



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge Advocate
Headquarters, Fort Carson

Keeping You Informed On Personal Legal Affairs



THE SERVICEMEMBERS

CIVIL RELIEF ACT (SCRA) AND YOUR LEASE

Consider these questions and answers to help you determine whether you may take advantage of the protections which the Soldiers' and Sailors' Civil Relief Act affords to servicemembers leasing homes or apartments.

INTRODUCTION: The Servicemembers Civil Relief Act (SCRA), was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard are also protected under the SCRA (hereafter referred to as Act). The protection begins with the date of entering active duty service and generally terminates within 30 to 90 days and in certain cases for up to six months after release from active duty.

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. Two conditions must exist:

- a. The servicemember signed the lease/rental agreement before entering active duty; and
- b. The servicemember or his or her dependents occupied the leased premises for the above purposes.

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

A: To terminate the lease, the servicemember must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

- a. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination.
- b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

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.

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

A: If the property is rented for \$1,200 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 these 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. Courts are reluctant to grant long-term stays of proceedings and tend to require service-member's to act in good faith and be diligent in their efforts to appear in court. 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. An affidavit setting out all the facts and circumstances is usually required.

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.

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