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Military Tenants: Federal Law Provides Relief for Relocated Service Members

by Steve Lynch

Overseas military activity since 2001 has placed significant demands on service members, often requiring their relocation. One of the first issues implicated by a service member's entrance into active duty, deployment, or transfer of station is housing. For service members renting an apartment or house, maintaining a lease during a long term deployment or transfer of station is at best impractical, and attending to disputes that arise with a landlord may be impossible. These complications extend to nonmilitary family members who may continue to reside in the leased property during a deployment, or relocate closer to other family members. Fortunately, federal law—in the form of the Servicemembers Civil Relief Act (SCRA)¹—provides limited relief to military tenants facing problems with a lease or landlord due to military service. This article highlights SCRA provisions that may directly benefit military tenants, and offers tips on how to use them.²

Early lease termination

As a general rule, tenants who vacate early remain liable for the balance of the lease, unless a landlord is able to relet the premises. Section 535 of the SCRA changes this equation by providing relief for two broad categories of tenants who must terminate early: those already in a lease who then enter active duty; and those on active duty who enter a lease and then receive permanent change of station (PCS) or deployment orders.³

Members of either category **may** terminate a lease early without penalty or termination damages, but the earliest possible date of termination varies. For civilians (such as enlistees) entering active duty or for activated Reserve or National Guard personnel, termination **may** occur any time after the

Photo credit: Christine Singh, US Navy



Lieutenant Commander Johnny Nilsen, JAGC, USN, Command Judge Advocate, USS RONALD REAGAN (CVN 76) (right) guides ABA President Michael S. Greco during a tour of the USS Ronald Reagan in San Diego on December 20, 2005. Greco met with legal staff members of the San Diego Naval Base, Naval Legal Service Office Southwest, and Marine Base Camp Pendleton to discuss the legal assistance challenges facing members of the military.

Tip One:
*Forewarned is forearmed.
Publicize the SCRA's provisions often and early to your military clients, especially the rules on early lease termination.*

lessee's "entry into military service." For those already on active duty, lease termination may be effective as early as a month after the date of the military orders dictating a

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Military Tenants

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PCS or deployment to a military unit of at least 90 days, assuming proper notice.⁴

Counsel should be cautioned that many clients provide timely but deficient notice to landlords. Deficient notice delays the effective date of termination.

Proper notice

To trigger protection, tenants must (1) notify landlords in writing, and (2) include a copy of military orders or written confirmation from a tenant's commanding officer.⁵ Failure to do both leaves the original terms of the lease in force. Clients often fail to provide written notice, relying instead on a phone call or informal chat. In such cases, counsel should ensure that proper notice is provided immediately.

Upon proper notice, the effective date of termination depends on the lease payment terms. If the lease provides for monthly payment of rent, termination is effective 30 days after the first date on which the next rental payment is due. If rent is not paid in monthly installments, termination is effective the last day of the month following the month in which notice is delivered. To avoid surprises, counsel should alert clients that landlords may seek equitable offset under the SCRA, although experience has shown that relatively few do.⁶

There are some other details to keep in mind—Section 535 applies not only to residential leases, but also to agricultural and business leases and even vehicle leases.⁷

Activated Reserve and National Guard personnel⁸ are protected, as are dependents who are co-tenants.⁹ However, co-tenants who are not military dependents are not protected by the law.

Most landlords do not realize that willful violation of Section 535 carries with it the risk of criminal penalties, in addition to consequential and punitive damages. This is useful information to share with landlords who seize or detain a military tenant's security deposit or personal property as compensation for the tenant's lawful termination. Landlords risk up to a year in jail and significant fines.¹⁰

Tip Two:

Advise clients to use certified mail return receipt (CMRR) or another mode of delivery that requires landlords to acknowledge receipt of the notice. Ensure that clients know to keep a copy of their notice, activation or PCS orders, and the CMRR signature card when it is returned in the mail.

Eviction and distress

The SCRA prohibits landlords from evicting most military tenants and their dependents without a court order.¹¹ The prohibition is limited to residential leases where the monthly rent does not exceed an amount adjusted each year for inflation.¹² In 2005, that amount was \$2534.32.¹³ Landlords must also obtain a court order before subjecting a tenant's personal property to distress for rent.¹⁴

If a landlord seeks a court order for eviction or distress, the SCRA affords broad discretion to stay the proceedings to protect the interests of the service member and all parties.¹⁵ A stay may be entered on the court's own motion or at the

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Military Tenants

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request of a service member whose ability to pay rent is “materially affected” by military service. The law provides for a 90 day stay, which the court may lengthen or shorten as justice and equity require. Note that courts may look at the “totality of the circumstances” in determining material affect, not just the fact that a tenant’s income has dropped as a result of military service.¹⁶ The law provides for a 90 day stay, which the court may lengthen or shorten as equity and justice require. The court has broad equitable powers to adjust the terms of the lease to “preserve the interests of all parties.” Willful violation of Section 531 carries with it the same criminal penalties as Section 535.

Storage liens

Landlords and others who hold a storage lien on the property of a military tenant cannot enforce the lien without a court order.¹⁷ Tenants are protected while on active duty and up to 90 days afterwards. The order must be obtained before the lien is enforced. Tenants may request a stay of enforcement or the court may exercise this right on its own motion where the tenant’s ability to satisfy the lien is “materially affected” by military service. As with the provisions already

Tip Three:
When advising military tenants, keep in mind that some states provide statutory protections over and above those contained in the SCRA Familiarize yourself with these provisions, and include them in your training initiatives.

Enduring LAMP

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Recruiting more volunteers

While refining and upgrading Enduring LAMP’s Web-driven attorney match system, the Louisiana Bar also refreshed its list of volunteer attorneys in the program. A blast email seeking volunteers was sent out to all 22,000 members of the state bar. Volunteers also were sought through an electronic bar newsletter. During the Web site renovation, all of the original program volunteers were contacted, and asked to confirm their continued availability. As a result, the bar has developed a reliable list of 99 active pro bono volunteers ready to serve Louisiana reservists during a time of great need.

The program now is in position to be largely self-sustaining. Judge Jules Edwards III, a state judge also serving on active duty as State Judge Advocate for the Louisiana Army National Guard, and also the chair of the LSBA LAMP Committee, says that he does not believe that Louisiana service members could be served adequately without the program. “Military lawyers can do a lot for service personnel but when

civilian lawyers get involved, ready to file pleadings and go to court, the issues usually are resolved quickly and in the service member’s favor,” explains Edwards.

As the LSBA was launching its renewed Enduring LAMP Web site, the Louisiana Office of the Attorney General established an educational Web site designed to assist veterans and, specifically, called-to-duty reservists and National Guard members. The site is located at www.ag.state.la.us/AGLetter.aspx. It provides a wealth of knowledge and practical advice to all Louisiana service personnel, whether they are in the state or deployed.

The Louisiana State Bar Association and the state’s attorneys have extended themselves, in trying circumstances, not only to civilians in dire need but to those who are serving our country. If this state, in a time of crisis, can think about and act upon the needs of service personnel, attorneys and bar associations everywhere can find the time to ensure that Enduring LAMP keeps shining brightly.

Admiral Thomas A. Morrison, USN (Ret.) is a member of the ABA Standing Committee on Legal Assistance for Military Personnel.

discussed, willful violation carries with it criminal penalties.

Default judgments

The SCRA provides broad relief from default judgments that is not limited to military leases. If a landlord obtains a default judgment against a current or former military tenant, the

SCRA directs that a court shall reopen the judgment if provided that the tenant’s military service “materially affected” his or her ability to defend the initial suit, and the tenant has a meritorious legal defense.¹⁸ The tenant has up to 90 days after release from active duty to petition the court.¹⁹

Stay of proceedings

If an action other than for eviction

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or distress (but otherwise covered by the statute) is brought against an absent military tenant, the court again has broad discretion to grant a minimum 90-day stay of proceeding. The court may do so on its own motion, or counsel's motion, if it determines that (1) there may be a defense and the defense cannot be presented without the presence of the defendant, or (2) counsel, after due diligence, has been unable to contact the defendant or determine whether a meritorious defense exists.

Where the military tenant has received notice of the covered action brought against him or her, the tenant at any point in the proceeding may, upon the tenant's application or the court's own motion, obtain a stay of proceedings provided that the tenant explains to the court how current military duties prevent the tenant's appearance, and also state when the tenant will be available to appear. In addition, tenants must submit a letter from their commanding officer confirming the impairment and that leave currently is not authorized. A court must grant a minimum 90 day delay for tenants who comply with these notice requirements.²⁰ The stay may be extended further as warranted.

Conclusion

The SCRA contains provisions that offer military tenants an array of options not available to their civilian counterparts. Legal assistance attorneys would provide a great service to them by publicizing these as part of a proactive training program.

Endnotes

- ¹ Servicemembers Civil Relief Act (SCRA), 50 U.S.C App. §§ 501-596 (2005)
- ² For an overview of the SCRA, see John Meixel, *Servicemembers Civil Relief Act Replaces Soldiers' and Sailors' Civil Relief Act*, ARMY LAW., Dec. 2003 at 38.
- ³ 50 U.S.C. App §535
- ⁴ *Id.* §535(b)(1)(A) & (B)
- ⁵ *Id.* §535(c)(1) & (i)(1)
- ⁶ See Maj. Paul Conrad, Note, *Pre-Service Lease Terminations May Be Subject to Landlord "Equitable Offsets"*, ARMY LAW., Apr. 1997 at 153.
- ⁷ *Id.* §535(b)(1) & (b)(2). There are significant differences between vehicle and real property leases in terms of eligibility, notice and effective dates of termination. This article focuses on residential leases.
- ⁸ Reserve and National Guard personnel are covered when activated under 10 USC § 101(d)(1) - such as for deployment to Iraq; and when performing duties under 32 USC § 502(f) for more than 30 days - such as for hurricane relief efforts. See 50 U.S.C. App. §511(1) & (2)
- ⁹ 50 U.S.C. App §535(a)(2)
- ¹⁰ The SCRA does not specify the amount of the fine, but does specify the length of imprisonment as "not more than a year." *Id.* §535(h)(1). Imprisonment of not more than a year is limited to Class A misdemeanors under 18 USC §3581. By inference, fines associated with Class A misdemeanors should apply. Under 18 USC §3571 those fines are up to \$100,000 for individuals and \$200,000 for businesses.

- ¹¹ 50 U.S.C. App §531(a)(1)(A) & (B)
- ¹² *Id.* §531(a)(1)(A)(ii) & (a)(2)
- ¹³ 70 Fed. Reg. 2396 (Jan 13, 2005)
- ¹⁴ 50 U.S.C. App §531(a)(1)(B)
- ¹⁵ *Id.* §531(b)(1)
- ¹⁶ See *Fed. Home Loan Mortgage Corp. v. Sincaban* (unpublished) (U.S. Dist. Ct. W. D. WI. Order # 93-C-0090-C 13 Dec 93). Reserve doctor's wages dropped upon recall to active duty; however investment income remained significant. Cited in The Judge Advocate General's School, U.S. Army JA 260, *Soldiers and Sailors Civil Relief Act Guide*, ch. 8-6 (2000). Found at: www.jagcnet.army.mil/laawsxxi/cds.nsf.
- ¹⁷ 50 U.S.C. App §537
- ¹⁸ *Id.* §521(g)(1)
- ¹⁹ Although petitioners have up to 90 days AFTER military service to challenge a default judgment, the judgment itself must have been entered either (1) during petitioner's military service, or (2) up to 60 days AFTER military service. *Id.* §521(g)(1) & (g)(2).
- ²⁰ *Id.* §522(b). Delays beyond 90 days are within the discretion of the court.

Steve Lynch, a recipient of the LAMP Distinguished Service Award in 2003, serves as legal assistance attorney for the Ninth Coast Guard District in Cleveland.

Tip Four:

Military tenants may not realize that the SCRA gives them a "second" chance to challenge default judgments or liens. At demobilization or pre-separation briefings, highlight the post-active duty deadlines for challenging both.