

# LAW REVIEW 13107

## August 2013

### Terminating a Lease Held Solely by a Servicemember Dependent

By Gavriel Swerling<sup>1</sup>

#### 4.2 Right to Terminate a Lease or Contract upon Mobilization

**Q: I currently live in an apartment that is leased in my name alone. My husband's name is not on the lease, and he never lived in the apartment, because I lived there while completing nursing school. My husband is on active duty in the Army, and the Army recently transferred him from Texas to Florida. I recently completed my nursing training. I want to terminate the lease and move to Florida, to be with my husband at his new duty station. There are five months remaining on the one-year lease term.**

**A:** Congress enacted the Servicemembers Civil Relief Act (SCRA) in 2003, as a rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1917, shortly after the United States entered World War I. The SCRA protects the rights and interests of the men and women who defend our country. From the beginning, this has included the right to terminate leases on premises (apartment, house, etc.) when entering active duty. More recently, the right to terminate a lease was extended to make it apply also to the service member on active duty who is transferred to a new duty station on Permanent Change of Station (PCS) orders or who is deployed outside our country for an extended time.

The complete text of the SCRA, along with footnotes from the nation's foremost expert on the SCRA and SSCRA (Colonel John S. Odom, Jr., USAF Ret.) is located towards the bottom of the [ROA Servicemember Law Center \(SMLC\) webpage](#)<sup>2</sup>. The SCRA is codified in the appendix of title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b). The section giving servicemembers the right to terminate leases is §535:

#### **§ 535. Termination of residential or motor vehicle leases**

- (a) Termination by lessee.
  - (1) In general. The lessee on a lease described in subsection (b) may, at the lessee's option,

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\*The views expressed in this article do not represent the Maryland Law School or the Marine Corps.

<sup>2</sup> The SMLC online law library has over 900 law reviews on areas of law affecting citizen warriors. The Law Reviews are organized chronologically and by subject index.

terminate the lease at any time after —

- (a) the lessee's entry into military service; or
- (b) the date of the lessee's military orders described in paragraph (1)(B) of (2)(B) of subsection (b), as the case may be.

10 50 U.S.C. App. §535 is among the most frequently amended sections in the SCRA. Congress has continued to amend the section as a result of the continuing efforts of landlords and leasing companies to try and defeat the purpose of the section, which is to allow servicemembers to terminate premises and vehicle leases when they are not in a position to utilize the premises or vehicles because of their military service. The principal amendments to this section have been made by P.L. 108-454, effective December 10, 2004, and P.L. 111-275, effective October 13, 2010.

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(2) Joint leases. A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases. This section applies to the following leases:

(1) Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit or as an individual in support of a military operation for a period of not less than 90 days.

(2) Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days);

or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders —

(i) for a change of permanent station —

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit or as an individual in support of a military operation for a period of not less than 180 days.

(c) Manner of termination.

(1) In general. Termination of a lease under subsection (a) is made —

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(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished —

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination.

(1) Leases of premises. In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Leases of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities.

(1) Leases of premises. Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(2) Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee

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in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Misdemeanor. Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(i) Definitions.

(1) Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS. The term 'continental United States' means the 48 contiguous States and the District of Columbia.

Section 535(b)(1) gives an individual the ability to terminate a lease on premises in two circumstances. The first circumstance is when a person who signs a premises lease while a civilian (not on active duty) and thereafter, during the term of the lease, enters active duty. The second circumstance is for the service member on active duty who signs a premises lease and thereafter, during the term of the lease, is transferred to a new duty station or is deployed. For a more in depth discussion on the right to terminate a lease, see articles:

- [No. 110](#) Terminating a Vehicle Lease Upon Mobilization
- [No. 0944](#) Get Out of Lease upon Mobilization
- [No. 1079](#) Congress Strengthens SCRA Provision on Terminating Lease of Premises or Vehicle upon Activation, Deployment, or PCS Orders
- [No. 1081](#) Congress Strengthens SCRA Provision on Terminating Cell Phone Contract upon Mobilization or Deployment
- [No. 1148](#) The Servicemembers Civil Relief Act and Foreclosure
- [No. 1268](#) Getting out of a Lease upon Deployment of Soldier
- [No. 13102](#) Air Force Recruit Has Right to Terminate Apartment Lease

The right to terminate a lease under §535 only applies to a service member, so he or she must be named as a party on the lease. If the lease is in the name of a different party, §535 would not apply. However, there is a remedy to this problem, if the party on the lease is a dependent of said servicemember. Under §538, a dependent of a service member can apply to a court for the same relief said service member is entitled to under SCRA:

**§ 538. Extension of protections to dependents**

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

So you would have to apply to a court for the same relief your husband would be entitled to, under 50 USC App 535. If the court grants the application, you would then be able to terminate your lease. Let us know if you are having difficulty finding a lawyer to represent you.

Approved: August 15, 2013. Captain Samuel F. Wright, JAGC, USN (Ret.). Director, Service Members Law Center.