

LOCAL LAWS GUIDE

NEW YORK STATE

Table of Contents

SECTION I. SPECIAL PROTECTIONS FOR SERVICE MEMBERS 1

SECTION II. COURTS 4

SECTION III. FAMILY LAW 6

SECTION IV. PROPERTY (LANDLORD\TENANT) 11

SECTION V. TAXES 13

SECTION VI. MOTOR VEHICLES 15

SECTION VII. TRAFFIC LAWS..... 17

SECTION VIII. LIABILITY FOR A MINOR, AND MISCELLANEOUS MATTERS 18

SECTION IX. CONSUMER PROTECTION 21

SECTION X. WILLS AND ESTATE PLANNING..... 22

SECTION XI. ADVANCE MEDICAL DIRECTIVES 23

SECTION XII. POWERS OF ATTORNEY..... 24

SECTION XIII. ADDITIONAL RESOURCES 26

SECTION I. SPECIAL PROTECTIONS FOR SERVICE MEMBERS

A. SERVICE MEMBER’S CIVIL RELIEF ACT

The Service Members’ Civil Relief Act (SCRA) was signed into law on December 19, 2003. It replaced the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which was first passed by Congress in 1918. The SCRA clarifies and updates protections to military personnel whose legal rights or financial obligations are affected by military service. It protects active duty service members, reservists, and National Guard personnel who are called to active duty (starting on the date active duty orders are received), and, in limited situations, dependents of service members.

B. NEW PROTECTIONS

Significant new protections in the SCRA include:

- An automatic 90-day stay of civil proceedings upon application by a service member – applicable to all judicial and administrative hearings.
- Clarification that the 6 percent limitation on interest rates for pre-service debts requires a reduction in monthly payments, and that any interest in excess of 6 percent is forgiven, not deferred.

- Expansion of protection against eviction. (Under the SCRA service members and their dependents who enter into a lease for \$1,200 or less could not be evicted without a court order. The SCRA increases the maximum lease amount to \$2,400 and adds an annual adjustment for inflation. For 2004, the maximum will be \$2,465.)
- For service members who receive permanent-change-of-station orders or who are being deployed for not less than 90 days, the right to terminate a housing lease with 30 days' written notice. (Prior to the SCRA, service members could, when not protected by state law on specific lease provisions, be required to pay for housing they were unable to occupy.)
- Ability to terminate certain motor vehicle leases. (Any active duty service member who receives PCS orders outside the continental United States, or who is being deployed for not less than 180 days, may terminate a motor vehicle lease – without early termination charges.)

Brief references to various protections of the SCRA are made **throughout this pamphlet**. In some situations, the protections of the SCRA are not automatic, but require specific action. If you think that you have rights under the SCRA that have been violated, or that you are entitled to be shielded from a legal proceeding or financial obligation by the protections of the SCRA, discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible.

C. NEW YORK STATE PROTECTIONS

- **Freedom From Discrimination Based on Military Service.** Any discrimination based on military status constitutes a violation of an individual's civil rights and is actionable under New York State Human Rights Law. All service personnel, state and federal, are covered. **POC:** New York State Division of Human Rights 718-741-8400
- **Prohibition Against Soliciting or Requiring Waiver of Civil Relief Act Rights.** It is a misdemeanor to solicit, require, demand or otherwise request a waiver of a right provided under the State Soldiers' and Sailors' Civil Relief Act ("Civil Relief Act"). All service personnel and their dependents are covered. **POC:** DMNA Legal Affairs Office 518-786-4541
- **Extension of State Civil Relief Act Benefits to Dependents.** The protections of the State Civil Relief Act have been extended to include dependents of a person in military service. These benefits include stay of court proceedings, freedom from foreclosure, restraints against eviction, reduced interest rates on loans and the tolling of the Statute of Limitations during the period of military service. All service personnel and their dependents are covered. **POC:** DMNA Legal Affairs Office 518-786-4541
- **Life Insurance Not to Lapse for Non-payment of Premiums.** Life insurance policies will not lapse for nonpayment of premiums during a period of State or Federal active duty and for two years thereafter. This applies only to policies covering Reserve Component personnel, including members of the National Guard. **POC:** NYS Insurance Department, Legislative Affairs 518-473-0785 | DMNA Legal Affairs Office 518-786-4541
- **Protection Against Enforcement of Storage Liens on Household Goods.** Prohibits the foreclosure or enforcement of any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of active duty military service and for three months thereafter. All service personnel and their dependents are covered. **POC:** DMNA State Family Readiness Program Office 518-786-4656 | DMNA Legal Affairs Office 518-786-4541
- **Professional Liability Insurance Protection.** Professional liability insurance for persons ordered to active duty is suspended, upon request, for the period of military service plus 30 days. This is applicable to federal and state active duty. It does not encompass Annual Training (AT), drill

(IDT), or Active-Guard Reserve (AGR) service. **POC:** NYS Insurance Department, Legislative Affairs 518-473-0785 | DMNA Legal Affairs Office 518-786-4541

- **Prohibition Against Foreclosure of Mortgage.** Prohibits the sale, foreclosure, or seizure of property for nonpayment of mortgage during the service member's period of service, or within six months thereafter. The property must have been subject to the mortgage prior to the call to active duty. Applies to personnel on federal or state active duty and their dependents. **POC:** DMNA Legal Affairs Office 518-786-4541
- **Adverse Credit Reporting.** Adverse action in future financial transactions, including adverse credit reporting against an individual who has previously obtained a stay, postponement or suspension of obligations under the Civil Relief Act, is prohibited. Applies to personnel on federal or state active duty and their dependents. **POC:** DMNA Legal Affairs Office 518-786-4541 | NYS Division of Human Rights 718-741-8400

D. NEW YORK STATE FINANCIAL BENEFITS

- **State Active Duty Pay.** New York State Military Law has been amended to raise the minimum daily pay of service members performing under Military Law in an emergency situation on state active duty from \$100 to \$125. This provision affects mostly junior enlisted members in the grades of E-1 through E-4. **POC:** DMNA Budget and Finance Office 518-786-4513
- **Exemption from New York State Income Tax, Title 10 Status.** New York State Tax Law is amended to exempt from state income taxation for federal military pay received in a Title 10, DoD designated combat zone or contingency operation. Additional information is located at www.tax.state.ny.us. **POC:** New York State Department of Taxation and Finance, Personnel Tax Information Center 800-225-5829
- **Exemption from New York State Income Tax, State Active Duty.** New York State Tax Law is amended to exempt from state income taxation any state military pay received while serving on any "emergency" state active duty under New York State Military Law. Service members who received SAD pay will receive the state tax benefit when they file their New York State Tax Return (Forms IT 201 or IT 203). Additional information may be obtained at www.tax.state.ny.us. **POC:** New York State Department of Taxation and Finance, Personnel Tax Information Center 800-225-5829
- **Termination of Motor Vehicle Lease Contracts.** Permits individuals who enter into a car lease prior to entering active military service to break the lease upon entry into active service. Must have entered state or federal active duty, other than for training, after entering lease. Also applies to spouse as co-signer of lease. **POC:** DMNA Legal Affairs Office 518-786-4541
- **Maximum Rate of Interest.** The Patriot Law extends the 6 percent interest cap on debt incurred prior to entering active duty. This applies to federal active duty, other than for training. **POC:** DMNA Legal Affairs Office 518-786-4541
- **Suspension of Repayment of Public Retirement System Loans** permits a public retirement system, at its discretion, to suspend the obligation to repay any loan while a member is absent on military duty. Applies to state and federal active duty July 1, 2003 to June 1, 2010. The original repayment period (5 years) is extended by the number of months a member serves on active military duty between July 1, 2008 to June 1, 2010. **POC:** NYS Office of the State Comptroller, Counsel's Officer - (518) 474-7621 | DMNA Government and Community Affairs - (518) 786-4580
- **Supplemental Military Leave for State Employees.** Supplemental military leave benefits have been extended through December 31, 2009, to state employees who are ordered to active military duties relating to the war on terrorism and military action in Iraq. Applies to federal and state active duty. **POC:** NYS Department of Civil Service, Attendants and Leave Unit - (518) 457-2295

- **Extension of Deadline to Pay Real Property Taxes.** Localities are permitted, at their discretion, to extend the payment period for any tax owed on real property. Eligibility is limited to a person who has been ordered to active military duty, other than for training, for a period beginning with a declaration of war by Congress or during any periods of combat designated by presidential executive order or during hazardous ("imminent danger") duty. This benefit is contingent upon the passage of a resolution by the effected municipality authorizing the extension. **POC:** DMNA Legal Affairs Office - (518) 786-4541
-

Information cited from <http://dmna.state.ny.us/benefits/patriot.php>

SECTION II. COURTS

A. SMALL CLAIMS COURTS

Small claims courts are intended for resolution of minor disputes with a minimum of time and expense and usually without the assistance of an attorney. Courts costs are low, and the Court procedures are simplified and relatively informal. Small claims courts commonly hear landlord-tenant, debtor-creditor, contractual, and motor vehicle property damage disputes.

1. NEW YORK

The Small Claims Court has monetary jurisdiction up to \$5,000.00. Claims for more than \$5,000.00 may not be brought in Small Claims Court. They must be started in the Civil Part of the court or in a different court. A claim for damages for more than \$5,000.00 cannot be "split" into two or more claims to meet the \$5,000.00 limit (that is, bringing one \$5,000.00 claim and another \$1,500.00 claim to recover damages for \$6,500.00).

The kinds of cases filed in the Small Claims Court vary, but a case must seek money only. For example, a suit cannot be brought in Small Claims Court to force a person or business to fix a damaged item, fulfill a promise made in an advertisement, or seek money for pain and suffering. Some of the kinds of cases most often filed in the Small Claims Court include the following:

1. Damage caused to automobiles, other personal property, real property or person.
2. Failure to provide proper repairs, services, merchandise, or goods.
3. Failure to return security, property, a deposit, or money loaned.
4. Failure to pay for services rendered, salary, an insurance claim, rent, commissions, or for goods sold and delivered.
5. Breach of lease, contract, warranty or agreement.
6. Loss of luggage, property, time from work, or use of property.
7. Bounced or stopped check.

Cases brought in Small Claims Court are automatically placed on the court's evening calendar so that most people do not have to miss work to bring their lawsuits. There are daytime hours available as well, for people who cannot come in the evening. Small Claims Court cases are mostly decided by volunteer Arbitrators. However, either party may choose to have the case heard by a Civil Court Judge.

The Small Claims Court may not be used by a claimant to harass another party. Where a claimant repeatedly unsuccessfully brings the same claim against a defendant, the claimant might end up with a court order denying him or her the right to use the Small Claims Court to prosecute the claim.

To resolve a dispute using small claims court, contact the appropriate Clerk of Court, Clerks of Court are generally very helpful and can provide information on the court process. They may have available a small claims “packet” with the information and forms you will need to file a claim and take it through to trial. Your local legal assistance attorney can assist you in preparing a case for trial, but cannot represent you in court. See Civil Court Act Section 1803 for the law on this procedure. Also, more information is available at <http://www.nycourts.gov/courts/nyc/smallclaims/starting.shtml>.

Information cited from <http://www.nycourts.gov/courts/nyc/smallclaims/general.shtml>

B. OTHER COURTS

1. NEW YORK STATE COURTS

a. SUPREME COURT. The Supreme Court is the trial court of unlimited original jurisdiction, but it generally only hears cases that are outside the jurisdiction of other trial courts of more limited jurisdiction. It exercises civil jurisdiction and jurisdiction over felony charges.

b. COUNTY COURT. The County Courts are trial courts with jurisdiction over criminal and usually limited civil cases. Outside New York City, Supreme Court exercises civil jurisdiction, while County Court generally handles criminal matters. The County Courts in the Third and Fourth Departments (although primarily trial courts), hear appeals from cases originating in the City, Town and Village Courts.

c. FAMILY COURT. The Family Court hears matters involving children and families. Its jurisdiction includes: custody and visitation, support, family offense (domestic violence), persons in need of supervision, delinquency, child protective proceedings (abuse and neglect), foster care approval and review, termination of parental rights, adoption and guardianship.

d. SURROGATE’S COURT. The Surrogate’s Court hears cases involving the affairs of decedents, including the probate of wills and the administration of estates, and adoptions.

e. SUPREME COURT, APPELLATE TERM. Appellate Terms of the Supreme Court have been established in the First and Second Departments to hear appeals from civil and criminal cases originating in the Civil and Criminal Courts of the City of New York. In the Second Department, the Appellate Terms also have jurisdiction over appeals from civil and criminal cases originating in District, City, Town and Village Courts.

f. APPELLATE DIVISION OF THE SUPREME COURT. There are four Appellate Divisions of the Supreme Court, one in each of the State's four Judicial Departments. These Courts resolve appeals from judgments or orders of the superior courts of original jurisdiction in civil and criminal cases, and review civil appeals taken from the Appellate Terms and the County Courts acting as appellate courts.

g. COURT OF APPEALS. The Court of Appeals, New York State's highest court, is composed of a Chief Judge and six Associate Judges, each appointed to a 14-year term. New York's highest appellate court was established to articulate statewide principles of law in the context of deciding particular lawsuits. The Court thus generally focuses on broad issues of law as distinguished from individual factual disputes. There is no jurisdictional limitation based upon the amount of money at stake in a case or the status or rank of the parties.

2. NEW YORK CITY COURTS

a. **NEW YORK CITY CIVIL COURTS.** The Civil Court of New York City has jurisdiction over civil cases involving amounts up to \$25,000 and other civil matters referred to it by the Supreme Court. It includes a small claims part for informal dispositions of matters not exceeding \$5,000 and a housing part for landlord-tenant matters and housing code violations.

b. **NEW YORK CITY CRIMINAL COURTS.** The Criminal Court has jurisdiction over misdemeanors and violations. Judges of the Criminal Court also act as arraigning magistrates and conduct preliminary hearings in felony cases.

Information cited from <http://www.nycourts.gov/courts/nyc/>

SECTION III. FAMILY LAW

A. MARRIAGE

1. NEW YORK

a. MARRIAGE REQUIREMENTS

(1) **Age** - The age of legal consent to marriage is legislatively fixed at 18, but the marriage is voidable and not outright void where the court will make a discretionary determination based on the circumstances of the marriage whether to annul the marriage or not. **DRL § 7.**

The legislature has prohibited any marriage in which one party is under age 14. **DRL § 15-a.**

If an applicant is between the ages of 16-18, there must be written consent of both parents, or in certain circumstances one parent or a guardian. If the applicant is under the age of 16, written consent from the parents as well as approval of a Supreme Court Justice or of a Family Court Judge must be obtained. **DRL § 15.**

(2) **Medical Examination** - No premarital examination or blood test is required to obtain a marriage license in New York State.

(3) **Marriage License Application Fee** - If the license is to be issued by the City Clerk of the City of New York, please contact the New York City Clerk's Office for current fees and requirements. The City Clerk's Office can be reached at (212) NEW-YORK or via its web site at New York City Marriage Bureau.

(4) **Waiting Period** - A marriage shall not be solemnized within twenty-four hours after the issuance of the marriage license, unless authorized by an order of a court of record as hereinafter provided, nor shall it be solemnized after sixty days from the date of the issuance of the marriage license unless authorized pursuant to section three hundred fifty-four-d of the executive law. **DRL § 13-b.**

Notwithstanding DRL sec. 13-b, where either of the parties makes application for a marriage license is a member of the armed forces of the United States on active duty the marriage of the parties shall not be solemnized within twenty-four hours after the issuance of the marriage license, nor shall it be solemnized after one hundred eighty days from the date of the issuance of the marriage license. Proof that the applicant is a member of the armed forces of the United States shall be furnished to the satisfaction of the official issuing the marriage license. Every license to marry issued pursuant to the provisions of this

section shall state the day and hour the license is issued and shall contain a recital that it is issued pursuant to the provisions of this section. **VA §354-d.**

(5) Solemnization - No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony. **DRL § 12.**

The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted. **DRL § 12.**

No marriage shall be valid unless solemnized by a clergyman or magistrate listed in **DRL § 11.**

b. ALTERNATIVE MARRIAGE FORMS:

(1) Common Law Marriage in New York - New York does not allow creation of a common law marriage, but does recognize as valid, common law marriage created in other states if the marriage is legal in those states.

(2) Marriage by Proxy/Marriage by Contract - New York State Marriage Laws do not provide for a proxy marriage.

c. PROHIBITED MARRIAGES. A marriage is prohibited if it is incestuous, whether the relatives are legitimate or illegitimate. An incestuous marriage is between either: an ancestor and a descendent; a brother and sister of either the whole or the half blood; or an uncle and niece or an aunt and nephew. **DRL § 5.** Though not specifically stated, marriages of half blood uncles and nieces or aunts and nephews are considered incestuous and void as well. However, if the solemnization was done in a jurisdiction where such marriages are lawful, the marriage would be recognized as valid. **In re May's Estate, 305 N.Y. 486, 114 N.E.2d 4 (1953).**

Bigamous marriages are also prohibited/void marriages. **DRL § 6.**

d. GROUNDS FOR ANNULMENT. Marriage is void/prohibited; under age of consent; mental incompetence; physical incapacity; consent by force, duress or fraud; or incurable mental illness for five years. **DRL § 140.**

B. ADOPTION

1. GENERAL

Adoption is the legal process of terminating an existing relationship between a biological parent or parents and a child, and substituting a new parent or parents in their place. Adoption usually eliminates any and all rights a biological parent may have, absolutely and forever, and gives those rights without

qualification or exception to the adopting parents. Any person, whether a minor or adult, may be adopted unless there are exceptional circumstances, e.g. fraud, adoptions are irreversible.

There are two methods for proceeding with adoption: a private adoption and an agency adoption. A private adoption typically involves an adopting parent or parents and a child whose identity is previously known to them. The most common private adoptions are the stepparent adoption, where a stepparent adopts his or her spouse's children by a previous relationship, and the adoption by grandparents of a grandchild. Agency adoptions are varied. They can be accomplished using state welfare offices, foster care programs, church organizations, commercial agencies, and placement services.

To adopt through an agency, prospective adopting parents register with an agency, which then conducts a sociological survey to determine their suitability as parents and the best type of child for them. Once a child that matches the parents is found, the child will live with the adopting parents for a period of time under supervision of the agency to ensure that everything is working out. Only after this period of time has passed can the adoption be accomplished.

2. LEGAL PROCESS

In order for an adoption to be accomplished, several steps must be followed. The parental rights of the natural parents must be terminated, a hearing must be conducted to determine whether the adopting parents are suitable parents, and the court must enter a final decree of adoption.

Only a court can terminate parental rights and only when there is "clear and convincing evidence" that it is in the best interests of the child. Parental rights may be terminated by voluntary consent of the natural parents. A consent signed by the natural parents is not binding upon them until the court approves it and the adoption is finalized. Parental rights may be terminated involuntarily if a court is satisfied a parent has abandoned the child, has failed to support the child, has abused the child, or has otherwise neglected parental responsibilities. Death terminates the parental rights of the deceased parent, but does not terminate the right of the child to share in the estate of the deceased parent. Once the child is adopted, however, any right to inherit from the natural parents is normally terminated.

In addition to determining whether parental rights should be terminated, the court must determine if the adoptive parents are suitable parents for the child. The court may make this determination in open court, but more commonly will ask an appropriate agency to investigate the home environment and return a confidential report to the judge. An agency investigation may be waived under certain circumstances.

After appropriate notice is given to all who might have an interest in the case, the court conducts a final hearing. Following the hearing, the judge will either approve or disapprove the adoption. Once an adoption is approved, a new birth certificate with the adoptee's new name will be issued.

3. NEW YORK STATE

a. **WHO CAN PETITION FOR ADOPTION.** An adult unmarried person, an adult husband and adult wife together, or an adult married person legally separated may adopt. **DRL § 110.**

b. **WHO MUST CONSENT TO THE ADOPTION.** The following persons or entities must consent to the adoption: the parents or surviving parent, whether adult or minor, of a child conceived or born in

wedlock; the mother, whether adult or minor, of a child born out of wedlock; the father, whether adult or minor, of a child born out-of-wedlock and placed with the adoptive parents more than 6 months after birth, but only if such father shall have maintained substantial and continuous or repeated contact with the child; the father, whether adult or minor, of a child born out-of-wedlock and placed with the adoptive parents less than 6 months after birth, but only if the father (1) openly lived with the child or the child's mother for a continuous period of 6 months immediately preceding the placement of the child for adoption, (2) openly held himself out to be the father of such child during such period, and (3) paid a fair and reasonable sum, in accordance with his means, for the medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child; or any person or authorized agency having lawful custody of the adoptive child. An authorized agency may consent to the adoption of a minor whose custody and guardianship has been transferred to such agency. **DRL §§ 111; 113.**

Consent to adoption shall be required of the adoptive child who is age 14 or older, unless the judge or surrogate in his discretion dispenses with such consent. **DRL § 111.**

c. **TIME BETWEEN FILING PETITION AND FINAL ADOPTION.** Generally, agencies are required to supervise families for three months after placement before an adoption becomes legal under New York State law. An exception may be given if the adoptive parent has already been providing care for the child. **DRL § 112.**

C. DOMESTIC VIOLENCE AND NEGLECT

Any physical abuse by one person against another member of his or her household is "domestic violence." It is as illegal as assault and battery against a stranger would be. "Neglect" may come in many forms, including physical neglect and emotional neglect. Both, like actual violence, are illegal. If you believe you or someone you know is being abused in any way – physically or emotionally then contact the Department of Social Services in your area or your local police department. In addition, many counties and communities have shelters for the temporary lodging of abused family members, such as the House of Ruth.

1. NEW YORK STATE

The Court may use its discretion to issue a criminal restraining order if the suspect is arrested for domestic violence. The order may restrict contact between the victim and accused to varying degrees. The court may still allow contact between the victim and accused with a warning that any further violence will be punished with much greater consequences. Much more common is full restraining order prohibiting any and all contact between the victim and accused without regard for whether the victim wishes the restraining order or not. Child protective services may also request the court to remove any children from the home for a failure to protect.

The victim may also request a restraining or him or herself from a civil court without the need for an arrest or police involvement.

These cases are brought in your local county There is often a small filing fee which may be waived if it causes undue hardship. Judges after reading the petition may grant the petition on the spot if the danger is immediate. Once the abuser is served with the order, it will become effective and a second hearing for a

permanent order will be required within 10 days to 4 weeks where the abuser will be allowed to argue his or her side of the story.

D. DIVORCE AND SEPARATION AGREEMENTS

Divorce is the severing of a marriage relationship through the civil court system. Generally, there are two types of divorce, a complete and final divorce, and a divorce “from bed and board,” also called a “legal separation” in some jurisdiction (both are imposed by court order). With the first type, when it is final, the legal relationship of marriage that existed between the parties is abolished and both parties are free to remarry someone else if they wish. A divorce “from bed and board” does not completely end the relationship. Neither party is free to remarry but they are free to live separate and apart from each other without interference in their day to day lives by the other party. If you are considering a divorce, you should see a legal assistance attorney or civilian family law attorney to discuss which might be better for your specific situation.

A separation agreement is not a divorce, but rather is a contract between the parties in which each party agrees to do or not to do certain things. A separation agreement is entered into voluntarily; neither party can be forced against his or her will to sign a separation agreement. If a separation agreement is signed, it can be incorporated into a future divorce decree. If one of the parties breaks the agreement, that party has “breached the contract” and the law of contracts must then be used to enforce any remedy that may be available. Sexual relations between a service member and a non-spouse during separation (whether “legal” or “by contract”) may, depending on the circumstances, lead to administrative and/or criminal action. Separated service members are well advised to discuss this carefully with a legal assistance attorney.

1. NEW YORK STATE

a. **RESIDENCY REQUIREMENTS FOR DIVORCE.** One of the following residency conditions must be satisfied: the marriage ceremony was performed in New York and either spouse is a resident of the state at the time of the commencement of the action for divorce and resided in the state for a continuous period of one year immediately before the action began; the couple lived as husband and wife in New York and either spouse is a resident of the state at the time of the commencement of the action for divorce and resided in this state for a continuous period of one year immediately before the action began; the grounds for divorce occurred in New York and either spouse is a resident of the state at the time of the commencement of the action for divorce and resided in the state for a continuous period of one year immediately before the action began; the grounds for divorce occurred in New York and both spouses are New York residents at the time the action is commenced; if the parties were married outside of New York and have never lived together as husband and wife in the state and the grounds for divorce did not occur in New York then, one spouse must presently be a resident of New York and have resided continuously in the state for at least two years prior to filing an action for divorce. **DRL § 230.**

Residing “continuously” in the state does not mean that party cannot have left the state during the period of residency nor does it mean that the party does not have another residence elsewhere outside New York.

b. **SUBSTANTIVE REQUIREMENTS FOR DIVORCE.** Since 2010, New York has introduced no-fault divorce by mutual consent without grounds when the relationship between husband and wife has broken down irretrievably for a period of at least six months. Parties may still disagree on ancillary relief such as child support, custody, alimony, division of joint assets, legal fees, etc. **DRL § 170.**

Fault grounds for divorce in New York include: cruel and inhuman treatment; abandonment for a continuous period of one year or more ; imprisonment for more than three years subsequent to the marriage; adultery ; conversion of a separation judgment; conversion of a written and acknowledged separation agreement after living separate and apart for more than one year. **DRL §170.**

c. SEPARATION. Spouses may enter into a separation agreement for the following causes: cruel and inhuman treatment; abandonment; neglect or refusal to provide support; adultery; confinement in prison for a period of three or more consecutive years after marriage. **DRL § 200.**

d. TIME REQUIRED BEFORE REMARRIAGE. Where a divorce is final, there are no restrictions to remarriage. **DRL § 8.**

e. ALIMONY AND CHILD SUPPORT. The amount of child support paid by the non-custodial parent to the custodial parent is determined by the state Child Support Standards Act. **DRL § 240.** A grant of spousal support depends on different factors which may include differences in income, length of marriage, health of parties, children, etc. New York rarely grants spousal support indefinitely. Generally, there is a set period of time in which the supported spouse is expected to get back on their feet. **DRL § 236.**

f. PROPERTY DISTRIBUTION. New York law adheres to equitable distribution when dividing property. **DRL § 236.**

g. DETERMINATION OF CHILD CUSTODY. Custody may be joint or sole by agreement between the parties or determined by the court. If there is no mutual agreement, then the court will determine custody in the best interests of the child. **DRL § 240.**

E. SUPPORT OF DEPENDENTS

All service members are required to provide sufficient financial support to their dependents. This obligation continues even if the service member is separated from the non-service member spouse. Failure to provide adequate support subjects the service member to a variety of administrative actions, non-judicial punishment, and even to court-martial. The services have differing regulations defining the amount of support that is necessary to constitute adequate support. In most cases, the minimum necessary is an amount at least equal to the basic allowance for quarters (BAQ) at the with-dependents rate. Service members who have questions as to whether they are providing sufficient financial support to their dependents should contact a legal assistance attorney for advice.

SECTION IV. PROPERTY (LANDLORD\TENANT)

A. SCRA PROTECTION

The SCRA contains a provision that allows a service member to terminate a lease covering premises occupied for dwelling, professional business, agricultural or similar purposes. This provision is applicable if the lease was executed by the service member prior to entering the service, or if the service member has PCS orders or orders to deploy for a time period greater than 90 days. The service member must notify the landlord in writing and with a copy of the orders. The termination will be effective 30

days after the first date that the next rental payment is due for monthly payments. In the case of other leases termination is effective on the last day of the month in which the notice was give.

B. RENTAL PROPERTY REGULATIONS

1. NEW YORK STATE

There are three main types of rental housing in New York: rent regulated housing, government-financed housing, and special types of housing.

a. **RENT REGULATED HOUSING.** Rent control and rent stabilization are the two types of rent regulation in New York State. If an apartment is not subject to these regulations, it is considered “unregulated.” Rent control limits the rent an owner may charge for an apartment and restricts the right of the owner to evict tenants. Generally, in New York City, apartments are under rent stabilization if they are in buildings of six or more units built between February 1, 1947 and December 31, 1973. Local Rent Guidelines Boards in New York City, Nassau, Rockland and Westchester counties set maximum rates for rent increases once a year which are effective for one or two year leases beginning on or after October 1 each year. Tenants in rent stabilized apartments are entitled to receive required essential services and to have their leases renewed, and may not be evicted except on grounds allowed by law.

b. **GOVERNMENT-FINANCED HOUSING.** The Mitchell-Lama housing program provides rental and cooperative housing for middle-income tenants. For both state-sponsored and city-sponsored Mitchell-Lama developments, tenants must meet eligibility requirements including income, family size, and apartment size. Additionally, each development sets its own restrictions.

Public housing is a federally funded program in which state-chartered public housing authorities develop and manage public housing developments. Public housing in New York is subject to federal, state, and local laws and regulations. Tenants in public housing are entitled to an administrative grievance process administered by the local housing authority before they may be evicted.

The Section 8 Housing Assistance Payments program is a rent subsidy program that assists eligible low-income families in obtaining housing. Families receive a rental subsidy, known as a housing assistance payment, equal to the difference between their share of the rent and the rent charged by the owner. Eligible families and individuals are subject to statutory income limits.

c. **SPECIAL TYPES OF HOUSING.** The rights, duties and responsibilities of manufactured and mobile home parks’ owners and tenants are governed by Real Property Law § 233, popularly known as the “Mobile Home Owner’s Bill of Rights”. The DHCR has the authority to enforce compliance with this law.

The rights, duties and responsibilities of New York City loft owners and tenants are governed by Multiple Dwelling Law, Article 7-C. The New York City Loft Board has the authority to enforce this law.

The rights, duties and responsibilities of New York City residential hotel owners and tenants are governed by the rent stabilization law. The DHCR has the authority to enforce compliance with this law.

Tenants Rights Guide released by Andrew M. Cuomo, Attorney General (available at http://portal.hud.gov/hudportal/HUD?src=/states/new_york/renting/tenantrights).

If you are unsure if your apartment is rent stabilized based on the lease contract, ask the landlord or managing agent leasing the apartment. If you need to, call New York State Division of Housing and Community Renewal (DHCR), at (718) 739-6400 to verify.

Other useful information:

The security deposit is usually one month's rent, and cannot be more than one month's rent in rent stabilized housing units. **GOL § 7-103.**

The landlord must return your security deposit, less any lawful deduction, at the end of the lease or within a reasonable time thereafter. A landlord may use the security deposit: (a) as reimbursement for the reasonable cost of repairs beyond normal wear and tear, if the apartment is damaged; or (b) as reimbursement for any unpaid rent. **GOL § 7-103.**

A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, properly served. **RPL § 228.**

SECTION V. TAXES

Before you can determine what income and personal property taxes are properly assessable to you and members of your family, you must understand the distinction between the terms “residence” and “domicile” and the protections that may be afforded by the SCRA. Under the SCRA, only your state of domicile has the right to tax your military pay and your personal property when you are absent in compliance with military orders. Furthermore, the SCRA requires all states to recognize your automobile registration, if issued by your state of domicile. In these areas, the SCRA applies only to you and not to members of your family.

Under the SCRA, only your state of domicile has the right to tax your military pay and your personal property when you are absent in compliance with military orders. Furthermore, the SCRA requires all states to recognize your automobile registration, if issued by your state of domicile. In these areas, the SCRA applies only to you and not to members of your family.

To determine your resident status, you have to consider where your domicile was and where you maintained a permanent place of abode during the tax year.

If your permanent home (domicile) was in New York State when you entered the military but you were later assigned to another state or country, your domicile does not change. You are still a New York State resident and must file a resident return and pay any tax due, unless you meet all three conditions in either Group A or Group B:

Group A

1. You did not maintain any permanent place of abode in New York State during the tax year; and
2. You maintained a permanent place of abode outside New York State during the entire tax year; and

3. You spent 30 days or less (any part of a day is a day for this purpose) in New York State during the tax year.

Group B

1. You were in a foreign country for at least 450 days during any period of 548 consecutive days; and

2. You, your spouse (unless legally separated) and minor children spent 90 days or less (any part of a day is a day for this purpose) in New York State during this 548-day period; and

3. During the nonresident portion of the taxable year in which the 548-day period begins, and during the nonresident portion of the taxable year in which the 548-day period ends, you were present in New York State for no more than the number of days which bears the same ratio to 90 as the number of days in such portion of the taxable year bears to 548.

If you meet all of the conditions in either Group A or Group B, you are considered a nonresident for the tax year. However, you may still be subject to tax.

Domicile of choice is the place that a person has voluntarily elected and chosen to replace the previous domicile. To change your domicile there must be a simultaneous occurrence of these elements: (1) actual change in residence (bodily presence in the new locality); (2) an intention to remain there permanently or indefinitely; and (3) an intention to abandon the old domicile.

Once the above three elements have occurred simultaneously, you have changed your domicile. However, proving the requisite intent, particularly if the change of domicile gives you a tax advantage, may be difficult. In this event, your word, though considered, will not necessarily satisfy taxing authorities. They may properly demand evidence of some overt acts on your part indicative of the requisite intent. In short, your actions speak louder than your words. One of the clearest indications that you consider a state to be your domicile is by registering to vote and voting there. For this reason, you are cautioned NOT to register or vote in a state that is not your state of domicile unless you intend to abandon your old domicile and establish that state as your new domicile.

Taxation of family members – The tax protection afforded by the SCRA does NOT apply to spouses and dependents of service members unless they are also in the service. The income and personal property of civilian spouses and dependents can be taxed by the state in which they are temporarily residing as well as by their state of domicile and the state where the income is derived.

Real Property Taxes - the tax protection of the SCRA does NOT apply to real property. If you buy a house of land (real property), whether in your home state or elsewhere, you will have to pay taxes assessed against it by the jurisdiction in which the property is located. If the tax remains unpaid the court may stay a proceeding where military service affected the service member's ability to pay.

Income tax laws of NY :

Military pay received for active service as a member of the armed services of the United States in an area designated as a combat zone is exempt from New York State, New York City and Yonkers taxes. You are entitled to a New York subtraction modification in computing your New York adjusted gross income for the amount of combat pay included in your federal adjusted gross income.

Pension payments received by retired military personnel or their beneficiaries are totally exempt from New York State, New York City, and Yonkers income taxes.

Military spouses qualifying under the Service members Civil Relief Act (SCRA) may claim an exemption from New York State personal income tax withholding by filing Form IT-2104-E, Certificate of Exemption from Withholding, with their employer. SCRA provides certain tax relief for a military spouse when he or she is present in a state solely to be with a service member who is in that state so he or she can comply with military orders.

- ⤴ If you are a New York State resident and your permanent home (domicile) was in New York State when you entered the military but you were assigned to duty outside the state, you are still a New York State resident. Your military pay is subject to New York State income tax to the same extent it is subject to federal income tax.
- ⤴ If your permanent home (domicile) was in New York State when you entered the military but you meet the conditions for nonresident status, your military pay is not subject to New York State income tax.
- ⤴ If your permanent home was not New York State when you entered the military but you were assigned to duty in New York State, you do not become a New York State resident even if you have a permanent place of abode here. You are a nonresident and your military pay is not subject to New York State income tax.

For further information see *Publication 3 – Armed Forces' Tax Guide* – An IRS publication that covers the special federal tax situations of active members of the U.S. At : <http://www.irs.gov/pub/irs-pdf/p3.pdf> . Information at the State level can be found At : http://www.tax.ny.gov/pit/file/military_page.htm .

SECTION VI. MOTOR VEHICLES

Registration & Driver's License:

You must have a NYS driver license or a valid driver license from another US state or from Canada to drive in NYS. In most cases, you can drive in NYS if you have a valid driver license from another country. The minimum driving age in NYS is 16. If you become a resident of NYS, you must get a NYS driver license within 30 days and surrender your out-of-state driver license. Normally, you cannot have a NYS driver license and a driver license from another state, but there are exceptions. It is a violation of Federal law to hold more than one commercial driver license (CDL).

Department of Motor Vehicles extends the driver licenses and vehicle registrations of military personnel automatically. If you are deployed from New York for active military duty the DMV will keep your driver license and registration current until you return. Once you return (after discharge or separation from the military), you have up to six months to renew your license in addition to the normal two-year grace period, and you'll have 60 days upon your return to renew your registration.

Insurance:

You must maintain liability insurance coverage at all times or else surrender your license plates before you ship out. If you are unable to maintain liability insurance, the DMV can exempt members from “administrative actions” (stiff penalties for lapsed insurance that might include fines and the loss of your

driver license) as long as you provide a notarized statement that the vehicle was not used during the period it was uninsured.

Along with this, you'll need to submit a copy of your military ID, proof that the vehicle is now insured (or that you have surrendered the plates), and signed and dated copies of your deployment and return papers. Instead of this last item you may also submit a copy of your DD-214 form if you've separated from service.

Inspections:

Motor vehicles are required, by law, to be in safe operating condition whenever they are driven on a public street or roadway in New York State. Each vehicle registered in New York State must be inspected at least every 12 months. The inspection must be done before the expiration date of the current inspection sticker, and whenever the vehicle becomes registered in a different name.

If your vehicle fails the safety and/or emissions inspection, the inspection station must have your permission before beginning any repairs.

You are not required to have your vehicle repaired or re-inspected at the station that performed the initial inspection. Your vehicle may be taken to any registered repair shop, or you may make the required repairs yourself. Your vehicle must then pass a new inspection, at an inspection station of your choice, before an inspection sticker will be issued.

Accident Reports:

Police Accident Reports are retained at the Precinct in which the accident occurred for thirty (30) days before being forwarded to the Commissioner of Motor Vehicles. Motorists may request a copy of their accident report at the Precinct of occurrence within thirty (30) days of the report by completing a "REQUEST FOR COPY OF ACCIDENT RECORD" [PD301-165]. There is a ten dollar (\$10.00) non-refundable fee for this request (check or money order only) payable to the "City of New York, Police Department."

After thirty (30) days from the date of the Police Accident Report all requests must be made to the New York State Department of Motor Vehicles on NYS DMV form MV-198C. The NYS DMV requires a twenty dollar (\$20.00) fee for this request.

Child Restraint & Mandatory Seat Belts:

New York is a "primary enforcement" state. A law enforcement officer can issue a traffic ticket just for failure to wear a seat belt. A ticket can be issued to the driver who fails to make sure a child passenger is properly secured in a safety seat or with a seat belt. This law also applies to visitors from outside New York State. In the front seat, the driver and each passenger must wear a seat belt, one person per belt. The driver and front-seat passengers aged 16 or older can be fined each for failure to buckle up. Each passenger under age 16 must wear a seat belt or use an appropriate child safety restraint system.

Seat belt use is not required in taxis or livery vehicles, emergency vehicles, 1964 or older vehicles, or by passengers in buses other than school buses.

If a physical condition inhibits the proper use of a seat belt, you may be exempt from the seat belt law if your doctor certifies your condition and exemption in writing. Certification must be on the physician's letterhead and carried with you when you travel. For more information, see publication "Guidelines for Granting Medical Exemptions from Seat Belt Use" (C-58), available from the DMV.

Lemon Law

SECTION VII. TRAFFIC LAWS

Introduction

A license to operate a motor vehicle on a public highway is a privilege granted by states and is not a guaranteed right. Persons whose driving records indicate they are a hazard to themselves or others will be subject to official suspension or revocation of their operator's license. Most states will keep permanent and detailed files of all convictions of motorists within the state. A conviction of a non-resident in one state is usually filed where the offense occurred, but also in the motorist's home state, where it becomes a part of the motorist's permanent record.

The NYS Department of State is required to maintain online the complete New York Codes, Rules and Regulations (NYCRR). This includes The Regulations of the Commissioner of Motor Vehicles (NYCRR Title 15). The NYCRR is available through the website of the NYS Department of State (<http://www.dos.state.ny.us/info/nycrr.html>).

New York

1. Point system: The DMV driver violation point system helps to identify drivers who commit several traffic violations during a specific time period. The point system is not the only reason for a driver license suspension or revocation. There are mandatory suspensions or revocations. For example, the DMV must revoke your driver license if you are convicted of three speeding violations within an 18-month period, regardless of how many driver violation points you have.
 - a. If your point total reaches 11 points or more based on DMV calculations, the DMV notifies you and suspends your driver license.
2. Automatic Military Extension: A valid NYS driver license is automatically extended when you are on active military duty. Your license does not expire and is extended during your active service. Your driver license is also extended a maximum of six months after your discharge from military service. Complete the MV-75 for (Military Service Notification) to inform the DMV to update your driver record.
 - a. MV-75 Form – While this form is normally filed when you enter military service. You can file form MV-75 after you enter military service, but you must file the form before your NYS driver license expires. If your driver license expires before you file form MV-75, you must send the form and a letter from your commanding officer. The letter must certify the date that you entered military service and that you are on active duty. The date that you entered military service must be earlier than the expiration date of your NYS driver license.
 - b. Military Driver Licenses: If you have a driver license issued by the US Armed Forces, you can drive in NYS for a maximum of 60 days after you enter NYS. After 60 days, you must have a valid driver license to drive in NYS.
3. Driving While Intoxicated (DWI): Driving while intoxicated is a crime in NYS, with penalties including the loss of driving privileges, fines, and a possible jail term.

BAC = blood alcohol concentration

DWI: Driving While Intoxicated; .08 BAC or higher or other evidence of intoxication. For drivers of commercial motor vehicles, .04 BAC or other evidence of intoxication.

Aggravated DWI: Aggravated Driving While Intoxicated: .18 BAC or higher.

DWAI/Alcohol: Driving While Ability Impaired (by alcohol); more than .05 BAC to .07 BAC, or other evidence of impairment. For drivers of commercial motor vehicles who are under age 21, .02 BAC or other evidence of impairment.

DWAI/Drug: Driving While Ability Impaired by a single Drug other than alcohol.

DWAI/Combination: Driving While Ability Impaired by a Combined Influence of Drugs or Alcohol.

Chemical Test Refusal: A driver who refuses to take a chemical test (normally a test of breath, blood or urine) can receive a driver license revocation of at least one year (18 months for a commercial driver) and must pay a \$500 civil penalty (\$550 for a driver of commercial vehicles) to apply for a new driver license. A driver who refuses a chemical test during the five years after a DWI-related charge or previous refusal will have their driver license revoked for at least 18 months (permanent for a commercial driver) and must pay a \$750 civil penalty to apply for a new driver license. If the driver is under age 21, and refuses a chemical test during the five years after a DWI-related charge or previous refusal, they will have their driver license revoked for at least one year or until age 21, whichever is longer and must pay a \$750 civil penalty to apply for a new driver license.

Zero Tolerance Law: A driver who is less than 21 years of age and who drives with a .02 BAC to .07 BAC violates the Zero Tolerance Law.

Military Installations

1. Overview. All personnel, military or civilian are subject to Department of Defense guidelines when driving on a military installation. Installation commanders are authorized to establish local procedures for suspension of driving privileges. DoDD 101.7, para 5.2.
2. Driving while intoxicated or while impaired. Department of Defense Directive 1010.7, Drunk and Drugged Driving by DoD Personnel, (DoDD 1010.7) established DoD Policy regarding drunk and drugged driving by DoD Personnel. Military Personnel and their family members, retired members of the military services, DoD civilian personnel, and others with installation driving privileges may have those driving privileges suspended, regardless of the location of an intoxicated driving incident. DoDD 1010.7, para 5.2.1.

State specific laws, broken down by category, can be viewed at:

<http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS+&TARGET=VIEW> .

SECTION VIII. LIABILITY FOR A MINOR, AND MISCELLANEOUS MATTERS

A. LIABILITY FOR ACTS OF A MINOR

1. OVERVIEW: Under New York law, minor children are liable for damages caused by their negligence. The age of the minor child however, is taken into consideration as a mitigating factor in determining liability. The rules of negligence are not applied with the same severity to a child as to an adult because of the child's limited ability to exercise judgment. A child is required to exercise that degree of care that an ordinary child of comparable age, knowledge, and experience would exercise.

2. SHARED LIABILITY: Under certain circumstances, both the parent and the child may be liable for the child's negligence or behavior. In New York, parents are liable for damages incurred if they permit, encourage, or fail to discourage conduct of minor children which is inherently dangerous to others or

prohibited by laws promoting safety, and such conduct results in injury to the person or property of another. Thus, a parent may be held liable to others for negligently entrusting a child with a dangerous instrument. Under New York Parental Responsibility Statute parents are not liable for auto damages or certain personal injuries. However, parents are responsible for certain crimes committed by the minor. When a minor over ten and under eighteen commits burglary or causes damage through “willful, malicious or unlawful” acts, a parent or legal guardian can generally be held liable for restitution of up to Two Thousand Five Hundred (\$2,500) dollars (General Obligations Law § 3-112). This liability does not attach to the negligent acts of minors. The liability limit is increased to \$5,000.00 in the case of destruction or change to religious articles or structures (Religious Corporation Law §28).

In New York, a parent who “fails or refuses to exercise reasonable diligence in the control of [a] child to prevent him from becoming ‘a juvenile delinquent’ or a ‘person in need of supervision’” may be found guilty of endangering the welfare of a child.” This is a class A misdemeanor which requires greater than 15 days, but less than one year imprisonment.

The age of majority in New York is 18. Dom. Rel. §2

B. REGULATION OF AND LIABILITY FOR DOGS

The regulation of dogs is within the police power of the states. Every jurisdiction imposes a license tax on the ownership of a dog. Payment of the tax is evidenced by a receipt, and a metallic tag that the dog must wear at all times. Failure to purchase and display the tag subjects the owner to a fine and may result in the dog being impounded (NY Licensing and Control Laws Art. 7 Licensing, Identification and Control of Dogs).

Dog owners should carefully observe local leash laws since they generally impose fines and strict liability for unleashed dogs.

The familiar adage “every dog is entitled to one bite” is not an entirely accurate statement of the law. The owner may be found liable if the person injured can show that the owner of the dog knew, or in the exercise of reasonable diligence should have known, that his dog had vicious or mischievous propensities. A cross and savage disposition on the part of the dog is not necessary in order to impose liability on its owner for its attack; the owner is equally responsible if he or she knew the dog has a propensity to bite or jump upon a person in play. Further, if a dog is not always dangerous, but is likely to bite under particular circumstances, the owner may be responsible for injury or damage.

It is very important for service members to contact the appropriate local agency in their area to find out the requirements for keeping a dog or other animal.

C. HANDGUN LAWS

1. PERMITS ARE REQUIRED: It is unlawful for any person to carry, possess or transport a handgun in or through the state unless he has a valid New York license. (A provision of federal law provides a defense to state or local laws which would prohibit the passage of persons with firearms in interstate travel if the person is traveling from any place where he may lawfully possess and transport a firearm to

any other place where he may lawfully possess and transport such firearm and the firearm is unloaded and in the trunk. In vehicles without a trunk, the unloaded firearm shall be in a locked container other than the glove compartment or console).

2. TRANSPORTING FIREARMS THROUGH NEW YORK: The best way to travel through NY or any state that has restriction is to carry a copy of Title 18-Part 1-Chapter 44 926A of the federal code with you. Some law enforcement may not know the law. DO keep the firearm in a locked box. Keep ammo in another locked box. No ammo in Magazines or speed loaders in the trunk or if this is no trunk, then as far back in the vehicle as possible in a locked box. By NY Law, if you are traveling across the state and can legally possess the firearm where you started and where you are going you can transport it as above. But if you stop in NY and spend the night in a motel/hotel/camp ground etc you are in violation of NY law and can be arrested if found with a firearm. Stopping for gas and food would most likely be OK but this is not a given in NY.

3. PLACES OFF LIMITS EVEN WITH A PERMIT OR LICENSE: Firearms (other than carried by peace officers and federal officers) are NOT permitted in courthouses under the rules of the NYS Office of Court Administration, which have the force and effect of law. Federal law bans firearms in federal courthouses and US attorney offices, except for law enforcement personnel on official business. Certain cities and all counties may, under home rule options, ban firearms from their governmental buildings. Federal law also prohibits possession of a rifle, shotgun or firearm in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, without the written authorization of such educational institution; New York Penal Code §265.01[3].

D. IDENTIFICATION, PROOF OF AGE AND ADDRESS

Some local businesses require two pieces of identification, at least one of which contains a local address, to negotiate a check (even one drawn on a local bank) or to make a purchase with a national credit card (VISA, Master card, etc.). Military and dependent I.D. cards have a photograph but not an address; major credit cards generally do not carry an address; some local credit cards do not bear a photograph or a signature. As a result, persons who do not have a local New York driver's license or state I.D. card may occasionally experience difficulty cashing checks or using credit cards.

E. TUITION FOR NEW YORK STATE COLLEGES AND UNIVERSITIES

Generally, part-time and out-of-state students shall be charged such tuition and fees as may be approved by the state university trustees. Such community college, state college or university, may elect to charge to and collect from each county within the state which has issued a certificate or certificates of residence pursuant to subdivision three of this section on the basis of which such non-resident students are attending such community college, an allocable portion of the local sponsor's share of the operating costs of such community college attributable to such non-resident students, computed on a per student basis, together with a further sum of not to exceed three hundred dollars each year to be determined and approved by the state university trustees for each such non-resident student on account of the local sponsor's share of the capital costs incurred to provide facilities in which such non-resident students can be accommodated.

Students must be residents of New York qualify for the in-state tuition rate. Individuals who have maintained their domicile in New York State for a period of at least twelve months prior to registration shall be considered New York State residents. Persons who have been physically present in New York for at least twelve months but have maintained a fixed, permanent and principal residence outside of New York shall not be considered New York State residents. NYS Education Law §355(h)(3) and 8 NYCRR §302.1(i).

Any student attending a community college who is a member or the spouse or the dependent of a member of the armed forces of the United States on full-time active duty and stationed in this state, whether or not a resident of this state, shall be charged the tuition rate for residents as approved by the state university trustees.

PROOF OF DOMICILE

Proof of a New York State domicile is demonstrated by documents which support an applicant's contention that his or her permanent home is located in New York State. For unemancipated students, the campus shall review documents relating to the parents' or legal guardian's permanent home.

EMANCIPATION OF A STUDENT

A student whose parents or legal guardian reside out-of-State may claim to be emancipated in order to qualify for in-State tuition. A student claiming emancipation must present evidence of both emancipation and a New York State domicile in order to be designated a New York State resident for tuition purposes. Proof of emancipation must include documentation demonstrating the student's financial independence. Emancipation does not occur automatically when a student reaches 18 years of age. Students under the age of 22 must provide evidence of one year of independent living in order to be considered emancipated. NYS Education Law §355(h)(3) and 8 NYCRR §302.1(i).

SECTION IX. CONSUMER PROTECTION

A. GENERAL CONSUMER PROTECTION LAWS AND AGENCIES

Consumer protection laws cover almost all aspects of consumer transactions, including door-to-door sales, extension of credit, collection methods, balloon payments, interest rates, service charges and billing errors, credit card transactions, misleading advertising, warranties and guarantees. For example, specific federal and state statutes provide that unordered merchandise received in the mail may be treated as a gift and the recipient has the right to retain, use or discard such merchandise without obligation to the sender. Similar legislation permits the purchaser of goods from a door-to-door salesman to cancel the transaction without obligation any time within three days. The Federal Truth in Lending Law requires complete disclosure of the terms of a credit sale before the transaction is finalized.

New York has consumer protection laws and agencies charged with enforcing them. The most popular of New York State's many consumer protection statutes is General Business Law §349 which prohibits deceptive and misleading business practices ["GBL§349"]. A comprehensive listing of all state laws, agencies and services provided is beyond the scope of this limited guide. Please see the back of this guide for a limited listing of consumer-oriented agencies.

B. CREDIT AND CREDIT CARD PROTECTION

To protect those seeking credit, Congress adopted the Consumer Credit Protection Act (CCPA). The CCPA requires the disclosure of the cost of credit to all potential borrowers, and provides a number of other protections for consumers. For example, the CCPA states that no credit card may be issued to an individual unless he requests or applies for it. 15 U.S.C. §§ 1673 et seq.

A credit card holder may be liable up to \$50.00 for the unauthorized use of the card, unless he or she notifies the card issuer of loss before the unauthorized use occurs. Before any liability can be incurred, however, the card issuer must have notified the cardholder of the potential liability and provided the cardholder with a description of a means by which the card issuer may be notified of any loss or theft of the card. Finally, unless the card itself provided some means of identifying the holder, such as a photograph or signature, no liability will be incurred for unauthorized use.

Other provisions of the CCPA require disclosure of information concerning interest rates in credit transactions, limit the techniques that can be used in advertising credit, require the establishment of procedures to settle disputes about credit billing and prohibit restriction of credit availability because of sex or marital status.

Those who encounter problems with credit are protected by the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 et seq., which allows access to credit reports and an opportunity to correct inaccuracies in them, and the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 et seq., which limits the methods creditors can use to collect debts.

SECTION X. WILLS AND ESTATE PLANNING

Estate planning is the continual process of coordinating your financial affairs to ensure financial security for you and your family. A well designed estate plan should provide not only for the orderly transfer of assets at your death, but also take into account the need for retirement income and the possibility of mental or physical disability. A legal assistance attorney can provide advice on effective estate planning, particularly for estates of limited value; high-value estates may require use of estate planning specialists.

A. WILLS

A will is a document that allows you to make provisions for the distribution of your assets and property upon your death. It also allows you to determine who will be responsible for distributing your property, and who will be responsible for the care of minor children upon your death. A person who dies without a will is considered to have died “intestate.” If you die intestate, state law will determine who will inherit your property, who will settle your estate, and who will care for your children. Each state has its own particular laws regarding intestate descent and distribution, and the distribution scheme may not be one you would choose for yourself.

Each state has statutes that establish the requirements for a valid will. New York requires a testator (the person whose will it is) to be at least 18 years of age and of sound mind at the time the will is executed. Sound mind requires that the testator know that he/she is executing a will; know the general nature and extent of his/her property; and know his/her decedents of relatives that would ordinarily be expected to

share in his/her state. The testator must also have testamentary intent which involves the testator having subjectively intended that the document in question constitute his or her will at the time it was executed. N.Y. Est. Powers & Trusts Law § 3-2.1(a)(1)(A).

The will must be signed by the testator. The modern view is that everything appearing before the signature is given effect; but the provisions that follow the signature are void (even assuming they existed at the time the will was made). An exception to this view is if the provisions following the signature are so material that deleting them would subvert the testator's testamentary plan. In such a case, the entire will is void. In addition to the testator signing the will, it also has to be signed by witnesses. Like the testator, the witnesses must possess certain minimal qualifications or their attestations may be legally insufficient to validate the will. Specifically, the witnesses must be competent—they must be mature enough and of sufficient mental capacity to understand and appreciate the nature of the act that they are witnessing and attesting to, so that, if needed, the witnesses could testify in court on these matters. N.Y. Est. Powers & Trusts Law § 3-2.1(a)(1)(A).

B. LIFE INSURANCE

Life insurance is an important tool for providing financial security for your family members. Through life insurance, you can create an immediate estate of sufficient size to assure adequate income for your family members upon your death. In determining your life insurance needs, consider the desired monthly income you would like your survivors to have, as well as the various military benefits available for military survivors, including the Survivors Benefit Plan and Social Security. Service members contemplating the purchase of commercial insurance should look closely to determine whether the policy will carry a "war clause." Such clauses typically allow insurance companies to avoid payment on a contract of insurance if the service member is killed in war or by a "military service hazard."

You have the right to name any person(s) you choose as the beneficiary(ies) of your life insurance policy(ies). You should review your life insurance policies regularly to ensure the persons you desire to receive your insurance benefits are named as beneficiaries. When naming beneficiaries under your Servicemen's Group Life Insurance policy, consider carefully before making your beneficiary designation "by law." The "by law" designation requires the insurance proceeds to be paid in the following order: surviving spouse; surviving children; surviving parents; your estate; next of kin determined by your state of domicile.

SECTION XI. ADVANCE MEDICAL DIRECTIVES

A. LIVING WILLS

A living will is an "advance medical directive" that expresses your desire that medical treatment be withheld or stopped in the event of terminal medical condition. The document states your wish to be allowed to die a natural death and not be kept alive by machines, heroic measures, or artificial means. There is no statute in New York that governs living wills. However, the highest court in New York has held that a living will is valid as long as it constitutes "clear and convincing evidence" of your wishes.

There is no standard form for a living will in New York, which is interpreted in a uniform way. This means that even a well-drafted living will is ultimately subject to interpretation by those who need to

determine your wishes. It is hard to draft a living will that provides specific instructions with regard to all possible future events. This means that inevitably, a living will will require those responsible for your care to interpret general instructions in your living will in the context of specific circumstances. Your local legal assistance office can assist you in preparing a living will.

B. DURABLE POWER OF ATTORNEY

A durable power of attorney for health care, another type of advance medical directive, is a document that delegates certain future health care decision-making powers to another individual, known as an agent. The agent has the same power to make health care decisions as the principal. The health care power of attorney is similar to the living will in that the agent may have the ability to withdraw life-support treatment; however, it may authorize much broader powers beyond the removal of life-support. In some states, court approval may have to be obtained prior to withdrawing life-support treatment. Some forms direct agents to take specific courses of action while others merely authorize the agents to act.

SECTION XII. POWERS OF ATTORNEY

A Power of Attorney (POA) is a written instrument that allows you (the “principal”) to authorize your agent (the “attorney in-fact”) to conduct certain business on your behalf. It is one of the strongest legal documents that you give to another person. There are two types of POA “general” and “special” (or limited). A general POA gives your agent very broad powers to act on your behalf; and a special POA limits your agent’s authority to act only on certain matters. Every act performed by your agent within the authority of the POA is legally binding upon you. Since a POA is such a powerful document, it should be given only to a trustworthy person, and only when absolutely necessary. Your local legal assistance office can advise you about, and prepare for you, the appropriate type of POA needed for your situation.

A. GENERAL POWER OF ATTORNEY

A General POA gives your agent (attorney-in-fact) the authority to do most things you could do yourself such as write checks, pay bills, borrow money, and sign contracts in your name. It does not, however, give your agent authority to perform certain actions, which require your personal attention, such as taking an oath.

B. SPECIAL (LIMITED) POWER OF ATTORNEY

A special, or limited, POA authorizes your agent to do only a specified act, such as sell your car, ship your household goods, or cash your paycheck. Some acts may only be accomplished with a special POA. For example, authorizing someone buy or sell real estate in your name requires a special POA that describes, in detail, the property and the specific acts to be done by your agent.

C. SPECIAL POWER OF ATTORNEY TO ACT “IN LOCO PARENTIS”

This is a common type of special power of attorney. The phrase “in loco parentis” means “in the place of a parent.” This type of special POA grants parental authority to another (such as a baby-sitter) to perform a range of functions which can include picking up a child from school, buying food and clothing, and consenting to medical treatment of the child in the event of illness or injury.

Without this type of special POA a day center, school, store, hospital or clinic, fearing legal repercussions, may refuse to follow the directives of the baby-sitter or other agent, and require the specific authorization of the actual parent. This grant of authority will assist the agent in the daily business of looking after the child, and can avoid unnecessary delays in emergencies. Furthermore, the special POA provides legal protection for the facility, and also for the agent who might otherwise fear taking action on behalf of the child.

D. GENERAL CONSIDERATIONS

1. Many financial institutions and other businesses have their own POA forms—which they prefer to be used to conduct business. It is a good idea to show your POA to all known parties who may be dealing with your named attorney-in-fact to ensure that your POA is acceptable to them.
2. A POA becomes void upon the death of the principal.
3. A POA normally is void if the principal becomes physically or mentally incapacitated. However, appropriate “durability” language may be added to the POA that will ensure that it remains valid during any period of incapacity.
4. Any third party has the right to refuse to accept a POA.
5. A POA should be given for only a limited time period (such as six months during a deployment). A third party is more likely to accept a POA with a recent date than one that is many months or years old.
6. Never give a General POA when a Special POA will accomplish the mission. There is less opportunity for abuse when only limited powers are given.
7. A Special POA should be as specific as possible. For example, if you are authorizing an attorney-in-fact to sell a vehicle on your behalf, specify the vehicle, license number, vehicle identification number, the make/model/year of the vehicle, and any specific terms you will require. Your legal assistance attorney can help you tailor the POA to suit your precise needs.
8. You may revoke a POA before its expiration date by executing a revocation of the POA. Notice of the revocation must be delivered to the attorney-in-fact, as well as to all third parties who you know relied on the POA. If possible, recover from the attorney-in-fact and destroy the original and all copies of the POA. Even though the POA has been revoked, you may be responsible to any third party who did not receive notice of the revocation.

SECTION XIII. ADDITIONAL RESOURCES

A. SMALL CLAIMS COURTS.....27

 1. Bronx.....27

 2. Harlem.....28

 3. Kings County (Brooklyn Borough).....28

 4. New York County (Manhattan Borough).....28

 5. Queens County.....28

 6. Redhook Community Court.....29

 7. Richmond County.....29

B. SOCIAL AND FAMILY SERVICE AGENCIES.....29

 1. Military.....29

 2. Non-Military.....30

C. TAX OFFICES.....30

 1. Federal.....30

 2. New York.....31

D. VEHICLE REGISTRATION/LICENSES.....32

E. CONSUMER PROTECTION.....34

 1. New York.....34

A. SMALL CLAIMS COURT

New York City Civil Court Small Claims Part

1. Bronx County – Civil

851 Grand Concourse Bronx, NY 10451

General Information..... [646]386-5700

Clerk of the County..... [718]618-2500

Civil Court Clerk’s Office..... [718]618-2500

Special Term (Motions)..... [718]618-2566

Small Claims Clerk’s Office.....[718]618-2517

2. Harlem Community Justice Center

170 East 121st Street New York, NY 10035

General Information Landlord-Tenant..... [646]386-5750
General Information Civil and Small Claims..... [646]386-5700
Small Claims Clerk’s Office..... [212]360-4113

3. Kings County

141 Livingston Street Brooklyn, NY 11201

General Information Civil and Small Claims..... [646]386-5700
General Information Landlord-Tenant..... [646]386-5750
Clerk of the County..... [347]404-9133
Civil Court Clerk’s Office..... [347]404-9123
Special Term (Motions)..... [347]404-9030
Landlord-Tenant Clerk’s Office.....[347]404-9200
Small Claims Clerk’s Office..... [347]404-9021

4. New York County

111 Centre Street New York, NY 10013

General Information Civil and Small Claims..... [646]386-5700
General Information Landlord-Tenant..... [646]386-5750
Clerk of the County..... [646]386-5730
Civil Court Clerk’s Office..... [646]386-5600
Special Term (Motions)..... [646]386-5603
Landlord-Tenant Clerk’s Office..... [646]386-5500
Small Claims Clerk’s Office..... [646]386-5484

5. Queens County

89-17 Sutphin Boulevard Jamaica, New York 11435

General Information Civil and Small Claims..... [646]386-5700
General Information Landlord-Tenant..... [646]386-5750
Clerk of the County..... [718]262-7300

Civil Court Clerk’s Office..... [718]262-7142
Special Term (Motions)..... [718]262-7180
Landlord-Tenant Clerk’s Office..... [718]262-7145
Small Claims Clerk’s Office.....[718]262-7123

6. Redhook Community Court

88 Visitation Place Brooklyn, New York 11231
(718) 923-8270
General Information Landlord-Tenant..... [646]386-5750

7. Richmond County

927 Castleton Avenue Staten Island, New York 10310
General Information Civil and Small Claims..... [646]386-5700
General Information Landlord-Tenant..... [646]386-5750
Clerk of the County..... [718]675-8458
Civil Court Clerk’s Office..... [718]675-8455
Landlord-Tenant Clerk’s Office..... [718]675-8452
Small Claims Clerk’s Office..... [718]675-8460

<http://www.nycourts.gov/courts/nyc/smallclaims/startingcase.shtml>

B. SOCIAL AND FAMILY SERVICE AGENCIES

1. Military

Navy-Marine Corps Relief Society

ESO= Emergency Service Office

NMCRS Ballston Spa, ESO
Naval Nuclear Power Training Unit 350
Atomic Project Rd., PO Box 300.
Ballston Spa, NY 12020-0300
Phone: For Active Duty with access to

NPTU: (518) 884-1702 or 3207

For those without access to NPTU:

FFSC (518) 886-0200 ext 147

<http://www.nmcrcs.org/>

Veteran Health Administration Hospital

2. Non-Military

New York State Department of Health

Local Department of Social Services:

Human Resources Administration

(718) 557-1399 or 1(877) 472-8411

(Toll free within the five boroughs of New York City)

American Red Cross

National Capitol Chapter

<http://www.redcrossdc.org/>

American Red Cross in Greater New York

520 West 49th Street New York, NY 10019

(877) 733-2767

C. TAX OFFICES

1. Federal

Telephone Assistance for Individuals:

Toll-Free, 1(800) 829-1040; M-F, 7a-10p

Telephone Assistance for Businesses:

Toll-Free, 1(800) 829-4933; M-F, 7a-10p

www.irs.gov/

Walk-In Sites:

Brooklyn

625 Fulton St. Brooklyn, NY 11201

(718) 488-2068

Manhattan (Downtown)

290 Broadway New York, NY 10007

(212) 436-1000

Manhattan (Midtown)

110 W. 44th St. New York, NY 10036

(212) 719-6631

Staten Island

10 Richmond Ter. Staten Island, NY 10301

(212) 436-1000

2. New York

Individual Protest Resolution Center:

Bills

NYS Assessment Receivables

P O Box 4127 Binghamton NY 13902-4127

Account and Refund Adjustments

NYS Tax Department OPTS–

Protest Correspondence Unit–

Personal Income Tax

W A Harriman Campus Albany NY 12227

Service of Legal Papers:

Department of Taxation and Finance

ATT: Office of Counsel Building 9,

W.A. Harriman Campus Albany NY 12227

Freedom of Information Requests:

Records Access Office NYS Department
of Taxation and Finance
W.A. Harriman Campus
Bldg 9 Room 100 Albany, NY 12227

Bankruptcy Information:

New York State Department of Taxation
and Finance Bankruptcy Section
PO Box 5300 Albany, NY 12205-0300

Telephone Contact List:

Personal Income Tax Refund Information.....[518] 457-5149
Personal Income Tax Information Center.....[518] 457-5181
1099-G information.....[518] 457-5181
Disagree with your personal income tax bill.....[518] 485-9791
Disagree with your personal income tax refund.....[518] 485-6549
Metropolitan Commuter Transportation Mobility Tax.....[518] 485-2392

www.tax.ny.gov/

D. VEHICLE REGISTRATION/LICENSES

Bronx Office - NYSDMV

696 East Fordham Road Bronx, New York 10458
1 (718) 966-6155 or 1 (212) 645-5550

Brooklyn Office - NYSDMV

Atlantic Center, Second Floor

625 Atlantic Ave. Brooklyn, NY 11217
1 (718) 966-6155 or 1 (212) 645-5550

New York Office - NYSDMV

11 Greenwich Street New York, NY 10004
1 (212) 645-5550 or 1 (718) 966-6155

Harlem Office - NYSDMV

159 East 125th Street, 3rd Floor
New York, NY 10035
1 (212) 645-5550 or 1 (718) 966-6155

Herald Square - NYSDMV

1293-1311 Broadway 8th Floor
New York, NY 10001
1 (212) 645-5550 or 1 (718) 966-6155

Queens Office - NYSDMV

168-46 91st Avenue, 2nd Floor
Jamaica, NY 11432
1 (718) 966-6155 or 1 (212) 645-5550

Springfield Gardens - NYSDMV

168-35 Rockaway Blvd. Jamaica, NY 11434
1 (718) 966-6155 or 1 (212) 645-5550

College Point Office - NYSDMV

30-56 Whitestone Expressway

Flushing, NY 11354

1 (718) 966-6155 or 1 (212) 645-5550

<http://www.nydmv.state.ny.us/register.htm>

E. CONSUMER PROTECTION

1. New York

Department of State, Division of Consumer Protection

Department of State, Albany Location:

One Commerce Plaza, 99 Washington Ave

Albany, NY 12231-0001

Department of State, New York City Location:

123 William Street, New York, NY 10038-3804

1 (800) 697-1220

www.dos.ny.gov/consumerprotection/

New York City Department of Consumer Affairs

For Call Center Dial: 311

www.nyc.gov/dca

Note: a list of "Local Lawyer Referrals" was not included here because the legal office would be in the best position to recommend civilian attorneys based on their knowledge of the local community