



# STAFF JUDGE ADVOCATE FORT HUACHUCA, AZ



## THE SCRA AND YOUR LEASE

**Consider these questions and answers to help you determine whether you may take advantage of the protections which the Servicemember's Civil Relief Act (SCRA) affords to military personnel leasing homes or apartments. Please note that the protection provided under the SCRA also extends to dependents of the servicemember if the dependent's ability to comply with the lease, contract or other obligation is materially affected by reason of the servicemember's military service.**

### **Q: CAN A SERVICEMEMBER GET OUT OF A LEASE OR RENTAL AGREEMENT?**

A: Often, yes. A lease covering property used for dwelling, professional business, agricultural or similar purposes may be terminated by a servicemember under two conditions:

a. The servicemember signed the lease/rental agreement before entering active duty; or

b. The servicemember while in military service executes the lease and thereafter receives military orders for a permanent change of station (PCS) or to deploy with a military unit for a period of not less than 90 days. Being assigned to on-post housing is NOT considered adequate legal justification to terminate a lease unless the lease permits it.

### **Q: HOW DOES THE SERVICEMEMBER GO ABOUT TERMINATING THE LEASE?**

A: To terminate the lease, the servicemember must deliver written notice to the landlord and a copy of military orders to enter active duty, deploy or PCS. Oral notice is not sufficient. The effective date of termination is determined as follows:

a. For month-to-month rentals: Once written notice and a copy of your orders is mailed or delivered to the landlord or manager, the tenancy will terminate 30 days after the day that rent is next due. For example, if rent is due on the first of June and you mail notice on May 24th, the tenancy will terminate on July 1st. This rule takes precedence over any longer notice periods that might be specified in your rental agreement or by state law. If state law or your agreement provides for shorter notice periods, the shorter notice periods will control.

b. Lease: Once written notice and a copy of orders is mailed or delivered to the landlord or manager, the tenancy will terminate 30 days after the day rent is next due. For example, if rent is due on the 1st day of the month and the tenant provides notice on October 10th, the lease will terminate on December 1st, which is 30 days after the first time rent is due after giving notice. The tenant will have no obligation to pay rent past December 1st.

Servicemembers using the procedure set forth in the SCRA to terminate a lease should keep a copy of all documents provided to the landlord as well as notes as to when and how written notice and orders were delivered to the landlord. Ideally, written notice of termination and a copy of military orders should be delivered in person to the landlord so there is no misunderstanding as to when the lease will terminate. Alternatively, notice and orders can be sent to the landlord by certified mail, return receipt requested.

You can always try to negotiate better terms than what is required under the SCRA to terminate your lease, but if agreement cannot be reached with the landlord, then both parties are bound by the termination provisions set forth in the SCRA. The landlord must abide by the provisions of the SCRA or be in violation of federal law.

Even if there are lease break fees in the lease calling for a penalty or an “acceleration” of the remaining unpaid months of rent remaining on the lease to be paid immediately, those terms of the lease are void if proper notice is provided to the landlord pursuant to the provisions of the SCRA.

**Q: CAN I GET A REFUND OF SECURITY DEPOSIT OR PREPAID RENT?**

A: If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the servicemember upon termination of the lease. The servicemember is required to pay rent only for those months before the lease is terminated.

**Q: CAN I STOP AN EVICTION ACTION BY MY LANDLORD?**

A: If the property is rented for \$2,400 per month or less, you may ask the court to delay the eviction action for up to three months. The court must grant the stay if you request it and can prove that your military service materially affected your ability to pay.

**Q: ARE THERE PROTECTIONS AGAINST MORTGAGE FORECLOSURES?**

A: The Act protects servicemembers against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The servicemember or dependent owned the property before entry on active duty status;
- d. The servicemember or dependent still owns the property at the time relief is sought;
- e. The servicemember’s active duty obligation “materially affects” his ability to meet the financial obligation.

**Q: CAN JUDICIAL PROCEEDINGS BE DELAYED?**

A: A servicemember who is involved in civil (not criminal) judicial proceedings as either a plaintiff or defendant is entitled to a stay of proceedings if the court finds that his or her ability to prosecute or defend an action is "materially affected" by reason of his or her active duty service. A servicemember's ability to prosecute or defend a civil suit is shown to be "materially affected" when it can be satisfactorily demonstrated to the court that his or her military duties prevent him or her from appearing in court at the designated time and place. A court may stay the action for a period of not less than 90 days if the following conditions are met:

- a. The servicemember provides the court a letter or other written communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember’s ability to appear and provides a date when the servicemember will be available to appear; AND
- b. The servicemember’s commanding officer provides a letter or other communication stating that the Servicemember’s current military duty prevents his/her appearance and that military leave is not authorized for the Servicemember.

Both documents must be provided to the court for the judge to be able to make a finding that the case should be stayed due to military service.

**Q: IF A SERVICEMEMBER IS SUED, CAN A DEFAULT JUDGMENT BE ENTERED AGAINST HIM IN HIS ABSENCE?**

A: When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the servicemember's response. When no response is filed on time, a default is usually entered against the defendant. The SCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service before a default can be taken. When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent the servicemember defendant. The filing of a false affidavit subjects the filer to a misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of \$1,000, or both. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as the servicemember's civilian attorney.