

Keeping It Legal

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Is Your Family Care Plan Legal?

It is the time of year where family is often front and center in our lives. Yet we also have members deployed all over the world and separated from their families. It might be time to think about your Family Care Plan.

Certain members of the Air Force are required by DoDI 1342.9_AFI 36-2908, *Family Care Plans* (24 Jan 19), to document a Family Care Plan (FCP) on AF Form 357, and implement the plan when they must be absent from their family members (i.e., during deployments, exercises, or TDYs). These members include single parents with custody (joint or sole) of minor children; dual military couples with minor children; and married service members whose current

spouse is the step-parent of their minor children.

However, your FCP and FCP Power of Attorney (POA) is not a replacement for an order entered by a state court with jurisdiction over your child custody issue. Child custody is a matter of state law, and while Air Force regulations require a FCP for certain service members, **this does not mean that your FCP and POA will be legally enforceable.**

If a court has entered a custody order regarding your children, and you make a FCP that is inconsistent with that order, or give a third party the right to care for your children without the consent of the children's other parent, you risk having your FCP

challenged and overturned in court. This is true even if your custody order gives you "primary" or "sole" physical custody of your children.

If you have no custody order regarding your children, then both biological parents (unless their parental rights have been terminated by a court) have equal rights to custody of their children. This means that there is probably no legal recourse if the other parent takes custody of your children during your absence, even if this is inconsistent with your FCP.

If you are worried that your FCP is not legally enforceable, then you should make an appointment with a legal assistance attorney.

WELCOME!

Your local JA Office is here to help.

To request an appointment:

1. Call 910-394-2341;
2. Send an email to: 43AMOG.JA.LegalAssistance.us.af.mil; or
3. Visit: <https://www.pope.af.mil/about-us/Legal-appointment>

We provide notaries, powers of attorneys, and attorney consultations by appointment.

For after-hours emergencies, call the Command Post (394-9000) to reach the on-call JAG.

TESTIFYING IN CIVILIAN COURT

Military members and Air Force civilians are often called upon to testify or appear at court for various administrative and judicial matters. When that happens, it is important to know the basics of when and how you are allowed to testify.

If you receive such a demand, contact the Legal Office for advice.

Military Lending Act (MLA)

What is MLA?

The MLA is a Federal law that provides special protections for active duty servicemembers from predatory lending practices and high interest rates that are often charged on many types of consumer credit loans.

What types of lending practices?

The MLA is targeted at payday loans, deposit advance products, tax refund anticipation loans, and vehicle title loans. In addition, some overdraft lines of credit, installment loans, and credit cards may be affected.

How does the MLA protect me?

MLA's primary protections include a 36% cap on interest. This cap includes costs such as finance charges, credit insurance premiums, and includes fees such as application fees, participation fees, and cancellation fees to name a few.

The MLA also sets forth that creditors cannot require a servicemember to submit to mandatory arbitration, to give up their rights under the Servicemembers' Civil Relief Act, to set up allotments or give them direct access to their bank account, or to pay early termination penalties.

What kind of credit does it cover?

Primarily includes consumer credit which is subject to a finance charge or payable by a written agreement in more than four installments. However, the MLA does not cover residential mortgages, auto loans, and loans for personal property which is secured by the property you are buying, such as home appliances.

Where can I get help?

If you believe that a creditor has violated this act, please contact your local legal assistance office or submit a complaint through the CFPB at <https://www.consumerfinance.gov/complaint/>

This paper is for general legal education, and should not be substituted for legal advice.

