

Person Entering Military Service Has the Right To Terminate an Apartment Lease

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Update on Sam Wright

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Q: I am the owner-operator of a small apartment building. Four years ago, I was making great money because of the fracking boom in our area. As the price of oil plummeted, the production of oil through fracking declined precipitously and many of the folks who had come here to work wandered off. Today, only half of the apartments in my building are occupied,

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1700 "Law Review" articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1500 of the articles.

² BA 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. I have 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 35 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 or by telephone at 800-809-9448, ext. 730. I will provide up to one hour of information without charge. If you need more than that, I will charge a very reasonable hourly rate. If you need a lawyer, I can suggest several well-qualified USERRA lawyers.

and several of the remaining tenants are seriously behind in paying rent. I am hanging on by my fingernails financially.³

I have a tenant (let's call him Ralph Jones) who has been attending community college in our area. He has a one-year lease with seven months remaining. His parents (who are well-off financially) co-signed the lease. Ralph has paid his rent on time each month, probably because his parents keep him well supplied with cash.

Just recently, Ralph dropped out of the community college and enlisted in the Army. He brought me some Army paperwork showing that he will be reporting for basic training soon. Ralph told me that the Army recruiter had told him that under something that he called the "Soldiers' and Sailors' Act" he was entitled to break the lease. Is that true?

Answer, bottom line up front

The recruiter has the name of the statute wrong, but yes, federal law gives Ralph the right to cancel a residential lease under these circumstances.

Explanation

A century ago, shortly after our country had joined the "Great War" (as World War I was then known), Congress enacted and President Woodrow Wilson signed the Soldiers' and Sailors' Civil Relief Act (SSCRA). The purpose of this statute was to protect the legal and financial rights and interests of those who answered our country's call and who "won't be back until it's over over there" in the lyrics of "Over There," the great song that George M. Cohan wrote one day after Congress declared war on Germany in April 1917.

The SSCRA protected all those who left civilian life to respond to the call to the colors. This includes those who were drafted, those who enlisted voluntarily, and those who were called to active duty from the nascent Army National Guard, Army Reserve, Naval Reserve, and Marine Corps Reserve.

The original SSCRA expired in 1919, at the end of the period of national emergency for World War I. In 1940, after World War II had broken out in Europe but before our country entered the war unambiguously, Congress reenacted the SSCRA for the new national emergency. After World War II ended, it became clear that our country would need a large standing military in peacetime as well as wartime, and Congress made the SSCRA permanent.

³ This factual set-up is hypothetical but realistic.

The SSCRA served our nation well through two world wars, the Korean War, the Vietnam War, and the long Cold War competition with the Soviet Union. By 1990, when President George H.W. Bush responded to Saddam Hussein's naked aggression against Kuwait and called up many Reserve and National Guard units, it became clear that the SSCRA needed to be updated and improved upon.

Through the 1990s, judge advocates of the five armed forces (Army, Navy, Marine Corps, Air Force, and Coast Guard) studied the SSCRA and drafted a proposed recodification. After the terrorist attacks of 9/11/2001 brought renewed attention to this issue, Congress enacted their work product. On December 19, 2003, President George W. Bush signed into law the Servicemembers Civil Relief Act (SCRA).⁴

Since 1917 (except for the period between 1919 and 1940), a person entering active military service voluntarily or involuntarily has had the right to terminate a lease on premises (apartment, house, office, farm, etc.). In 2003, when Congress enacted the SCRA to replace the SSCRA, Congress expanded the provision to give the person entering active duty the right to terminate a vehicle lease, as well as a premises lease. The current SCRA provision reads as follows:

§ 3955. 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

⁴ Public Law 108-189, 117 Stat. 2835. The citation means that this was the 189th new Public Law enacted during the 108th Congress (2003-04), and you can find the SCRA (in the form that it was enacted in 2003) in Volume 117 of *Statutes at Large*, starting on page 2835. The SCRA is now codified in title 50 of the United States Code, at sections 3901 through 4043 (50 U.S.C. 3901-4043).

- **(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.⁵

The right to terminate a premises lease under this section applies to a person (like Ralph Jones) who was a civilian when he or she signed the premises lease and who thereafter, during the term of the lease, voluntarily enlisted in an Active Component (AC) of the armed forces. The right to terminate also applies to a National Guard or Reserve member who was not on active duty when he or she signed the lease and who thereafter, during the term of the lease, is called to active duty involuntarily or goes on active duty voluntarily. The right to terminate the lease also applies to a person who is on active duty when he or she signs the lease and who thereafter, during the term of the lease, is transferred by the military (Permanent Change of Station) or is deployed for a period of at least 90 days.

Ralph Jones can terminate the apartment lease by giving you written notice of termination. He can deliver that notice to you in person, by mail (United States Postal Service), or by a commercial service like Federal Express or United Parcel Service.

For a lease that requires the monthly payment of rent, as in your situation, the termination goes into effect 30 days after the next monthly due date for rent, after the delivery of the termination notice.

For example, let us say that Ralph delivers the termination notice on June 15. The next monthly due date for rent is July 1. The termination goes into effect 30 days later, on July 31. Ralph owes rent for July in this scenario, but he does not owe rent for August or subsequent months.

Please note that if you knowingly interfere with Ralph's right to terminate the lease, by withholding the return of the security deposit or by preventing Ralph from removing his personal property from the apartment, you are guilty of a federal misdemeanor for which you can be fined and imprisoned for up to one year.⁶

Q: This provision is very burdensome on a small business owner like me.

⁵ 50 U.S.C. 3955 (emphasis supplied).

⁶ 50 U.S.C. 3955(h).

A: The burden on you (the landlord) is tiny as compared to the immensely greater burden voluntarily undertaken by brave young men and women like Ralph Jones who enlist in our armed forces. Please see Law Review 17055 (June 2017).

The SCRA is neither unreasonable nor unconstitutional.⁷

Q: Are there other SCRA protections?

A: Yes. Other valuable SCRA protections include:

Interest rate reduction

Section 3937⁸ applies to a person who incurs financial obligations (credit card debt, automobile loan, etc.) while not on active duty and thereafter, before the obligation has been paid off, enters active duty voluntarily or involuntarily, and who can say that the entry on active duty materially (adversely) affected his or her ability to meet financial obligations. In that situation, the interest rate on those financial obligations is reduced to 6% and capped at that rate during the individual's active duty service.⁹

Right to a continuance and protection from default judgment

Under section 3931¹⁰ and section 3932,¹¹ an active duty service member is entitled to a continuance (delay) of a civil or administrative proceeding if his or her service precludes immediate participation in the proceeding, and the service member is entitled to protection against a default judgment.¹²

Right to reinstatement of health insurance coverage

A person who has civilian health insurance coverage and who gives up that coverage to go on active duty voluntarily or involuntarily is entitled to reinstatement of the health insurance coverage, under section 4024.¹³ Section 4024 applies to health insurance coverage other than under the civilian employment of the insured. For employment-related health insurance coverage, section 4317 of the Uniformed Services Employment and Reemployment Rights Act¹⁴

⁷ The United States Supreme Court has specifically upheld the constitutionality of the SSCRA, precursor to the SCRA. See *Dameron v. Brodhead*, 345 U.S. 322 (1953). I discuss that case in detail in Law Review 09017 (April 2009).

⁸ 50 U.S.C. 3937.

⁹ Please see Law Review 14025 (February 2014).

¹⁰ 50 U.S.C. 3931.

¹¹ 50 U.S.C. 3932.

¹² Please see Law Review 13141 (October 2013).

¹³ 50 U.S.C. 4024. Please see Law Review 118 (March 2004).

¹⁴ 38 U.S.C. 4317.

gives the individual the right to reinstatement of health insurance coverage, upon reemployment.

Protection from state and local tax authorities

Under section 4001,¹⁵ the state and local government of the jurisdiction where the active duty service member physically resides but is not domiciled is precluded from taxing the service member's military income and his or her personal property.¹⁶

Protection from eviction or foreclosure

Under certain circumstances, section 3951¹⁷ and section 3952¹⁸ protect the service member from eviction or foreclosure.¹⁹

Tolling of statutes of limitations

A statute of limitations on a cause of action for or against an active duty service member is tolled (stops running) during the service member's active duty service, under section 3936.²⁰

These and other SCRA provisions impose cost and inconvenience on third parties, including landlords, creditors, individuals and companies that want to sue service members, and state and local tax officials. These burdens are reasonable, constitutional, and necessary for national defense.

¹⁵ 50 U.S.C. 4001.

¹⁶ Please see Law Review 17034 (April 2017).

¹⁷ 50 U.S.C. 3951.

¹⁸ 50 U.S.C. 3952.

¹⁹ Please see Law Review 111 (January 2004) and Law Review 12042 (April 2012).

²⁰ 50 U.S.C. 3936. Please see Law Review 09060 (October 2009).