

## LAW REVIEW<sup>1</sup> 23033

June 2023

### **I Have Enlisted. I Want To Terminate my Apartment Lease.**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

4.2—SCRA right to terminate a lease

**Q: I recently enlisted in the Army as a Private (E-1). My recruiter has informed me that I will be traveling, along with many other new soldiers in this state, to basic training on 8/1/2023. While doing research on-line, I found your Law Review 23001 (January 2023), about the legal rights of new service members under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA). I found the article to be very helpful in understanding my rights.**

**It is reassuring to learn that, under USERRA, I have the legal right to return to my current civilian job if I leave active duty after four or five years, but my immediate concern relates to**

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,000 "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 Spouses' 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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

<sup>2</sup> 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. For 45 years, I have collaborated 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 38 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 <mailto:swright@roa.org>.

**the SCRA. For the last 18 months, I have lived in a nice apartment that costs me \$1,500 per month in rent. The current lease is for 2023, from 1/1/2023 through 12/31/2023.**

**After reading your Law Review 23001, I gave written notice to the landlord on 5/15/2023 that I am invoking my SCRA right to terminate the lease because I will be entering on active duty on 8/1/2023. I have already largely moved out of the apartment. I sold or gave away most of my furniture and other personal property and put the rest in storage in my parents' garage. I plan to be out of the apartment completely well before the end of July.**

**The recruiter has told me that it is definite that I will travel to basic training on 8/1/2023, but that the official Army orders have not yet been prepared. The landlord has told me that my termination notice is "ineffective" until I provide him a copy of my *official Army orders*. I told the recruiter about this problem, and he gave me some Army paperwork showing my "ship date" as 8/1/2023, but he said that the official military orders have not yet been prepared and that he won't be able to provide the orders to me, to give to the landlord, until a few days before the ship date.**

**Almost half the apartments in this apartment complex are currently vacant, and the landlord is trying to get another two or three months of rent out of me by demanding that I provide something that does not yet exist. Help! What do you suggest that I do?**

**A:** I have attached, below, a copy of the complete text of section 3955 of title 50 of the United States Code. It is true that section 3955(c)(1)(A) requires that the person seeking to terminate a lease provide "a copy of the servicemember's military orders."<sup>3</sup> But section 3955 broadly defines the term "military orders" as follows: "The term 'military orders', with respect to a servicemember, means official military orders (including orders for separation or retirement), or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status."<sup>4</sup>

The "Army paperwork" that the recruiter provided you, and that you provided to the landlord, probably meets the definition of "military orders." To be safe, you should ask the recruiter to get the commanding officer of the Recruiting District to sign a statement affirming the fact that you have enlisted in the Army and that you will be reporting to basic training on 8/1/2023. Provide a copy of that statement to the landlord.

**Q: If I have done all that and the landlord still will not let me terminate the lease, what do I do next?**

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<sup>3</sup> 50 U.S.C. § 3955(c)(1)(A).

<sup>4</sup> 50 U.S.C. § 3955(i)(1) (emphasis supplied).

**A:** Contact a nearby military legal assistance office and make an appointment to consult with a military legal assistance attorney.<sup>5</sup> A military legal assistance attorney can put you in touch with the United States Department of Justice (DOJ), through the local United States Attorney. Interfering with a service member's termination of a lease under section 3955 is a federal crime, punishable by fine and up to one year of imprisonment.<sup>6</sup> That will get the landlord's attention.

**Here is the entire text of section 3955 of title 50 of the United States Code:**

**(a) Termination.**

**(1)** Termination by lessee. 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;*

**(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; or

**(C)** the date of the lessee's stop movement order described in paragraph (1)(C) or (2)(C) 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.

**(3)** Death of lessee. The spouse or dependent of the lessee on a lease described in subsection (b) may terminate the lease during the one-year period beginning on the date of the death of the lessee, if the lessee dies while in military service or while performing full-time National Guard duty, active Guard and Reserve duty, or inactive-duty training (as such terms are defined in section 101(d) of title 10, United States Code).

**(4)** Catastrophic injury or illness of lessee.

**(A)** Termination. If the lessee on a lease described in subsection (b) incurs a catastrophic injury or illness during a period of military service or while performing covered service, during the one-year period beginning on the date on which the lessee incurs such injury or illness—

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<sup>5</sup> Go to <https://legalassistance.law.af.mil>. This website is administered by the Air Force, but it shows legal assistance officers for all the services. You will need to make an appointment and visit the legal assistance office in person. Legal assistance attorneys are not permitted to give legal advice by telephone. *See also* <https://militaryonesource.mil/financial-legal/legal>.

<sup>6</sup> 50 U.S.C. § 3955(h).

- (i) the lessee may terminate the lease; or
- (ii) in the case of a lessee who lacks the mental capacity to contract or to manage his or her own affairs (including disbursement of funds without limitation) due to such injury or illness, the spouse or dependent of the lessee may terminate the lease.

**(B) Definitions.** In this paragraph:

(i) The term “catastrophic injury or illness” has the meaning given that term in section 439(g) of title 37, United States Code.

(ii) The term “covered service” means full-time National Guard duty, active Guard and Reserve duty, or inactive-duty training (as such terms are defined in section 101(d) of title 10, United States Code).

**(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;*

(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; or

(C) the servicemember, while in military service—

(i) executes a lease upon receipt of 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; and

(ii) thereafter receives a stop movement order issued by the Secretary concerned in response to a local, national, or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the servicemember or servicemember’s dependents from occupying the lease for a residential, professional, business, agricultural, or similar purpose.

(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);

**(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; or

**(C)** the servicemember, while in military service—

**(i)** executes a lease upon receipt of military orders described in subparagraph (B); and

**(ii)** thereafter receives a stop movement order issued by the Secretary concerned in response to a local, national, or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the servicemember, or the servicemember's dependents, from using the vehicle for personal or business transportation.

**(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;

**(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; or

**(D)** by electronic means, including—

**(i)** the direct delivery of material to an electronic address designated by the lessor (or the lessor's grantee) or the lessor's agent (or the agent's grantee);

**(ii)** the posting of material to a website or other internet or electronic-based information repository to which access has been granted to the lessee, the lessor (or the lessor's grantee), or the lessor's agent (or the agent's grantee); and

**(iii)** other electronic means reasonably calculated to ensure actual receipt of the material by the lessor (or the lessor's grantee) or the lessor's agent (or the agent's grantee).

**(d) Effective date of lease termination.**

**(1) Lease of premises.**

**(A)** Entrance to military service, permanent change of station, or deployment. In the case of a lease described in subparagraph (A) or (B) of 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 subparagraphs (A) and (B) of 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.

**(B)** Stop movement orders. In the case of a lease described in subsection (b)(1)(C), termination of the lease under subsection (a) is effective on the date on which the requirements of subsection (c) are met for such termination.

**(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.** In this section:

**(1) Military orders.** *The term "military orders", with respect to a servicemember, means official military orders (including orders for separation or retirement), 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.

**(3) Permanent change of station.** The term "permanent change of station" includes separation or retirement from military service.<sup>7</sup>

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<sup>7</sup> 50 U.S.C. § 3955 (emphasis supplied).

## **Please join or support ROA**

This article is one of 2,000-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing. 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.

If you are now serving or have ever served in any one of our nation’s eight<sup>8</sup> 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](http://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  
Washington, DC 20002<sup>9</sup>

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<sup>8</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>9</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).