

Questions and Answers on: NORTH CAROLINA MILITARY PERSONNEL RESIDENTIAL LEASE TERMINATION

This pamphlet focuses on questions regarding the rights of members of the Army, Navy, Air Force, Marine Corps, and Coast Guard to terminate a lease contract under North Carolina and/or Federal law. While it is written primarily from the viewpoint of those individuals, it is equally informative for owners and landlords of rental properties occupied by members of the U.S. Armed Forces.

The relationship between you (the tenant) and a landlord begins when you enter into a contract — typically, a lease. The terms of the lease generally are not dictated by law. However, tenant and landlord relationships and the duties owed by each to the other are controlled by statutory law.



Q: I am a member of the United States Armed Forces and I signed a 1-year lease for quarters in North Carolina. May I terminate my residential lease early?

A: In 2005, the North Carolina Legislature passed an amendment to North Carolina General Statute § 42-45. Pursuant to that amended law, members of the United States Armed Forces may seek early lease

termination in the following cases:

- The service member tenant receives permanent change of station orders to depart 50 miles or more from the location of his or her current dwelling;
- The service member is “prematurely or involuntarily released or discharged from active duty with the United States Armed Forces;” or
- The service member tenant is deployed for 90 days or more.

Q: Under North Carolina law, how much notice must I give to terminate my lease?

A: Under N.C. Gen. Stat. § 42-45 (see above), the lease termination date depends first on the reason for terminating the lease. If you receive permanent change of station orders to relocate at least 50 miles away or you are prematurely or involuntarily discharged or released from active duty, you may provide written notice of termination to be effective as soon as 30 days after the landlord’s receipt of the notice.

If you are being deployed for 90 days or more, you may terminate 30 days after the next rental payment is due following the landlord’s receipt of proper notice of your 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 you provide proper notice to terminate on January 5th, the lease can terminate as early as 30 days after February 1st, or 45 days after January 5th, whichever comes first. In this case, 45 days after January 5th is shorter. However, if you terminate under North Carolina law and you have been in your lease less than nine months, you may also be required to pay liquidated damages.

Q: What are liquidated damages?

A: “Liquidated damages” are a set dollar amount determined to be the value of the harm caused if a party to a contract violates the terms negotiated.

The parties agree that if such a breach occurs, the breaching party must pay the specified liquidated damages. In North Carolina, the requirement to pay liquidated damages, as well as the amount, is set by statute rather than by agreement of the parties. Thus, if you terminate your lease under N.C.G.S. § 42-45, you may be required to pay rent through the effective date of lease termination and you may also be required to pay the applicable liquidated damages amount.



Q: What will I have to pay under North Carolina law if I terminate my residential lease early?

A: You will be required to pay rent through the effective date of termination of the lease. In addition, you may be required to pay liquidated damages if you have completed less than nine months of your lease term. If you have completed less than six months of the tenancy, the maximum liquidated damage amount is one month’s rent. If you have completed at least six months of your tenancy but less than nine months, the maximum is one-half of a month’s rent. If you have completed at least nine months of your tenancy, then no liquidated damages are owed.

Q: Under North Carolina law, will I always have to pay liquidated damages if I terminate my lease within the first 9 months?

A: No, a landlord is not entitled to liquidated damages unless there are actual damages due to loss of the

tenancy. Actual damages occur when, despite reasonable efforts to mitigate or limit damages, the landlord is unable to find a new tenant for the premises. For example, if the landlord rents the residence two days after you terminate your lease, the liquidated damages may not exceed two days’ rent and other actual damages.

Q: Under North Carolina law, what are my family’s options for my residential lease if I die while on active duty?

A: Effective June 2012, an immediate family member or lawful representative may terminate the lease with written notice. Termination is effective 30 days after the first date on which the next rental payment is due, or 45 days after the landlord’s receipt, whichever is shorter. Notice must include a copy of the death certificate, military casualty report, or letter from a commanding officer.

Co-tenants who are immediate family members are also no longer obligated under the lease. However, co-tenants who are not immediate family members remain obligated under the lease.

Q: What if the State law doesn’t apply to my situation?

A: The Servicemembers Civil Relief Act (SCRA) provides a wide range of protections for service members. (50 U.S.C. App. § 501-597b.) The SCRA allows service members and their dependents to terminate residential leases in three instances:

- The service member entered the lease before active duty military service;
- The service member entered the lease while on active duty and then received permanent change of station orders; or
- The service member entered the lease while on active duty and then received orders to deploy in support of a military operation in excess of 90 days.

Q: Under the Federal SCRA, how much notice must I give to terminate my lease, and what will I owe?

A: 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. For example, if the monthly rent is due on the 1st day of the month and you deliver proper notice of termination to your landlord on January 25th, the earliest effective date the lease and your obligation to pay rent terminate, will be 30 days after February 1st. If you terminate your lease under the SCRA, you cannot be required to pay any liquidated damages. You must pay rent through the effective date of the lease.



Q: Should I use the State or Federal law to terminate my North Carolina lease?

A: In some cases, only one of the laws will apply, so you should use the one that works best for you. For example, only the North Carolina law will apply when the service member is “prematurely or involuntarily discharged.” On the other hand, only the SCRA will apply to permanent change of station orders of less than 50 miles. In cases where both laws apply, the service member should utilize the law that is most advantageous given the facts at hand. *Continued*

The biggest difference between the SCRA and NC law relates 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.

Q: What kind of notice of lease termination must I give my landlord under the laws?

A: The notice requirements under both the SCRA and North Carolina law are similar. You must provide written notice and a copy of your military orders to the landlord. Alternatively, you can provide a letter from your Commanding Officer verifying the reason for the need to terminate the lease. Under the SCRA, the only effective methods of service are hand delivery, private business carrier, or by U.S. Mail with return receipt requested.

Q: Which law is going to cost me less to terminate my lease — North Carolina or Federal?

A: It is typically less expensive to terminate under North Carolina law when you have been in your lease for nine months or more and you deliver notice to terminate more than fifteen days before the next monthly rental payment is due. For example, suppose you have been in your lease over nine months and the next rental payment is due April 5th. On March 6th, you deliver notice of intent to terminate. Under the SCRA, the effective date of termination is 30 days after April 5th, meaning you will pay two months' rent. Under North Carolina law, the termination date would be 45 days after delivery of the notice. Since you have been in the lease for at least nine months, there are no liquidated damages.

Remember that in North Carolina, even if you

have been in the lease for less than nine months, the landlord may only retain rent or liquidated damages if he or she has suffered an actual loss. If the property is re-rented during the period for which the landlord has collected rent from the former tenant/service member, the landlord may need to refund the service member a prorated portion of the rent collected, less any allowable fees.



Q: My landlord also required my spouse's signature on the residential lease; does either law release my spouse from the lease as well?

A: Yes, the SCRA is clear that termination by a service member terminates the obligations of a spouse and any other military dependent that may have signed the lease as well. The North Carolina law does not address that issue.

If a spouse signs a lease on behalf of the service member, such as by using a power of attorney, then the lease is covered to the same extent as if the service member signed the lease. However, if the civilian spouse signed a lease in his or her own capacity and the service member did not, there is no protection under either statute.

Q: Can I waive my rights under either law in my lease contract?

A: The North Carolina statute specifically says that its protections cannot be waived or modified

under any circumstances. However, SCRA lease termination rights may be waived, but to be legally effective, such waiver must comply with 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 a 12-point font.

If a landlord requires you to waive SCRA rights as a condition of renting the premises, you should go elsewhere for rental quarters and then report the matter to the nearest legal assistance office and the base housing and housing referral office.

Q: What should I do if I am a service member, but none of the scenarios above apply to give me the right to terminate my lease early?

A: When you need to terminate your lease and neither of the lease termination statutes applies, you should review the lease to see if it gives you any other special lease termination rights or seek legal assistance. If you leave the premises early and in breach of the contract, the landlord may be entitled to damages you caused as a result of the breach. These damages can include the loss of rent during the remaining lease term and costs of re-renting the property. Again, the landlord must take reasonable steps to "mitigate" damages, that is, to re-rent the premises to avoid loss of rent, but the landlord may apply your security deposit to satisfy these damages and may also sue you for any additional damages in excess of the security deposit.

Additional Resources:

For information on tenant security deposits, renting residential real estate, discrimination in rental housing and other consumer housing issues, visit the North Carolina Real Estate Commission Web site at www.ncrec.gov or call us at 919-875-3700 to request a free copy of a "Questions and Answers" brochure on any of these topics.

Other written materials are available from the Consumer Protection Section of the Attorney General's Office's Web site at www.ncdoj.gov or by calling 919-716-6000. For fair housing (discrimination) issues, visit the North Carolina Human Relations Commission Web site at www.doa.nc.gov/hrc or call 919-807-4420, or contact your local fair housing agency. In addition, if you are in the military, you may wish to consult your Judge Advocate General (JAG).

If you are in the military and have questions about a lease, please call our special toll-free hotline at 1-855-806-0232.



Scan the code above to access the Commission Web site from your mobile devices.

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