

# **LAW REVIEW 23048 (September 2023)**

## **Can my HOA prevent me from renting out my home when I PCS?**

### **By Maj Rob Friedman\*<sup>1</sup> (USAFR)**

**Q: I bought a home/condo when I began my current military assignment. I just received PCS orders more quickly than expected and now have to relocate again. I want to maintain ownership of my home/condo but rent it out once I PCS. My Homeowners Association (HOA) prohibits renters outright (or requires a “waiting period” before owners can rent out a unit). Do I have a remedy?**

**A: Although SCRA likely doesn’t provide a “legal” remedy to property owners, a strong argument can be made that under the “spirit” of the applicable laws an HOA should make an exception.**

As explained in [Law Review 19100](#), the Servicemembers Civil Relief Act (SCRA) gives renters great latitude to terminate leases early due to military orders.

But what about property owners? HOA’s are becoming increasingly stringent and limiting owners’ rights to rent out their properties, or requiring a “waiting period” during which an owner must own (and sometimes physically reside) in the home before the owner can rent out a unit.<sup>2</sup>

Although SCRA in its current form lacks a direct remedy for owners (these statutes primarily aid military members who are renters), a strong argument can be made that under the “spirit of the law,” and HOA should make an exception:

- 1) Applicable statutes provide value protections for servicemember tenants on military orders. The Servicemembers' Civil Relief Act (SCRA, 50 U.S.C. app. §§ 501 et seq) enacted by Congress provide valuable protections for servicemember tenants on military orders.
- 2) Applicable statutes also recognize that there are limitations to an HOA’s power to restrict owner behavior (See "Freedom to Display the American Flag Act of 2005" 4 U.S.C. § 5, as pertaining to condominium associations, cooperative associations, and residential real estate management associations).
- 3) It benefits neither side (neither the owner nor the HOA) for a condo or home to “sit vacant” for a period of months or more. A responsible tenant will ensure the home is cared for in accordance with the HOA standards.
- 4) The state of [insert – nearly all states will apply] has a robust consumer/tenant protection program ensuring that landlords and HOA’s respect the rights of their tenants and owners [insert link to Attorney General page].

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<sup>2</sup> Here’s an example from an HOA Policy Document: “A minimum initial term length of 1 (one) year is required [prior to executing any lease or rental agreement]. All units must be owned no less than 1 (one) year before leasing.”

Hopefully Congress will eventually take action and bolster SCRA regulations to protect owners in the same way it protects renters, but in the meantime, the above provides a helpful strategy to ask your HOA to “see the light.” See below for text you may consider in a letter to your HOA.

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Sample letter to HOA:

*Dear [HOA POC],*

*I appreciate your time in reviewing my request. I wanted to follow up and respectfully request reconsideration.*

*It has been a great honor of my career to serve as [insert description of current assignment] these past \_\_ months/years.*

*I recently received military orders requiring me to relocate again, and I have no ability to modify or decline them. The Servicemembers' Civil Relief Act (SCRA, 50 U.S.C. app. §§ 501 et seq) enacted by Congress provides valuable protections for servicemember tenants impacted by military orders (See also the "Freedom to Display the American Flag Act of 2005," 4 U.S.C. § 5).*

*In the "spirit" of these regulations (and comparable service-member oriented policies enforced by the [insert state] Attorney General) I respectfully request similar dispensation and for you to make an exception to the ownership requirement to rent out a unit:*

- 1) I come to you with this request solely due to my new military orders that I recently received (attached, redacted of pii) -- not as an investor or for other commercial aims.*
- 2) Having my unit sit vacant serves neither me nor the HOA (a responsible tenant will ensure the home is cared for in accordance with the HOA standards).*

*I am grateful to be part of the [insert condo or HOA name] community and I would appreciate the opportunity to speak with the HOA further about this. I am grateful for your time and reconsideration.*

*Sincerely,*

*[insert]*