

MILITARY SERVICEMEMBERS AS TENANTS

I am a member of the Georgia National Guard and have been called to service and must relocate. I just signed a lease for an apartment but have yet to move in. What can I do to terminate my lease?

In 2005, the Georgia Legislature passed O.C.G.A. § 44-7-22 which allows service members to terminate their lease when necessary to fulfill their military obligations. This new law applies to all residential rental or lease agreements entered into on or after July 1, 2005, and to any renewals, modifications, or extensions of such agreements which occur after July 1, 2005. A landlord may not ask or require the tenant to waive or modify the application of this law.

A service member may terminate his or her residential rental or lease agreements by providing the landlord with a written notice of termination to be effective on the date stated in the notice as long as that date is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the service member's commanding officer. For this provision to apply one of the following must have occurred:

- The service member is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
- The service member is released from active duty or state active duty after having leased the rental premises while on active duty status and the rental premises is 35 miles or more from the service member's home of record prior to entering active duty;
- After entering into a rental agreement, the service member receives military orders requiring him or her to move into government quarters;
- After entering into a rental agreement, the service member becomes eligible to live in government quarters and the failure to move onto government quarters will result in a forfeiture of the services member's basic allowance for housing;
- The service member receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

- The service member has leased the property but prior to taking possession of the rental premises receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

The service member is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the rent is due under the lease. The service member is not liable for any other rent or damages due to the early termination of the tenancy. If a service member terminates the rental agreement 14 or more days prior to occupancy, no damages or penalties of any kind can be charged by the landlord.

In the unfortunate event that a service member dies during active duty, an adult member of his or her immediate family may terminate the service member's residential rental or lease agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice as long as the date is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the service member was on active duty, or a written verification signed by the service member's commanding officer and a copy of the service member's death certificate. The term `service member' means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia national Guard, or the Georgia Air national Guard on ordered federal duty for a period of 90 days or longer.

Less than six months ago, in 2004, my husband leased an apartment for me and our children to live in while he served at a local military base. My husband has been relocated to a military base out-of-state and we want to move with him. Can we terminate our lease without paying a penalty?

For more than ten years, Georgia law (O.C.G.A. § 44-7-37) has allowed families in your situation to terminate their lease without a penalty. If while on active military duty, a service member leases a residence for occupancy by either the service member or his immediate family the lease may be terminated if the service member receives permanent change of station orders or temporary duty orders for a period in excess of three months. The family can only be required to pay thirty days' rent after written notice and proof of the assignment are given to the landlord. The family can still be held responsible for the cost of repairing damage to the premises caused by an act or omission of the tenant.

I am serving in the military and my family cannot afford to pay their rent. What can I do to protect my family from being evicted?

Although the Service members Civil Relief Act does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents have some protection from eviction. Before a court can evict it must find that the service member's failure to pay rent was not materially affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction up to three months unless the court decides on a shorter or longer period in the interest of justice. The military member or his dependents must request this relief. There is no requirement that the lease be entered into before entry into active duty. This rule applies when:

- The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty;
- The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
- The agreed rent does not exceed \$2,534.32 per month. The amount is subject to change in future years.

I am on active military service and my former landlord has sued me for damages to my former residence. I received a copy of the lawsuit but was unable to file an answer. A default judgment was entered against me. What can I do?

The Servicemembers Civil Relief Act (SCRA) permits active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety days upon the service member's request. The request must be in writing and (1) explain why the current military duty materially affects the servicemembers ability to appear, (2) provide a date when the service member can appear, and (3) include a letter from the commander stating that the service member's duties preclude his or her appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal

appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the service member.

If a default judgment is entered against a service member during his or her active duty service, or within 60 days thereafter, the Servicemembers Civil Relief Act allows the service member to reopen the default judgment and set it aside. In order to set aside a default judgment, the service member must show that he or she was prejudiced by not being able to appear in person, and that he or she has good legal defenses to the claims against him/her.