

AIR FORCE

Housing Privatization



Commander's Security Authority

Multiple factors affect a Commander's security authority in privatized housing, including legislative jurisdiction, state and local laws, the project's transaction documents, and the military affiliation of the individual involved. This information sheet describes the categories of legislative jurisdiction, general treatment of the Commander's security authority in projects' transaction documents, and the roles and responsibilities of Installation Security Forces within each legislative jurisdiction.

Legislative jurisdiction is the authority of the Government to make and enforce laws. Federally-owned land falls within one of four types of legislative jurisdiction: exclusive, concurrent, partial or proprietary. The different categories represent varying degrees of authority held and/or shared by the federal government and the state government, as described in the table below. The scope of the Commander's security authority will vary depending on the category of jurisdiction within which the privatized housing project falls.

Privatized Housing Legal Jurisdictions and Law Enforcement Authority				
Federal Legislative Jurisdiction	Authority			Additional Details
	Federal	State	Explanation	
Exclusive	●		The federal government has sole legislative and enforcement authority. The state has authority to serve civil / criminal process for activities that occurred off the installation.	Civilians committing offenses are cited or detained by Security Forces, and when necessary transferred to federal authorities.
Concurrent	●	●	Both retain the authority to make and enforce their laws.	In these areas, both state and federal laws apply and both sovereigns may exercise their authority. If there is a conflict, the federal government prevails under the Supremacy Clause of the Constitution (Art. VI, Clause 2).
Partial	●	●	Both have some authority but neither has exclusive power.	The state may have retained jurisdiction over some areas that impact privatized housing (e.g. criminal matters). In a conflict, federal supremacy applies.
Proprietary		●	The federal government does not possess any of the state's	The federal government has the same rights as any property

			authority to make or enforce laws.	owner. However, the federal government retains sovereign immunity and supremacy for inherently governmental functions.
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Project Transaction Documents

Although to date no published case law has directly addressed the issue of the Commander’s security authority in privatized housing, each projects’ transaction documents include a provision to provide support for the position that Commanders possess security authority in privatized housing. In addition, the projects’ transaction documents expressly reference the Commander’s inherent authority to maintain the security of the installation and safety of persons on the installation, which includes removal and debarment authority.

Security Forces Roles and Responsibilities

In all privatized housing located on federally-owned land, Security Forces retain responsibility for law enforcement and security operations. Security Forces perform Installation access control and mobile and static posting, as required, except under proprietary jurisdiction, where it is performed only for inherently governmental functions. For privatized housing located on property not owned by the AF, local police have responsibility for law enforcement and security operations.

Privatized Housing Security Issues

Commanders will likely face questions involving whether they have authority to authorize a search, whether someone may be apprehended, the extent to which law enforcement personnel may conduct surveillance, the bounds of police protection, handling prospective tenants who may be registered sex offenders, coroner’s jurisdiction, handling of spousal abuse, conducting background checks on prospective tenants and whether an individual may be barred from the privatized housing area or military installation. These issues become more complex when non-government-affiliated civilian residents are living in privatized housing.

Plan of Action

It is essential for Commanders to work with their Staff Judge Advocates (SJA) to understand the numerous issues that may impact the Commander’s security authority in privatized housing. Working with their SJA, Commanders should review their project’s transaction documents and evaluate specific issues in the context of those documents and the jurisdiction(s) of their privatized housing areas. In doing so, Commanders can establish procedures for searches, inspections, and removal/debarment, including clearly identifying the types of misconduct or actions that warrant removal/debarment.