

Debt Collection — Keeping it Fair by CPT Daniel Curley

Have you received bills in the mail saying you are overdue on a payment? Have companies harassed you by repeatedly calling your home? If so, you should know your legal rights!

When creditors collect on overdue payments, they normally begin with form letters, then graduate to phone calls or personal visits, and then eventually to repossession of the purchased item, or even referral to a collection agency.

Normally the creditor will

first send out friendly “reminder” letters to let you, the consumer, know you are behind in your payments. Subsequent reminder letters usually contain harsher language, and stress the severity of non-payment. Although phone calls can be used to determine why payments are late, they cannot be used to harass the consumer in an attempt to collect the debt. The creditor usually threatens to repossess the item when payments are 30 to 60 days overdue and, ulti-

mately, will turn the account over to a lawyer or professional debt collector to continue collection efforts.

Although a debt collector is in the business of collecting debts for others, a guy looking like Dog the Bounty Hunter or a character out of “The Godfather” shouldn’t be paying you a visit. If they do, contact your local police department.

...continued on page 10...

YOUR LANDLORD WANTS TO SELL THE HOUSE — MUST YOU MOVE?

by Joerg Moddelmog

You have spent time (and maybe even some money if a broker was involved) finding a suitable place to live during your tour in Germany. The Army has delivered all your household goods to your new home for free, you have paid your security deposit, and you are enjoying your new neighborhood. Then, just when you think you are fully settled in, you learn that your landlord wants to sell the house you are living in. Your anxiety increases when you learn that the Army will not move you for free to another place. You start wondering: “will I have to move?”

The good news is that the sale of the premises does not terminate your residential lease (§566 of the BGB—the German Civil Code). By operation of law, the new owner assumes the position of the old landlord in the rental agreement. No new rental agreement needs to be concluded. The old one simply continues. The buyer takes the contract as he finds it.

The purchaser will only be considered the new owner once he is registered in the “Grundbuch” (Real Estate Register). The notarized purchase agreement does NOT make him the owner.

There are only two kinds of buyers: those who specifically buy houses that are already

rented, in order to pay off any mortgage with your rental payments, and those who buy the house in order to move in themselves later on. Only with the latter kind will you be faced with a termination notice due to personal need (“Eigenbedarfskündigung”).

Your original landlord (the seller) cannot terminate your lease for personal need because he has none—after all, he is selling his property. The law allows the landlord to terminate the lease only under an extraordinary hardship provision if he can prove he would lose at least 20% of the value of the house if it is rented out. That would be very hard to demonstrate in the rural KMC area.

What’s more, your landlord (the seller) cannot terminate on behalf of the buyer because the buyer must first be the recorded owner in order to claim personal need, in which case the buyer will be your landlord, leaving no legal standing for your prior landlord. Moreover, the seller generally also refuses to assign any rights to the buyer before the sale is recorded because if he does and the deal goes wrong, the seller will be legally worse off than before.

Assuming everything is done by the book and your new landlord sends you a VALID three-month statutory termination notice for personal need, following the recording of his

ownership rights in the Real Estate Register, you still may not have to leave!

According to §574b of the BGB, you can protest such termination on two grounds: either because the stated reasons for the termination are false or because you have a case of (social) hardship. The latter defense includes situations in which you cannot obtain adequate substitute housing under reasonable conditions (e.g., you have a lot of children or your PCS is less than a year away). In weighing the different interests, your reason will generally prevail and the new owner will have to wait for you to PCS before he can move into his house.

Finally, if the premises have been sold, the new owner/landlord is responsible for paying back your rental security deposit at the end of the lease, even if the former owner/landlord did not transfer it to him (§566a of the BGB).

You can avoid all of the above by including a clause in your lease that suspends the landlord’s right to termination for personal need for a period not to exceed three years.

If you have questions about the legality of a termination notice or problems involving the sale of the rental home you are living in, call DSN 483-8848 or Civilian 0631-411-8848 to schedule an appointment with a Legal Assistance Attorney.



KAISERSLAUTERN LEGAL SERVICES CENTER

**Building 3210
Kleber Kaserne**

Legal Assistance 483-8848

Claims 483-8414

Tax Assistance 483-7688

International Affairs 483-8854

Soldiers Counsel 483-7463

Trial Defense Service 483-8165

Administrative Law 484-7450

Criminal Law 484-8311





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Debt Collection — Keeping it Fair (continued from page 9)

Congress enacted the Fair Debt Collection Practices Act (FDCPA) to combat abusive debt collectors. Designed to limit harassing, misleading, and fraudulent contacts and communications with consumers, the FDCPA requires debt collectors to follow certain procedures. Within five days of contacting you, the debt collector must send you a letter stating the amount of the debt, the name of the creditor, and notice that you have 30 days to contest the validity of the debt. After 30 days, the collector will assume the debt is legitimate. You can prevent the collector from communicating with you by notifying the collector in writing that: (1) you refuse to pay; (2) you wish no further contact; and (3) you are represented by an attorney who should receive all future correspondence.

The FDCPA also prevents debt collectors from contacting you at work or at inconvenient times. In addition, debt collectors must refrain from contacting your spouse, friends, or relatives about the debt. The collector cannot falsely imply government affiliation and, if legal action is initiated, must sue the consumer where the consumer resides, where the contract was signed, or where the property is located. Also, the collector cannot make false threats about legal action. A violation of the FDCPA could be grounds for a private lawsuit against the collector, or as a counterclaim if the collector takes you to court.

If a debt is valid, paying it is the best policy. Failure to pay your just debts will adversely impact your credit report. Your military commander may also take administrative or disciplinary action against you if you fail to meet your financial obligations. Possible disciplinary actions include notice in your permanent record, denial of reenlistment, administrative separation, or punitive action under Articles 92, 123, 133, or 134 of the UCMJ.

So, remember, pay your valid debts, but don't let rogue debt collectors go unchecked. If you are the subject of abusive debt collection practices, contact your local legal assistance office.

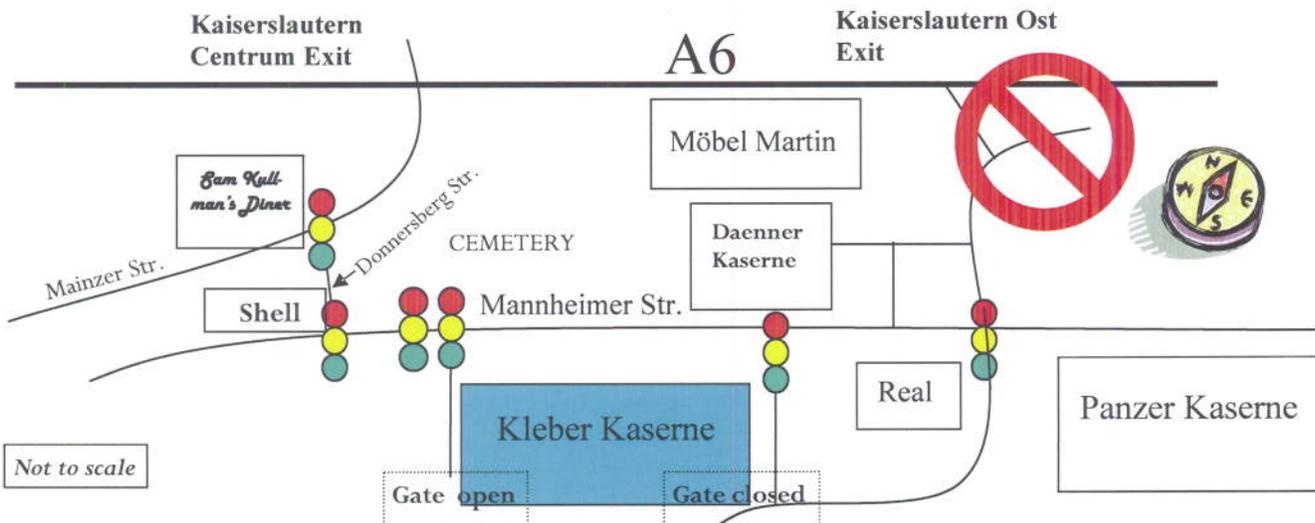
NOTE!

The Kaiserslautern Ost Autobahn exit is closed for construction this fall. Follow these directions to find the Kaiserslautern Legal Services Center...



Directions to Kleber Kaserne:

From Vogelweh, Ramstein, or Landstuhl take the A6 towards Mannheim. Take the Kaiserslautern Centrum exit and follow the priority road (Mainzer Strasse) into K-town. Turn left at the traffic light near Sam Kullman's diner, and left again at the Shell station. Head east on Mannheimer Strasse, passing the cemetery on your left, and some flower shops on your right. Turn right at the light at the west end of Kleber Kaserne, and follow the western perimeter of Kleber until you come to Gate 3. Follow the priority road through Kleber, turn left at the clinic, and park in the Shoppette parking lot. Bldg. 3210 is directly across from the Shoppette. Enter the end door of Bldg. 3210, closest to the Shoppette.



Not to scale