

Lease Termination and the Servicemember Civil Relief Act

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1. When is there a right to terminate a lease under the SCRA? The Servicemember Civil Relief Act (SCRA) (50 USC 3901 et seq) is a federal law that provides many important rights and protections to service members (SMs). One of these rights is the right to terminate a lease early, prior to the expiration of the lease term. Section 3955 of the SCRA (50 USC 3955) provides tenants with a right to terminate a residential lease early in four circumstances:

- The SM entered the lease prior to military service;
- The SM entered the lease while on active duty and thereafter received permanent change of station (PCS) orders;
- The SM entered the lease on active duty and thereafter received orders to deploy in excess of 90 days; and
- The SM died on active duty or National Guard service and the SM's spouse requests lease termination within one year of the death (2018 amendment).

2. What are PCS Orders? In their most common form, PCS orders assign a SM to a new duty station for non-temporary duty; for example, transferring a Marine from Camp Lejeune, North Carolina to Camp Pendleton, California. The orders themselves will generally say that they are PCS orders. However, PCS orders also include such matters as retirement, or separation from active duty service under honorable conditions. For a complete listing of the types of orders that are considered PCS orders, see the Joint Travel Regulation, or consult your legal assistance attorney.

3. What does the tenant need to do to exercise lease termination rights under the SCRA? To exercise these SCRA rights, the tenant must provide written notice to the landlord of intent to terminate the lease. Notice must also include a copy of the orders that give rise to this right to terminate, or a letter from the tenant's commanding officer verifying that the tenant has been issued such orders. The websites of each of the Legal Service Support Teams (LSSTs) within Marine Corps Installations East (LSST Lejeune, Parris Island, Cherry Point) contain forms for the tenant demand to terminate the lease early and for the CO verification of orders. Use those web posts as a guide, adjusting as needed to suit your situation. If you have questions, you are encouraged to consult your military legal assistance attorney.

4. Can an officer subordinate to the CO sign a letter verifying the SM's orders?

a. *By direction authority.* Commanders often delegate authority to subordinate officers, and the more senior the commander, the more likely that this delegation will occur. For example, the commanding general may delegate certain issues relating to the expenditure of funds to the comptroller, or certain matters relating to the assignment of personnel to the adjutant or personnel officer. When the subordinate officer has been delegated such authority and signs for the commanding officer, the letter will indicate at the top that it is from the commander. The subordinate will sign the letter along with the designation, "By direction," or sometimes simply

“By dir.” In fact, official PCS orders are often signed “by direction.” A tenant who provides such orders to the landlord, as well as the letter to terminate the lease early, has complied with the SCRA notice requirements. However, what happens if the tenant does not provide the landlord with official military orders, and provides instead a letter from the commander verifying the receipt of such orders? Can a subordinate officer sign such verification letter by direction of the CO? The SCRA does not specifically address this issue.

b. *The Legal Answer.* If the case were ever heard before an appellate court, the court would almost certainly rule that a letter signed by a person with by direction authority to do so is sufficient verification of orders. The SCRA says that the letter must be “from” the commanding officer. It does not require that the letter be “signed” by the commander. Furthermore, it is common practice within the armed forces to delegate authority in this manner. Finally, the U.S. Supreme Court has long held that the SCRA should be interpreted liberally with an eye towards assisting SMs.

c. *Best Practices.* However, it is unlikely that such a case will ever reach an appellate court; the sums involved in litigation vastly outweigh the sums involved in lease termination. The better practice therefore is to have an orders verification letter signed by the CO actual, so as not to give the landlord any excuse, however flimsy, to claim noncompliance with the notice requirements of the SCRA.

5. When is the date of lease termination under the SCRA? The lease terminates, as does the tenant’s obligation to pay rent, thirty days after the next rent is due after the tenant provides satisfactory notice. For example, if the lease calls for rent to be paid on the first day of each month, and the tenant provides notice on April 15th, the lease terminates thirty days after 1 May.

6. What about the lease obligations of the co-tenant spouse? Termination of the lease obligations of the SM under the SCRA also terminate the lease obligations of the co-tenant spouse.

7. Can the landlord make me waive, or give up, my SCRA lease termination rights? The SCRA itself says that its protections can be waived, and prescribes requirements for such waiver. The waiver must:

- Be in writing
- Be on a document separate from the lease
- Be signed by the SM;
- Specify the legal instrument (e.g., the lease) to which it applies; and
- Be in at least 12 point type.

Failure to meet all of the above requirements render a purported SCRA waiver legally ineffective. Furthermore, provisions in the lease that limit the SCRA lease termination right, or impose additional conditions, are ineffective.

8. Forfeiture of Up Front Rent Concessions. Sometimes landlords entice tenants to sign a lease by providing some concession, such as the first month’s rent free. Further, sometimes the lease provides that such concessions are forfeit if the tenant terminates the lease prior to the end of the lease term. However, it is unlawful to apply such forfeiture provisions to a tenant that is

terminating the lease under the SCRA. In fact, the U.S. Department of Justice has taken several enforcement actions against property managers on precisely this issue.

9. Are there any other laws that provide military lease termination rights?

a. *North Carolina Military Lease termination.* North Carolina law (NC Gen Stat 42-45) provides lease termination rights to SMs. While there is a great deal of overlap between the SCRA and NC Gen Stat 42-45, these laws are not identical. Unlike SCRA rights, NC lease termination rights cannot be waived. In those situations in which both NC Gen Stat 42-45 and the SCRA apply, the SM tenant generally pays less by terminating the lease in accordance with the SCRA. However, there are discrete situations in which the SM tenant pays somewhat less under NC law. Additional information concerning the interplay between NC Gen Stat 42-45 can be found in the “Take 1” handout on lease termination posted to the web page of the NC State Bar committee on Legal Assistance for Military Personnel (www.nclamp.gov). You may also discuss these matters with your military legal assistance attorney.

b. *South Carolina Military Lease Termination.* South Carolina does not have a state military lease termination statute.

c. *Other cases.* States may provide lease termination rights to cover situations other than military service. For example, North Carolina provides lease termination rights if the residential residence is so badly damaged that it can not be made reasonably fit except at a cost exceeding a year’s rent (NC Gen Stat 42-12), or if there is a foreclosure on the rented premises (NC Gen Stat 42-45.2) or in some cases of sexual assault, stalking, and domestic violence (NC Gen Stat 42-45.1). Each of these statutes has specific requirements that you should discuss with qualified legal counsel.

10. Where can I complain if the landlord violates my SCRA rights? You can discuss the matter with your military legal assistance attorney. In North Carolina, you can make an on line complaint against property managers (but not landlords renting their own home) to the North Carolina Real Estate Commission (www.ncrec.gov). You can make an on line complaint about landlords or property managers to the North Carolina Attorney General (www.ncdoj.gov). Perhaps most importantly, you can also make an on line complaint about SCRA violations directly to the U.S. Department of Justice (DoJ), which has taken several enforcement actions against property managers to force SCRA compliance. In addition, the DoJ may demand many records from the property manager, potentially revealing SCRA violations against other tenants <https://www.justice.gov/servicemembers>

11. Where can I obtain additional information? Your military legal assistance officer can help. In addition, there are two articles on the web page of the NC State Bar committee for Legal Assistance for Military Personnel (www.nclamp.gov):

Take One Handout: Early Lease Termination for Servicemembers and Their Dependents, which can be found under the “For the Military” tab, and

Property Manager's Guide to the SCRA, which can be found under the "For Lawyers," tab under the sub-file, "Additional Resources."

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