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The Newsletter of the
Virginia State Bar
Real Property Section

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<http://www.vsb.org/site/sections/realproperty>

VOLUME XXXV, NUMBER 2

FALL 2014



C. COOPER YUELL, IV
Chair, 2014-2015
Virginia State Bar Real Property Section

WELCOME ABOARD! RESIDENTIAL LEASING TO MILITARY FAMILIES

by Kathryn N. Byler*

The Commonwealth of Virginia is home to twenty-seven military bases, which together represent every branch of the armed services. Quantico, Fort Eustis, and Naval Air Station Oceana are just a few of the installations that bring people (and dollars) to Virginia. Military personnel living in the Commonwealth for a limited period provide a steady market for rental properties. Accordingly, both landlords and military tenants should be aware of special legislation and procedures designed to protect servicemembers.

The Servicemembers Civil Relief Act of 2003 (SCRA),¹ 50 U.S.C.A. App. §§ 501-597b, codifies provisions designed to help active duty personnel meet their financial and legal obligations, some of which involve real property. Among the issues the SCRA addresses is apartment and home rentals; in particular, it addresses early termination of residential leases under certain circumstances and offers military tenants protection against evictions while on active duty. The Virginia General Assembly has enacted corresponding legislation.

Commonly referred to as the “military clause,” § 55-248.21:1, Code of Virginia, 1950, as amended, along with the SCRA, controls early termination of rental agreements by military personnel. Both laws specify the circumstances in which a servicemember may terminate a lease early and identify the procedures to be followed when doing so. Early termination is permitted when the servicemember is:

- 1) given permanent change of station orders to depart 35 miles or more from dwelling;
- 2) given temporary orders in excess of three months’ duration to depart 35 miles or more from dwelling;
- 3) discharged or released from active duty; or
- 4) ordered to report to government-supplied quarters, resulting in the forfeiture of basic allowance for quarters.

To terminate a rental agreement prior to its expiration, the servicemember-tenant must provide the landlord with written notice of termination at least thirty days before the next rental payment is due. For example, if rent is due on the first of each month, notice provided any time between May 2 and June 1 would be effective on June 30; likewise, notice provided any time between June 2 and July 1 would be effective on July 30.

Prior to the termination date, the servicemember-tenant must provide the landlord with a copy of the servicemember’s official orders or with a signed letter from the servicemember’s commanding officer confirming the orders. The servicemember need not provide this documentation before the requisite notice period begins but official documentation is necessary to finalize the early termination.

Note that the termination date may not be more than 60 days prior to the departure date on the orders.

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¹ Ed. Note: The SCRA replaced the Soldiers and Sailors Civil Relief Act of 1940.

If the specified procedures are followed, the landlord may not charge liquidated damages. Thus, a lease provision stating that one-month's rent will be charged in case of an early termination would not apply if the early termination is covered by the military clause. Moreover, the servicemember-tenant will be released from all further obligations under the terms of the lease, except the obligation to turn over possession of the property in good condition.

The SCRA also offers protection for deployed personnel. Pursuant to § 8.01-15.2, Code of Virginia, a landlord seeking default judgment against a party who does not appear in court must submit an affidavit attesting to the absent defendant's military status.² The affidavit is a notarized statement declaring whether the defendant is in military service and providing facts in support of this declaration. With respect to an unlawful detainer, supporting facts could be gleaned from information provided on the rental application.

If the landlord-plaintiff declares in the affidavit that the absent defendant is not in military service, and adduces facts in support of this declaration, the matter will be heard by the court and a default judgment may be granted. However, if the landlord is unable to determine whether the defendant is in military service, the court may require the landlord to file a bond in an amount approved by the court before proceeding. 50 U.S.C.A. App. § 521.

When the absent defendant *is* believed to be in military service, the judge will order appointment of counsel pursuant to the SCRA, 50 U.S.C.A. App. § 521, and will stay the proceedings for a minimum of 90 days, 50 U.S.C.A. App. § 522. During this time, appointed counsel will attempt to locate the servicemember and will either appear at the next hearing or will file a report with the court. The cost of the court-appointed counsel will initially be borne by the plaintiff; this cost may be added to the judgment the plaintiff seeks. The merits of a claim for reimbursement of legal expenses will be adjudicated at the hearing and considered by the court.

Relief under the SCRA is not always automatic. In some cases, the servicemember may need assistance from the Armed Forces Legal Assistance Office³ or from private counsel. Similarly, relying on the Virginia Landlord Tenant Act alone will not ensure that a landlord complies with federal and state legislation regarding residential leases to military families.

A servicemember may waive his or her rights and protections under the SCRA if he or she does so as part of a written agreement, such as a lease. It is not uncommon for a landlord to require a waiver of the appointment of an attorney or *guardian ad litem*, thereby also waiving the 90-day stay. 50 U.S.C.A. App. § 517. The waiver must be in writing, prominently displayed, and printed in at least 12-point type.

² The court-provided affidavit form for a default judgment is available as a fillable PDF on the Virginia Judicial System website: <http://www.courts.state.va.us/forms/district/dc418.pdf>.

³ The legal assistance offices may be found using the Armed Services website, <http://legalassistance.law.af.mil/content/locator.php>.