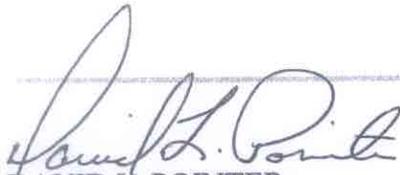
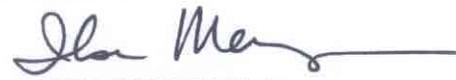


***USAREUR Real Estate/Office of the Judge Advocate Standard Operating Procedures for Processing Claims Involving Real Estate During Contingency Operations**

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Summary. This Standard Operating Procedure (SOP) SOP prescribes policy and responsibilities for investigating, processing, and settling claims against the United States involving real estate within USAREUR.

Applicability. This SOP applies to contingency operations involving US Forces personnel and civilian employees within the USAREUR area of responsibility for which the Army is responsible or has Single Service Claims Responsibility (SSR). When no military department has been assigned SSR within the USAREUR area of responsibility, this SOP applies to processing of claims involving real estate where the claim is related to the acts or omissions of Army personnel. This SOP does not apply if another, more geographically restrictive, regulation applies.

Suggested Improvements. The proponents of this SOP are the Office of the Deputy Chief of Staff, Engineer, HQ USAREUR/7A (AEAEN-RE) and the US Army Claims Service, Europe, Office of the Judge Advocate, HQ USAREUR/7A (AEAJA-CD). Users may send suggestions to improve this SOP on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, USAREUR/7A, ATTN: AEAEN-RE, Unit 29351, APO AE 09014, or ATTN: AEAJA-CD, Unit 30010, APO AE 09166.

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1. Purpose. This SOP provides guidance on investigating and processing claims against the United States involving real estate, which arise during contingency operations within the USAREUR area of responsibility for which the Army is responsible or has SSR for all US Forces. In a contingency operation, there is often no clear demarcation between property law claims issues (handled by USAREUR Real Estate) and tort law claims issues (handled by Foreign Claims Commissioners (FCCs)). This SOP establishes a division of responsibility between USAREUR Deputy Chief of Staff, Engineer, hereinafter referred to as USAREUR Real Estate, and FCCs for processing claims involving real estate during contingency operations. How such claims will be processed depends on the nature of the contingency as well as the country (Receiving State) in which US Forces are operating. A broad spectrum of international agreements may apply, ranging from the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) or Partnership for Peace (PfP) SOFA, to specialized international agreements, to no international agreements. This SOP outlines appropriate procedures for processing claims involving real estate based on the nature of the existing international agreement in the Receiving State. This SOP does not apply to countries where a country specific USAREUR Real Estate Regulation exists, (i.e. Italy, Belgium, the Netherlands, Luxembourg, the United Kingdom, and Germany).

2. References

- a. North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA).
- b. Partnership for Peace Status of Forces Agreement (PfP SOFA).
- c. The General Framework Agreement for Peace (GFAP) in Bosnia and Herzegovina (a.k.a. The Dayton Peace Accord), Dec. 14, 1995.
- d. Military Technical Agreement Between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia.
- e. United Nations Interim Administration Mission (UNMIK) in Kosovo, Regulation 1999/23, On The Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission.
- f. 10 USC 2675, Leases Foreign Countries.
- g. 10 USC 2734, The Foreign Claims Act (FCA).
- h. 10 USC 2734a, The International Agreements Claims Act (IACA).

i. DoD Directive 5515.8, Single-Service Assignment of Responsibility for Processing of Claims.

j. Joint Publication 1-02, DoD Dictionary of Military and Associated Terms.

k. AR 27-20, Claims.

l. AR 405-10, Acquisition of Real Property and Interests Therein.

m. AR 405-15, Real Estate Claims Founded Upon Contract.

n. DA Pamphlet 27-162, Claims Procedure.

o. USAREUR Regulation 405-5, Acquiring, Administering, and Disposing of Real Property.

p. USAREUR Pamphlet 27-2, Processing Maneuver, Tort, and Environmental Claims Within the Single Service Responsibility of USAREUR Under the NATO SOFA.

q. USAREUR Standard Operating Procedure, Real Estate Support to Contingency Operations, 22 Feb. 2000.

3. Abbreviations and Terms

The glossary explains abbreviations and terms used in this SOP.

4. Authority to Pay Claims Involving Real Estate.

a. USAREUR Real Estate Claims.

(1) USAREUR Real Estate's authority to pay claims involving real estate is defined in AR 405-10, paragraph 2-18, and USAREUR Regulation 405-5, paragraphs 12d and 13. When specific authority to enter into leases has not otherwise been delegated, the Assistant Secretary of the Army for Installations, Logistics, and Environment may delegate such authority to the Commander, USAREUR IAW 10 USC 2675.

(2) Claims based on an existing written lease should be paid in accordance with the lease or any supplemental agreement. *See* AR 405-15, paragraph 5. Generally, a real estate contracting officer (RECO) may enter into a lease based on an implied contract after US Forces have occupied the property if US Forces continue to use the property at the time or if US Forces have occupied the property for more than 30 consecutive days. Such a lease is effective from the date the occupancy begins.

b. Foreign Claims Commission (FCC) Claims.

(1) An FCC's authority to pay claims involving real estate is derived from the Foreign Claims Act (FCA), 10 USC 2734. This authority is outlined in AR 27-20, chapter 10, as well as DA Pam 27-162, chapter 10. The Chief, USACSEUR, has been delegated authority to appoint FCCs in the USAREUR area of responsibility (AOR).

(2) Claims for damage to real property incident to its use and occupancy by US Forces are cognizable as tort claims when there is no written lease or the use and occupancy are for less than 30 days.

(3) Damages arising out of trespass or other torts are compensable, even if the claimant presents a claim for "rent." Although "rent" is not payable under the FCA, such claims are payable for "loss of use" as well as any physical damage done to the real property. When US Forces occupy and use property without an express agreement, such use will be considered a trespass and, except as provided in paragraph 6c(4) and 6c(5), will be processed as a tort claim under the FCA. However, such claims are not cognizable if the property owner expressly assumed the risk of loss. The provisions of AR 405-15 cover contract claims where a lease expressly covers damages that are the subject of a claim. *See* DA Pam 27-167, paragraph 10-2(b)(3).

(4) Claims arising from the use and occupancy of real estate by US Forces under an express or implied lease are cognizable when the damages are beyond those contemplated in the lease agreement. Where a lease expressly covers damages that are the subject of a claim, the claim will be treated as a contract claim under AR 405-15. *See* DA PAM 27-162, paragraph 2-28(b).

5. Real Estate Claims Payment Authority and International Agreements

a. International agreements between the host nation and the United States govern all bilateral relations, including US real estate operations. All claims related to real estate will follow the provisions of any applicable international agreement, and will be evaluated according to the laws and customs of the host nation as well as US domestic law. *See* USAREUR Regulation 405-5, paragraph 6. Both RECOs and FCCs must examine all relevant international agreements to structure appropriately tailored real estate claims processing procedures for each contingency operation. The following sections outline general procedures to follow in processing real estate claims in contingency operations in the USAREUR AOR. The type of international agreements in place will generally determine which procedures should be adopted.

b. NATO SOFA or Partnership for Peace (PfP) SOFA.

(1) The NATO SOFA, which has been adopted by both NATO and PfP members, sets out specific procedures for processing claims involving real estate. Article IX, paragraph 3, provides that the Receiving State shall assume sole responsibility for making suitable arrangements to make available to a force the buildings and ground required by the force. USAREUR Regulation 405-5, paragraph 8, establishes the methods for Real Estate Acquisition in this context, which will be coordinated with the Office of the Deputy Chief of Staff, Engineer (DSCENG) and Office of the Deputy Chief of Staff, Logistics (DCSLOG).

(2) Claims for damages to real estate, not arising out of contract, are processed under

Article VIII, and are coordinated through USACSEUR in those countries in which the Army has SSR. *See generally* USAREUR Pamphlet 27-2. Under Article VIII, claims are adjudicated and paid by the Receiving State, with the Sending State typically reimbursing 75 percent of the amount paid. NATO SOFA claims are not paid under the FCA, but instead are paid under the International Agreements Claims Act (IACA) (10 USC 2734a). As such, FCCs do not have authority to reimburse a Receiving State for claims that arise under the NATO SOFA.¹ NATO SOFA claim reimbursements are made by USACSEUR to the competent Receiving State claims office.

(3) The provisions of the NATO SOFA as well as the PfP SOFA may be augmented by bilateral/multilateral supplemental agreements (treaties), as well as administrative (non-treaty) agreements. This array of law and regulation provides country-specific guidance. Although many NATO members have a well-established procedure for processing claims related to real estate, newer NATO and PfP members may have limited or no established infrastructure or procedures for processing real estate related claims. Where such infrastructure and procedures are lacking, US personnel responsible for paying real estate claims may be required to take a more active role to assist the Receiving State in meeting its obligations under the SOFA.

c. PfP SOFA with NAC waiver.

(1) During the establishment of KFOR in 1999, the North Atlantic Council (NAC) waived the 25 percent Receiving State contribution requirement under the PfP SOFA for both Albania and the Former Yugoslav Republic of Macedonia (FYROM). This made payment under the IACA impossible, as the IACA requires cost sharing. Since payment may not be made under the IACA, such claims are processed either by USAREUR Real Estate under AR 405-15 or by FCCs under the FCA, as augmented by the terms of the SOFA and any administrative agreements.

(2) When participating in contingency operations in a PfP country, the supporting Army JA must determine whether the NAC has established a similar waiver for the Receiving State in question.

d. Specialized International Agreements.

(1) It is common for the US and NATO, or other international bodies, to enter into international agreements prior to, or as part of, contingency operations (e.g., The Dayton Accord). Such international agreements often provide mechanisms and procedures for acquiring real estate. The agreements may or may not be considered as "binding" under US law affecting real estate claims. *See, e.g.*, paragraph 7 below. To the extent consistent with US domestic law, such agreements are to be followed in developing appropriate standard operating procedures.

(2) Authority to pay non-tort real estate claims is described in paragraph 4(a), above. The FCA will normally provide the authority to pay tort claims arising in an area under a specialized international agreement specific to a contingency operation (*see* AR 27-20, chapter

10). However, if the international agreement provides for cost sharing, then the IACA may apply (see AR 27-20, chapter 7). Although the IACA was drafted as implementing legislation for the NATO SOFA (with its 75 percent-25 percent cost-sharing provision), the IACA does not require a specific ratio of cost sharing. If the terms of the specialized international agreement allow for payment of tort claims under the IACA, partial reimbursement to the Receiving State will be made by USACSEUR. FCCs will pay no claims directly to claimants under these circumstances.

e. No Existing International Agreements. If no pertinent international agreements exist, tort claims will be paid under the FCA. See AR 27-20, chapter 10. Authority to pay non-tort real estate claims is described in paragraph 4(a), above.

6. Responsibilities

a. 30-Day Rule. As outlined in paragraph 1 above, there exists an overlap between property law issues (handled by USAREUR Real Estate) and tort law issues (handled by FCCs) in a deployed environment where no conventional SOFA applies.² As a general rule, a claim arising from the current use of real property, or for the past use of real property (for more than 30 consecutive days), will normally be handled as a property law (real estate) claim, based on an implied contract. Claims arising from the intermittent or temporary use of real property (fewer than 31 consecutive days) will normally be considered as arising in tort and be handled as a claim under the FCA.

b. Responsibilities of Supporting Army JAs/FCCs.

(1) Real Estate Claims Arising under the FCA. The competent FCC will take the following action on claims that arise from the use of real estate:

(a) Receive all claims arising from US Forces' use of real estate. Log in the claim and assign a sequential claim number.

(b) Determine whether the United States ever occupied the property.

(c) If the US Forces never occupied the property, deny the claim and inform the RECO.

(d) If the US Forces occupied the property for more than 30 consecutive days, transfer the claim to the RECO, as provided in subparagraph 6c below. If the RECO is unable to negotiate a lease with the claimant based upon an implied contract, the claim will be transferred back to the FCC and the FCC will adjudicate the claim under the FCA.

(e) If the US Forces used the property for fewer than 31 consecutive days, determine whether the claimant has sufficient proof of ownership. If the claimant does not have sufficient proof of ownership, deny the claim and notify the RECO.

(f) If the US Forces used the property for fewer than 31 consecutive days and the claimant

has sufficient proof of ownership (*see infra* paragraph 6 b(2)(c)), the FCC should adjudicate the claim and notify the RECO of the final outcome.

(2) General Legal Support. Supporting Army JAs will provide necessary legal support to USAREUR RECOs.

(a) Such support will generally include assistance in:

(i) interpreting relevant international agreements;

(ii) determining local law relevant to processing real estate claims;

(iii) determining standards for tort liability under local law;

(iv) determining the amount of damages under local law;

(v) evaluating evidence and making legal determinations concerning property ownership.

(b) Local Legal Support. Proper interpretation of local law is critical to analyzing and resolving real estate claims. Therefore, the services of a skilled local attorney must be obtained. A local attorney can be retained through a services contract, awarded by the Joint Contracting Center (JCC) servicing the deployed command. Contingency Operations (CONOPS) funds are the appropriate funding source for legal services contracts.

(c) Legal Determination Regarding Proof of Ownership. An important function of a supporting Army JA is to determine the sufficiency of proof of ownership for real estate cases. Before a supporting JA begins to make determinations concerning the sufficiency of proof of ownership of real property, the local attorney described above should be consulted for an opinion on what proof of ownership is required/preferred under local law. USACSEUR and USAREUR Real Estate should also be consulted to determine what manner of proof is required/preferred under local law. This information should be communicated to the RECO for use in ownership evaluations. When the Army JA cannot readily determine proof of ownership, the following steps should be taken.

(i) Obtain a legal opinion from a local attorney regarding sufficiency of proof of ownership; and/or

(ii) Obtain an advisory opinion from a local court or similar judicial body regarding ownership, without subjecting the US to the court's jurisdiction; and/or

(iii) If the property in question has multiple potential owners, have the claimant obtain a written release from all of the potential owners, authorizing the claimant to file and receive the claim on their behalf. The final settlement agreement with such claimants should include an indemnification clause, wherein the claimant agrees to stand in the stead of the US against any

unknown owners. No payment should be made where the claimant fails to provide such a written release.

(iv) When sufficient proof of ownership cannot be determined, the claim should be denied and the RECO should be notified.

(3) Real Estate Claims Arising Under the IACA.⁴

(a) NATO SOFA. Claims that arise under Article VIII of the NATO SOFA should be filed in accordance with the local law and regulations of the Receiving State and should be filed with the Receiving State directly. *See* AR 27-162, paragraph 7-2(c). Involvement of US Forces and scope of duty determinations will be made at USACSEUR. Supporting JAs should be prepared to assist USACSEUR in investigating real estate related claims that fall under Article VIII, NATO SOFA. FCCs should also be prepared to adjudicate all *ex gratia* claims (*see* Glossary), at the direction of USACSEUR.

(b) Claims that arise under international agreements other than the NATO SOFA are to be processed in accordance with the terms of the controlling international agreement, insofar as US domestic law permits.

c. Responsibilities of RECOs. Upon receipt of a claim from the competent FCC as provided in paragraph 6(b)(1)(d) above, the RECO will:

(1) Log the claim in for claim-tracking purposes.

(2) Require the claimant to submit all pertinent documentation required to make an ownership determination. What documents are required, and where they are located, will vary depending on local laws and customs. Check with the supporting JA to determine the types of documents necessary to prove ownership, based on local law.³ Examples of such documents include deeds and probate documents, and may include oral or written statements of individuals familiar with the ownership of the property. Make a preliminary determination, based upon the documentation provided as well as any necessary inquiry to confirm the authenticity of the documentation, whether the claimant has presented sufficient proof of ownership. Forward the preliminary determination to the supporting Army JA. The supporting Army JA will concur or nonconcur and provide the basis for nonconurrence.

(3) If there is insufficient proof of ownership and US Forces currently occupy the property and intend to do so for longer than 30 consecutive days, the RECO will notify the claimant that there is insufficient proof of ownership and the file will be closed. The RECO will inform the supporting JA.

(4) If the US Forces currently occupy the property or used the property for more than 30 consecutive days and the claimant has sufficient proof of ownership, the RECO will attempt to negotiate a lease based on an implied contract. The RECO will also attempt to settle any claims

for damage to that property caused by the US Forces. The RECO will notify the supporting Army JA of the final outcome of the claim.

(5) If the RECO is unable to negotiate a lease based on an implied contract, the RECO will transfer the claim back to the supporting Army JA, who will adjudicate the claim under the FCA.

7. Reconsideration.

a. Claims arising under an international agreement that provides for reconsideration or appeal of decisions made by FCCs should be followed and, where possible, respected. Although decisions of appellate tribunals, or similar bodies, should be given significant deference, they are generally not binding on the United States.

b. Claims arising under an existing written lease will be considered by the RECO in accordance with the lease or any supplemental agreement. In the absence of a controlling international agreement, the decision of the RECO is final.

Glossary

Abbreviations

FCA

Foreign Claims Act

FCC

Foreign Claims Commission

FYROM

Former Yugoslav Republic of Macedonia

IACA

International Agreements Claims Act

IAW

In Accordance With

JA

Judge Advocate

NATO

North Atlantic Treaty Organization

NATO SOFA

North Atlantic Treaty Organization Status of Forces Agreement

PfP SOFA

Partnership for Peace Status of Forces Agreement

RECO

Real Estate Contract Officer

SSR

Single Service Claims Responsibility

SOFA

Status of Forces Agreement

USAREUR

United States Army Europe

USACSEUR

United States Army Claims Service, Europe

USEUCOM

United States European Command

Terms

Claim

A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this SOP, in writing and signed by the claimant or a properly designated representative.

Contingency Operation

A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law (10 USC 101(a)(13)). It is a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing force; or, is created by definition of law. Under 10 USC 101 (a)(13)(B), a contingency operation exists if a military operation results in the (1) callup to (or retention on) active duty of members of the uniformed Services under certain Enumerated Statutes (10 USC Sections 688, 12301(a), 12302, 12304, 12305, 12406, or 331-335) (2) the callup to (or retention on) active duty of members of the uniformed Services under other (non-enumerated) statutes during war or national emergency declared by the President or Congress. Joint Publication 1-02, DoD Dictionary of Military and Associated Terms.

Ex Gratia

“As a matter of grace.” Claims arising out of tortious acts or omissions not done in the performance of official duties shall be considered by the Sending State for an *ex gratia* payment that is made directly to the injured party, NATO SOFA, Article VIII, paragraph 6. AR 27-20, para. 7-2(a)(3).

Single Service Claims Responsibility

DoD has assigned single Service Claims Responsibility for the settlement of certain claims, to include claims under the FCA, the Military Claims Act (MCA), and the IACA in certain countries. See DoDD 5515.8; see also AR 27-20, paragraph 1-20; DA Pam 27-162, paragraph 1-11.

**APPENDIX A
ASSIGNMENT OF SINGLE SERVICE CLAIMS RESPONSIBILITY FOR TORT CLAIMS**

SERVICE	COUNTRY	AUTHORITY
ARMY	Albania Austria Belarus Belgium Bosnia and Herzegovina Bulgaria Croatia Czech Republic Estonia Federal Republic of Yugoslavia Federal Republic of Germany Former Yugoslavian Republic of Macedonia Grenada Hungary Latvia Lithuania Moldova The Netherlands Poland Romania Slovakia Slovenia Switzerland Ukraine	Approved, John McNeil, 17 Apr 96 DoD Directive 5515.8, 9 Jun 90 Approved, John McNeil, 17 Apr 96 DoD Directive 5515.8, 9 Jun 90 Memo, David Koplow, 7 Jul 99 Approved, John McNeil, 17 Apr 96 Memo, David Koplow, 7 Jul 99 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 Memo, David Koplow, 7 Jul 99 DoD Directive 5515.8, 9 Jun 90 Memo, David Koplow, 7 Jul 99 DoD Directive 5515.8, 9 Jun 90 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 Memo, John McNeil, 1 Sep 94 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 Approved, John McNeil, 17 Apr 96 DoD Directive 5515.8, 9 Jun 90 Approved, John McNeil, 17 Apr 96
NAVY	Bahrain Greece Iceland Italy Portugal Spain	DoD Directive 5515.8, 9 Jun 90 Memo, John McNeil, 1 Sep 94 DoD Directive 5515.8, 9 Jun 90 DoD Directive 5515.8, 9 Jun 90 DoD Directive 5515.8, 9 Jun 90 Memo, John McNeil, 1 Sep 94

AIR FORCE	Cyprus	DoD Directive 5515.8, 9 Jun 90
	Denmark	DoD Directive 5515.8, 9 Jun 90
	France	Memo, William Dalton, 25 Nov 96
	Luxembourg	DoD Directive 5515.8, 9 Jun 90
	Norway	DoD Directive 5515.8, 9 Jun 90
	Turkey	DoD Directive 5515.8, 9 Jun 90
	the United Kingdom	DoD Directive 5515.8, 9 Jun 90
	CENTCOM*	DoD Directive 5515.8, 9 Jun 90
	USSOC*	DoD Directive 5515.8, 9 Jun 90
*Applicable only in countries not otherwise assigned to the Army or Navy		

Changes from assignments made in DoD Directive 5515.8, 9 Jan 90, are noted by listing the original assignment, in brackets and crossed out, with an appropriate notation in the Authority block. These countries are also listed under the currently assigned service.

Endnotes

¹ FCCs do have the authority to pay *ex gratia* claims that arise under Article VIII, paragraph 6, NATO SOFA. See also AR 27-70, paragraph 7-2 (c)(3).

² As described in paragraph 5(b) above, the Receiving State Claims Office processes claims involving real estate under the IACA. Accordingly, no overlap exists between the role of the RECO and the FCC under the IACA, as the RECO should not play a role under the IACA.

³ See *supra* paragraph 6 (b)(2)(c).