

Landlords, Leases And The Servicemembers Civil Relief Act

Law360, New York (November 10, 2015, 12:24 PM ET) --



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As President Obama slows the drawdown of troops overseas — and as the nation expands its fight against ISIS — a growing number of service members will seek the benefits and protections of a nearly century-old law that protects them on the homefront while they serve on active duty: the Servicemembers Civil Relief Act. Although most of the SCRA focus over the past few years has been on the law's foreclosure and interest rate protections, the SCRA is a broad statute that can affect nearly all of a service member's civil obligations.

In August, a press release issued by New York Attorney General Eric Schneiderman highlighted the need for landlords and financial institutions to remain vigilant regarding their compliance with the SCRA. In the wake of an announcement that 2,500 New York service members would be deployed overseas, Attorney General Schneiderman cautioned landlords to observe both the letter and spirit of the SCRA's protections for residential tenants.[1] And in October, Arkansas Attorney General Leslie Rutledge issued her own consumer alert to ensure that landlords and military families are aware of the SCRA's eviction protection.[2]

In this article, we explore two of the SCRA's lesser-known provisions that govern residential leases: the ability of a service member or dependent to terminate a residential lease at will and the protection against eviction of a service member or service member's dependent during the service member's active duty military service.

SCRA Lease Termination Benefit — Section 535

Entry into military service, as well as deployment or a permanent change of station, can cause financial distress for military families. To mitigate this distress, the SCRA provides several protections and

benefits, including the right to terminate a residential lease in certain circumstances.[3] This portion of the SCRA permits a service member or service member's dependents to terminate a real property lease — without penalty — at any point after receiving qualifying military orders or entering military service.[4] Service members who, after entering military service and executing a lease, receive permanent change of station or deployment orders for a period of at least 90 days may also take advantage of this protection.[5]

Although broadly written, there are some limitations to this protection. The protection applies to any property occupied for residential, professional, business, agricultural or similar purposes, so long as the lease was executed prior to the service member's military service.[6] However, the statutory text only applies to property actually occupied or intended to be occupied by a service member or the service member's dependents. If a service member sublets a property to another, the service member no longer occupies the property and may have forfeited the lease termination protection of the SCRA.

Lease termination is not automatic, however, and the procedure to terminate a lease has been subject to debate. A service member must provide written notice of the termination to the landlord, as well as a copy of the service member's military orders.[7] Unlike other portions of the SCRA, under the lease termination provision the term "military orders" is defined expressly to include any "notification, certification or verification from the service member's commanding officer." [8] Attorney General Schneiderman emphasized this requirement in his press release, as formal orders often are delayed. Landlords must be wary — even documents that do not appear to be official military orders may permit a service member to terminate a residential lease.

Once the service member provides appropriate military orders or notice, the SCRA provides detailed provisions for how to terminate the lease agreement. If the rental agreement provides for a monthly payment, the lease terminates 30 days after the payment following the termination notification.[9] For any other rental payment arrangements, the lease terminates on the last day of the month following notification.[10] Although the SCRA prohibits charging a termination fee, the lessor may require the lessee to pay rent due prior to the termination date, as well as any taxes, summonses, wear and tear charges and any other fees that are outstanding on the termination date.[11]

SCRA Eviction Protection — Section 531

Unfortunately, even with the SCRA's early termination provision, some service members and their dependents fall behind on their rent payments and face eviction. The SCRA also provides these service members and their dependents with certain protections. Not every service member or service member's dependent is eligible for this protection; only those with a monthly rent that does not exceed \$2,400 in 2003 or its inflation-adjusted equivalent qualify. In 2015, the maximum monthly rent to be eligible for the SCRA's eviction protection is \$3,329.84.[12]

Rather than prohibiting evictions outright, the SCRA requires a landlord to obtain a waiver or court order prior to proceeding with an eviction.[13] And after a court receives an eviction petition, the court may stay the proceedings for a period of 90 days or adjust the obligation under the lease to preserve the interests of all parties if military service has materially affected the service member's ability to meet his or her financial obligations.[14]

Unlike many of the SCRA's provisions, the eviction protection applies not only to the service member's or dependent's immediate landlord, but also to any other entity with "paramount title." [15] This appears to eliminate any privity of contract requirement and may include entities such as a mortgagee

that obtains a property with a preexisting tenant through foreclosure.[16] However, there must still be a formal rental agreement in effect — an action to remove an occupant who is not in a landlord-tenant relationship is unaffected by the SCRA.[17]

Conclusion

As members of the military continue to serve on active duty both stateside and abroad, landlords and financial institutions must remain wary of the SCRA's eviction and lease termination provisions. In particular, because the SCRA's lease provisions apply to both service members and their dependents, even someone appearing unlikely to be affected by military service may nevertheless be entitled to the law's protections.

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[1] Press Release, A.G. Schneiderman Cautions Watertown Area Landlords About Servicemembers' Rights In Wake of Fort Drum Deployment (Aug. 6, 2015).

[2] Press Release, Consumer Alert: Service Members Protected from Eviction (Oct. 21, 2015).

[3] 50 U.S.C. app. § 535.

[4] *Id.* § 535(a)(1).

[5] *Id.*

[6] *Id.* § 535(b)(1).

[7] *Id.* § 535(c)(1)(A).

[8] *Id.* § 535(i)(1).

[9] *Id.* § 535(d)(1).

[10] *Id.*

[11] *Id.* § 535(e)(1).

[12] Publication of Housing Price Inflation Adjustment, 80 Fed. Reg. 4,551-01 (Jan. 28, 2015).

[13] 50 U.S.C. app. § 531.

[14] *Id.* § 531(b).

[15] Id. § 531(a)(1).

[16] Kirk D. Jensen, Sasha Leonhardt, and Alex Dempsey, From Landlord To Locked Up: The Long Arm Of The SCRA, Law360 (Aug. 21, 2014).

[17] See id.; Jimenez v. Miami—Dade County, No. 11-23131-CIV, (S.D. Fla. Jan. 18, 2013).

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