postsecondary Institutions and Programs, located at ope.ed.gov/accreditation, and the Council for Higher Education's Accreditation database, located at www.chea.org/.

Federal Student Aid

There are financial aid resources available for servicemembers when choosing which college to attend. The Federal Student Aid website, www.studentaid.gov, contains information that may be helpful.

Chapter 8

Housing Issues

Housing Issues[46]

The Servicemembers Civil Relief Act Helps Servicemembers with Affordable Mortgages

Any active duty soldier who owns a home has rights under federal law that can help with avoiding foreclosure. The Servicemembers Civil Relief Act (SCRA)[47] protects servicemembers from foreclosures of mortgages, deeds of trusts and other security devices. Intended to relieve servicemembers of certain civil obligations so that they can focus on their military service, Section 533 of the SCRA restricts mortgage servicers[48] from foreclosing on active duty homeowners. The SCRA only applies if the servicemember took out the loan in question *before* he or she began active duty. This is an important part of the law. If the loan originated after active duty, the law does not apply and a servicemember in default most likely will not be able to rely on the SCRA to prevent foreclosure.

In addition to showing that they took out the loan before enlisting in active duty, servicemembers will also have to demonstrate how their military service affected their ability to pay their mortgages. For example, servicemembers who took a cut in pay to enlist or whose spouses lost their jobs after moving to a new part of the country can likely count on the SCRA to protect them from foreclosure. Fortunately, courts tend to interpret the SCRA broadly in favor of the homeowner, meaning that servicemembers may just need to make a general argument that their military service has affected their finances in order to qualify for protection. Provided the above conditions are met, the SCRA will likely prevent most foreclosures without court approval. The mortgage servicer may choose not to take the matter to court. Rather than incur costly legal fees, many mortgage servicers will put the foreclosure on hold and try to work out a

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[46] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

[47] 50 U.S.C. App. §§ 501 *et seq*.

[48] Your mortgage servicer is the bank or financial institution to which you make your monthly mortgage payment, e.g. Bank of America, Wells Fargo, Ocwen, etc.

loan modification, forbearance, or some other agreement designed to help the homeowner reinstate his or her account. For a servicemember to determine if the SCRA applies to his or her situation, that servicemember should contact the mortgage servicer and explain the circumstances. The mortgage servicer will likely put all foreclosure proceedings on hold.

In addition to preventing many foreclosures, the SCRA can lower a servicemember's monthly mortgage payments. The SCRA sets a 6 percent cap on interest rates for home loans and other obligations—as long as the servicemember took on the obligation before enlisting in active duty. If a servicemember's interest rate is above 6 percent, he or she should contact the mortgage servicer and ask for a rate reduction under the SCRA. The servicemember should be prepared to provide a copy of his or her military orders no later than 180 days after termination or release from active military service.

Not all mortgage servicers are familiar with the protections servicemembers receive under the SCRA, while others may misinterpret the law's scope. Therefore, if a mortgage servicer notifies the servicemember that the SCRA does not apply, the servicemember should seek a second opinion. The servicemember may want to contact an attorney who is familiar with the SCRA. Trained VA counselors can also be contacted at the servicemember's nearest Regional Loan Center at 877-827-3702.

Finally, even if the SCRA does not apply to the servicemember's circumstances, the mortgage servicer needs to be aware that the servicemember is on active duty or has recently been discharged. Many lending institutions will assign a specialist to the account with experience in working with members of the military. In addition, the mortgage servicer may also be more accommodating in trying to postpone a foreclosure in recognition that military service may have caused financial hardship.

Mortgage Scams: How to spot them and how to avoid them

Taking advantage of public information, including property recordings that show that a homeowner is in default, mortgage rescue outfits reach out to prospective clients offering their "expertise" in obtaining a loan modification, refinance or principal forgiveness. These outfits, however, often neglect their clients once they receive their upfront fees. They usually also have little experience in the first place in helping homeowners qualify for mortgage assistance.

Mortgage rescue outfits often misrepresent the modification process claiming that homeowners require the expensive services of their firm to obtain results. That's almost never true. Although some may occasionally help homeowners in default, others have attracted the attention of state and federal law enforcement for deceptive practices that have caused great harm to their clients. If a homeowner is already having trouble paying a mortgage, the last thing that homeowner needs is to fall victim to a costly scam. Homeowners should be wary of anyone soliciting to help with their mortgage problems. Homeowners should be skeptical of online companies and they should enlist reputable help from people they know have their best interests in mind.

Free Mortgage Assistance

Rather than rely on expensive and often ineffective firms for help, homeowners facing foreclosure should turn to free HUD-certified housing counselors who can help them navigate the often confusing world of mortgage assistance. Housing counselors, who usually receive their salaries through state and federal grant programs, are trained to help homeowners organize their finances and loan paperwork so that they can apply for loan modifications. A loan modification can help a homeowner avoid foreclosure by lowering the monthly payments and forgiving or

restructuring the past due amount. To speak with a free HUD-certified housing counselor, call the toll-free HOPE Hotline at 888-995-HOPE.

The National Mortgage Settlement: Making Foreclosure a Last Resort

In April 2012, 49 states, the federal government, and the nation's five largest mortgage servicers entered in the National Mortgage Settlement, a historic agreement that provided struggling homeowners with a set of protections aimed at making foreclosure a last resort.[49] In essence, the National Mortgage Settlement requires mortgage servicers like Bank of America and Wells Fargo to follow a strict set of guidelines before they foreclose on a property. The end result is that homeowners face an easier road if they are trying to qualify for a loan modification. The National Mortgage Settlement also provides for special protections for active servicemembers and veterans.

Prior to the National Mortgage Settlement, homeowners tried to apply for available mortgage assistance programs only to have their mortgage servicer lose their paperwork or fail to follow through on deals offered just weeks earlier. This settlement stopped these types of abuses by requiring the mortgage servicer to work closely with their homeowners.

Under the National Mortgage Settlement, the five mortgage servicers must reach out to homeowners in default and provide each distressed homeowner with a single point of contact. In turn, the contact will guide them on what financial paperwork they need to submit in order to qualify for assistance. The mortgage company will also need to evaluate the homeowners for eligibility for all forms of relief, including a modification provided for under the settlement or other federal programs, including the Home Affordability Modification Program (HAMP).

[49] For more information about the National Mortgage Settlement, visit www.nationalmortgagesettlement.com.

The National Mortgage Settlement also requires that mortgage companies follow strict timelines in evaluating applications for mortgage assistance like loan modifications while keeping homeowners updated regularly. In order to lower monthly payments, the mortgage servicer may reduce the interest rate, extend the term of the loan, forgive some of the unpaid principal or employ a combination of these strategies. This settlement has standardized the loan modification process while helping homeowners in default apply for assistance in a fair and orderly way.

The National Mortgage Settlement only applies to Bank of America, Wells Fargo, JP Morgan Chase, Citi and old Ally/GMAC loans, most of which have been transferred to Ocwen Financial Corporation. A separate settlement with Ocwen, announced in December 2013 by 49 states and the Consumer Financial Protection Bureau (CFPB), applies to all other Ocwen loans, including loans formerly serviced by Litton Loan Servicing LP and Homeward Residential Inc. Mortgage companies not covered by the two settlements still have to comply with the CFPB's new mortgage rules, which went into effect in January 2014. The new rules require mortgage companies to work closely and promptly with struggling homeowners and evaluate them for modifications and other alternatives to foreclosure.

Benefits to Servicemembers and Veterans under the National Mortgage Settlement

The National Mortgage Settlement contains a number of provisions to protect servicemembers' and veterans' rights and provide other significant benefits. The following is a list of some of the protections involved:

- **Wrongful foreclosures:** After a mandatory review, it was determined that the five mortgage servicers foreclosed on some servicemembers in violation of the SCRA

between January 2006 and April 2012. The banks were required to provide any servicemember who was a victim of such a wrongful foreclosure with a payment equal to the servicemember's lost equity, plus interest, and an additional lump sum.

- **Interest Charged in Excess of 6 percent:** The five mortgage servicers also conducted a thorough review to determine whether any servicemember, from January 2008 to April 2012, was charged mortgage interest in excess of 6 percent after a request to lower the interest rate in violation of the SCRA. Servicers were required to provide a payment equal to a refund plus interest of any amount in excess of 6 percent, plus triple the amount refunded or $500 (whichever is larger).
- **Permanent Change of Station (PCS) orders:** Under the DOD's Homeowners' Assistance Program (HAP), certain servicemembers who are forced to sell their homes at a loss due to a PCS order may be partially compensated for the loss. However, under the governing statute for HAP, only certain PCS ordered servicemembers are eligible for benefits. Under the settlement, the five mortgage servicers have provided short sale agreements and deficiency waivers to certain servicemembers who are currently ineligible for HAP.
- **Veterans Housing Benefit Program:** $10 million was paid into the Veterans Housing Benefit Program Fund through which the VA guarantees loans provided on favorable terms to eligible veterans. In addition, many veterans with VA-guaranteed mortgages were also eligible for relief provided through the servicers' consumer relief obligations under the settlement.
- **Foreclosure Protections for Servicemembers Receiving Hostile Fire/Imminent Danger Pay:** For loans secured by servicemembers when they were not on active

duty, the SCRA prohibits servicers from foreclosing on active duty servicemembers without first securing a court order. The settlement extends this protection to all servicemembers, regardless of when their mortgage was secured, who within nine months of the foreclosure received Hostile Fire/Imminent Danger Pay and were stationed away from their home.

A foreclosure is rarely in anyone's best interest, including the mortgage servicer. That's why there are free programs available to help homeowners qualify for loan modifications to help keep them in their homes. Aiming to make these programs accessible to all homeowners, the national mortgage settlement is one of many protections people have against foreclosure. If a homeowner is in default, regardless of whether the mortgage is covered under the settlement, the homeowner should contact the mortgage servicer to see what options are available to avoid foreclosure and to stay in the home.

Home Rental Scams

Because servicemembers can be moved around the country frequently, they can be susceptible to rental scams if they must find their own housing off base. Unfortunately, Internet listing services such as Craigslist can contain fake ads. Scammers may copy photos and content from a legitimate ad and then post it on a site using the scammer's contact information. Scammers may post false rental properties based on real listings, and then offer special military discounts or very low pricing. To secure the deal, scammers may ask for a security deposit to be wired in advance. Another ruse is to get the servicemember's bank routing information. In some cases, the new servicemember arrives to find other people already living in the home. Legitimate property owners usually ask for money to be paid only once the lease has been

signed. Typically, first month's rent and a security deposit are the only fees required after a potential renter has seen the property and signed a lease. When a potential landlord tells a servicemember that he or she can move into the property without seeing it, this could be a sign of a scam.

Rental property that is advertised by a property owner who lives in another country may also be a red flag. The property owner may entice the servicemember with a detailed story to gain their trust. The information may focus on trying to get someone to rent the property at a low price just because they want someone to stay there while the property owner is away. There are websites available to check rental values in the area to see if the price is consistent with the average rate in that area.

Some scammers will try to get information in order to gain access to bank accounts. The fake property owner may ask a servicemember to wire the funds to a friend. The transaction will produce a receipt to show the scammer that the servicemember has funds. Unfortunately, this receipt may show just enough bank account information for the scammer to try to gain access to the account. Servicemembers who are potential renters should never give out money or personal information without researching the rental property company first.

When it comes to electronic mail, there are a few signs that indicate if a scam is involved. E-mails showing misspelled words, grammatical errors, and a lot of capitalization are some examples. Beware of e-mails from another country as well. Many scammers use free e-mail address services like the following: Gmail, Yahoo, AOL, Hotmail, etc. The presence of a free e-mail service coupled with one of the other signs can indicate that a scam is involved. It is important to keep computers protected by keeping the most updated anti-virus software loaded on the computer.

Chapter 9

Debt Collection

Debt Collection[50]

Bill collectors will use many tactics to force a consumer to pay his or her debt. However, it is important for a consumer to know the laws about debt collection to avoid being scammed or abused by a collector. The Federal Fair Debt Collection Practices Act (FDCPA) was created to protect consumers from unfair, deceptive and harassing debt collection practices. When collecting a debt, a debt collector must:

- Identify who he or she is when calling. During the first call, the collector must state the name of the collector's company and for whom the debt is being collected. If the debt collector fails to do this or does not provide this information when asked, use caution because the caller may not be working for a legitimate debt collection agency.
- Send a letter to the consumer's home address within five days of initial contact identifying the debt collector, which company the debt is being collected on behalf of, and the balance allegedly owed.
- Inform the consumer that he or she has the right to dispute the debt and has 30 days to demand the collector validate (provide proof of) the debt allegedly owed.
- If asked for validation (proof) of the debt, the collection agency must stop all attempts to collect the debt until it provides verification. If the consumer wants to have the debt validated, he or she must do so in writing—an oral request does not necessarily require the collector to produce validation.

The following is a list of what debt collectors can and cannot do when it comes to collecting debts.

[50] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

The debt collector CANNOT:

- Call before 8 a.m., after 9 p.m., or at any time that the consumer has said is inconvenient to receive calls. The collector also cannot call the consumer's workplace if the consumer has told the collector not to do so.
- Tell people other than the consumer, the consumer's spouse, or the consumer's attorney that the debt is owed.
- Use any profane or abusive language while speaking with the consumer.
- Refuse to give the consumer information regarding the collector's name, the name of the collection agency, the company's contact information, and the creditor that the agency is collecting on behalf of.
- Misrepresent facts such as how much money the consumer owes.
- Threaten to arrest or criminally prosecute the consumer because of this debt.
- Send false information to credit bureaus.
- Cause the consumer's phone to ring an unreasonable number of times (for example, 3-4 times a day).
- Add arbitrary fees. The collection agency is not allowed to add interest or any other extra fees unless the consumer agreed to the fees in the original contract with the creditor or the fees are permitted by law.

The debt collector CAN:

- Contact a family member, friend, or work supervisor in order to get the consumer's contact information; however, the collector is not allowed to discuss the debt with this individual and can only contact this person once.
- Call at reasonable hours and times that the consumer said would be okay.

It is a very good idea to keep a record of anything discussed during a call with a debt collector. Some consumers choose to record the calls. Every state has its own policy regarding call recording. Tennessee and Kentucky are both "One Party Consent States," meaning that if a consumer would like to record the conversation with the debt collector, the consumer does not have tell the collector that the call is being recorded.

Consumers need to know their rights and seek proof of validation of any debt that the consumer is contacted about but is unsure is actually owed. If a debt collector contacts a servicemember or servicemember's spouse about a late debt and threatens to contact the servicemember's commanding officer if the debt is not paid quickly, do not hesitate to ask questions. By law the collector is not allowed to contact the servicemember's commanding officer, and the mention of doing so might be an indication that the call is from a scammer. Regardless of whether the servicemember believes the debt is legitimate or not, ask for the collector's information and then contact the creditor to make sure the information is accurate. Taking these steps could prevent servicemembers from becoming victims of fraudulent debt collectors.

Chapter 10

Telephone Solicitation and Consumer Telemarketing Protection

Telephone Solicitation and Consumer Telemarketing Protection[51]

Many consumers have received telemarketing calls at odd hours, disrupting their dinners or workdays with aggressive pitches to buy things they don't need. In many cases, these calls are more than just aggravating. They are abusive and can potentially trick people into buying products that are defective.

Sign Up For Do-Not-Call Lists

To avoid being contacted by telephone solicitors, consumers can sign up for various Do-Not-Call lists. Two of the lists include the National Do-Not-Call Registry and Tennessee's Do-Not-Call list. Being on both lists can reduce the number of unwanted calls. Consumers can register for the National Do-Not-Call Registry by calling 888-382-1222 or going online to www.donotcall.gov.

Effective June 26, 2007, Kentucky's No Call List will be maintained as part of the National Do Not Call Registry. Once you have signed up your home and/or wireless telephone number, you will remain on the No Call list for five years. All telephone numbers already on the Kentucky Do Not Call List will remain on the list for five years from the date of signup.

Kentuckians on the No Call list who receive unwanted telemarketing calls can file a complaint by completing an online complaint form on this web site, by calling the Attorney General's toll-free telemarketing complaint hotline 1 (866) 877-STOP (7867), or by mailing a written complaint form to the:

Office of the Attorney General
Attn: NoCall
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

[51] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide."

Kentucky's Telemarketing No Call law is located in Kentucky Revised Statutes (KRS) 367.46951 to 367.46999.

The Telemarketing Sales Rule

The Federal Trade Commission's (FTC) Telemarketing Sales Rule[52] (TSR) helps protect consumers from fraudulent telemarketing calls. With some exceptions, individuals or companies that take part in any plan, program, or campaign to sell goods or services through interstate telephone calls must comply with the TSR.

Generally, a person who is making a telephone solicitation may only call between the hours of 8 a.m. to 9 p.m. At the beginning of the call, the telephone solicitor must clearly state his or her identity and the organization that the person represents. Under the TSR, a telemarketer is also:

- required to make disclosures of specific information;
- prohibited from making misrepresentations;
- required to transmit Caller ID information;
- prohibited from unauthorized billing;
- required to abide by payment restrictions for the sale of certain goods and services; and
- required to keep specific business records for two years.

Telemarketers must provide consumers with material information in a clear and conspicuous manner. For example, a telemarketer can't pitch a consumer a "seaside" timeshare condo without disclosing that the unit is 20 blocks from the beach. The telemarketer has to include the key limitations of the product or package he or she is trying to sell. Under the TSR,

[52] Portions of this chapter were taken from the Federal Trade Commission's website at: http://www.business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule

these disclosures should be communicated in a clear and conspicuous manner. Before a consumer pays for goods or services, telemarketers must disclose the total cost to buy, receive, or use the offered goods or services as well as the total quantity of goods the consumer must pay for and receive.

If the telemarketer mentions any kind of special refund, cancellation, exchange or repurchase policy during the sales pitch, he or she must state all of the terms and conditions that may affect the consumer's decision to buy the goods or services. If there is an "all sales are final" policy, the telemarketer must disclose it to the consumer prior to payment of the offered goods or services.

Prize Promotions

Regulations also exist to protect consumers from being scammed with prize promotions. Under the TSR, prize promotions include sweepstakes or games of "chance" as well as representations that a consumer has won, has been selected to receive, or is possibly eligible to receive a prize. The element of "chance" means that the consumer is guaranteed to receive an item, but at the time of the offer, the telemarketer does not tell the consumer the specific item that he or she will receive. The following information must be disclosed when the telemarketer discusses prizes:

- The odds of winning or if no odds can be calculated, the fact that no odds can be calculated as well as any factors that may be used for calculating the odds;
- That the consumer can participate in the promotion or could potentially win without buying anything or making a payment;
- How to enter the prize promotion without paying and/or an address or local/toll-free telephone number where such information can be found; and
- Any costs or conditions that exist in order to get or redeem any prize.

Exemptions for Telefunders

When it comes to telemarketing, Do-Not-Call provisions do not include calls from political organizations, charities, telephone surveyors, or companies with which a consumer has an existing business relationship. "Telefunders" are telemarketers who solicit charitable contributions. Telefunders are now required to:

- Make certain prompt disclosures in every outbound call;
- Get express verifiable authorization if accepting payment by methods other than credit or debit card;
- Maintain records for 24 months;
- Comply with the entity-specific Do-Not-Call requirements; and
- Include in any prerecorded message call on behalf of a nonprofit organization to a member of, or previous donor to, the nonprofit, a prompt-key to press or voice-activated mechanism for the consumer to opt out.

Telefunders are prohibited from:

- Making a false or misleading statement to induce a charitable contribution;
- Making various specific prohibited misrepresentations;
- Engaging in credit card laundering;
- Placing cold calls that deliver prerecorded messages; and
- Engaging in acts defined as abusive under the TSR, like calling before 8 a.m. or after 9 p.m., disclosing or receiving consumers' unencrypted account information, and denying or interfering with a consumer's right to be placed on a Do-Not-Call list.

Avoiding Telemarketing Scams

The following are some general tips to help consumers avoid telemarketing scams:

- If payment is asked in advance for a prize, it may be a scam. To receive a prize, a consumer should never have to pay in advance.

- Lottery tickets cannot be sold over the phone.
- Calls from people the consumer does not know who ask for Social Security numbers, credit card numbers, or bank account information are almost definitely a scam. Do not give personal information over the phone to someone who has initiated the call.
- Receiving a telemarketing call after signing up for the Do-Not-Call Registry could indicate a scam.
- Be wary if mail or e-mail is received containing lottery or sweepstake prizes. Responding could cause the consumer to be targeted by fraudulent telemarketers who operate worldwide.
- Beware if a telemarketer sends a check as reimbursement for taxes or fees that the consumer is asked to pay for a prize or award. The scammer could be sending a counterfeit check.

Finally, the FTC's website contains a substantial amount of helpful information for consumers related to frauds and scams. Consumers can contact the FTC or file a complaint by calling 877-382-4357 or going online to www.ftccomplaintassistant.gov.

Chapter 11

Resources for Servicemembers

Resources for Servicemembers[53]

Many times servicemembers do not know where to go for help after the servicemember has been taken advantage of by a business or individual. While there are numerous consumer watchdogs, it is important that servicemembers know the right agency to file their complaints with. This section covers the different agencies a servicemember might choose when filing a complaint.

Kentucky Office of the Attorney General

In Kentucky, the clearinghouse for consumer complaints is the Kentucky Office of the Attorney General. Servicemembers with a complaint on a Kentucky business should consider filing a complaint with the KYOAG. Before filing a complaint, the servicemember should first contact the business and speak with a manager. Most issues with a business are able to be resolved at this stage. If the servicemember does not reach a suitable resolution, he or she should file a complaint with the KYOAG. All complaints must be in writing. Servicemembers can file a complaint with the KYOAG by, calling (502) 696-5389, or completing the online complaint form at

ag.ky.gov/consumer. Complaints should be sent to:

Office of the Kentucky Attorney General
Consumer Protection Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

[53] Used, with permission, from the Tennessee Office of the Attorney General's "Military Consumer Protection Guide.".

Federal Trade Commission

The Federal Trade Commission (FTC) works to protect consumers and maintain competition in the nationwide marketplace. The FTC pursues vigorous and effective law enforcement, advances consumers' interests by sharing its expertise with federal and state legislatures and U.S. and international government agencies, develops policy and research tools through hearings, workshops, and conferences, and creates practical and plain-language educational programs for consumers and businesses. The FTC's website contains helpful information about a number of consumer issues. The FTC's website can be found at www.ftc.gov. The FTC also accepts complaints. Servicemembers can file a complaint by going online to www.ftccomplaintassistant.gov or calling 877-382-4357.

Consumer Financial Protection Bureau

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act established the Consumer Financial Protection Bureau (CFPB) to protect consumers by enforcing federal consumer financial laws. Among other things, the CFPB:

- Writes rules, supervises companies, and enforces federal consumer financial protection laws.
- Restricts unfair, deceptive, or abusive acts or practices.
- Takes consumer complaints.
- Promotes financial education.
- Researches consumer behavior.
- Monitors financial markets for new risks to consumers.
- Enforces laws that outlaw discrimination and other unfair treatment in consumer finance.

The CFPB also has an Office of Servicemembers Affairs that assists servicemembers with planning for their future and protecting their finances. Its website contains helpful information for servicemembers. You can read more about the Office of Servicemembers Affairs at www.consumerfinance.gov/servicemembers. The CFPB accepts servicemembers'

complaints on a number of topics including banks, credit cards, credit reporting, debt collection, money transfers, mortgages, student loans, and vehicle or consumer loans. Servicemembers can file a complaint with the CFPB by going online to www.consumerfinance.gov/complaint.

Tennessee Division of Consumer Affairs

In Tennessee, the clearinghouse for consumer complaints is the Tennessee Division of Consumer Affairs (DCA). Created in 1977, the DCA works with the Tennessee Attorney General's Office to enforce the Tennessee Consumer Protection Act. The DCA assists consumers and businesses who are the victims of unfair business practices.

If a servicemember has a complaint, he or she should contact the business first. The servicemember should try talking to a manager to resolve the complaint. If a servicemember is still not satisfied with the outcome, he or she should file a complaint with the DCA. In order to file a complaint with the DCA, either the servicemember must live in Tennessee or the business must be located in Tennessee. Servicemembers should answer all questions on the DCA's complaint form and attach any important paperwork. However, servicemembers should not include bank account numbers, Social Security numbers, credit card numbers or other sensitive information on the complaint or on any paperwork. Servicemembers should send copies of their documents (not original paperwork), as the complaint will not be returned after it is filed. After the DCA receives the complaint, a file will be set up and a specialist will be assigned. A copy of the complaint will be sent to the business for response. The business will have 21 days to respond. If the business does not respond, a second notice will be sent before placing the company on the DCA's buyer beware list.

Servicemembers can file a complaint with the DCA by filling out and mailing the complaint form in Appendix C, completing the online complaint form at

tn.gov/consumer/complaint.shtml, or calling the DCA at 615-741-4737 or toll free inside Tennessee at 800-342-8385.

United States Department of Justice

The United States Department of Justice (DOJ) provides helpful information directed to servicemembers on its website. Through its Civil Rights Division, the DOJ works to protect the rights of servicemembers by enforcing the Servicemember Civil Relief Act (SCRA), the Uniformed Services Employment Reemployment Rights Act, and voting rights under the Uniformed and Overseas Citizen Absentee Voting Act. The latest news, cases, and other resources related to the DOJ's work can be found by visiting www.servicemembers.gov.