

FLIPL Investigating Officer's Guide

1. **Purpose.** This guide is intended to assist you in conducting a timely, thorough, and legally sufficient survey. It is based on the 28 February 2005 version of Army Regulation 735-5, which is your primary reference. You should seek legal advice at any stage of your investigation, whenever you have a question. You may reach assistance at the Administrative Law Branch of the Office of the Staff Judge Advocate, located in Building 125 or by calling 798-2441.
2. **What is your mission?** You investigate the loss, damage, or destruction of government property. Your objective is to both determine the cause of the loss, damage, or destruction and to assess responsibility. Your investigation is a fact-finding mission. Once you collect the facts, you draw conclusions. The conclusions are your findings. Based on these findings, you make recommendations. Your chain of command will act on your recommendations.
3. **How do you start your investigation?** You usually will be appointed by your battalion commander and will be provided a copy of DD Form 200 "Financial Liability Investigation of Property Loss." The front half of the form will already be completed. This form will provide you with the basic information on what property was lost, damage, or destroyed and some general information on how the property was lost, damaged, or destroyed. This form will often be accompanied by exhibits as supporting documents. Read the form --and any attached exhibits--and promptly start your investigation. In conducting the investigation, strive to answer five basic questions: "what", "when," "where," "why," and "who". In other words, make sure you answer the following questions:
 - a. What was lost, damaged, or destroyed?
 - b. When was it lost, damaged, or destroyed?
 - c. Where was it lost, damaged, or destroyed?
 - d. Why was it lost, damaged, or destroyed? and
 - e. Who was responsible for the loss, damage, or destruction?

To answer these questions, you must collect evidence in addition to what you may have already been provided. Begin by interviewing those individuals who logically are connected to the lost, damaged, or destroyed property. These may be individuals who are identified in block 9, DD Form 200.

If the circumstances surrounding the loss, damage, or destruction are vague, you should begin your investigation with the property's hand receipt holder. It may then be necessary to interview sub-hand receipt holders and other individuals who used the property. These interviews often will reveal other individuals who must be interviewed to answer the "what," "when," "where," "why," and "who" of the loss, damage, or destruction. Record the substance of these interviews on DA Form 2823, "Sworn Statement." As an investigating officer, you are authorized to administer oaths and all forms must be signed and dated. If you do not have access to the DA

Form 2823 is not available, you should request the form from your legal advisor. If you must conduct an interview over the phone with someone who does not have access to email in order to mail the completed statement, you will complete a memorandum for record documenting the substance of the conversation and reason for the inability to use the DA Form 2823. Finally, the statement should be lettered alphabetically as follows: Exhibit A, FLIPL# _____, date, amount, Unit.

4. Determining “what” was lost, damaged, or destroyed.

a. Your first mission is to determine what was lost, damaged, or destroyed. Usually this task will be straightforward--that is, all you need to do is examine the front side of DD Form 200 which lists the property that was lost, damage, or destroyed in block 5. For example, you can obtain a copy of the hand receipt that shows that property was issued and now is lost. With damaged or destroyed property, you usually can examine the property, obtain police reports, and obtain estimated or actual costs for the damage or destruction. You then will have answered the “what” question and will be prepared to support your answer with exhibits.

b. If the survey involves damaged property, paragraph 13-31c, AR 735-5, directs you to examine the property immediately. You then must release the property for repair or turn-in. If an expert opinion would be helpful to determining the cause of the damage, ensure that technical inspectors examine the property and given a written opinion on the probable cause of the damage.

c. With lost property, answering the “what” question may be more complex. You also must resolve the question “was anything lost?” For example, when dealing with lost components from major end items, determine how the loss was identified. Was the property identified, for example, by using a new edition of a manual? If it was, determine whether the property had been issued and accounted for using a prior edition of the manual. The old edition may have had a less-inclusive list of required components and the missing property may really not be missing because it was never issued, no loss has occurred and the survey should be canceled. Similarly, when dealing with losses from major end items, determining if shortage annexes have been prepared is important. If a shortage annex exists, the property may have never been present in the unit. The date that the shortage annex was prepared is critical. If the shortage annex is recent, the property probably was lost recently. If is old, the property may never have been present. Remember, if the property never was present, no loss has occurred.

d. You always must attempt to locate lost property. The nature of the search will depend on the type of property lost and the “why” and “where” of its loss. For example, if night vision goggles were lost at a guard tower, check with other units that had duty at the same tower and see if they have them. If accountability for property--such as linen--was lost, you may be required to conduct a thorough inventory of linen in the unit. On the other hand, if you are certain that the property fell off the back of a truck while on mission outside the wire, you can do little to relocate the property.

5. What to do if property is recovered during the survey. During the course of the investigation, you may find the property that has been reported missing. Paragraph 14-14, AR 735-5, provides

detailed guidance on the steps that must be followed to reestablish accountability. These steps are summarized as follows:

a. If all property listed on the report is recovered, report the find to the S-4 or to the approving authority. Once the recovery of the property is verified, your job is done. The approving authority will direct that the steps required by paragraph 14-14 are taken to close out the survey.

b. If some, but not all, of the property is recovered, you will continue to look into the cause of the loss for the remaining property. However, you will line through the recovered property identified in blocks 4-8 of DD Form 200 and initial the entries on all copies. Adjust the total cost. You should make a specific reference to the discovered property in your findings in block 15, DD Form 200. Always report recovered property to your S-4.

6. Determining “when” the property was lost, damaged, or destroyed. Often, when the loss occurred is clear. You need only confirm the accuracy of the information in block 3 of DD Form 200. In other cases--such as when an inventory determined property to be missing--determining “when” the loss occurred may be difficult, or even impossible. You may only be able to determine “why” the loss occurred and “who” was responsible. For example, you may conclude that because the property was left unsecured, it was lost through theft at an indeterminate time or that it was issued at an indeterminate time without a hand receipt, and this caused a loss of accountability. If determining accurately “when” the loss occurred is not possible, attempt to determine when the property was accounted for last. Resolving when the property was last accounted for will assist you in determining the “who” and the “why” questions of the loss. Even if you are unable to pinpoint exactly “when” the loss occurred you still may be able to make a legally sufficient recommendation for financial liability. You need only conclude that the property was lost because of negligence (the “why” question) on the part of a specific individual-(the “who” question).

7. Determining “where” the loss or damage occurred. This is usually the easiest question to answer because this requires merely verifying the details found in block 9, DD Form 200. When you have difficulty determining the place of loss, it is most often an accountability problem that is the reason for the loss. For example, an individual may be signed for the property and subsequently issued it, but failed to obtain a sub-hand receipt. If you cannot determine to whom the property was issued, the individual who last was responsible for it may be liable. The basis for a recommendation of liability would be a loss of accountability. For example, individual A issued the property to an unknown individual and the property is now unaccountable. Individual A is liable because of his or her failure to maintain accountability for the property. On the other hand, if the investigation clearly reveals that individual A issued the now missing property to individual B--without obtaining a sub-hand receipt--A should not be held liable. Even though a sub-hand receipt was not obtained, accountability for the property was not lost when the property was issued to B. Because the property clearly was issued to B, A’s negligence in issuing the property without a hand receipt, did not cause the loss (for further guidance, see the discussion below on proximate cause). The investigation must focus on B’s conduct.

8. Determining “why” the loss or damage occurred.

a. Determining the reason for the loss is the most critical aspect of the investigation of property loss. In some cases, the determination may be straightforward. For example, block 9, DD Form 200 may state that, "CPT John Doe reported that his HMMVW was damaged when MAJ John Deer intentionally backed into it with his Gator." To answer the "why" question, all you need to do is to verify these facts, support them with exhibits, and discuss the loss or damage in the narrated portion of the investigation.

b. In other cases, explaining the "why" of the loss or damage may be more difficult. For example, block 9, DD Form 200, may indicate, "During a change of command inventory, the incoming commander and I conducted a thorough search of the area and the above listed shortages could not be located." How do you attempt to answer the "why" question in a case like this. The following guidance will assist you in answering this question:

(1) Start with what you know. Property described in block 5, DD Form 200, has been determined to be missing. Therefore, the "what" question has been answered partially. As discussed in the "what" section, you still must verify that the property really is missing.

(2) Next, determine who was responsible for the property. This involves learning to whom the property was issued. To answer this, you must obtain a copy of the basic hand receipt. The copy should be preserved as an exhibit.

(3) Once you determine to whom the property was issued, determine what happened to the property. For example, examine the following:

(a) Where was it stored? If it was not secured properly, the "why" of the loss may have been theft.

(b) Was it issued without a hand receipt? If so, the "why" of the loss may be loss of accountability.

(4) If it was sub-hand receipted or given to an identified individual, you must attempt to resolve the questions discussed above in paragraph b.(3)(a) and b.(3)(b), as they pertain to that individual. Your goal is to determine who was the last person identified as responsible for the property, and then determine "why" the property is missing.

9. Determining "who" was responsible for the loss or damage. If you are able to answer the "what," "when," "where," and "why" of the loss or damage, you usually will have answered the "who" question. Answering the "who" question simply is a conclusion--based on your investigation and assessment of the evidence collected--of who caused the "what," "when," "where," and "why" of the loss, damage, or destruction. If answering these questions is not possible, you may not be able to answer the question of "who."

10. Completing the Report.

a. Findings. Once you have completed the investigation and believe you are prepared to answer the "what," "when," "where," "why," and "who" questions, begin to draft your findings

in block 15 of DD Form 200. For lengthy or difficult investigations, you may also write “See Attached MFR” in block 15. Paragraph 13-32, AR 735-5, requires you to state the facts in your own words and to make your findings complete, so that the appointing and approving authorities can easily see the basis of liability without returning to the investigation for more information.

(1) Start with a conclusion. Common language used by investigating officers begins with “I have examined all available evidence shown in block 9, and as shown in exhibits ___ thru ___ as indicated below. I have personally investigated the same and it is my belief that the articles listed hereon and/or attached to sheets, total cost \$_____,...” You should continue this by writing:

(a) was/were (lost, damaged, or destroyed) through the (simple, gross negligence of _____); or

(b) was/were (lost, damaged, or destroyed) by the willful misconduct of _____; or

(c) was/were (lost, damaged, or destroyed) as the result of (an unavoidable accident, an unpreventable theft, undeterminable circumstances, etc).

(2) By stating a conclusion, you have answered the “what” question; you have told the reviewer that the property listed in block 7 was lost, damaged, or destroyed. Go on to “state in your own words, how the loss, damage, or destruction occurred.” In so doing, explain the “when,” “where,” “why,” and “who” of the loss by writing:

(a) “When” it was lost, damaged, or destroyed;

(b) “Where” it was lost, damaged, or destroyed;

(c) “Why” it was lost, damaged, or destroyed; and

(d) “Who” was responsible for the loss, damage, or destruction.

(3) Whenever possible, reference your findings to exhibits, so that the appointing and approving authorities may see the basis for your findings. In writing findings, your goal is explain, in narrative format, the cause of the loss, damage, or destruction. Your narrative must support the conclusion with which you started your findings because findings must be factual. If the investigation contains contradictory evidence, or if you relied on self-serving statements from the individual who was responsible for the property, you must explain how you resolved the contradiction or what other evidence confirms the self-serving statement. For further guidance, see AR 735-5, paragraph 13-32.

(4) The appointing and approving authorities should be able to read the findings and to see clearly that certain property was lost, damaged, or destroyed in a certain manner, at a certain place or time, and by a certain individual. At its most basic, it should be as obvious as “Individual A was negligent (explain how the person was negligent) on 9 August 2008, at _____, and that individual A’s negligence caused the loss or damage.” If you cannot

answer any of the “what,” “when,” “where,” “why,” and “who” questions, explain that in your findings.

(5) You also must specifically identify in block 15 the current Army master data file (or equivalent) value and, if depreciation was allowed (or some other valuation method used), its value after depreciation. If uneconomically repairable property was investigated, you must explain its disposition or recommended disposition.

b. Recommendations. Immediately after making findings, you must make recommendations. Start this section with the word “recommendations.” Two general types of recommendations can be made. These are “relief from responsibility and accountability” or “financial liability.” They also must indicate whether the investigation lists property for which a claim may be processed under AR 27-20. For further guidance, see AR 735-5, paragraph 13-32.

(1) Relief from responsibility and accountability. If you are unable to determine the cause of, or responsibility for, the loss, damage, or destruction, you should recommend that all parties be relieved of accountability and responsibility. You should make a similar recommendation if you determine that neither negligence nor willful misconduct was involved.

(2) Financial Liability. If you conclude that an individual’s negligence or willful misconduct caused the loss or damage, you must make a recommendation for financial liability. Blocks 15a through 15d must be completed for each individual recommended for liability. Specifically, you will provide in block 15a the full name, grade, and social security number of the individual. Blocks 15c and d will contain the individual’s monthly basic pay and the recommended liability. Where more than one individual is recommended for liability, block 15a will include the information normally contained in blocks 15c and 15d. Blocks 15c and 15d will then read “see block 15 a.”

(a) Willful Misconduct. Willful misconduct involves an intentional act, specifically aimed at damaging or losing the property. For example, if PVT Schmedlap became angry and blew up his commander’s office with a Claymore mine, he would have committed an act of willful misconduct. He intended to destroy both the commander’s office and its contents. Similarly, if PVT Schmedlap stole the commander’s HMMWV and sold it to a local national, he would have committed an act of willful misconduct--because he intended to deprive the government of the use of the vehicle.

(b) Gross Negligence. Gross negligence is an extreme departure from due care resulting from an act or omission that falls far short of the degree of care for property that a reasonably prudent person would have taken under similar circumstances. This is usually accompanied by reckless, deliberate, or wanton disregard for the foreseeable loss or damage to the property.

(c) Simple Negligence. Simple negligence is defined in AR 735-5, paragraph 13-29b as the absence of due care, by an act or omission of a person which lacks that degree of care for the property that an ordinarily prudent person would have taken under similar circumstances Paragraph 13-29b(4), AR 735-5, cites several factors to be considered in determining whether negligence is involved. They may be simplified as follows: Was an unreasonable act

committed--or in some cases unreasonable omitted--and did that unreasonable act cause the loss. To be unreasonable, the evidence must show that another individual, of similar experience and relationship to the property, as a matter of common sense, would have acted differently. For guidance on the various types of property responsibility, see AR 735-5, paragraph 13-29a. Responsibility must be specifically addressed when recommending liability as well.

(d) Proximate Cause. If you can show that another individual, of similar experience and relationship to the property, as a matter of common sense, would have acted differently, you have established negligence. To hold someone liable, however, you also must establish that the negligence caused--referred to as proximate cause in AR 735-5--the loss. Causation may be best explained by the following examples.

Example 1. SPC Careless leaves a set of night vision goggles unattended on the seat of his unlocked HMMWV at the main DFAC on Bagram Airfield. The goggles were stolen. SPC Careless' negligence caused the loss. By placing the goggles in a location where theft was reasonably foreseeable, he created the conditions that allowed the loss by theft to occur. In other words, SPC Careless' negligence proximately caused the resulting loss.

Example 2. Same facts as example 1, and 1SG Out O. Luck recovers the goggles, but subsequently manages to lose them. SPC Careless is off the hook. Although he was negligent, his negligence did not cause the loss. The goggles were returned to the control of the Army when 1SG Out O. Luck recovered them. SPC Careless cannot be held responsible for the actions of 1SG Luck. Of course, if the findings support it, 1SG Luck may be recommended for liability.

Example 3. PVT Foyt is driving his MRAP at sixty-five miles-per-hour on Bagram Airfield. He fails to negotiate a sharp turn and the truck crashes. If the investigating officer concludes that PVT Foyt was negligent--driving too fast for the conditions--Foyt's negligence logically caused the accident. If PVT Foyt had not been driving too fast, the accident would not have happened. By driving too fast, PVT Foyt's negligence proximately caused the loss.

Example 4. CPL Crash is driving his MRAP at fifty miles per hour down Disney Drive at Bagram. A limb on an old tree breaks, falls, and shatters his windshield. Here, even though CPL Crash was negligent (driving too fast) his negligence did not cause the accident. The tree limb would have fallen anyway. CPL Crash's speeding did not hasten the tree limb's fall. That he was driving at the wrong time, in the wrong place was pure chance. If, for example, he had left the motor pool a few minutes earlier, but had not been speeding, the damage still could have resulted. Even though he was driving too fast, CPL Crash's speeding did not proximately cause the damage.

Example 5. SSG Supply negligently issued property without obtaining hand receipts. The property cannot be located, nor can you determine to whom the property was issued. SSG Supply's negligence caused the loss. The property cannot be located because no accountability documents exist indicating to whom the property was issued. By failing to properly obtain hand receipts for the now-missing property, and because you cannot determine to whom he issued the property, SSG Supply's negligence proximately caused the loss.

(c) Negligence Presumed. In some cases, you may not be able to determine the actual cause of the loss. Nonetheless, you still may be able to conclude that a certain individual is responsible for the loss. This is done by “presuming negligence.” You may presume negligence when you find that an individual had exclusive access and control over property, and you also can rule out all other case for loss.

Example 1. PVT Fleet Foot goes absent with out leave while on R&R. His TA-50 immediately is secured and inventoried, and most of it is missing. Because PVT Foot had exclusive control over his TA-50, and it immediately was secured and inventoried, he may be presumed to have been the cause of its loss. If however, the property was neither secured, nor inventoried for several months, the presumption may not apply. You must rule out theft or pilferage.

Example 2. PVT Broken Up is injured and medevac’d to Landstuhl. His TA-50 was lost. Because another explanation for the loss may exist, negligence may not be presumed. For example, the equipment may not have been secured by the chain of command after PVT Broken Up was evacuated to the hospital. Unless you can show that Broken Up already had lost the equipment or that someone else was at fault, recommend that no one be held liable for the loss.

(3) How much liability.

(a) General Rule. An individual’s liability usually will be limited to his or her monthly basic pay (for soldiers) or 1/12 of his or her annual pay (for civilians) at the time of loss or the actual loss to the government, whichever is less. When two or more investigations have been initiated for the same incident, AR 735-5, paragraph 13-41, provides that liability still is limited to one month’s basic pay. Additionally, when two or more surveys arise out of the same incident, the surveys must be cross-referenced to each other. If you know that your survey is related to another survey on the same individual, ensure that this cross-reference is made.

(b) Exceptions. Paragraph 13-41, AR 735-5, provides that when personal arms or equipment or public funds are involved, liability may be as much as the actual loss to the government. Additionally, if the survey includes a recommendation for liability against an accountable officer, a state, a government contractor or employee, or a nonappropriated fund activity, the recommendation for liability may be for the full amount of the loss. When damage to government quarters or their contents is involved, liability may exceed basic pay if the damage resulted from gross negligence or willful misconduct. If only simple negligence is involved, liability is limited to one month’s basic pay at the time of the loss.

(c) Actual Loss to the Government--Repairable Property. For damaged property that can be repaired, the loss to the government is the actual cost of the repairs (ACOD), or the value of the item at the time of the damage, whichever is less. See Appendix B, paragraph B-1, AR 735-5.

--The cost of repair consists of the sum of material, labor, overhead, and transportation, minus any salvage or scrap value of replaced parts.

--If repair makes the item more valuable than it was before the damage, reduce the amount of the repairs by the amount of the increase in value.

--When the actual cost of damage (ACOD) cannot be obtained in a reasonable period of time, and estimated cost of damages (ECOD) may be used. You must state the reason for using the ECOD and the basis on which the estimate was made.

(d) Actual **Loss to the Government--Lost or Irreparable Damaged Property**. For lost or irreparable damage property, AR 735-5, Appendix B, paragraph B-2, requires you to determine the actual value of the property at the time of its loss or destruction. The preferred method is appraisal of fair market value at the time of the loss.

(e) **Depreciation Method**. When an appraisal is not feasible and the property is in less-than-new condition, the depreciated value will be used. To compute depreciated value, the survey officer starts with the DD Form 200, block 7 value of the property and subtracts the following:

--ten percent for organizational clothing and individual equipment (OCIE) and non-power handtools;

--twenty-five percent for items constructed of relatively perishable material (with the exception of OCIE items) such as leathers, canvas, plastic, and rubber;

--five percent per year of service, to a maximum of fifty percent, for electronic equipment and office furniture.

--five percent per year of service, to a maximum of ninety percent, for tactical and general purpose vehicles;

--For all other property, use five percent per year of service, to a maximum of seventy-five percent. If the time of service cannot be determined, use twenty-five percent.

--Appendix B, paragraph B-2 (6), AR 735-5, permits you to increase or decrease the above rates when you conclude that the property was subjected to more or less use as applicable. Army Regulation 27-20 may be used as a guide for a fair rate of depreciation. If the property is new, use the Army master data file price, which is reflected in block 10.

(f) **Standard Rebuild Cost**. If using an appraisal or the depreciation method is either not possible, or not equitable, you may be able to use the standard rebuild cost to determine loss to the government. You may use this method if the property has been used long enough to warrant overhaul and a standard rebuild cost has been published. When using this method, subtract the standard rebuild cost, offset by any salvage value, from the current Army mater data file price.

(g) Salvage Value. When property has been damaged irreparably, give credit for salvage or scrap value, plus the depreciated value of repair parts. For additional guidance, see AR 735-5, Appendix B, paragraph B-3.

(4) Joint Liability. When you conclude that more than one individual is responsible for the loss or damage, you should make a recommendation for joint liability, in accordance with paragraphs 13-32 and table 12-3, AR 735-5. Charges are computed as outlined below:

(a) When the actual loss exceeds the combined monthly basic pay for each individual, charge the full amount of each Soldier's basic pay, or for civilian employees, the full amount of 1/12 of the annual pay.

(b) When the actual loss is less than the combined basic pay of all individuals, compute the charges in proportion of the Soldier's basic pay or, for civilian employees, in proportion of 1/12 of the annual pay.

(c) For example, if two Soldiers are jointly liable for an actual loss of \$1,000, and the basic pay of Soldier #1 is \$500 and the basic pay of Soldier #2 is \$1,000, each Soldier will pay a proportional share. To compute the financial charge, add the basic pays of the Soldiers for a combined basic pay figure of \$1,500. Then divide each Soldier's monthly basic pay by the combined basic pay figure and multiply this percentage by the actual loss amount to arrive at each Soldier's financial charge. Soldier #1 would owe \$333.33 (\$400 divided by \$1,500, multiplied by \$1,000). Soldier #2 would owe \$666.67 (\$1,000 divided by \$1,500, multiplied by \$1,000). For joint liability among civilian employees, use the same formula while substituting 1/12 annual pay for monthly basic pay.

11. Completing block 15b. The amount of actual loss, not the block 8 value, will be recorded in block 15b. Block 15d is the total amount of recommended liability.

12. Notifying the individual. In accordance with paragraph 13-34, AR 735-5, if you recommend an individual for financial liability, you must notify that person by memorandum (AR 735-5, figure 13-14) and afford the individual a chance to submit matters in rebuttal.

a. If the individual is located on the same base, block 16 of DD Form 200 should be completed. If the individual desires to submit matters in rebuttal, allow him or her the opportunity to speak with a legal assistance attorney. You may speed the process by making the legal assistance appointment for an individual who desires to speak with an attorney. If the individual submits matters in rebuttal, you must both consider them and note your consideration of them in the report. If the individual indicated that he or she wanted to submit a statement, but, after seven days, has not, explain the individual's omission in block 15 of the investigation and forward to the S-4 for processing.

b. If the individual is not located on the same base, you must send him or her a copy of the survey and the notification memorandum by either certified or registered mail. You should try to reach via email if possible using an AKO address. A copy of the memorandum and the certified or registered mail receipt must be attached to the file. Individuals located in the same country

will be given fifteen days from the date of mailing to respond. Individuals stationed outside the country will be given thirty days to respond. If you receive a response, you must consider it and note your consideration of it in your report. If the individual does not respond, annotate the file accordingly.

13. Completing the Investigation. After accomplishing the above, you should ensure that the investigation is administratively complete. All blanks should be filled. To ensure completeness go over the investigation by using the DA Form 7531 (required). Prior to submitting your investigation to the G4, you should review it with your legal advisor.