

# LAW REVIEW 14082<sup>1</sup>

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## If I Am Selected for AGR Tour, Can I Get out of my Apartment Lease?

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

4.2—Right to terminate a lease or contract upon mobilization

**Q: I am a Sergeant First Class (SFC) in the Army Reserve. I recently joined the Reserve Officers Association (ROA), after you amended your constitution to make noncommissioned officers eligible for membership.**

**Currently, I am a traditional reservist, in a Troop Program Unit (TPU). I have applied for a three-year Active Guard and Reserve (AGR) tour, and I think that it is likely that I will be selected. I will learn late this year whether I have been selected. If selected, I will report to active duty early in 2015.**

**I live in an apartment with a one-year lease that expires at the end of September 2014. I want to sign a new one-year lease because if I stay on a month-to-month basis my monthly rent will be substantially higher. But if I am selected for the AGR tour I will have to move to another city 200 miles away. If I sign a new one-year lease that runs through September 2015 and then learn that I have been selected for this AGR tour, does federal law give me the right to terminate the lease early?**

**A:** Yes. Section 305 of the Servicemembers Civil Relief Act (SCRA) gives lease-termination rights to any person who signs a lease for premises (house, apartment, office, farm, etc.) or for a motor vehicle while a civilian (not on active duty) and who thereafter, during the term of the lease, enters into full-time military service. This applies to the person like you who is a traditional reservist (not on active duty) and who enters active duty voluntarily or involuntarily. This applies to a person who enlists in the Active Component of an armed force and reports to active duty. This even applies to the person who is drafted, but of course no one has been drafted by our country since 1973. Here is the entire text of section 305:

§ 535. Termination of residential or motor vehicle leases

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<sup>1</sup> We invite the reader's attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find almost 1,300 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

<sup>2</sup> Captain Wright is the Director of ROA's Service Members Law Center (SMLC). He can be reached by telephone at (800) 809-9448, ext. 730. His e-mail is [SWright@roa.org](mailto:SWright@roa.org).

(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 change of permanent 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.*

(2) *Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation 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 under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or*

(B) *the servicemember, while in military service, executes the lease and thereafter receives military orders--*

(i) *for a change of permanent station--*

(I) *from a location in the continental United States to a location outside the continental United States; or*

(II) *from a location in a State outside the continental United States to any location outside that State; or*

(ii) *to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 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

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(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.

(d) Effective date of lease termination.

(1) Lease of premises. In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(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.

(2) Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) 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, title and registration fees, 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 or use and mileage, 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) 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.

(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 "continental United States" means the 48 contiguous States and the District of Columbia.

50 U.S.C. App. 535 (emphasis supplied).

To terminate the lease, you must give the landlord written notice (I suggest that you do so by certified mail.), and you must provide the landlord a copy of your military orders. The termination is effective at the end of the next month following the next rental due date. For example, let us say that you give written notice on December 15, 2014, including a copy of your military orders, which provide for you to report to active duty on January 1, which is also the due date for the January rent. Your lease is terminated as of the end of January, and you owe no further rent after January 31.

**Q: I have not told the landlord that I am being considered for this AGR tour. As I am negotiating the terms of the new lease, to start on October 1, do I need to inform the landlord of the possibility that I will be going on active duty, and do I need to get lease-termination language included in the lease?**

**A:** You are under no legal obligation to inform the landlord that you have applied to go on active duty, and I suggest that you not share that information with the landlord until it is absolutely certain that you will be going on active duty and you have the orders in hand. Your right to terminate the lease upon going on active duty comes from this federal statute, the SCRA, not from a termination clause in the lease itself.

If you tell the landlord in September that you may be going on active duty in January, the landlord likely will try to make you move out at the end of September or pay the higher month-to-month rate. I suggest that you hold close your military plans until you have the orders in hand and are ready to give the formal lease-termination notice to the landlord.

**Q: My good friend Joe Smith lives in the same apartment building where I live, and his lease also expires on September 30, 2014. While I am an SFC in the Army Reserve, Joe is an SFC in the Army National Guard. Joe has applied for and is likely to be accepted for an Army National Guard AGR tour at the state headquarters of our state's National Guard. That headquarters is located in our state capital, about 150 miles from here.**

**My good friend Colonel Mary Jones recently retired from the Army National Guard as a judge advocate. She said that Joe Smith's situation is different from mine, under the SCRA. She said that as an Army Reserve Soldier I am entitled, under the SCRA, to terminate my apartment lease when I go on Army Reserve AGR orders, but when Joe Smith goes on Army National Guard AGR orders he is not entitled to terminate his apartment lease. Is Mary Jones correct? Why are Army Reserve AGR orders treated differently from Army National Guard AGR orders under the SCRA?**

**A:** I believe that Colonel Mary Jones is correct. Perhaps Congress did not intend to treat Army National Guard Soldiers and Air National Guard Airmen differently from Army Reserve Soldiers and Air Force Reserve Airmen, but the language that Congress enacted clearly mandates this differential treatment.

Under the SCRA, a person who enters "military service" is entitled to certain benefits, including the right to terminate an apartment lease. The SCRA's definitions section defines "military service" as follows:

"(2) Military service. The term 'military service' means—  
(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—  
(i) active duty, as defined in section 101(d)(1) of title 10, United States Code."

50 U.S.C. App. 511(2)(A)(i).

Section 101(d)(1) of title 10 defines the term "active duty" as follows:

“The term ‘active duty’ means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. *Such term does not include full-time National Guard duty.*”

10 U.S.C. 101(d)(1) (emphasis supplied).

Section 101(d)(5) of title 10 defines the term “full-time National Guard duty” as follows:

“The term ‘full-time National Guard duty’ means training *or other duty*, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.”

10 U.S.C. 101(d)(5) (emphasis supplied).

If Joe Smith is selected for this AGR tour at the state headquarters of the National Guard, he will receive orders that cite section 502 of title 32, and he will perform these orders in his status as a member of the National Guard of your state, but he will receive federal pay for this service. Thus, Joe Smith’s service will qualify as “full-time National Guard duty” as defined in 10 U.S.C. 101(d)(5). As has been stated, full-time National Guard duty is specifically excluded from the SCRA definition of “active duty.” Joe Smith will not be entering “active duty” as defined by the SCRA, and he will not have SCRA rights, including the right to terminate his apartment lease.

Your situation is different. As a member of the Army Reserve, you will not be performing full-time National Guard duty. Your Army Reserve AGR duty will qualify as “active duty” for SCRA purposes. You will have SCRA rights, including the right to terminate your apartment lease.

**Q: I also have an expensive health club membership in the city where I now live. The health club does not have a location near the place where I will likely be serving on my AGR tour. I recently renewed my health club membership, signing a contract that runs through June 2015. If I am selected for this AGR tour, does federal law give me the right to terminate my health club membership contract?**

**A:** No. Under 50 U.S.C. App. 535, you have the right to terminate a lease on premises or a motor vehicle, when you enter active duty. Under 50 U.S.C. App. 535a, you have the right to terminate a cell phone contract. There is no generalized right to terminate leases and contracts upon entering active duty.