

# Kimball, Tirey & St. John LLP

## Military Lease Terminations

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The Federal Servicemembers' Civil Relief Act allows service members to terminate leases under certain situations. If a tenant becomes a service member after entering into a fixed term lease, the service member can terminate the lease by serving a notice on the landlord. If the tenant is in the military when the lease is signed and then after the lease is signed the tenant receives "military orders" for a permanent change of station or, if he or she receives "military orders" to deploy for at least 90 days, the tenant can also terminate the lease before its expiration date. The notice of termination can be personally delivered or mailed. Any landlord who interferes with the termination of the lease or uses the security deposit for rent owed after the lease termination date is committing a misdemeanor.

A written waiver of these rights is possible, but only from a tenant who is already in the military service. The waiver must be in an agreement that is separate from the lease. The waiver must specifically reference the lease. The waiver must be in at least 12 point font. The waiver will not be valid after a member enters into military service, if the waiver was signed before the tenant entered into military service.

If a service member takes advantage of any of these rights, this fact cannot be used against the service member to deny an application to rent based upon credit worthiness and cannot even be mentioned in any credit report or applicant screening report.

These laws protect the dependants of military service members as well. Some military advocates argue that the laws protect non-dependant roommates, particularly because the SCRA is to be "liberally construed" in favor of the military. However, no statute explicitly protects non-dependant roommates.

Under the Federal law, a "service member" is:

- a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty; or
- a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, to respond to a national emergency declared by the President and supported by Federal funds; or
- a member of the commissioned corps of the Public Health Service on active service; or
- commissioned members of the National Oceanic and Atmospheric Administration on active service;

The Federal Servicemembers' Civil Relief Act applies to any service member:

- who is on active duty or active service; or
- during any period when the service member is absent from duty because of sickness, wounds, leave, or other lawful cause.

“Military orders” are “. . . any official military orders, or any notification, certification, or verification from the service member’s commanding officer, with respect to the service member’s current or future military duty status.” This means a letter from the commanding officer regarding a deployment or permanent change of station is an “order”.

It applies to any “dwelling, professional, business, agricultural, or similar” lease executed by or for the service member and occupied for those purposes by the service member or his dependents.

A certificate signed by an authorized officer of the military may be used as proof of the service member’s military service and dates of service, the time and place where the person entered military service, the service member’s residence, rank, branch and unit, the service member’s monthly pay, the time and place where the service member died or was discharged from the service.

Some landlords include lease language about military members’ rights to terminate the lease, but it is not required to include language in the lease.

The following provision complies with the Federal Servicemembers’ Civil Relief Act:

- “Military personnel on active duty may terminate this lease under Federal law if:
- (i) Resident becomes a member of the Armed Forces of the United States after Resident enters into the lease; or
  - (ii) Resident is or becomes a member of the Armed Forces of the United States and receives:
    - a. Orders for a permanent change of station; or
    - b. Orders to deploy for a period of at least 90 days.

Resident must provide written notice of termination, and the new termination date must be at least 30 days after the first date on which the next rental payment is due and payable. (For example, if Resident served the notice on September 15<sup>th</sup>, Resident’s tenancy would terminate on October 31.) Resident must furnish Owner with proof to establish that Resident qualifies for this limited exception. Proof may consist of any official military orders, or any notification, certification, or verification from the service member’s commanding officer, regarding the service member’s current or future military duty status. Military permission for base housing does not constitute a permanent change-of-station order.”

Before inserting this suggested language into a lease, the terminology should be made consistent with the terminology used in the lease.

A tenant receiving an honorable discharge from the military is entitled to terminate a lease. It is questionable whether a tenant receiving a dishonorable discharge from the military is entitled to terminate a lease.

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California has its own version of the Civil Servicemember's Relief Act at Military & Veterans Code §400 et seq. "Service members" under the California law are National Guard officers and enlisted members called or ordered into active state service by the Governor or into active federal service by the President of the United States pursuant to Title 10 or 32 of the United States Code, or United States Military Reserve reservists who are called to full-time active duty, and their dependents. Full time active duty for a reservist is more than seven days in any 14-day period. For service members called to active service or duty since September 11, 2001, to engage in homeland defense against terrorism, the reservist's days of service before June 21, 2002 will be credited toward the seven day period.

If the property is occupied primarily for dwelling purposes by the service member, or the service member's spouse, children, or other dependants, California Military & Veterans Code §406 prohibits evictions during active military service periods and until 120 days after the service member is released from active service or duty unless the court grants leave of court after an application by the landlord.

Military & Veterans Code §409 applies to leases used for dwelling, professional, business, or agricultural purposes by the military member or a dependent when the lease was executed by a person who later entered into active military service, or while in the military, signs the lease then receives military orders for a permanent change of station or to deploy, or as an individual in support of a military operation for at least 90 days. It allows the active military member to terminate a lease by giving written notice of termination to the landlord, with a copy of the service member's military orders. If rent is due monthly, the termination will be effective on 30 days after the next rent payment is due (after delivery of the notice to the landlord by hand delivery, private business carrier, or US Mail, return receipt requested). If rent is payable other than monthly, the termination will be effective on the last day of the month following the month in which the notice is delivered. If rent has not been paid for a period before the termination, the rent will be prorated. If rent has been paid for a period after the termination date, the landlord must refund the overpaid amount within 30 days. Landlords cannot impose early termination charges to lessees exercising their early termination rights under this law.

If a landlord receives a good faith request from a service member for relief under the California law, but the landlord believes the request is incomplete or otherwise not legally sufficient, or if the landlord believes the service member is not entitled to the relief requested, California Military & Veterans Code §409.15 requires the landlord within 30 days to provide a written response acknowledging the request, and explaining why the request is incomplete or not legally sufficient. The response must clearly identify the specific information or materials missing from the request and that would be required to grant the requested relief. It must also provide contact information, including the mailing address and telephone number that the service member can use to contact the person. A landlord who fails to provide this response waives any objections to the service member's request, and the service member will be entitled to the relief requested by the service member.

The following provision may (but is not required to) be added to a lease to describe the California law:

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“Additionally, service members may terminate this Lease in compliance with California law (California Military & Veterans Code §409).”

Landlords may, but are not required to, grant military members rights in addition to those specified under applicable law. Examples are provisions allowing a military member to terminate a lease with less notice than that required by law, when a military member becomes eligible for base housing, or in situations other than those specified by law. Additional rights granted to military members may increase the chances that local military housing assistance offices will recommend a community. Landlords who choose to grant additional rights may want to advise the local military housing assistance offices that the community is “military friendly” and ask that the community be added to the military housing assistance office’s referral list.

Violation of the SCRA can expose a landlord to criminal and civil liability and prosecution by the Attorney General is authorized. A damaged military member can also bring a private cause of action for violation of the SCRA. Liability can include consequential damages, punitive damages, attorney’s fees and costs.

*If you have questions regarding this article, please contact our office at (800) 338-6039.*

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