

TERMINATING LEASES ON SEPARATION

Legal Authority to Terminate Leases at Separation

The Servicemembers Civil Relief Act of 2003 (SCRA), 50 USC App § 535, provides servicemembers the right to terminate, without penalty, residential leases and rental agreements entered into during active military service if they are making a permanent change of station (PCS). Under the Joint Federal Travel Regulations, Chapter 5, page U5A-1, paragraph U5000 B, a PCS is defined to include "separation from the Service under honorable conditions." Therefore, members separating under honorable conditions may terminate leases and rentals of real estate properties. SCRA will also terminate any obligation of the member's dependents under the lease.

Invoking the SCRA Protection

Termination of a residential lease due to separation must be made in accordance with SCRA to enjoy SCRA's protections. SCRA allows termination to be made by delivery of written notice and a copy of the servicemember's military orders to the landlord or the landlord's agent. Delivery may be by hand, private business carrier (e.g. FedEx), or USPS mail with return receipt requested and addressed to the landlord or the landlord's agent. Using a private business carrier or the USPS mail provides a record of delivery.

When the termination is effective depends upon the lease. If a lease requires monthly payment of rent, then termination occurs 30 days after the first date on which the next rental payment is due following notice. For example, if rent is due on the first of the month and notice is provided on 2 January, then the lease will terminate 30 days after 1 February. In contrast, if notice was provided on 31 December, the lease would terminate 30 days after 1 January. All other leases will terminate effective the last day of the month following the month in which notice is given.

Relation to State and Federal Law

SCRA is a federal law. When federal and state laws conflict, federal law will apply. However, where state law provides an *additional* remedy a servicemember may assert rights under state law as well as SCRA. For example, Montana Code Annotated § 70-25-202, requires that landlords mail security deposits with a list of deductions to addresses provided by former tenants within thirty days of termination. SCRA does not limit your right to a speedy return of your security deposit.

Enforcement of SCRA Rights

The Department of Justice enforces SCRA rights, and a landlord's violation of the right to terminate residential leases could constitute a federal misdemeanor. If you feel that your SCRA rights are being violated or will be violated, contact the base legal office at x-2878 to schedule a legal assistance appointment. Many landlords still need to be educated that a separation is the same as a PCS, and that servicemembers may terminate their residential leases as a result.