

LEVY BRIEFING

PREPARATION FOR PERMANENT CHANGES OF STATION (PCS) OR OVERSEAS DEPLOYMENTS

Office of the Staff Judge Advocate
Military District of Washington
Fort Myer Legal Assistance Office
202 Custer Road, Building 201
Fort Myer, Virginia 22211
(703) 696-0761

BLUF: TIE UP YOUR LEGAL OBLIGATIONS NOW... The legal system can be slow so address your legal issues as soon as possible. It is far more difficult to resolve matters with courts when you are out of the country.

The following is a sample of the legal issues you may need to address before your PCS or deployment. Consult with a Legal Assistance attorney about your specific issue(s).

Family Law Issues

Divorce: Each state has its own rules governing divorce. Generally, you must meet the residency requirement of the state in which you are seeking a divorce and also be living apart from your spouse for a specified amount of time. Courts have various requisites that you must satisfy concerning filings and appearances.

Custody/Support: Servicemembers must be diligent about resolving custody issues and required support for dependents. You must comply with applicable military interim support requirements (contained in Army Regulation 608-99) and any state guidelines.

Civil Suits

Under the Servicemembers Civil Relief Act (SCRA) (Title 50, United States Code, Sections 3901 to 4043), a Servicemember may request a stay of any civil action or administrative proceeding for at least 90 days if he/she is overseas or otherwise unavailable to appear. However, a court will not automatically delay or stay a proceeding. You must request a stay by sending a letter or other communication to the court explaining how your military duty requirements materially affect your ability to appear and stating when you will become available to appear. Your commander must also provide a letter stating that your current duty prevents appearance and that military leave is not authorized. (50 U.S.C. § 3932)

Leases

The SCRA allows Servicemembers to terminate certain leases early – without financial penalty – for permanent changes of station or deployment orders. You must, however, provide proper notice and the appropriate documentation to your landlord/leasing company along with fulfilling any outstanding financial obligations outlined in your rental agreement. (50 U.S.C. §§ 3951, 3952)

Citations

Servicemembers should resolve any parking or traffic tickets prior to moving or departure. If citations are not paid, the debt may be referred to a collection agency and your credit rating will likely be negatively impacted. Failure to respond in a timely fashion can result in the imposition of late penalties, suspension of your license, and/or the issuance of an arrest warrant against you. (50 U.S.C. § 3912)

Powers of Attorney

Servicemembers can execute Powers of Attorney (POA) at a Legal Assistance Office. There are two types of POAs – general and specific. A general POA authorizes someone to step into your shoes to transact in any manner you would otherwise be able (e.g., sell your home, drain your bank account, register your car, etc...). This type of POA should only be given to a responsible individual whom you can trust. A specific POA authorizes someone limited powers to act on your behalf with authority for specific transactions. (50 U.S.C. § 4022)

Wills and Estate Planning

Servicemembers – especially those who are deploying – should consider getting wills or updating old ones. Estate planning establishes a process under which your property and assets are distributed upon your death. It may also consist of the preparation of other documents that permit selected individuals to make financial and medical decisions for you in the event that you become incapacitated. Every estate plan is different but most include a will, advanced medical directive, and various powers of attorney. Your estate plan may feature life insurance policies (e.g., SGLI) and trusts for minor children. (50 U.S.C. §§ 3971-3979)

Other Matters

Change of Address: Visit the US Post Office to change your mailing address (www.USPS.com/umove). Changing your address will ensure important correspondence does not get lost or delayed.

Vehicles: Check the warranty to confirm whether shipping your car overseas invalidates the warranty. (50 U.S.C. §§ 3952, 3955, 3972)

Household Goods: Document the items that you ship through photographs, video, and a written list. If the carrier damaged your household goods, there are filing deadlines and documentation requirements with which you must comply. Visit your local Claims office for assistance.

Office of the Staff Judge Advocate
Military District of Washington
Fort Myer Legal Assistance Office
202 Custer Road, Building 201
Fort Myer, Virginia 22211
(703) 696-0761

Normal Business Hours:

0800 to 1200 and 1300 to 1600
Closed for lunch from 1200 to 1300
Closed Thursday mornings 0800-1300

Please note: Our office staff must occasionally attend unscheduled mandatory functions. We make every effort to contact and reschedule conflicting appointments. If the office is closed due to sudden inclement weather, however, appointments are automatically canceled and the client is responsible for rescheduling.

The Legal Assistance Office provides you:

Powers of Attorney and Notary Services

Walk-in – Monday – Friday

ALL OTHER SERVICES ARE BY APPOINTMENT ONLY – CALL TO SCHEDULE DURING NORMAL BUSINESS HOURS.

General Attorney Consultations

Monday – Friday

Attorney consultations can cover subjects such as landlord-tenant, consumer affairs, contacts, financial and credit matters, Servicemembers Civil Relief Act (SCRA), and military administrative issues, to include: reports of survey, reprimands and counselings, evaluation reports, etc.

Family Law Attorney Consultations

Monday – Friday

The Family Law Briefings cover separation, divorce, custody, and alimony. Attorneys brief attendees on general family issues and then meet individually with those interested in a private consultations. **Please call for information during normal business hours – family law consultations are not a walk-in service.**

Wills and Estate Planning Services

Wednesdays

Claims Services

Monday – Friday

Claimants who need to file their Notices of Loss DD Forms 1840/1840R (pink forms) or Forms 1850/1851 may fax them to (703) 696-2181. **Please note: Personnel Claims, such as household goods, privately owned vehicle shipments, and incident to service claims, have been centralized to Fort Knox. For more information please visit <https://jagcnet.army.mil/pclaims> or call 502-626-3000**

EARLY TERMINATION OF RENTAL AGREEMENTS BY MILITARY PERSONNEL

Your lease should contain a "Military Clause" or "Transfer of Tenant" clause reinforcing your SCRA right to terminate your lease in the event that you receive PCS or deployment orders. Also if your residential lease is in Virginia, you should include your Virginia SCRA right to terminate your lease in the event that you are discharged or released from active duty with the Armed Forces of the United States or from your full-time duty or technician status with the National Guard or you are ordered to report to government-supplied quarters resulting forfeiture of your basic allowance for quarters.

"Military Clause" in the United States Code Annotated
50 U.S.C.A. §§ 3951, 3952 Termination of residential leases

(a) Termination by lessee

(1) In general

The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases

A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases

This section applies to the following leases:

(1) Leases of premises

A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(c) Manner of termination

(1) In general

Termination of a lease under subsection (a) is made--

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(2) Delivery of notice

Delivery of notice under paragraph (1)(A) may be accomplished--

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(e) Arrearages and other obligations and liabilities

(1) Leases of premises

Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance

Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor

Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Penalties

(1) Misdemeanor

Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing

subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

(i) Definitions

(1) Military orders -- The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS -- The term "CONUS" or "continental United States" means the 48 contiguous States and the District of Columbia.

"Military Clause" in The Virginia Code Annotated

Va. Code Ann. § 55-248.21:1 Early termination of rental agreement by military personnel

A. Any member of the armed forces of the United States or a member of the National Guard serving on full-time duty or as a Civil Service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit; (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit; (iii) is discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the National Guard; or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer. The landlord may not charge any liquidated damages.

C. Nothing in this section shall affect the tenant's obligations established by § 55-248.16.

D. The exemption provided in subdivision 10 of subsection A of § 55-248.5 shall not apply to this section.

SOLDIER'S LETTER TO LANDLORD TO TERMINATE LEASE UNDER SCRA

Mail your letter to the Landlord "Certified Return Receipt" via the US Post Office. You will thereby get back a signed acknowledgement of receipt from the landlord.

(SOLDIER'S ADDRESS)

(TODAY'S DATE)

(LANDLORD'S NAME)

(LANDLORD'S ADDRESS)

Dear (LANDLORD'S NAME):

I am writing you to terminate my lease for the premises located at (ADDRESS OF LEASED PROPERTY). I am writing to invoke the protection of the Servicemembers' Civil Relief Act (SCRA).

Under the provisions the SCRA (50 U.S.C. Section 3955), I may terminate my lease at the aforementioned premises because after executing the lease I received orders for a permanent change of station.

In addition to this written notice, I have enclosed a copy of my military orders.

Since I paid rent on the first of every month, the effective termination date is 30 days from the first of (MONTH THAT SOLDIER WANTS TO TERMINATE LEASE). Under the SCRA, any prepaid rent covering periods after this termination must be returned to me within 30 days of the effective date of this termination.

Please note that any attempt to hold or seize my personal property, or that of my family members or my security deposit is unlawful under 50 U.S.C. Section 3955 (h) and could result in fines, imprisonment for not more than one year, or both.

Please forward my security deposit and any prepaid rent covering the periods after termination of this lease to me at (SOLDIER'S FORWARDING ADDRESS).

I regret any inconvenience this may cause, but I thank you for your understanding and cooperation in this matter.

Sincerely,

(SOLDIER'S NAME)

(RANK)