

Memo To: Chairperson Goico and Members of the Veterans, Military and Homeland Security Committee
From: Sherry C. Diel, Executive Director
RE: HB 2077—Licensure of Military Service Members
Date: January 31, 2013

Chairperson Goico and Members of the Committee, the Kansas Real Estate Commission wishes to thank you for giving the agency an opportunity to present **neutral** testimony on HB 2077.

Agency Background

The Kansas Real Estate Commission is the state agency that is responsible for licensing and regulating real estate salespersons and brokers. The Commission is comprised of five members appointed by the Governor. One commissioner is appointed from each congressional district and the remainder shall be appointed from the state-at-large. At least three commissioners must be real estate brokers for the five years preceding their appointment to the Commission and at least one commissioner shall have never been a real estate broker. The Commission staff issues original and renewal licenses, processes licensee affiliation and demographic changes, processes company changes, approves and tracks continuing education curriculum, approves instructors, audits brokerage trust accounts and transaction files, investigates complaints and takes disciplinary action when deemed appropriate.

Issues the Committee May Wish to Consider As Part of Your Deliberations on HB 2077

The Commission is very appreciative of the sacrifice that military service members and their families make on a daily basis to enable Kansans to enjoy freedom and security. I personally have been a spouse for the last 27+ years of an Army JAGC Officer who has been on active duty and is currently serving in the Army Reserves. The Commission endeavors to comply with the State's mandates for military personnel and their spouses while ensuring that the public interests are protected. To that end, the Commission would like to present neutral testimony on HB 2077 to address a couple of matters that the members of the Committee may or may not be aware of.

1. **There are other types of discharges/dismissals from the military other than "Dishonorable" that may involve conduct that is of concern to a licensing body:** As currently drafted, HB 2077 defines an "applicant" [Page 1, Lines 7-9] and "military service member" [Page 1, Lines 33-35] as a person who entered into military service and separated from such service under conditions "other than dishonorable". However, there are actually five types of military discharges. There is an administrative discharge known as "Other than Honorable Conditions" that usually causes the person to lose benefits and prevents them from re-enlisting. There is also a type of discharge known as "Bad Conduct" which is given by court-martial for enlisted persons. The equivalent to a Bad Conduct discharge for commissioned officers would be an "Officer Dismissal". For your information, I have attached copies of three articles that explain the differences between the types of administrative and general court-martial discharges and what the different discharges/dismissals are generally used for.

Veteran/Military/Homeland Security Comm

Date: JAN 31, 2013

Attachment #: 5

2. **The Commission does not have a probationary or temporary license status and requirements would need to be established by agency order at the discretion of the agency:** The Commission grants licensure according to Section 2(c)(2)(A) of HB 2077 by considering whether the applicant holds a current license in another state that has requirements that are equivalent to or higher than Kansas' course and examination requirements for salespersons and brokers. Kansas statutes require real estate applicants to pass a national portion and state portion of the licensure examination. Broker applicants must also meet specified experience requirements. Regardless, Kansas statutes require that salesperson and broker applicants complete a specified course on Kansas law and pass the Kansas portion of the licensure examination even if other application requirements have been deemed to be met under the equivalency provisions.

The current law for military spouses, which would be amended by HB 2077 to add military service members and limit coverage to only nonresident military spouses, requires the issuance of a probationary license after the applicant submits an application and affidavit. The probationary license can be revoked if the information on the affidavit is later found to be false [Page 2, Lines 39-43 through Page 3, Line 1].

Section 2(f) has been added by HB 2077 to provide the licensing agency with discretionary authority to grant a temporary license for a limited period of time to allow the military service member to practice while completing any specific requirements that are required for licensure in Kansas that were not required in the service member's state of residence or are determined by the licensing body to be not equivalent to Kansas' requirements pursuant to Section 2(c)(2)(A). The legislation leaves it to the discretion of each agency, I assume by agency order, how long the temporary license will be in effect, what requirements will need to be met during the temporary period of licensure and what will happen if the requirements are not met at the expiration of the temporary license. Otherwise, additional matters should be addressed by this legislation.

It is important to note that because the Commission's statutory licensure structure does not provide for probationary or temporary licenses, the Commission's licensure system is not programmed to issue probationary or temporary licenses. Because of the extensive business rules that would need to be written for the licensure system for just a few applicants that may benefit from HB 2077, it would not be cost effective for the Commission to update its licensure system to issue these types of licenses. However, the Commission does have authority to restrict and condition licenses by order as necessary to comply with the statutory mandates contained in HB 2077, with a couple of minor deviations. A license may not properly display on the Commission's website as being temporary or probationary since the data for the website is downloaded from the licensure system. The bottom line is that the Commission can comply with the statutory mandate manually but there may be a few technology issues that cannot be addressed because it is not cost effective to do so.

I would be happy to answer any questions from the Committee.

Types of Military Discharges

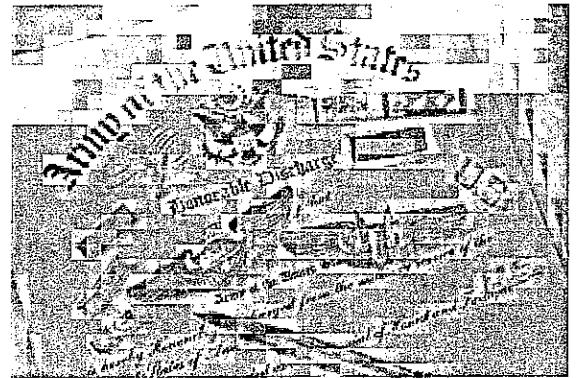
Many civilians commonly assume that people "retire" from the military when they leave the service, which isn't always the case. Receiving a discharge, or separation, is not the same thing as military retirement. A military discharge is simply defined as a military member being released from their obligation to continue service in the armed forces. A discharge relieves the veteran from any future military service obligations where as a retired reserve individual may be called back to active duty. A separation from the military can be voluntary or involuntary, and may leave additional unfulfilled military service obligation that will need to be carried out in the Individual Ready Reserve. It's important to note that there are several types of military discharges, and these can have a profound impact on a veteran's ability to receive veterans benefits, serve in government employment, reenlist in the military, and more.

Types of Military Discharges

The type of military discharge a veteran receives will be listed on his or her DD-214 Military Discharge Paperwork. The following are a list of various types of military discharges:

Honorable Discharge

If a military service member received a good or excellent rating for their service time, by exceeding standards for performance and personal conduct, they will be discharged from the military honorably. An honorable military discharge is a form of administrative discharge.



General Discharge

If a service member's performance is satisfactory but the individual failed to meet all expectations of conduct for military members, the discharge is considered a general discharge. To receive a general discharge from the military there has to be some form of nonjudicial punishment to correct unacceptable military behavior. A general military discharge is a form of administrative discharge.

Other Than Honorable Conditions Discharge

The most severe type of military administrative discharge is the Other Than Honorable Conditions. Some examples of actions that could lead to an Other Than Honorable Discharge include security violations, use of violence, conviction by a civilian court with a sentence including prison time, or being found guilty of adultery in a divorce hearing (this list is not a definitive list; these are only examples). In most cases, veterans who receive an Other Than Honorable Discharge cannot re-enlist in the Armed Forces or reserves, except under very rare circumstances. Veteran's benefits are not usually available to those discharged through this type of discharge.

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Bad Conduct Discharge (BCD)

The Bad Conduct Discharge is only passed on to enlisted military members and is given by a court-martial due to punishment for bad conduct. A Bad Conduct discharge is often preceded by time in military prison. Virtually all veteran's benefits are forfeited if discharged due to Bad Conduct.

Dishonorable Discharge

If the military considers a service members actions to be reprehensible, the general court-martial can determine a dishonorable discharge is in order. Murder and sexual assault are examples of situations which would result in a dishonorable discharge. If someone is dishonorably discharged from the military they are not allowed to own firearms according to US federal law. Military members who receive a Dishonorable Discharge forfeit all military and veterans benefits and may have a difficult time finding work in the civilian sector.

Officer Discharge

Commissioned officers cannot receive bad conduct discharges or a dishonorable discharge, nor can they be reduced in rank by a court-martial. If an officer is discharged by a general court-martial, they receive a Dismissal notice which is the same as a dishonorable discharge.

Entry Level Separation (ELS)

If an individual leaves the military before completing at least 180 days of service, they receive an entry level separation status. This type of military discharge can happen for a variety of reasons (medical, administrative, etc.) and is neither good or bad, though in many cases, service of less than 180 may prevent some people from being classified as a veteran for state and federal military benefits.

How Military Discharge Information Should Be Used for Job Interviews

This information should be used as a reference only – especially if you are an employer researching a job applicant. Due to legal issues surrounding Equal Employment Opportunities and related laws, one should be careful in the interview process. It is generally illegal to ask which type of discharge a military veteran received, unless it is to ask whether or not an applicant received an Honorable or General Discharge if you are ascertaining whether or not the applicant qualifies for veteran's preference. Read more about illegal job interview questions.

However, even if the veteran did not receive one of these types of discharges, it doesn't necessarily mean they were discharged for bad conduct, as the reason could have been a medical discharge or other administrative discharge. It is usually best to keep the line of questioning centered around the job applicant's experience and qualifications. For example, you can ask them if they have military service, the period of their service, rank at time of separation, type of training, leadership, and work experience, qualifications and certifications, and anything else relevant to the specific position for which they are applying. See your Human Resources office for more information.

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Discharges and Their Effect on Veteran Benefits

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If you serve in the military, you're entitled to certain veteran benefits. These benefits can range from education to retirement. However, the way you leave the military can have a great effect on your benefits.

You'll receive a **discharge** after you complete your military service. The discharge means that you're released from your obligation to serve. There are multiple types of discharges. Many benefits will depend on what type of discharge you receive. Types of service discharges include:

- Honorable discharge
- General discharge under honorable conditions
- Other than honorable (OTH) discharge
- Bad conduct discharge
- Dishonorable discharge
- Entry-level separation

Honorable Discharge

The best type of discharge you can receive is an **honorable discharge**. This means that you met the conduct and performance standards of the military. You're eligible for most veteran benefits if you receive this discharge. Some benefits actually require an honorable discharge, including:

- GI Bill education benefits
- Military health insurance
- Military retirement
- Military travel benefits

General Discharge under Honorable Conditions

The second best type of discharge you can receive is a **general discharge under honorable conditions**. This means that your performance was satisfactory. However, you fell a little short in expected military duty and conduct. Some examples include:

- Failure to meet fitness and weight standards
- Failure to progress in training
- Minor discipline problems

Just like an honorable discharge, you're eligible for most veteran benefits if you receive a general discharge. However, certain specific benefits, such as GI Bill education benefits, are only reserved for service members who receive an honorable discharge.

Other Than Honorable (OTH) Discharge

An **OTH discharge** means that you had some serious departures from the conduct and performance expected of a service member. Some examples of when you may receive this discharge include:

- Abuse of authority
- Serious misconduct that endangers other members of the military
- Use of deliberate force to seriously hurt another person

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You probably won't be eligible to receive most veteran benefits if you receive an OTH discharge. The Department of Veterans Affairs (VA), which provides most of the veteran benefits, will examine the circumstances of your OTH discharge to determine whether you're eligible or not.

Bad Conduct Discharge

A bad conduct discharge is a punitive discharge that's imposed by court-martial. A court-martial is a criminal trial that's conducted by the military.

You're not entitled to any veteran benefits if you receive a bad conduct discharge from a general court-martial. The VA determines whether you're eligible for benefits if you receive a bad conduct discharge from a special court-martial.

Dishonorable Discharge

The worst discharge you can receive is a dishonorable discharge. This usually means that you committed a very serious crime. Examples include desertion, rape or murder. You can only receive a dishonorable discharge if you're convicted at a general court-martial. Of course, all veteran benefits are lost with this discharge.

Entry-Level Separation

If you don't fit in the military, you may receive an entry-level separation. This means that you don't belong in the military, but your service isn't considered good or bad. An entry-level separation is rare and can only be given within your first 180 days. No benefits are earned with this discharge.

Questions for Your Attorney

- What are the pros and cons of having an attorney help me receive any military benefits?
- What can I do to convince the VA that I should have veteran benefits if I receive an OTH discharge?
- Is there any way to upgrade my general discharge to an honorable discharge?

Tagged as: Military Law, military, discharge, veteran, benefits, bad conduct, honorable, dishonorable

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Have a Veteran's Benefits Question?

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Less-than-honorable discharge does not have to be permanent

By Mathew B. Tully - Special to the Times
Posted : Monday Sep 22, 2008 10:53:24 EDT

For nearly a decade, with the exception of when I've been deployed, my family has traveled to Naval Air Station Brunswick, Maine, as our official end-of-summer getaway. My wife and I, now joined by our toddler son, love going there because of the spacious accommodations that seem to always be available to space-A travelers like ourselves.

I've always found my trips to NAS Brunswick rewarding because I get to meet many of the people who read this column, and this year was no exception.

While drinking coffee one morning in the lobby of Building 512, I had the pleasure of speaking with a retired Navy chief petty officer whose son is facing an administrative discharge. The chief had questions about what that meant.

When you get discharged from the military, you are either administratively discharged or punitively discharged. The overwhelming majority of discharges are administrative and fall into one of three categories: honorable, general under honorable conditions, and other than honorable.

Clearly, an honorable discharge is the most preferable. It means that your period of service was an honorable one — though it may not have been perfect; even a service member with a court-martial conviction or an Article 15 on his record for a petty offense can still receive an honorable discharge.

A general discharge under honorable conditions is meant for those who generally performed honorably but had some problems. The most common reasons for a general discharge that I've seen are alcohol or drug abuse, excessive absences, Article 15 reasons and, occasionally, mental health problems.

The third type of administrative discharge, other than honorable, is equivalent to a bad-conduct discharge. It generally results in the loss of all veterans civilian employment preference and Veterans Affairs benefits.

A service member might receive type of discharge if he is convicted by a civilian court for a crime or engages in a pattern of misconduct involving many minor offenses. In my experience, those offenses generally include disrespecting or disobeying an order, or fraudulent enlistment — such as if you concealed a prior felony conviction.

Similarly, there are three types of punitive discharges: bad-conduct discharge, dishonorable discharge and dismissal (the officer version of a dishonorable discharge).

The most severe punitive discharge is a dishonorable discharge or dismissal. Generally, this occurs upon conviction of a serious crime such as rape, murder or robbery.

The other type of punitive discharge, a bad-conduct discharge, may be seen when somebody is convicted of a serious crime. But in my experience, it's more commonly given for court-martial incidents related to desertion, assaulting an officer or theft.

In addition to the loss of all military and veterans benefits, punitive discharges can seriously hurt your civilian job prospects.

But as I pointed out to my new friend in Maine this past week, the discharge you get when you leave service is not necessarily the discharge you will have for life. If you receive an "other than honorable" or general discharge — or any other type of discharge — and go on to become a stellar citizen, it's possible for you to get that discharge changed.

I generally advise clients to wait several years before trying to get a discharge upgraded and then to show compelling need by explaining how and why the discharge is having an adverse impact on their civilian life.

Upgrading your discharge involves correcting your military records, a subject that I talked about in some detail in a [previous column](#).

The information in this column is provided for informational purposes only and is not intended to constitute legal advice. Readers are encouraged to seek the advice of an attorney or other professional when an opinion is needed.

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