

Child custody and property division while stationed overseas: knowing your rights during a divorce and separation...

by CPT Jonathan Hoag

Deciding to pursue a divorce or separation is never easy. This process can be far more difficult when a Soldier or civilian is stationed overseas. The fact that we are military members or Department of Defense civilians subject to a command structure with its own rules and regulations is one factor which often makes this issue more complicated. It is important to realize that while the Department of Defense can regulate some aspects of our divorce and separation, the ultimate authority on these matters should be a civilian court. The problem of course is that gaining access to a civilian court while stationed overseas and living in a foreign country can be difficult.

Child custody is one particular area in the separation process that can be very difficult to resolve overseas. Army personnel and their commanders are guided by AR 608-99, entitled "Family Support, Child Custody, and Paternity." However, it is important to realize from the start that the German courts will have the authority to resolve disputes over child custody once the child has resided in Germany for six months. If there is a custody dispute between a husband and wife, the military command or even family advocacy may intervene and attempt to resolve disputes or in extreme cases issue orders limiting a party's parental rights. The authority of the command or any Department of

Defense agency to influence or dictate custody determination is limited. While a soldier must always follow a lawful order the soldier can petition a German court to hear the matter and make a custody determination. Both the soldier and the command should then adhere to the requirements of the valid court order. In all cases, a commander should be wary about issuing an order which either directly or indirectly affects custody.

Although hopefully not as emotionally straining as child custody, property division can also lead to a great deal of stress in the separation process. Situations often arise where the parties have separated and the dependent spouse wishes to return to the United States with his or her property. If the other spouse does not support this and the two parties cannot agree on property division then there is no clear way to resolve this issue absent a court order. Government movers should not take property from a home if they are aware there is a legal dispute over the property. Generally, a Power of Attorney is required from the absent spouse as proof that they have agreed to the move. The absence of a Power of Attorney is often an indication that there is a dispute. In these cases, a valid separation agreement clearly dividing property or a court order would be a legally sufficient substitute. As always, command involvement should be minimal and soldiers should not be forced into an agreement or to sign off on a move.

It may be wise, therefore, to consider other options before you spend thousands of Euros deciding who is going to get that priceless wagon wheel coffee table. You may want to consider coming to an agreement with your spouse, and draft a separation agreement. A separation agreement is a contract which can address child support and property division as well as many other issues. However, it is never advisable to enter into a separation agreement without full awareness of the consequences, as there will be lasting legal effects on the parties. The Legal Assistance Office can advise you and ultimately prepare a separation agreement for you if, in the end, you and your spouse decide to compromise.

In any event, the command should never advise a service member that they have to enter into a separation agreement. All too often I hear that in order to start the Early Return of Dependents or qualify for some benefit there must be a signed separation agreement. This is quite simply the wrong answer. A separation agreement can have far-reaching legal ramifications and service members should never be required to enter into one.

For further information, contact the Kaiserslautern Legal Assistance Office at DSN 483-8848 or 0631-411-8848, or visit the American Bar Association's Military Committee on Family Law website at:

<http://www.abanet.org/family/military/>

SCRA Protection For Stored Items

by Jeff Colemere

A service member who is called to active duty and must place household goods or other items of personal property in storage is entitled to certain foreclosure protections on storage liens. Under the SCRA, a lien holder may not initiate foreclosure proceedings for default of payment on a service member's stored personal property, during the period of active duty and for 90 days thereafter, without first obtaining a court order. This protection applies regardless of whether the goods were placed in storage prior to active duty or during active duty. It is important to remember that these protections only apply to organizations in the United States. If you have questions regarding German storage companies or need more details on the SCRA, call the Kaiserslautern Legal Assistance Office at DSN 483-8848 or 0631-411-8848.