

Special Landlord and Tenant Laws for Military Personnel

North Carolina is home to a significant population of members of the military services, who often rent or lease properties near their duty stations and may be subject to relocation on short notice. In such circumstances, service members are protected under federal and state laws that grant them specific rights to achieve early termination of a lease.

As a broker who works with landlords and tenants, you should be knowledgeable about those laws.

Federal law is set out in the Servicemembers Civil Relief Act, enacted in 2003 to amend the Soldiers' and Sailors' Civil Relief Act of 1940. It provides a broad range of benefits and protections to service personnel including specific rights relating to renting and leasing obligations.

North Carolina law is found under General Statute §§ 42-45 and 42-45.2. It grants special protections to "military personnel, surviving family members, or lawful representatives" involved with early termination of a rental agreement.

The two laws differ in the rights and protections they provide when applied to early termination of a lease. One may be applicable to a particular situation and the other may not, or both laws may be applicable, but yield different outcomes.

The requirements under each law are as follows:

Federal Law

Requirements to Pursue Early Termination of a Lease	
SCRA	NCGS § 42-45
Each allows for early termination in three, but differing, instances:	
(1) Entry into lease before active service; (2) Permanent change of station received while on active duty; (3) Deployment in excess of 90 days while on active duty. Termination effective 30 days after next monthly payment following notice to landlord.	(1) PCS* to depart 50 miles or more from current dwelling; (2) Premature or involuntary service separation; (3) Deployment in excess of 90 days. Termination effective 30 days after notice to landlord in (1) and (2); 30 or 45 days after notice in (3), whichever is shorter. <small>*Permanent Change of Station</small>

The SCRA's rights to early termination of a lease are granted based on active duty status, i.e., they are secured for a lease already in force upon entering into military service and, when in active service, relocated to a new permanent duty station or

deployed in support of a military operation in excess of 90 days.

In these instances, lease termination is effective 30 days after the next rental payment is due following the landlord's receipt of proper notice of intent to terminate. [Notice must include a copy of the orders or a written verification by the tenant's commanding officer.]

(Example: If the monthly rent is due on the 1st day of the month and termination notice is delivered to your landlord five days earlier, your lease terminates and your final obligation to pay rent is effective 30 days following the 1st day of the month.)

State Law

State law, G.S. § 42-45, differs by specifying a permanent change of station of 50 miles or more from the member's current dwelling and allowing for premature or involuntary release from active duty; it differs slightly as to a deployment of "90 days or more" compared to "in excess of 90 days" in the federal law.

Also under our State law, the lease termination date depends first on which of the three reasons the service member has for terminating the lease.

Whether the service member receives permanent change of station orders to relocate at least 50 miles away or is prematurely or involuntarily discharged or released from active duty, the service member may provide written notice of termination to be effective as quickly as 30 days after the landlord's receipt of the notice.

A member of the Armed Forces of the United States who is deployed for 90 days or more may terminate 30 days after the next rental payment is due, following the landlord's receipt of proper notice of intent to terminate, or 45 days after receipt of notice, whichever is shorter.

The application of either or both laws should be determined after consulting with an attorney, who for a member on active duty may be available through the Judge Advocate General's Corp.

Liquidated Damages

The biggest differences between the SCRA and North Carolina law relate to how much money the service member may owe on the effective date of termination.

Generally, if a service member has been in the lease for less than nine months, the SCRA will be more favorable. How much must be paid will depend on the effective date of lease termination and liquidated damages.

When comparing federal and state law is more advantageous, consider the following:

Consequences of Pursuing Early Termination of a Lease	
SCRA	NCGS § 42-45
No liquidated damages required	Liquidated damages <ul style="list-style-type: none"> • 1 month's rent if the tenant has lived in the residence for less than 6 months • 1/2 month's rent between 6 and 9 months
Contract may waive rights <ul style="list-style-type: none"> • Separate writing 12 point font • Signed by service member • Reference lease 	No waiver allowed
Termination explicitly releases the spouse and all dependents of service member	No explicit language regarding release of others, but intent of law is likely persuasive

Example: Under N.C. law, the lease termination date depends first on which of the three reasons the service member has for terminating the lease. Whether the service member receives permanent change of station orders to relocate at least 50 miles away or is prematurely or involuntarily discharged or released from active duty, the service member may provide written notice of termination to be effective as quickly as 30 days after the landlord's receipt of the notice. For example, if a service member hand-delivers a notice of termination along with his or her official PCS orders on January 15th, the termination date may be as soon as February 15th, only 30 days later.

Example: A member of the Armed Forces of the United States who is deployed for 90 days or more may terminate 30 days after the next rental payment is due, following the landlord's receipt of proper notice of intent to terminate, or 45 days after receipt of notice, whichever is shorter. For example, if rent is due on the 1st of the month, and the service member provides proper notice to terminate on January 5th, the lease terminates 30 days after February 1st or 45 days after January 5th, whichever comes first. In this case, 45 days after January 5th is shorter and that is the earliest possible effective date of lease termination. However, if a service member terminates under North Carolina law and has been in the lease under nine months, he or she may also be required to pay liquidated damages.

“Liquidated damages” ordinarily refers to an agreed amount designed to estimate the dollar value of the harm that will be caused if a party to a contract violates the terms. If a service member terminates a lease under North Carolina law, the service member may be required to pay rent through the effective date of lease termination and may be required to pay the applicable liquidated damages amount if he or she has completed less than nine months of the lease term. If the service member completed less than six months of the tenancy, the maximum liquidated damage amount is one month's rent. If the service member completed at least six months of the tenancy but less than nine months, the maximum is one-half of a month's rent. After completing nine months of the tenancy, no liquidated damages are owed.

If a member of the armed forces terminates a lease under

the SCRA, there is no statutory requirement to pay liquidated damages. The service member must pay rent through the effective date of lease termination but there are no further charges resulting from early termination.

It is important to note that even under North Carolina law, the landlord is not entitled to liquidated damages where there are no actual damages due to loss of the tenancy. Actual damages occur when, despite making the required reasonable efforts to mitigate or limit damages, the landlord is unable to find a new tenant for the premises.

Example: If the landlord rents the residence two days after a service person terminates the lease, the liquidated damages cannot exceed two days' rent.

Notice Requirements

The notice requirements under both the SCRA and North Carolina law are similar. Service members must provide written notice and a copy of military orders to the landlord. Alternatively, a service member can provide a letter from his or her Commanding Officer verifying the reason for the need to terminate the lease. Under the SCRA, the only effective manners of service of notice are hand-delivery, private business carrier, or by US mail with return receipt requested.

Obligations of a Spouse

A North Carolina law was passed to assist service members whose military duties cause them to leave the area, but the law does not specifically address the obligations of a spouse on the lease. The latest version of the SCRA, on the other hand, makes it very clear that termination by the service member terminates the obligations of a spouse and any other military dependent that may have signed the lease as well.

Waiver of Rights

A lease can give a military tenant more lease termination rights than would otherwise be had, but, with one exception, its terms cannot take any of these rights away. While the North Carolina law specifically prohibits waiver or modification of its requirements under any circumstances, the SCRA does permit lease termination rights to be waived. To be legally effective, however, such a waiver must comply with certain requirements, including, but not limited to, the following:

- The waiver must be in writing;
- It must be on a document separate from the lease;
- The waiver must be signed by the service member;
- The waiver must specify the legal instrument (e.g., the lease) to which it applies; and
- It must be in at least 12-point font.

If neither law applies, landlords, property managers, and military tenants should review the lease to see if it contains any other special lease termination rights. If there are none, then early termination may not be permitted. If the tenant leaves the premises early and in breach of the contract, the landlord

is likely entitled to damages caused as a result of the breach. These damages include the loss of rent due to any vacancy of the premises during the remainder of the lease term. As always, the landlord must take reasonable steps to mitigate the damages, that is, to re-rent the premises, but the landlord may withhold the security deposit to satisfy these damages and may also sue for any additional damages that exceed the amount of the security deposit.

NC General Statute § 42-45(a3)

Since 2012, North Carolina law provides that when a member of the US Armed Forces dies on active duty, there is a specific right to terminate the lease. An immediate family member or lawful representative may terminate the lease with written notice as required in the other authorized situations. As with the case of a deployment for 90 days or more, termi-

nation is effective 30 days after the first date on which the next rental payment is due, or 45 days after the landlord's receipt of notice, whichever is shorter. Notice must include a copy of the death certificate, military casualty report, or letter from the commanding officer. While cotenants who are immediate family members are also no longer obligated under the lease, cotenants who are not immediate family members remain obligated under the lease. Payment of all rents is due up to the date of termination, and the same liquidated damages provisions discussed earlier apply under this law.

Service members are valued members of our community and should be treated as such. Brokers should be aware of the special circumstances that may allow service members to terminate a lease agreement early. These situations should be explained to landlords prior to entering into any lease agreement with a military tenant.