



THE FLOYD LAW FIRM PC

**Legal
Sense**

The Floyd Law Firm PC
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Preparing for Deployment

If you have a loved one in the armed services, you probably know the worries associated with military life. It is a life with many uncertainties: where is the next duty station; when is the next deployment; when is the next phone call home? However, you can help with the preparation for an upcoming deployment by taking on some legal and financial responsibilities. This can alleviate some of your loved one's worries and provide for a level of certainty that some matters back home are under control.



Without careful planning, a family member, other than a spouse, has little authority to act on behalf of a deployed loved one. In some cases, family members may not even be aware of the need to act. Before deployment, military personnel and their families should talk about important issues that will need to be addressed during deployment. These include taxes, real estate or rental properties (including investment and vacation properties), automobile payments and insurance, life and property insurance, credit cards, and any recent installment purchases (common for large purchases such as televisions and washers). Additionally, it is essential to talk about any upcoming or current litigation, including both civil and criminal proceedings. A simple traffic ticket can become a big headache if left unattended. By simply talking about these issues, you can ensure that everyone is on the same page.

Power of Attorney

A power of attorney is one of the best ways to make sure that you can take care of these and other law-

related issues for a deployed loved one. A *power of attorney* is a written document in which service members (the principal) grant certain authority to someone they trust (the agent or "attorney in fact") to act on their behalf. A power of attorney may be very specific, authorizing a person to sell a car, for example. Or it can be very broad, allowing the agent to do almost anything on the principal's behalf. Military personnel can use a power of attorney to give a family member or friend the ability to access bank accounts, make rent or mortgage payments, make car payments, and pay utilities and other bills.

It is important to note that a power of attorney isn't a guaranteed solution for every situation. Some agencies may require additional documentation. For example, the Social Security Administration often requires you to fill out their specialized paperwork in order to be able to receive payments on behalf of another person. Many states will require you to use their specific forms if you wish to file someone else's taxes. Regardless, a power of attorney is a good starting point and, at the very least, will document your deployed loved one's intentions. Armed services support organizations can help you identify your options and assist you in the drafting of a power of attorney agreement.

Most powers of attorney are effective only as long as the principal (your loved one) has what the law calls "capacity." The idea is that agents cannot do something that principals would not be able to do for themselves. So, if your loved one becomes incapacitated, your authority under a regular power of attorney is nullified. You can, however, draft a special power of attorney so that the agent's power and authority extends through any incapacitation. Usually called a *durable power of attorney*, a document such as this clearly states the agent's intent that the power continue after disability or incapacity. If such a situation is a realistic possibility, it is important to work with an attorney to draft any documents correctly and unambiguously.

The SCRA

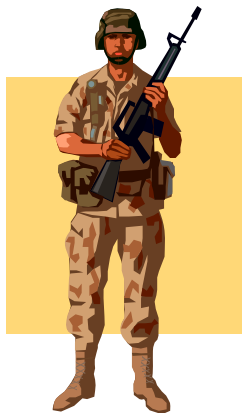
The Servicemembers Civil Relief Act (SCRA) provides important protections for active duty servicemembers and is a key aspect to any military family's deployment preparations. Under the SCRA, certain civilian obligations can be postponed or suspended during deployment. These include some credit card debt, mortgage payments, pending trials, some taxes, and residential leases. The SCRA protections apply to all servicemembers, Reservists, and members of the National Guard only while they are on active duty. Be aware that the SCRA is



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not a fail-safe and doesn't eliminate all obligations, but it can help alleviate some worry.

Regardless of the plan you and your loved one decide on, it is important to talk through all of the obligations and responsibilities that will need attending to during deployment. Additionally, military members and their families should take full advantage of the services and support offered by the appropriate branch of the armed services. These legal, financial, and social services can provide invaluable help and support, both in preparing for deployment and during deployment.



Prior to any deployment, military personnel and their loved ones should make sure they have a plan for:

- *Making necessary payments, including*
- *Rent*
- *Mortgage payments*
- *Insurance, including automobile, life, and property*
- *Car payments*
- *Utility bills*
- *Filing federal and state income taxes.*
- *Receiving any government benefits, such as Social Security.*
- *Handling any credit card debt and payments.*
- *Overseeing any legal proceedings.*
- *Drafting a power of attorney or, if needed, a durable power of attorney.*

The Innocent Shoplifter

Almost all of us have had the experience while shopping of making a purchase, leaving the store, and having the alarm go off. You know you didn't steal anything, and more often than not, the salesperson calls you back and removes a theft-deterrent device that was inadvertently left on your purchase. But what if it isn't as simple as this? **What if store personnel detain you for shoplifting? Can they legally hold you against your will?**

Retail theft results in huge losses for businesses. This so-called shrinkage is a major worry for businesses that can see a substantial portion of their profits walk out the door with thieves. It is understandable that many stores put a great deal of time and effort into installing shoplifting deterrents, training staff to be vigilant, and in some cases, hiring staff specifically trained in loss prevention. However, even the best training can't prevent all mistakes.

Innocent people often engage in behaviors that store security may be looking for: repeatedly returning to the same spot in the store, taking multiple items into a fitting room, and not talking to salespeople, just to name a few. Because what are often innocuous acts can sometimes look like shoplifting signals, there is a chance that as an innocent shopper, you may end up as an accused criminal. But, if you remain calm, after a short delay, you usually can be on your way.

In most states, merchants are allowed to reasonably detain a suspected shoplifter for questioning and a limited investigation. Usually, in order for a detention to be reasonable, the merchant must have a realistic belief that you attempted to shoplift. This often requires that store employees believe they saw you take some property and that they kept you in their continuous sight until you tried to leave the store without paying.



Once management has decided to detain a suspected shoplifter on the abovementioned grounds, the law generally permits store employees to do so, but only for a "reasonable" period of time. What counts as "reasonable" will vary but is likely limited to the time needed to identify the suspect and call local law enforcement. Most state laws allow merchants to ask suspects for identification and to return any unpaid merchandise. In some areas, employees may even pat down suspects if there is reason to believe that they may have a weapon. In a nutshell, if you have done something to raise the reasonable suspicions of store employees, they probably can detain you.

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Are Foreclosed Properties Always a Good Deal?

Home foreclosures are a hot topic these days. But what many of the reports on the increasing number of foreclosures seem to neglect to mention is what happens to properties after foreclosure. Since foreclosed properties are often sold at reduced prices buying a foreclosed property may be worth considering. **However, there are some pitfalls to be aware of before you sign on the dotted line.**

A foreclosed property is one that is owned by the lending institution or government agency that backed a now-defaulted loan. For one reason or another, the owner failed to make payments on the loan and the lender foreclosed on the loan and took possession of the property. The lender now has the title to the property and can sell it to someone else. Mortgages on all types of properties, including single-family homes and condominiums, can be foreclosed.

Finding foreclosed property may be easier than you think. Some institutions advertise their foreclosed properties; others deal strictly through real estate agents. Real estate agents usually have a current list of the foreclosed homes in their area. There are also Web sites that can help you find foreclosed properties on your own. These include www.1stforeclosure.com and www.foreclosurefreesearch.com, as well as government Web sites, such as www.hud.gov/homes/homesforsale.cfm.

The Federal Housing Administration usually sells its foreclosed properties through an auction announced in newspaper classifieds. On the day of the auction, potential buyers submit bids accompanied by a certified check for a percentage of the bid price. However, before you put in an offer, make sure you have done your homework and, if possible, consulted with an experienced attorney or real estate agent. You should put as much, if not more, consideration into the purchase of a foreclosed property as you would for a traditional real estate purchase.

Buying a foreclosed property can be risky if you are not familiar with the procedures involved. Safeguards that are present in a traditional sale, such as the presence of a lender and a title insurance company (both of whom will share your interest in making sure the title is clear and the value sufficient), may not be involved in a foreclosure sale. The condition of the foreclosed property can be an additional drawback. Sometimes the first owner who was unable to keep up on payments was also unable to maintain the home properly. Nevertheless, a foreclosed piece of real estate just may be the right purchase for you, assuming you are aware of the pitfalls and are fully prepared to meet them.

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If you are wrongly detained, try your best to remain calm and reasonable. Chances are that the store employees are worried about their safety; therefore it makes sense for you to take care not to do anything to make them think you are a threat, which might, in turn, put your own physical safety at risk. You can try to the best of your ability to explain your behavior (“I thought I put the shoes in the correct box.”) However, realize that the employees may not give much weight to your explanations; chances are good they have heard it before. While you are being detained, the store employees should be willing to accommodate any reasonable requests, such as for water, prescription medication, or use of the bathroom. If local law enforcement is called and you are detained by the police, you should immediately state your desire to speak to an attorney. Be polite, but wait until your attorney arrives before engaging in any lengthy discussions with the police.

Store security might say that you are expected to pay for the property they allege you took, which is common practice, and in many places, legal. This is known as civil recovery and allows the store to directly ask you to pay what they think you owe without any court or law enforcement involvement. While you are detained, you should protest politely any supposed fines. After the event, you should write a letter to the company’s head of loss prevention, explaining why you don’t believe you should have to pay. Although no court involvement is initially required, these notices and allegations should be taken seriously. Leaving something such as this unattended could result in major fines and headaches. **If you believe your rights were violated during the detention or if the store continues to pursue you for payment, you should talk to your attorney about your options and possible remedies.**

Q & A

May a will be changed after it is signed?

A Will may be changed at any time up to the death or mental incompetence of the testator/testatrix. The proper way to change a Will is to execute a Codicil. A Codicil is a document which basically states that the testator/testatrix has already written a Will and wishes to change that Will in certain ways. It then will state the changes which are to be made in the original Will and further states that the original Will is in all other respects to remain unchanged. A Codicil must be signed with the same formalities as a Will.

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THE FLOYD LAW FIRM PC



Word About Our Firm

The Floyd Law Firm PC is a general practice law firm established in 1973. We have four attorneys who can handle almost every type of legal work which you, your family or your business may require. We take great pride in our team of lawyers, legal assistants, legal secretaries, and staff members. Each attorney, legal assistant and legal secretary is an expert in one or more fields. This expertise allows us to provide superior legal services in a number of fields of law such as Personal Injury Claims, Community Association, General Trial Work, Golf Industry, Estate Planning, Estate Administration, Social Security Disability, Elder Law, Real Estate Transactions, Family Law, Worker's Compensation, Wills and Trusts and Criminal Law. We hope you will meet our well-qualified team and allow them to work together for your benefit.

Website:

www.floydlaw.com

NEWS FROM THE FLOYD LAW FIRM

The following have celebrated anniversaries with The Floyd Law Firm: **Congratulations to all!**

Frank J. Bryan, attorney in litigation, 14 years on June 1.

Bradley A. Floyd, attorney in litigation, was recently elected to serve on the Wachesaw Oak Grove POA Board.

R. Jeffrey Sawyer, attorney in Real Estate, left the firm on May 1. He and wife, Angela, have relocated to Memphis, Tennessee.

Terry R. Real, attorney, will be working in the area of Real Estate.