

Eviction protection After Mobilization

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

4.6—Eviction and Foreclosure Protection

Q: I have recently been called to Active Duty as an E-4, and that has resulted in a huge pay cut. I live with my wife and six children in an apartment with a monthly rent of \$1,300. I am deploying to Iraq, and of course I cannot take my wife and children with me. I need to keep the apartment, but I cannot afford the rent on my greatly reduced income. My wife cannot work outside the home because of a debilitating disease. As I go off to serve the country in Iraq, I don't want to worry about my sick wife and six small children out on the street. It gets mighty cold in Minneapolis in January.

Several weeks ago, I contacted an Army legal assistance attorney, to inquire about my rights under the Soldiers' and Sailors' Civil Relief Act (SSCRA). She told me that the SSCRA has a

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

provision for eviction protection under these circumstances, but that the provision only applies if the monthly rent was not more than \$1,200. Help!

A: Good news! The newly enacted Servicemembers' Civil Relief Act [Public Law 108-189, 117 Stat. 2835] has rewritten the SSCRA, with several major improvements. One of those improvements is directly applicable to your situation. The new law was signed by the president on 19 December 2003 and went into effect at that time.

The legal assistance attorney was correct when she told you that the SSCRA's eviction protection provision only applied if the rent were not more than \$1,200. Section 301(a)(1) of the new law raises this cap to \$2,400. The new law also contains an inflation formula to calculate the cap in future years. For calendar year 2004, the maximum rent for which the eviction protection provision applies is \$2,465.

Update – March 2022³

Due to housing price inflation, the Department of the Defense is required to adjust the monthly rent amount annually to reflect inflation in the Federal Register. Applying the inflation adjustment for 2020, the maximum monthly rental amount for which eviction protection is now \$4,089.62.⁴ This adjustment applied as of January 1, 2021.⁵

Please join or support ROA

This article is one of 2,300-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard

³Update by Second Lieutenant Lauren Walker, USMC.

⁴*Publication of Housing Price Inflation Adjustment*, FEDERAL REGISTER (Jan. 25, 2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01481/publication-of-housing-price-inflation-adjustment>.

⁵*Id.*

to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight⁶ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE

⁶Congress recently established the United States Space Force as the 8th uniformed service.