



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge Advocate
Headquarters, Fort Carson

Keeping You Informed On Personal Legal Affairs

FINANCIAL LIABILITY INVESTIGATIONS OF PROPERTY LOSS (FLIPLs)

Consider these questions and answers to help you determine your rights in the FLIPL (Report of Survey) process.

Q: COULD I BE LIABLE FOR LOST, DAMAGED, OR DESTROYED PROPERTY?

A: Yes, in some circumstances. Soldiers and Department of the Army civilian employees may have to pay for Army property they lose or damage. Under Army Regulation (AR) 735-5, financial liability ordinarily will not exceed one month's base pay. In certain cases, however, such as the loss of personal arms or equipment or damage to Government housing, liability may equal the full amount of the loss. The report of survey is the administrative tool used by the Army to establish liability.

Q: CAN I JUST SIGN A STATEMENT OF CHARGES, INSTEAD OF HAVING A REPORT OF SURVEY INITIATED?

A: Yes, in some circumstances. A report of survey is not required in every situation where there is a loss or damage. If the loss is less than one month's base pay, the command may ask the responsible individual to sign a DD Form 362, Statement of Charges/Cash Collection Voucher. This is essentially an admission of liability for the lost or damaged property, and an agreement to pay for it. The command cannot force or coerce someone to sign the statement: it must be voluntary. A report of survey is used in situations where responsibility for the loss is in question, or where the amount to be charged is in dispute.

Q: I HAVE JUST BEEN NAMED THE SUBJECT OF A FLIPL; WHAT'S GOING TO HAPPEN?

A: The FLIPL process starts when the appointing authority, usually a Lieutenant Colonel or above (most often a battalion or squadron commander), appoints a survey officer to investigate the facts surrounding the loss. The survey officer will be a commissioned or warrant officer, a noncommissioned officer with the rank of Sergeant First Class or above or a civilian employee GS-7 or above. The survey officer must be senior in grade to the individual subject to potential liability unless war or military exigency requires otherwise. The survey officer investigates and makes initial findings as to the circumstances surrounding the loss. A copy of those initial findings is then given to the individual subject to potential liability. That individual has 7 days to prepare and submit a rebuttal back to the survey officer. The time constraints will extend to 15 days if the findings were mailed instead of hand delivered. Mailing may be appropriate if the survey officer and

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the individual are not assigned to the same installation (*e.g.*, where the individual PCSed during the survey process). The survey officer will consider the rebuttal along with the findings, and make a recommendation about who should be held liable and in what amount. The recommendation is made to the appointing authority.

Q: WHAT SHOULD I DO AFTER I RECEIVE NOTICE THAT I'M THE SUBJECT OF A REPORT OF SURVEY?

A: Contact the Fort Carson Legal Assistance Division immediately to arrange a consultation with a legal assistance attorney. Remember that you have a limited amount of time to respond. Often, arrangements can be made to extend your rebuttal period in order to construct an effective rebuttal.

Q: WHAT HAPPENS AFTER I SUBMIT MY REBUTTAL?

A: The appointing authority reviews the FLIPL packet, comments on the survey officer's recommendation, and forwards it to the approving authority. Before making his decision, the approving authority receives a legal opinion that the findings are legally sufficient and that the survey was completed in accordance with AR 735-5. The approving authority, usually a Colonel or above (most often a brigade or regiment commander or a division or installation chief of staff), approves or disapproves the survey officer's recommendation. To assess liability, the approving authority must find 1) the person to be held liable had a duty/responsibility to take care of the property; 2) the person failed to carry out that duty (negligence); and 3) the person's failure led to the loss (proximate cause). The approving authority will notify the person to be charged that financial liability has been assessed. The notification will be in memorandum format and will inform the person they have the right to request reconsideration of the approving authority's decision; they can appeal the liability assessment.

Q: EVEN AFTER I SUBMITTED MY REBUTTAL, I HAVE STILL BEEN HELD FINANCIALLY LIABLE; WHAT CAN I DO IF I DISAGREE?

A: A person held liable has 30 days to request reconsideration of the approving authority decision to assess liability. The request goes back to the approving authority (the survey officer and the appointing authority are not involved). If the approving authority decides to continue liability, he or she will forward the request to the appeal authority. The appeal authority, usually a General Officer, is the next higher commander in the chain of command. The appeal authority will examine all of the facts and the recommendations again. The decision of the appeal authority is final.

Q: WHAT ARE MY POST-FLIPL OPTIONS IF MY REQUEST FOR RECONSIDERATION FAILS?

A: Once the approving and/or appeal authority renders a decision, the person to be held liable still has several options to avoid losing pay. These options are not a part of the survey process but are afforded to soldiers and civilian employees under other Army Regulations. These options include the right to request remission or cancellation of the debt (enlisted personnel only), to request a hearing (civilian personnel only), to request a payment plan with DFAS, or to petition the Army Board for the Correction of Military Records (ABCMR) to reverse the chain of command action.

Q: WHAT ABOUT FLIPLs INVOLVING GOVERNMENT VEHICLE ACCIDENTS?

A: AR 735-5 authorizes the waiver of financial liability for Government vehicle accidents caused by "simple negligence." The chain of command can use the survey to document the loss and justify repairing the vehicle without actually having to take money from the soldier or civilian employee involved. The waiver provision recognizes that accidents happen and that personnel should not have to lose pay for simple fender benders. Personnel should be sure to ask for the waiver in their rebuttal or request for reconsideration.
