

LANDLORD-TENANT AND OTHER REAL ESTATE ISSUES FOR MILITARY MEMBERS

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

I. Landlord-Tenant

A. **Generally.** As a member of the military, there are special laws that can have a substantial influence on your rights in property rental and ownership. Perhaps one of the most important areas affected by these laws is that of landlord-tenant law. A landlord-tenant relationship is contractual in nature, and exists where a person agrees that a residential or commercial dwelling will be used by another person for a certain amount of money and period of time. Such legal relationships are normally covered by formal (usually written) agreements called leases and are strictly controlled by the terms of the lease, as well as various state and Federal laws that apply. As each state has different laws that affect a military member's rights in the landlord-tenant relationship, each case is unique, and requires individual attention from a qualified member of the legal assistance team. However, general information regarding individual rights in such cases is provided below, and should be considered in any military landlord-tenant matter.

B. **Right to terminate leases early.** Under section 535 of the Servicemembers Civil Relief Act (50 USC App. §§ 501-596, "SCRA"), a military member has the right to terminate a lease, if after signing the lease: the tenant enters military service (which includes a reservist being called to active duty); or the tenant signs the lease while in military service, and then receives military orders for a PCS move, or to deploy, or as an individual in support of a military operation, with a military unit for a period of not less than 90 days.

1. **How to terminate leases under the SCRA.** The military tenant who terminates a lease under the SCRA must do so by giving the landlord written notice of termination of the lease, accompanied by a copy of the military tenant's orders. The notice must be "delivered" to the landlord by hand, private business carrier, or by U.S. mail, return receipt requested. Your local legal assistance office will likely have a standard form for use in terminating a lease under the SCRA.

2. **Effective date of lease termination.** The SCRA says that the lease terminates "30 days after the first date on which the next rental payment is due and payable after the date on which the notice...is delivered." For example, if a tenant delivers notice to the landlord on the 20th of the January, and normally pays rent on the 1st of each month, the lease ends on 1 March (the tenant must pay for February's rent).

3. **What about family members who are also tenants?** In cases where both a military member and a non-military spouse are tenants (have signed the lease), the military member's notice of termination is good for the non-military tenant as well. In other words,

the landlord cannot sue the non-military tenant for nonperformance under the lease where the military tenant has given proper notice under the SCRA. (See § 535(a) of the SCRA.)

4. **Criminal penalties for violations.** The SCRA provides that any person (landlord) who knowingly and wrongfully holds a security deposit, or other property of a tenant who has lawfully terminated a lease under the SCRA is subject to a fine under title 18 of the US Code, and imprisonment for not more than one year.

C. **Evictions.** Under the SCRA (§ 531), a military tenant and dependents may not be evicted from a rented residence (during a period of military service) without a court order. Note that this protection only applies to leases covering the principal residence of the military member, and for leases less than a certain amount specified in the statute (\$2,932.31 per month in 2009). If an eviction case is started against a servicemember whose ability to pay the agreed rent is materially affected by military service (for example, a reservist that suffers a pay decrease after being called to active duty), then the court can delay the proceedings, or adjust the rent under the lease to accommodate the interests of the parties.

II. Public-Private Venture (PPV) Housing. The Department of Defense has increasingly contracted base housing management functions to private contractors since approximately 2002. In so doing, the actual ownership of the houses aboard many installations has been transferred to corporations and other organizations, under agreement with the Federal Government. Accordingly, installations that have PPV housing units are using written leases to govern the relationship between the military tenants and the civilian management. Some installations have had such leases reviewed by legal assistance attorneys, while others have not. Keep in mind that you may contact your local legal assistance office with any questions about such leases.

III. Real Estate Ownership Issues

A. **Generally.** Purchasing a house can be one of the most important decisions you can make. Such transactions involve formal contracts for the purchase of the home, which carry substantial financial and legal responsibilities the moment they are signed. The process normally involves real estate agents or brokers, attorneys, title companies, banks, and other persons. Most sales of real estate use detailed contracts, sometimes called purchase agreements. Such binding contracts establish the purchase price, address financing (many contracts are contingent upon the buyer's obtaining loans at or below a certain interest rate), disclose the condition of the property, identify the type of deed that will be used to transfer title of ownership, require a (sometimes nonrefundable) deposit on the purchase (sometimes called "earnest money") and set a date on which the sale will be completed, and title will be transferred to the buyer (called the "closing date"). As real estate transactions are inherently complex, and involve detailed questions of state and Federal law, and deal with large sums of money, you should consult with a legal assistance attorney at the earliest opportunity in the buying or selling process.

B. **Real estate purchase agreements.** Military members have unique protections under the SCRA regarding installment agreements to purchase houses and land. Under § 532 of the SCRA, a contract for the sale of real (or personal) property may not be rescinded or terminated for a violation of the contract (that happens before or during military service) without a court order, provided that the deposit or installment has been paid **before** the servicemember enters military service. In such cases, a court may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract, or may take any other lawful action to preserve the interest of all parties.

C. Financing the purchase of real estate and VA loans. Unless you are buying your house with cash, you will probably need to obtain a loan from a financial institution to complete the purchase of the house. Loans for the purchase of real property (called “mortgages” or “deeds of trust”) grant the lender an ownership interest in the property until the loan is paid. Most military members consider applying to a number of lenders for a mortgage, to include turning to the Department of Veterans’ Affairs for help.

1. VA loans generally. Most military members can obtain real estate purchase financing with the help of the Department of Veterans’ Affairs (VA). The VA specializes in helping military families learn about the home-buying process, and funding purchases for principal residences. VA guaranteed loans are made by private lenders, such as banks, savings & loans, or mortgage companies to eligible veterans for the purchase of a home which must be for their own personal occupancy. The guaranty means the lender is protected against loss if you or a later owner fails to repay the loan. The guaranty replaces the protection the lender normally receives by requiring a downpayment allowing you to obtain favorable financing terms. The first step for any military home-buyer (especially rookies) should be the VA’s webpage, which provides update information on the loan program, and what to do to get started with the home-buying process.. You can visit them at <http://www.va.gov>.

2. Who is eligible? Although the VA has many different categories of persons eligible for loans, two of the most relevant to our active duty community are: 1) If you are now on regular active duty (not active duty for training), you are eligible after having served **181 days (90 days during the Gulf War)** unless discharged or separated from a previous qualifying period of active duty service; and 2) If you are not otherwise eligible and you have completed a total of **6 years** in the Selected Reserves or National Guard (member of an active unit, attended required **weekend drills** and **2-week active duty for training**) and (a) were discharged with an honorable discharge; or (b) were placed on the retired list; or (c) were transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service characterized as honorable service; or (d) continue to serve in the Selected Reserves. Individuals who completed less than 6 years may be eligible if discharged for a service-connected disability.

3. What are the benefits of a VA loan?

- Equal opportunity.
- No downpayment (unless required by the lender or the purchase price is more than the reasonable value of the property).
- Buyer informed of reasonable value.
- Negotiable interest rate.
- Ability to finance the VA funding fee (plus reduced funding fees with a downpayment of at least 5% and exemption for veterans receiving VA compensation).
- Closing costs are comparable with other financing types (and may be lower).
- No mortgage insurance premiums.

- An assumable mortgage.
- Right to prepay without penalty.
- For homes inspected by VA during construction, a warranty from builder and assistance from VA to obtain cooperation of builder.
- VA assistance to veteran borrowers in default due to temporary financial difficulty.

D. Protections against foreclosures. Under §533 of the SCRA, mortgages and deeds of trust that originated **before** the period of the servicemember's military service and for which the servicemember is still obligated, may not be foreclosed without a court order (unless a waiver has been signed by the servicemember). The law also allows the court to delay the proceedings and adjust the obligations of the parties under the mortgage or deed of trust. In addition, § 591 of the SCRA allows a servicemember to go to court before any payments are missed, and ask for help. In cases where a military member may experience problems in making mortgage payments (on a property purchased **before** military service) due to military service, the member can apply to the court for a stay of the enforcement of the obligation during the period of military service. Note, that this remedy requires repayment of all principal and interest due under the obligation, and such amounts are not forgiven.

E. Mortgage interest reductions. For debts incurred **before** military service, the SCRA limits the maximum amount of interest that can be charged. Under § 527 of the act, a creditor may not charge more than 6% interest per year during military service. This interest rate reduction applies to joint obligations that a servicemember may have with a spouse, and when the reduction takes place, any interest in excess of the maximum rate is forgiven.

1. How to reduce interest rates. The servicemember must give the creditor written notice of the request to reduce interest on the obligation, and must include a copy of the military orders calling the member to military service and any orders further extending military service, not later than 180 days after the date of the member's termination or release from military service. Once the notice and enclosures are received by the creditor, the creditor must reduce interest retroactive to the date on which the servicemember is called to military service. Your local legal office will likely have a sample letter for use in requesting interest rate reductions for pre-military service obligations.

F. Real estate taxes. The SCRA (at § 561) extends special protections to servicemembers that own real property occupied (**before** military service and during the time that the tax or assessment remains unpaid) for residential, professional, business, or agricultural purposes by a servicemember, spouse or employee. This section of the law provides that such property may not be sold to enforce collection of such taxes or assessments except by court order, and upon determination by the court that the military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment. Note too, that the SCRA gives the servicemember the right to redeem the property after a sale to collect or enforce a tax or assessment. In such cases, the military member may commence a court action to redeem the property (pay for back taxes and costs to regain ownership of the property) during the period of military service, or within 180 days after the termination of or release from military service.

G. Other rights regarding real estate under the SCRA. The SCRA provides additional protections concerning interests that servicemembers may have in certain public lands, desert land

rights, mining claims, and mineral permits and leases. Please refer to a legal assistance attorney with any questions regarding these matters (reference §§ 562-565 of the SCRA).

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