



NOTIFICATION LETTER

ATTENTION: Landlord/Property Management Company

DATE: December 2021

RE: Protection of Servicemembers' Housing Rights during the Pandemic

This letter is to inform you of the federal housing protections offered to servicemembers and their dependents under the Servicemembers Civil Relief Act (SCRA).¹ The purpose of this federal law is to provide servicemembers with protections to enable them to devote their entire energy to the defense needs of the Nation. The COVID-19 pandemic has underscored the importance of these protections, as active duty servicemembers and members of the National Guard and Reserve—and their families—have shouldered new burdens to respond to the crisis.

The Department of Justice (DOJ) ensures that the SCRA rights of servicemembers are protected and the Consumer Financial Protection Bureau (CFPB) works to help military families overcome unique financial challenges by providing educational resources, monitoring complaints, and working with other agencies to solve problems faced by servicemembers. We request that you carefully review the information in this letter and evaluate your practices to ensure compliance with this federal law.

Early Lease Terminations

The SCRA allows servicemembers to terminate a lease early after entering military service or receiving qualifying military orders. Under the law, qualifying orders include orders for a permanent change of station, orders for a deployment of at least 90 days, and separation or retirement orders.² In addition, Congress recently amended the SCRA to extend these lease protections for servicemembers under stop movement orders related to the COVID-19 pandemic.³

¹ See Title 50 U.S. Code, Sections 3901-4043.

² *Id.* at § 3955(a)(1) & (b)(1).

³ *Id.* at § 3955(a)(1)(C).

To terminate a residential lease under the SCRA, servicemembers must submit a written notice and a copy of their military orders—or a letter from a commanding officer—to the landlord or landlord’s agent.⁴ If a servicemember pays rent on a monthly basis and provides proper notice and a copy of the military orders, the lease will terminate 30 days after the next rent payment is due.⁵ A termination under the SCRA will also terminate any obligations that a servicemember’s dependents may have under the lease. Moreover, if a servicemember terminates a lease under the SCRA, the law prohibits the landlord from imposing any early termination charges, though “reasonable charges to the lessee for excess wear” are permitted.⁶

In addition, landlords and property managers should take note of the following details about the SCRA’s lease termination protections, which are sometimes misunderstood:

- *Concession and Discount Chargebacks:* The Department of Justice has taken the position that requiring servicemembers to repay rent concessions or discounts is an early termination fee that violates the SCRA.⁷
- *Mileage Requirement:* The SCRA does not contain any requirement regarding minimum mileage between the leased property and the new military duty station. As such, any mileage requirements contained in a lease are likely unenforceable.
- *Waivers of SCRA Rights:* The SCRA allows servicemembers to waive their rights under the SCRA, provided that the waiver is executed: (1) as an instrument separate from the contract; (2) during or after the relevant period of military service; and (3) in at least 12-point font.⁸ The Department of Justice has taken the position that waivers are invalid if they are addenda to a lease and not separate instruments, are signed at the same time as the lease, and are not supported by any additional benefit to the servicemember.⁹
- *National Guard Members:* Members of the National Guard are covered by the SCRA when they are on orders for more than 30 days under 32 U.S.C. § 502(f) to respond to a national emergency, as declared by the President or Secretary of Defense.¹⁰ Members of the National Guard are also covered by the SCRA when serving under Title 10 orders for federal active duty, including training orders.¹¹

⁴ *Id.* at § 3955(c).

⁵ *Id.* at § 3955(d)(1).

⁶ *Id.* at § 3955(e).

⁷ See *United States v. United Communities LLC* (D.N.J.) (www.justice.gov/opa/pr/justice-department-reaches-settlement-new-jersey-military-housing-provider-charging-unlawful); *United States v. Twin Creek Apartments LLC* (D. Neb.) (www.justice.gov/opa/pr/justice-department-reaches-settlement-nebraska-landlord-charging-unlawful-lease-termination).

⁸ See 50 U.S.C. § 3918.

⁹ See *United States v. Western Rim Investors* (www.justice.gov/opa/pr/justice-department-reaches-settlement-san-antonio-housing-providers-charging-unlawful-lease).

¹⁰ See 50 U.S.C. § 3911(2)(A)(ii).

¹¹ *Id.* at § 3911(2)(A)(i).

- *Joint Lessees and Dependents:* If a servicemember terminates their lease under the SCRA, the obligations of any dependents under the lease may also be terminated.¹² The SCRA defines dependents to include (1) a servicemember's spouse; (2) a servicemember's child; or (3) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under the SCRA.¹³ This means that it is possible for a servicemember's roommate or non-spousal partner to be relieved of their obligations as joint lessees if the servicemember terminates the lease under the SCRA.
- *Retirement or Separation Orders:* The SCRA specifically states that receipt of retirement or separation orders qualifies a servicemember to terminate his or her lease under the SCRA.¹⁴
- *Delivery of Notice:* Notice and orders may be delivered through mail, hand-delivery, e-mail, or a communication portal designated by the landlord.¹⁵
- *Time Period to Request Termination:* The servicemember may request termination at any time after receipt of orders.¹⁶ The SCRA does not require that servicemembers exercise their SCRA rights within any particular period of time after receiving orders.

Eviction Protections

A landlord may not evict a servicemember, or the servicemember's dependents, from a residential home during a period of military service without first obtaining a court order.¹⁷ This requirement applies regardless of whether a state otherwise permits evictions without court orders (also known as non-judicial evictions).

Furthermore, if a landlord or property manager pursues a court order through a default judgment, the SCRA requires that they file an affidavit notifying the court of the tenant's military status. If the tenant is in military service, the court must appoint a *guardian ad litem* to represent the interests of the servicemember.¹⁸ The court may also postpone the judgment by 90 days if the servicemember cannot be reached or the servicemember's appearance is necessary to present a defense.¹⁹

¹² *Id.* at § 3955(a)(2).

¹³ *Id.* at § 3911(4).

¹⁴ *Id.* at § 3955(i)(1).

¹⁵ *Id.* at § 3955(c)(2).

¹⁶ *Id.* at § 3955(a)(1).

¹⁷ This protection applies to properties where the monthly rent does not exceed the annually adjusted maximum, set by the Secretary of Defense. As of January 1, 2021, the maximum amount is \$4,089.62. *See* 86 F.R. 6878; www.federalregister.gov/documents/2021/01/25/2021-01481/publication-of-housing-price-inflation-adjustment.

¹⁸ *See* 50 U.S.C. § 3931.

¹⁹ *Id.* at § 3931(d).

Additional Resources

- *Verification of Military Service* – <https://scra.dmdc.osd.mil/> (where landlords or property managers can verify a lessee’s military status by completing a search online using the Department of Defense’s Manpower Data Center (DMDC) database)
- *DOJ’s Servicemembers and Veterans Initiative* – www.servicemembers.gov
- *CFPB’s Office of Servicemember Affairs* – www.consumerfinance.gov/servicemembers

Summary

The SCRA provides important legal protections for our military families who do so much for our country. The DOJ and CFPB appreciate your assistance in educating your employees about these protections to ensure our Nation’s heroes are safeguarded.

Sincerely,



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