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The SCRA Gives the Service Member and his or her Spouse the Right To Terminate a Lease Early upon Receipt of PCS Orders.

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4.2—SCRA right to terminate a lease

¹ We invite the reader's attention to www.roa.org/lawcenter. You will find more than 2100 "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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

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He is recognized as the country's foremost authority on the SCRA and represents servicemembers throughout the country in litigation arising out of SCRA violations. He has been recognized by the ABA with both a Distinguished Service Award (2002) and the Grassroots Award (2011) in connection with his advocacy before Congress for revisions to the SCRA during the 111th Congress. He received the ABA Family Law Section Compass Award in 2010 for his work with the SCRA. He is the author of "A Judge's Benchbook for the Servicemembers Civil Relief Act", published by ABA Publishing in 2011.

Mr. Odom is a member of the Bar of the State of Louisiana, admitted to practice before the U.S. Supreme Court, the Court of Appeals of the Armed Forces, the U.S. Courts of Appeals for the Fifth, Sixth, Seventh, and Ninth Circuits, and numerous state and federal district courts throughout the country. He is a member of the Shreveport, Louisiana, and American Bar Associations and Harry Booth-Henry Politz Chapter of American Inns of Court.

He served as a member of the American Bar Association Standing Committee on Legal Assistance for Military Personnel, 2006–09. He was recalled to active duty from retirement in 2010 and assigned to the Office of Legal Policy, Undersecretary of Defense for Personnel & Readiness, The Pentagon, to author reports to the U.S. Congress on child custody matters related to the SCRA and international intra-familial abductions of children of members of the Armed Forces.

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Q: I am a Second Lieutenant in the Marine Corps. Although I am not a reservist, I recently joined the Reserve Organization of America (ROA) because I found your “Law Review” articles to be most helpful to me in understanding my legal rights and what I need to do to exercise and enforce my rights.

More than a year ago, I married my high school sweetheart. We reconnected after we both graduated from college. We got married in June 2023 and have been separated, except for some brief weekends together, for most of our first year of marriage as I enlisted in the Marine Corps and attended Officer Candidate School (OCS) and The Basic School (TBS).

When I graduated from TBS, I received permanent change of station (PCS) orders to an overseas military base, and I really want to take my wife with me so that we can live together as a couple and get a family started. The only thing stopping us from this plan is my wife’s apartment lease in Florida. In December 2022, before we married and even before I proposed to her, she signed a two-year lease on the apartment, from 1/1/2023 until 12/31/2024. She should not have to pay five months of rent (August through December of 2024) for an apartment that she does not need and will not be using because she will be with me at an overseas duty station. The lease is in my wife’s name alone because we were not married at the time she signed the lease.

In your Law Review 23001 (January 2023), you wrote about the Servicemembers Civil Relief Act (SCRA) and the right to terminate a residential lease upon entering active duty. I have heard that the

SCRA also gives a service member and his or her spouse the right to terminate a residential lease upon receiving PCS orders. Is that true?

A: Yes, section 3955 of title 50 of the United States Code provides for the right to early termination of a premises lease in several circumstances, including PCS orders when the servicemember is the lessee. Here is the entire text of section 3955:

Termination of residential or motor vehicle leases

(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—

(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 [the Service Secretary, like the Secretary of the Navy] 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.⁴

Under the facts you outlined, you, as the military member, are not the lessee of the apartment and Section 3955 would not provide you or your wife with any relief. The fact that the apartment lease that needs to be terminated is in your wife’s name alone complicates this issue, but there is another SCRA provision (50 U.S.C. § 3959, entitled “Extension of protections to dependents”) that is pertinent and could potentially offer your wife the relief she is seeking. That section provides: “Upon application to a court, a dependent of a servicemember is entitled to the protections of this title [the SCRA] 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.”⁵

⁴ 50 U.S.C. § 3955 (emphasis supplied).

⁵ 50 U.S.C. § 3959.

Although most provisions of the SCRA do not require judicial action to be effective, Section 3959 is different and requires a court to extend the protections of the SCRA to your wife (including the protections of Section 3955 allowing termination of a residential lease upon receipt of PCS orders). Your wife needs to retain an attorney in the Florida county where the apartment is located. The attorney needs to communicate with the landlord, informing him or her that, if necessary, the attorney will bring an action under section 3959 seeking to terminate your wife's remaining obligations under the lease because her active duty Marine Corps husband has been transferred overseas. The attorney should inform the landlord that if such a suit is necessary, the attorney will also ask the court to impose upon the landlord the court costs and attorney fees for this action. Under these circumstances, it is likely that the landlord will agree to an early termination of the lease.

Please join or support ROA

This article is one of 2,100-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. We add new articles each month.

ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).⁶

⁶ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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, who had commanded American troops in the recently concluded “Great War.” 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 more than 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 advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and 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 eight⁷ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership.

⁷ Congress recently established the United States Space Force as the eighth uniformed service.

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 <https://www.roa.org/page/memberoptions>.

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 20002⁸

⁸ You can also contribute on-line at www.roa.org.