



# LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

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## REPORTS OF SURVEY

### **Soldiers and Civilian Employees may be liable for lost, damaged, or destroyed property:**

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.

### **Statement of Charges versus Report of Survey:**

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.

### **Procedures - Submitting a Rebuttal:**

The report of survey 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 what happened. 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 person will have 15 days if the findings are mailed to him or her. Mailing may be appropriate if the survey officer and the individual are not assigned to the same installation (perhaps 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.

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The appointing authority reviews the report of survey packet, comments on the survey officer's recommendation, and forwards it to the approving authority. 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. 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.

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 (appeal) the approving authority's decision.

### **Appealing Liability - Requesting Reconsideration:**

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.

### **Waiver of Liability - Government Vehicle Accidents:**

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 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.

### **Post-Survey Options:**

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.

### **What Legal Assistance Can Do:**

We can help with the preparation of rebuttals, requests for reconsideration, or post-survey documents. Please feel free to call us to schedule an appointment or for more information. Our telephone number is (502) 624-2771, and our hours of operation are Monday through Friday, 0800-1600. We are located in the Office of the Staff Judge Advocate, Building 1310, Pike Hall (north of the post office on Knox Street).

Legal Assistance Attorneys HELP YOU prepare your rebuttal, request for reconsideration, or other post survey documents. BEFORE AN ATTORNEY CAN SEE YOU, YOU MUST FILL OUT THIS FORM AND HAVE A COPY OF THE REPORT OF SURVEY PACKET TO LEAVE WITH YOUR ATTORNEY. Be aware of the deadline for submitting your rebuttal. Your attorney needs 5-7 working days to adequately prepare your document. If this will put you beyond the due date to submit your rebuttal or request for reconsideration, YOU MUST get an extension from the survey officer. Before a survey officer can recommend financial liability to the appointing authority, he must determine you were both negligent (you acted unreasonably or improperly), and your actions caused the loss or damage to property.

DESCRIBE THE EVENTS, TO INCLUDE DATES AND PERSONS INVOLVED, LEADING UP TO THE LOSS/DAMAGE.

I TOOK ALL REASONABLE ACTIONS TO PROTECT THE PROPERTY AND DID NOT CAUSE THE LOSS OR DAMAGE BECAUSE: (continue on back)

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