



Notes From the JAG

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'Tis the Season...TAX SEASON that is!



Tax services at the 52 FW Legal Office will start on 11 February 2013. Due to manning constraints, the Legal Office will be assisting only Airmen E-1 through E-5 with their tax returns for the 2012 tax season. The following units have provided volunteer income tax advisors (VITAs) to help assist members of their units. Those designated as a VITA have obtained specialized IRS training.

52 LRS - SrA Chris Gascon, SrA Nortey Okwei, SSgt Markel Sykes, SSgt Alan Jones, TSgt Matthew Cox, TSgt Ryan Lee, TSgt Mario Ortiz;

52 CMS - A1C Jared Lawson, SrA Willis Jensen, SSgt Daniel Gonzalez, SSgt Kelly Miller, SSgt Bradford Schroeder, TSgt Michael Cevette, TSgt David Gley, TSgt Stephan Perryman;

606 ACS - A1C Brett McStotts, A1C Brittany Simmons;

52 AMXS - SSgt Josue Acevedo, MSgt Alan Valbuena;

702 MUNSS - A1C Sharlene Summers, TSgt Sandra Schmidt;

52 MXG - Ms. Olivia Sakyi;

52 CS - SrA Rian Beaman;

52 CPTS - A1C Justin Naud;

52 MOS - SSgt Cassandra Zoffoli;

52 FSS - Capt Daryl Hebert

If you are not in the grade of E-1 through E-5 and do not have a unit VITA, there are other ways you can complete your tax returns. There are commercial tax preparers in the local area such as H&R Block. H&R Block is located at Bademer Str. 3, 54647, Dudeldorf and can be reached at 065659559822. You can also complete your taxes and file online using the H&R Block at Home website that can be accessed through the militaryonesource.com website. Use of this service is generally free to file most federal taxes but you should be aware that the information entered to complete your taxes is maintained on the H&R Block server for ease of use from year to year. While this is convenient, some people are uncomfortable about having their personal information sitting out there in cyberspace on the H&R Block server. For those "die hard do-it-yourselfers" who want to make sure their financial information is secured, you can purchase commercial tax preparation software online or at the Exchange. Remember that while you are stationed overseas, you get an automatic filing extension deadline to 15 June.



What exactly is a Separation Agreement?

A separation agreement is a voluntary contract between a husband and wife when they separate from each other in which they resolve such matters as property division, debts, custody, and support. The agreement cannot bind third parties that have not signed it, i.e., release one spouse from any co-signed debt. Separation agreements are customarily used during the transition from marriage to divorce. If a court adopts or incorporates the separation agreement into the divorce decree, it becomes a court order.



Do I have to have a separation agreement?

No. The law does not require a separating couple to execute a separation agreement. However, it is recommended that if there are debts, children, support claims, or property involved that the parties execute a written agreement. Please note, though, that not all states recognize a legal separation.

Who prepares a separation agreement?

While it is possible to prepare one on your own, it is best to have an attorney assist in preparing a separation agreement for you, as such a document is very important and can be complex. It is highly recommended that both spouses have attorney representation during the negotiation and signing stages of the process. Courts do not like situations where one party could have been pressured into entering into such an agreement. Although Air Force legal assistance attorneys cannot draft separation

agreements, they can offer advice.

Can we divide our property in a separation agreement?

In a separation agreement, a couple can agree on a division of property. This agreement will be binding on them. The property to be divided can consist of real property (e.g., land and the buildings on it), tangible personal property (e.g., cars, jewelry, and furniture), and intangible personal property (e.g., bank accounts, stocks and bonds, vested pensions and life insurance).

Can we also divide our debts in the agreement?

Like marital assets, marital debt can be divided in a separation agreement. Ideally, all marital debts would be paid off before separating in order to prevent creditors from coming after you if the separated spouse defaults. If this is not possible, though, you should set out a schedule for who pays what debt in your separation agreement, including the creditor's name, account number, purpose of the debt, approximate balance, and monthly payment amount. While this will not stop the creditor from suing both of you if payments are not made by the separated spouse and both of your names are on the obligation, it does allow you to ask the court to hold your spouse (and not you) accountable for the debt as set out in the agreement.

Can a separation agreement settle who will get to claim the tax exemption for our children?

Yes. The 1984 Tax Reform Act allows the parties to agree as to who can claim the children as exemptions for income tax purposes. Without a written agreement, the parent who has physical custody of a child for more than half the year will get the dependency exemption.

What if my spouse breaks the promises in the separation agreement?

Unless the agreement was made a part of a court order, thus rendering any vio-

lation contempt of court, you can only sue your spouse for breach of contract if they violate the terms of the agreement. For this reason, it is important to specify which state has jurisdiction to hear disputes arising out of the agreement.

Will a separation agreement stop my spouse from hassling me?

While separation agreements usually have a nonharassment clause in them, you should understand that no piece of paper – be it agreement or court order – is going to stop a person from doing something he or she wants to do. If the problem is physical violence, a court order (i.e., restraining order) would be better than a separation agreement and could be used to punish the wrongdoer if he or she violates the order. If there is only an agreement, a lawsuit for breach of contract is one possible remedy for breaking the promise of not bothering each other, but it is a minimal remedy.



Is a court bound by what we put in our separation agreement about our children?

No. The terms you include for child support, custody and visitation can always be modified by the court in the best interest of the children. In the absence of proof to the contrary, however, there is a presumption that the terms concerning the children in your agreement are fair, reasonable, and necessary for the best interest and welfare of the children. Please note, however, should the parties agree to support that is less than the amount provided by the state, the court will closely examine this and generally inquire into the circumstances surrounding this provision.

Ask a JAG! Drug Use and Discharges

Spangdahlem Air Base has seen an increase in drug use among Airmen over the last couple of months. We are leading USAFE with Article 15's, courts-martial, and discharges for drug related offenses. The Air Force has a zero tolerance drug policy, but is that really an absolute zero?

There is such a thing as a "waiver of discharge" recommendation that can be submitted; the recommendation must be made by the Unit Commander, approved through the Wing Commander, and ultimately the discharge action may be waived by the 3 AF Commander. Please keep in mind that a recommendation is never a guarantee.

Commanders deciding whether to recommend a waiver of discharge must give full consideration to: the nature of the offense involved, all the circumstances surrounding the offense, any matters in extenuation, the airman's military record, the airman's potential for future productive service, and an evaluation of the retention criteria set out in paragraph 5.55.2.1. We in the legal field call these retention criteria the "seven criteria":



To be eligible for retention, the separation authority must find:

- (1) drug abuse is a departure from the member's usual and customary behavior,
 - (2) drug abuse occurred as the result of drug experimentation,
 - (3) drug abuse does not involve recurring incidents,
 - (4) the member does not desire to engage in or intend to engage in drug abuse in the future,
 - (5) drug abuse under all the circumstances is not likely to recur,
 - (6) the member's continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale, and
 - (7) drug abuse did not involve drug distribution.
- The burden is on the member to present evidence of his retention based on the seven retention criteria.

A couple of gray areas with the seven criteria are the experimentation and recurring statements. One, if the member disclosed that he used drugs prior to enlistment he no longer falls into the category of experimentation. Secondly, if the member is charged with drug use during his enlistment, and there are multiple uses or types of drugs, one punishment does not equal one incident. When it comes down to it, saying no to drugs is clearly the best policy for avoiding discharge for drug abuse.

Moving Out of a German Rental?

German law allows landlords to collect a security deposit of up to three months rent. The security deposit is supposed to cover unpaid rent or repair costs beyond fair wear and tear. Normal wear and tear is minor damage that occurs for no other reason than the house was being used in a normal and fair way. Examples can include the wear on carpet from walking on it or a light spot left on wallpaper where a picture was hung for a long time. In contrast, dirty fingerprints on walls, torn wallpaper, or any other damage caused by not being careful enough will not be considered normal wear and tear. When moving out of a German rental, the tenant and the landlord usually do a final inspection of the house. In the course of this inspection, the landlord may find damages and claim they are beyond mere normal wear and tear in an attempt to keep the tenant's security deposit. Landlords may even demand additional payment to cover damage costs. Often disputes arise when the tenant rejects the landlord's demand for payment claiming that they are not liable for the repair. In practice, the German rental industry and law is more stringent with these sorts of damages to rental property and it will not be an excuse that an American landlord has considered something normal wear and tear in the past.

—In order to avoid such disputes, as a tenant you can protect yourself by doing the following:

- 1.) Prior to moving in do a first inspection of the house together with the landlord and list the condition of the house/apartment. The housing office has a USAFE Form called "inventory sheet" which should be used and has to be signed by tenant and landlord. The tenant should list even small defects because this sheet can prove at the end of the lease that a defect already existed and was not caused by the tenant.
- 2.) During the term of the lease, German law requires tenants to report any needed maintenance work/defect to the landlord "without delay." If the tenant reports the defect late and the defect continues to worsen, German law requires the tenant to pay for the additional damage.

—If a landlord refuses to do the first inspection or the final inspection, have a witness walk with you through the property. It might be good to take some photos of the house/apartment to later demonstrate the condition of the rental property.

If you have a contract through the Housing Office you may ask your agent for assistance. The housing agent is also able to assist to determine what is considered normal wear and tear in Germany.



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For will worksheets or Powers of Attorney please visit
our website below.

Don't forget to send us or bring in your ticket number!



American Attorneys

***ALL WILLS BY APPT ONLY**

Appointments

Mon, Tue, Fri (0900-1000)

Tues (1300-1430)

Walk-ins

Wed (1300-1430)

German Legal Advisor

Appointments

Mon-Wed (0900-1100) &

Thurs (1300-1600)

Powers of Attorney & Notaries

ALL WALK-INS

Mon, Tue, Wed, Fri (0800-1630)

Thurs (0900-1630)