

Terminating Leases and Contracts when Entering Active Duty

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4.2—SCRA right to terminate a contract or lease upon mobilization

Q: I am a lieutenant colonel in the Army Reserve and a life member of the Reserve Officers Association (ROA). For many years, I have read and utilized your “Law Review” articles about the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and other laws that are especially pertinent to those of us who serve our country in uniform.

I have volunteered for and have been selected for a one-year recall to active duty, to be performed at the Pentagon. My active duty period is scheduled to start on July 1, 2015. I have found an apartment in Arlington, Virginia, within walking distance of the Pentagon, and I will soon sign a lease on that apartment, to move in on July 1.

My problem is that I have a lease on an apartment here, and that lease does not expire until January 31, 2016. Does the SCRA give me the right to terminate my apartment lease upon my going on active duty?

A: Yes.

Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which was originally enacted in 1917, shortly after the United States entered World War I. The SCRA is codified in the Appendix of Title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b). Here is the text of the pertinent SCRA section:

§ 535. Termination of residential or motor vehicle leases

(a) Termination by lessee.

(1) In general. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

(A) *the lessee's entry into military service;* or

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find more than 1,300 articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases. A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases. This section applies to the following leases:

(1) Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) *the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or*

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a change of permanent station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--

(A) *the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or*

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders--

(i) for a change of permanent station--

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) Manner of termination.

(1) In general. Termination of a lease under subsection (a) is made--

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished--

(A) by hand delivery;
(B) by private business carrier; or
(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination.

(1) Lease of premises. *In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.*

(2) Lease of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities.

(1) Leases of premises. Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(2) Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Misdemeanor. Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's

dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(i) Definitions.

(1) Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS. The term "continental United States" means the 48 contiguous States and the District of Columbia.

50 U.S.C. App. 535 (emphasis supplied).

To terminate the apartment lease, you need to follow the procedures set forth in section 535(c)(1)(A)—you need to give written notice of the lease termination to the landlord, or the landlord's agent, along with a copy of your military orders calling for you to go on active duty for a period of at least 180 days. The lease termination is effective 30 days after the due date of the next monthly rental payment after the date when you give written notice of lease termination (and a copy of your orders) to the landlord. For example, if you want to terminate the lease effective June 30, 2015, you need to give the written notice by May 31—the next due date of monthly rent, after May 31, is June 1, and 30 days later is June 30.

Q: I have already arranged for all my furniture and other property to be removed from the apartment in late May, and I want to terminate the lease as of June 1. I can stay at the home of my parents for a few weeks in June, before I drive to Arlington to move into my new apartment and report to active duty on July 1, as ordered. The landlord told me that since my military orders start on July 1 I can terminate the lease on that date, and not earlier. What do you think?

A: I think that the landlord is wrong. You are not required to wait until June 30 or July 1 to terminate the lease. If you want to terminate the lease effective June 1, you must give the landlord written notice (and a copy of your orders) by April 30, and you must have all your furniture and other property out of the apartment by the end of May.

Q: I have a 48-month lease on a luxury automobile, with 36 months left on the lease. Since I have found a new apartment in Arlington, within walking distance of the Pentagon, I want to terminate the lease on the automobile. Does the SCRA give me the right to terminate the automobile lease?

A: Yes. Because you were not on active duty when you signed the lease, and because you are entering active duty for a period of at least 180 days during the term of the lease, you have the right to terminate this lease, under section 535(b)(2)(A). You need to follow the procedures set forth in section 535(c).

Q: The automobile leasing company told me that a service member has the right to terminate a lease of a vehicle *only* when the service member receives Permanent Change of Station (PCS) orders to a place outside the Continental United States (the 48 contiguous states and the District of Columbia). Thus, the leasing company claims that I do not have the right to terminate the lease because my orders call for me to perform my military duty in the Pentagon, in Virginia. What do you think of the company's claim?

A: The company is confusing section 535(b)(2)(A) (your situation) with section 535(b)(2)(B) (a different situation). Section 535(b)(2)(B) applies to a service member *who is already on active duty when he or she signs the vehicle lease*. Such a service member is permitted to terminate the vehicle lease only upon deployment or transfer to a location outside the 48 contiguous states and the District of Columbia.

Your situation is different, because you were *not on active duty when you signed the vehicle lease*. In your situation, under section 535(b)(2)(A), you have the right to terminate the vehicle lease upon entering active duty, without regard to the location of the active duty.

Q: I have a 24-month cell phone contract with 18 months left on the term of the contract. I am not satisfied with my cell phone contract. I recently learned that I can get better service, at a lower price, with a different company. Does the SCRA give me the right to terminate my cell phone contract upon entering active duty?

A: Perhaps. Here is the pertinent SCRA section:

§ 535a. Termination of telephone service contracts

(a) Termination by servicemember.

(1) Termination. A servicemember may terminate a contract described in subsection (b) at any time after the date the servicemember receives military orders to relocate for a period of not less than 90 days *to a location that does not support the contract*.

(2) Notice. In the case that a servicemember terminates a contract as described in paragraph (1), the service provider under the contract shall provide such servicemember with written or electronic notice of the servicemember's rights under such paragraph.

(3) Manner of termination. Termination of a contract under paragraph (1) shall be made by delivery of a written or electronic notice of such termination and a copy of the servicemember's military orders to the service provider, delivered in accordance with industry standards for notification of terminations, together with the date on which the service is to be terminated.

(b) Covered contracts. A contract described in this subsection is a contract for cellular telephone service or telephone exchange service entered into by the servicemember before receiving the military orders referred to in subsection (a)(1).

(c) Retention of telephone number. In the case of a contract terminated under subsection (a) by a servicemember whose period of relocation is for a period of three years or less, the service provider under the contract shall, notwithstanding any other provision of law, allow the servicemember to keep the telephone number the servicemember has under the contract if the servicemember re-subscribes to the service during the 90-day period beginning on the last day of such period of relocation.

(d) Family plans. In the case of a contract for cellular telephone service entered into by any individual in which a servicemember is a designated beneficiary of the contract, the individual who entered into the contract may terminate the contract--

(1) with respect to the servicemember if the servicemember is eligible to terminate contracts pursuant to subsection (a); and

(2) with respect to all of the designated beneficiaries of such contract if all such beneficiaries accompany the servicemember during the servicemember's period of relocation.

(e) Other obligations and liabilities. For any contract terminated under this section, the service provider under the contract may not impose an early termination charge, but any tax or any other obligation or liability of the servicemember that, in accordance with the terms of the contract, is due and unpaid or unperformed at the time of termination of the contract shall be paid or performed by the servicemember. If the servicemember re-subscribes to the service provided under a covered contract during the 90-day period beginning on the last day of the servicemember's period of relocation, the service provider may not impose a charge for reinstating service, other than the usual and customary charges for the installation or acquisition of customer equipment imposed on any other subscriber.

(f) Return of advance payments. Not later than 60 days after the effective date of the termination of a contract under this section, the service provider under the contract shall refund to the servicemember any fee or other amount to the extent paid for a period extending until after such date, except for the remainder of the monthly or similar billing period in which the termination occurs.

(g) Definitions. For purposes of this section:

(1) The term "cellular telephone service" means commercial mobile service, as that term is defined in section 332(d) of the Communications Act of 1934 ([47 U.S.C. 332\(d\)](#)).

(2) The term "telephone exchange service" has the meaning given that term under section 3 of the Communications Act of 1934 ([47 U.S.C. 153](#)).

If the cell phone company does not offer cell phone service in the DC metropolitan area, you have the right to terminate your cell phone contract. If the cell phone company does offer cell phone service in the DC area, you do not have the right to terminate the contract.

Q: I have a one-year contract for a health club membership with a local (not national) health club chain. I have checked. This chain does not have a location in the DC metropolitan area. Does the SCRA give me the right to terminate my health club membership contract?

A: No. The SCRA gives you the right to terminate a premises lease, a vehicle lease, or a cell phone contract, under certain circumstances. The SCRA does not have a general provision giving the person entering active duty the right to terminate leases and contracts, and the SCRA contains no specific provision dealing with health club contracts. You do not have the legal right to terminate the health club contract, unless the contract itself gives you that right.