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SOLDIER'S GUIDE TO FINANCIAL LIABILITY INVESTIGATION OF PROPERTY LOSS (FLIPL)

INTRODUCTION: Soldiers are faced with the great responsibility of safeguarding the use, custody, and control of government property. If you are responsible for Government property that is damaged, destroyed, or lost, you may be the subject of a Financial Liability Investigation of Property Loss (FLIPL) to determine whether you should be held financially liable for the loss. To be held liable, the FLIPL report must show that your willful misconduct or negligence caused the property to be damaged, destroyed or lost. Army Regulation (AR) 735-5, Chapter 13, governs the FLIPL system. It can be found at www.apd.army.mil.

RIGHTS IF YOU ARE FOUND LIABLE: If the financial liability officer (FLO) recommends that you pay for the loss or damage, the FLO must allow you to examine the entire FLIPL report and to submit a rebuttal statement. Additionally, the FLO must inform you of your right to inspect and copy Army records relating to the FLIPL, to submit statements or other rebuttal evidence, and to obtain legal advice from a Judge Advocate. In order to rebut the FLIPL, you must submit your evidence to the FLO within certain time limits.

A. Time Limits. The time limits for submitting rebuttal statements vary depending on how the FLO notified you. If you were notified in person, then you have 7 calendar days from that date to submit your rebuttal. If you are notified by mail or e-mail and you live in the same country as the FLO, then you have 15 days from the date the FLIPL was mailed or e-mailed to respond. If you are in a different country from the FLO, you have 30 days from the date the FLIPL was mailed or e-mailed to respond.

B. Legal Assistance. You are entitled to legal assistance for the review and assistance of your rebuttal. You must gather your evidence and prepare a statement of what happened prior to scheduling a consultation. The Division of Legal Assistance can assist you in preparing a rebuttal.

CONTENT OF REBUTTAL: To properly rebut the FLO's recommendation, you must know the basis for that recommendation. Therefore, it is vital that you carefully read the entire FLIPL and examine all the evidence that is attached. In order for the FLO to recommend liability, he or she must find, based on the evidence in the report, that you willfully or negligently caused the property to be lost or damaged.

You should gather any documents, photos, statements, and other evidence that will support your position. Write a statement that explains why the FLO's recommendation is erroneous and why your evidence supports your position. You should avoid including extraneous issues or emotional comments within your rebuttal. Simply stick to the facts. An outline rebuttal letter is enclosed.

BASIS FOR LIABILITY: To find you liable, the FLO must first establish that you were responsible for the property. There are five types of responsibility an individual can have over equipment.

A. *Command Responsibility.* This is the obligation of a commander to ensure all Government property within their command is properly used and cared for. This responsibility is inherent in command and cannot be delegated.

B. *Supervisory Responsibility.* This is the obligation of a supervisor to ensure all Government property issued to, or used by its subordinates is properly used and cared for. It is inherent in all supervisory positions and is not contingent upon signed receipts or responsibility statements.

C. *Direct Responsibility.* This is the obligation of a person to ensure all Government property for which they have receipted is properly used and cared for. This responsibility results from assignment as an accountable officer, receipt of formal written delegation or acceptance of the property on-hand receipt from an accountable officer.

D. *Custodial Responsibility.* This is the obligation of an individual for property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for and secure the property. This responsibility results from assignment as a supply sergeant, supply custodian, supply clerk, or warehouse person.

E. *Personal Responsibility.* This is the obligation of a person to exercise reasonable and prudent actions to properly use, care for, safeguard and dispose of all Government property in their physical possession. It applies to all Government property issued for, acquired for, or converted to a person's exclusive use, with or without a receipt.

In addition to finding you responsible for the equipment, the FLO must establish that your *negligence* or *willful misconduct* resulted in the loss of Government property.

Simply negligence is the absence of due care and gross negligence is an extreme departure from due care. Willful misconduct is any intentional wrongful or unlawful act or omission.

The FLO must also find that your actions were the proximate cause of the loss. Your actions are the “proximate cause” of a loss if they, in a natural and continuous sequence, unbroken by a new cause, produced the loss and without which the loss would not have occurred.

A Four-Part Test must be followed before determining financial liability. If any element in this test is not established, the FLO cannot find you liable.

A. You must have a duty to care for the property, that is, you must have exercised responsibility over the property.

B. You must have breached the duty of care. This breach can occur through simple negligence, gross negligence or willful misconduct. Whether you have breached the duty of care depends upon the circumstances in each case. Acts or omissions can cause breaches.

C. Your breach of duty was the proximate cause of the loss. The breach of the duty cannot be merely a potential factor in the cause of the loss, but rather the act or omission that actually caused the loss.

D. Finally, there must be a loss to the government, which includes loss of accountability.

PROCESSING YOUR REBUTTAL: Once received, the FLO must consider your rebuttal statement. If the FLO believes that you are still liable, he or she forwards the report to the Staff Judge Advocate for legal review. If it is determined to be legally sufficient then it is forwarded to the Approving Authority, who then makes the decision whether or not to hold you liable. The Approving Authority, generally your battalion commander, will notify you in writing if he or she intends to hold you liable. This letter will also inform you of the following rights:

- A. To receive legal advice from the local Legal Assistance Office.
- B. To inspect and copy Army records relating to the FLIPL.

C. To request reconsideration based on legal error. The request for reconsideration must be requested within 30 calendar days from the date the commander notified you. Collection from your pay is stopped pending the outcome of your request for reconsideration. The request for reconsideration should initially be submitted to the Approving Authority. If liability is still recommended the report will be submitted to the Appeal Authority, which is usually your Brigade Commander. He or she will then act on your request for reconsideration.

D. To request extension of the collection period.

E. To request remission or cancellation of the indebtedness under the provisions of AR 600-4 (enlisted personnel only). However, you must request this before the entire amount is collected from your pay. Further collection action is stopped pending the outcome of your request for remission or cancellation.

F. To submit an application to the Army Board for Correction of Military Records (ABCMR) under the provisions of AR 15-185. Requests to the ABCMR must usually be filed within 3 years of discovery of the grounds for the request.

If you do not exercise the above rights or if you are unsuccessful, then the amount you owe will be withheld from your pay within 30 to 60 days.

AMOUNT OF LIABILITY: The government can require you to pay the entire amount of money lost by the government. The loss is determined using the lost item's current fair market value and depreciation. IAW AR 735-5, para.13-41, you will not pay more than one month's base pay, unless you fall into one of the following categories: accountable officers; persons losing public funds; Soldiers losing personal arms or equipment; or persons who lose, damage, or destroy government quarters, furnishing or equipment in quarters due to gross negligence or willful misconduct. Base pay is determined at the time of the incident, not when the FLIPL is completed.

If you have any questions, contact the Legal Assistance office at (210) 221-2282/2353.

SAMPLE FLIPL REBUTTAL

(Lost Equipment)

[Unit Letterhead]

[Your unit's office symbol]

[Date]

MEMORANDUM FOR Commander, [Name of unit], Arkansas National Guard

SUBJECT: Rebuttal Statement, Financial Liability Investigation of Property Loss No. _____, Your rank and name, SSN, Amount of money charged.

1. **PURPOSE.** Pursuant to AR 735-5, chapter 13, I am submitting this Rebuttal Statement to the recommendation of liability against me in Financial Liability Investigation of Property Loss (FLIPL) Number _____. The financial liability officer recommended that I pay \$_____ for the loss of my [*Equipment*].

2. **FACTS.** This property loss resulted when [*Explain what happened. Be as detailed as possible and refer to events chronologically. Do not discuss who you think is at fault*].

3. **NEGLIGENCE AND PROXIMATE CAUSE.** The FLO has not proven that I was negligent and that said negligence resulted in the loss. Without proof of these elements, there is no theory of liability upon which I can be held liable.

a. Regulatory Guidance. Pursuant to AR 735-5, para. 13-29(b)(1), before a person can be held financially liable, the facts must show that he or she violated a particular duty of care toward the property through negligence or willful misconduct. It must further be proven that the negligence was the proximate cause of the loss (13-29(c)). AR 735-5, para. 13-29(b)(2) defines simple negligence as the absence of due care, by an act or omission of a person which lacks the degree of care for the property that a reasonably prudent person would have taken under similar circumstances to avoid loss, damage, or destruction to the property. Based on these regulations, before I can be held liable, I must be found negligent and that negligence must have also been the proximate cause of the loss or damage.

b. Responsibility. *[State specific facts to support your assertion that you were either 1) Not responsible the equipment at all (it was never issued to you) or 2) You were not responsible for the equipment at the time of loss (It was issued to you but someone else took possession at the time of loss, etc.)].* Therefore, since I was not responsible at the time of the property loss, I cannot be held liable.

c. Culpability. I was not culpable for the loss of the *[equipment]*. According to AR 735-5, para.13, a person found to have personal responsibility for property to be liable, he or she must fail to "exercise reasonable and prudent actions to properly use, care for, and safeguard all Government property in his or her physical possession." I did everything a reasonable and prudent person would have done under similar circumstances. *[Explain why you acted reasonably]*. As such, I am not culpable and request that this recommendation be dismissed.

d. Proximate Cause. AR 735-5, paragraph 13-29(c) states that proximate cause is "the natural and continuous sequence [of events] unbroken by a new cause [that] produced the loss." In section **, the FLO stated that he or she based their findings on the fact that *[Briefly recite why the FLO found you liable. Follow this statement with any facts you believe were intervening causes to the loss, i.e. the equipment was stolen from your wall locker, you turned it in and the supply or inventory personnel did not properly account for it, etc. Be specific]* My actions did not cause the loss, therefore this recommendation should be dismissed.

4. **CONCLUSION.** I am not liable for the lost government equipment. The FLO cannot prove that: I was responsible at the time of loss, I was culpable, or I proximately caused the loss. Absent proof of these essential elements, I cannot be held liable for the loss. If I am found liable, however, I request the amount of liability be canceled due to *[State your financial reasons]*. If this is impossible, I request the amount be collected over a twelve-month period.

Encl

[YOUR NAME]
[YOUR RANK and UNIT]

Include any necessary enclosures

This handout is distributed by the Arkansas Office of the Staff Judge Advocate, Office of Legal Assistance as a preventive law service. This document and other helpful information on similar personal legal affairs topics can be found on the office's website located at <https://arkansas.nationalguard.mil/Home/JAG-Legal/>

For more information on this topic or to consult with a legal assistance attorney contact the Arkansas National Guard Office of Legal Assistance at 501-212-5040 to establish eligibility and appointment times.