

The SCRA: 'Til Deployment Do Us Part?

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A resident approaches you and asks for release from the lease because he is being deployed overseas. Is he released from his lease? For active duty soldiers, sailors, and other members of the U.S. Armed Forces, the lease is rescinded and he/she moves without penalty. If there are other occupants of the apartment, however, what happens to them?

The Servicemembers Civil Relief Act of 2003 ("SCRA") is neither panacea nor magic wand, though it might seem to have some sort of mystical impact upon our industry. Not every person who tries to stake a claim to its relief provisions is entitled to the benefits of SCRA, but for those who do qualify they are released from the binding effects of the residential lease contract. The question that faces many landlords is how to determine which individuals are eligible for SCRA-based release.

There are two classes of individuals to whom SCRA applies: servicemembers and dependents.

- *Servicemembers.* A "servicemember" is "a member of the uniformed services." (SCRA §101(1).) Servicemembers also include those who serve in the Public Health Service and the National Oceanic and Atmospheric Administration. Civilians who are employed, directly or indirectly, by the military, the PHS, or the NOAA and are transferred to other locations, including areas of conflict, are not servicemembers and therefore do not qualify for protection under the SCRA.
- *Dependents.* While the SCRA is vague on who constitutes a "dependent," the military has defined a dependent as a "blood" or "marriage" relation who relies upon the servicemember for his or her financial support. (See, e.g., DoD 601O.8-R). A servicemember's dependent is not a roommate, live-in "significant other," or anyone else not covered under a "blood" or "marriage" relationship. Additionally, the SCRA does not apply to "common law spouses" or other unions if the state in question does not recognize them. (See A.R.S. § 25-111 and Ariz. Const. Art. 30, § 1.)

Unfortunately the courts have not provided a bright line ruling on who qualifies as a "dependent." SCRA § 101(4)(c) declares individuals "for whom the servicemember provided more than one-half of the individual's support" as qualifying individuals." A logical test (if you're still confused) would be to use a taxation analysis: if the military member claims the person as a dependent on his/her income taxes, the person is a dependent under the SCRA. If he/she does not, the individual is not eligible under the SCRA.

What result does this have? For a servicemember and his/her dependents, they may escape any penalty or repayment (e.g., concessions) requirement. Leases no longer need to include servicemember clauses (as was necessary under the previous Soldiers and Sailors Civil Relief Act ("SSCRA")), as the provisions are automatic. Similarly, dependents who remain "stateside" during the deployment of the servicemember may receive a 90-day stay on eviction proceedings. Additionally, enlistment into and discharge from service are events that allow a resident to break the lease without penalty.

What does the SCRA not do? If the servicemember has roommates who are neither "blood" nor "marriage" relatives, they are not released from the lease contract. Any remaining residents who do not satisfy the original application requirements do not suddenly find the lease invalidated, as they remain responsible under the contract even without the presence of the servicemember. The landlord, meanwhile, may not evict them for failure to meet those same income (or other credit-based) standards. Also, the servicemember is not released from financial obligations pre-dating the release. Perhaps most significant, a servicemember who is ordered to move into base housing facilities or who wishes to move closer to the duty posting (if it is within the same metropolitan area) do not qualify for release.

Aside from the short-distance change of post, deployment truly does spell the end of the landlord-tenant relationship between you and your military residents. The SCRA permits verification of orders with the resident's commanding officer if he/she provides you with documents you believe insufficient, but once you have verified orders you must release the resident from further lease obligations.

I'm sure you understand why a servicemember has these protections. While they're on active duty in harm's way, the last thing they want to think about is being evicted. It's the last thing you should be considering, too. The SCRA represents best practices for our servicemembers and our own industry.