

HOW TO BREAK YOUR LEASE

1. Terminating your lease because of entry onto active duty, change of duty stations, and deployment

Under the Servicemembers Civil Relief Act (SCRA), 50 USCS Appx § 501 et seq., a soldier on active duty may terminate a lease covering property used for dwelling, professional, business, agricultural or similar purposes if the lease/rental agreement was signed before you entered active duty and the leased premises have been occupied for the above purposes by you or your dependents. Upon application to a court, a servicemember's dependent is entitled to the protections under the SCRA if the dependent's ability to comply with a lease, contract, or other obligation is materially affected by reason of the servicemember's military service. (50 USCS Appx § 538)

The SCRA was designed to afford protection of one's property during periods of military service. (Hanson v Crown Toyota Motors, (Utah 1977) 572 P2d 380) A servicemember may, however, waive any of the rights and protections provided by the SCRA. The waiver will be effective only if it is in writing (prominently displayed in a least 12 point type) and is executed as an instrument separate from the obligation or liability to which it applies. (50 USCS Appx § 517 (a-c)) This applies equally to the modification, termination, or cancellation of a lease or rental contract. (50 USCS Appx § 517 (c)) The written agreement of waiver shall specify the legal instrument (lease or rental contract) to which the waiver applies. (50 USCS Appx § 517 (c)) Assuming your rights have not been waived you may terminate your lease or rental agreement by following the procedure below.

As the lessee, you may, at your option, terminate the lease at any time after your entry into military service; or the date of your military orders. (50 USCS Appx § 535 (a)(1)) A lessee's termination of a lease shall terminate any obligation a dependent of the lessee may have under the lease. (50 USCS Appx §535 (a)(2)) To terminate the lease, you must deliver written notice of such termination, and a copy of your military orders, to the lessor/landlord after entry on active duty or receipt of orders for active duty. (50 USCS Appx § 535 (c)) Oral notice is not sufficient. Delivery may be accomplished by hand delivery, private business carrier, or deposit in the United States mail with sufficient postage and return receipt requested. The effective date of termination is determined as follows:

a. For rentals payable from month-to-month, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September; thirty days after that date would be 1 October, the effective date of termination.

b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

The SCRA added a new provision in December 2003, **extending coverage to leases entered into by active duty service members** who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.

If you have paid your rent in advance, the landlord must refund the unearned portion and your security deposit within 30 days of the effective date of the termination of the lease. It is illegal for a landlord to knowingly seize, hold, or detain your (or a dependent's) personal effects, security deposit, or other property if you have lawfully terminated your lease. (50 USCS Appx § 535 (h)). California essentially codified the SCRA into state law under the Cal Mil & Vet Code § 409 (2009) entitled "Termination of lease covering occupied premises."

2. Terminating your lease for other reasons

A Landlord is obligated to supply possession of the premises as agreed in the lease. The premises must meet minimum standards of habitability including compliance with applicable building codes. A rental unit must be fit to live in; that is, it must be habitable. In legal terms, "habitable" means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety. (Green v. Superior Court (1974) 10 Cal.3d 616, 637-638 [111 Cal.Rptr. 704, 719]; Civil Code Sections 1941, 1941.1) A rental unit may be considered uninhabitable (unlivable) if it contains a hazard that endangers the occupants or the public, or is a substandard building because, for example, a structural hazard, inadequate sanitation, or a nuisance endangers the health, life, safety, property, or welfare of the occupants or the public. (Civil Code Section 1941.1 paragraph 1, Health and Safety Code Sections 17920.3, 17920.10)

Landlords have the legal responsibility to repair and maintain the premises. In California the landlord must provide: waterproofing and weather protection of roof and walls (including windows and doors), working plumbing, hot and cold running water, heat, electricity, garbage and rodent free buildings and grounds, trash cans, deadbolt locks on main exterior doors, window locks, smoke detectors, telephone jacks, and well maintained floors, stairs, and railings. Furthermore, your landlord may have agreed to additional responsibilities in your lease for things like drapes, washing machines, swimming pools, saunas, parking places, intercoms, dishwashers, refrigerators, etc.

If your landlord has failed to meet his legal responsibilities to maintain and repair the premises after receiving complaints from you, usually 30 days is considered reasonable under the law, you may break your lease under the doctrine of "constructive eviction." In order to break your lease your dwelling must substantially lack any of the above-mentioned items, the landlord must have been notified of the problem, and the landlord must have failed to fix the problem in a "reasonable time." You do not need to give your landlord notice you are moving but it is a good idea to send them a notice stating when you are and why.

To end a periodic rental agreement, for example a month-to-month agreement, you must give the landlord the same amount of notice as there are days between rent payments, unless the rental agreement specifies a different notice requirement. So, if you pay monthly, the notice must be a month in advance. If you pay weekly you must give a week advance notice. (CA Civil Code Section 1946)

FURTHER HELP IS AVAILABLE

For appointments concerning consumer and other personal legal matters, please contact the Legal Assistance Branch of the Office of the Staff Judge Advocate located at Building 275, Plummer Street, Defense Language Institute, Presidio of Monterey (831-242-5084 or DSN 768-5084).