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If You Sign a Vehicle Lease while not on Active Duty and then Go on Active Duty during the Term of the Lease, You have the Right to Terminate the Lease

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[About Sam Wright](#)

4.2—SCRA right to terminate a lease or contract upon mobilization

Q: I am a Master Sergeant (E-7) in the Air National Guard (ANG) and a member of the Reserve Officers Association (ROA). I am not currently on active duty, but I have volunteered to go on active duty for one year, from October 1, 2015 through September 30, 2016. I will be serving this year of active duty at the Pentagon in Arlington, Virginia.

Some months ago, at a time when I was not on active duty but was a traditional ANG member, I signed a five-year lease on a new luxury automobile. I regret having signed this lease, because it is an expense that I really cannot afford.

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.

I want to terminate the lease because I really do not need and cannot afford this vehicle. For the next year, while I am on active duty at the Pentagon, I will be living in an apartment in Arlington that is within walking distance of the Pentagon.

An ANG judge advocate told me that I have the right to terminate the lease because I was not on active duty when I signed the lease and I will be going on active duty during the term of the lease. I sent a letter to the bank that manages the lease, and I enclosed a copy of my military orders. I asked for instructions as to where to turn in the vehicle and the keys. The bank's attorney responded by certified mail, telling me that the Servicemembers Civil Relief Act (SCRA) does not give me the right to terminate the lease because I will be serving my year of active duty within the United States—she said that the right to terminate a vehicle lease only applies to a service member who is being deployed or transferred to a duty station outside the United States.

Who is right—the ANG judge advocate or the bank's attorney?

A: The ANG judge advocate is right. The bank's attorney is wrong and should know better. The pertinent SCRA section is section 305. For the reader's convenience, I am attaching the entire text of that section to the end of this article.

The pertinent subsection is 535(b)(2)(A). This subsection explicitly applies to the individual who signs a vehicle lease *when not on active duty* and then enters active duty *during the term of the lease*. Such a person is permitted, by the express language of the statute, to terminate the lease upon entering active duty.³ The right to terminate the lease under this subsection, and in this situation, does not relate to the place where the individual will be performing the uniformed service.

The bank officer is thinking of section 535(b)(2)(B). That subsection applies to a person who *is already on active duty when he or she signs the vehicle lease*. Such a person is permitted to terminate the vehicle lease only if he or she is transferred or deployed to a location outside the 48 contiguous states and the District of Columbia.

Please note the critical word “or” between section 535(b)(2)(A) and section 535(b)(2)(B). The word “or” clearly means that an individual can terminate a vehicle lease either in the section 535(b)(2)(A) circumstance (signed the lease when not on active duty) or the section 535(b)(2)(B) circumstance (signed the lease while already on active duty). Your situation is clearly covered by section 535(b)(2)(A). You clearly meet the requirements of that subsection, and you have the clear statutory right to terminate the lease.

I suggest that you send a written termination letter to the bank by certified mail. Read section 535(c) (“manner of termination”) and follow those instructions carefully. If the bank continues to send you bills for the lease payments, contact me and I will help you find a lawyer to sue the

³The reason you want to terminate the lease is irrelevant.

bank.

§ 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,

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) or (2)(B) of

subsection (b), as the case may be.

(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 change of permanent 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--

(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) Lease 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) Lease 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 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.⁴

⁴50 U.S.C. App. § 535 (emphasis supplied).

Update – March 2022⁵

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁶ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found as followed:

50 U.S.C. App. § 535 discussing the termination of residential or motor leases can be found at 50 U.S.C. § 3955.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved.*⁷

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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 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.

⁵Update by Second Lieutenant Lauren Walker, USMC.

⁶*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

⁷Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

If you are now serving or have ever served in any one of our nation's eight⁸ 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

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