



The North Carolina Servicemembers Civil Relief Act

QUESTION: I was talking with another property manager recently and she mentioned the North Carolina Servicemembers Civil Relief Act. I thought that was a federal law, not a state law. Is there such a thing as the North Carolina SCRA?

ANSWER: Yes. The North Carolina Servicemembers Civil Relief Act was enacted by the NC General Assembly in its 2019 session and was signed by Governor Cooper on July 25, 2019. It was codified in the General Statutes as Article 4 of Chapter 127B ([Sections 127B-25 through 127B-36](#)). It became effective October 1, 2019, and applies to contracts entered into, renewed, or modified on or after that date.

QUESTION: What is the purpose of the North Carolina SCRA?

ANSWER: The North Carolina SCRA incorporates into State law the rights, benefits, and protections of the federal Servicemembers Civil Relief Act, and extends those rights, benefits, and protections to members of the North Carolina National Guard serving on State active duty and to members of the National Guard of other states serving on state active duty who reside in North Carolina. The North Carolina SCRA also provides some additional protections.

QUESTION: What is considered “active duty” for a member of the National Guard?

ANSWER: In the case of a member of the NC National Guard, it is active duty under an order of the Governor for a period of more than 30 consecutive days. In the case of a member of the National Guard of another state, it is military service under an order of the governor of that state that is similar to NC State active duty for a period of more than 30 consecutive days.

QUESTION: Can you refresh my memory on what a servicemember’s rights are to terminate their lease early?

ANSWER: Sure. Under the federal SCRA (and now by extension, the North Carolina SCRA), a servicemember may terminate a residential lease:

- if the servicemember enters into military service after signing the lease,
- if the servicemember, while in military service, signs the lease and thereafter receives orders for a permanent change of station or to deploy for not less than ninety days, **or**
- if the servicemember, while in military service, signs the lease upon receipt of an order for a permanent change of station or to deploy for not less than ninety days and thereafter receives a stop movement order in response to a local, national, or global emergency, which

prevents the servicemember or the servicemember's dependents from occupying the premises leased.

QUESTION: If a servicemember's spouse is also named on the lease, do they remain obligated by the lease?

ANSWER: No. A servicemember's termination of a lease under the federal SCRA also terminates any obligation a dependent of the servicemember may have under the lease.

QUESTION: How does a servicemember terminate the lease, and when does the termination become effective?

ANSWER: Termination of a lease is accomplished by delivery of written notice of termination and a copy of the servicemember's military orders to the landlord or the landlord's agent. For leases that provide for monthly payment of rent, a termination based on receipt of permanent change of station orders or an order to deploy for ninety days or more is effective thirty days after the first date on which the next rental payment is due after the notice has been delivered. A termination based on receipt of a stop movement order is effective when proper notice has been delivered.

QUESTION: Isn't there also a North Carolina statute that gives a servicemember rights to terminate their lease early?

ANSWER: Good question. NCGS Section 42-45 *used* to give any member of the armed forces the right to terminate their lease early under certain circumstances. The circumstances under which the lease could be terminated early under the State law, and the effect of an early termination, were slightly different than a servicemembers rights under the federal SCRA, which was confusing. When the North Carolina SCRA was enacted, NCGS 42-45 was amended to remove any reference to members of the armed forces. The effect of that change is that a servicemember's rights to terminate their lease early are now the same under both federal and State law.

QUESTION: So if servicemembers aren't covered under NCGS 42-45 anymore, who is?

ANSWER: Military technicians. A military technician is a federal civilian employee who holds dual status as a member of the Army Reserve. The term "military technician" is defined in section 10216 of Title 10 of the United States Code.

QUESTION: Please also remind me what a servicemembers rights are to delay an eviction.

ANSWER: Sure. The federal SCRA (and now by extension, the North Carolina SCRA) provides for the temporary suspension of civil judicial and administrative proceedings, including evictions, that may adversely affect the rights of servicemembers during their military service. The SCRA requires the plaintiff in every civil action where the defendant has not made an appearance in the case to file a Declaration declaring whether or not the defendant is in military service. The form is called the "Servicemembers Civil Relief Act Declaration" (form AOC-G-250).

QUESTION: How do I prove whether or not a tenant in an eviction action is in military service?

ANSWER: The best evidence of the tenant's status as to whether he or she is in military service is to obtain a "Status Report" on a Department of Defense website at: <https://scra.dmdc.osd.mil/scra/>. Click on "Single Record Request," set up an account, insert the tenant's name and social security number, and you will get a "Status Report" certifying the tenant's active duty status as of the date of the request. A copy of the Status Report should be printed and attached it to the Declaration.

QUESTION: What if I don't have the tenant's social security number?

ANSWER: If the tenant's social security number is not available, there is a place in the Declaration for facts supporting the complainant's statement that the tenant is not in the military. Whether a magistrate will find the explanation sufficient will depend on the magistrate and the particular facts. It should be carefully noted that paragraph 5 on the back of the Declaration form states that knowingly making a false statement made can result in fines or imprisonment for up to one year. NC REALTORS® has a Military Status Addendum (Form 436-T) that a tenant can sign confirming that they are *not* in military service and agreeing to promptly notify the landlord if they enter military service after the addendum is signed. If signed, this form may be used as evidence supporting the complainant's statement that the tenant is not in the military. Again, whether or not this will be considered sufficient evidence would be up to the particular magistrate.

Note carefully that paragraph 5 on the back of the Declaration form states that knowingly making a false statement made can result in fines or imprisonment for up to one year.

QUESTION: So what happens if the tenant is in military service and doesn't make an appearance in the case?

ANSWER: In that case, the court may not enter judgment until after the court appoints an attorney to represent the servicemember. If the court determines that there may be a defense to the action that cannot be presented without the presence of the servicemember, or the appointed attorney can't contact the servicemember or otherwise determine if the servicemember has a defense to the action, the court must grant a stay of the proceedings for a minimum of 90 days.

QUESTION: What if it's not clear whether the tenant is in military service?

ANSWER: If, based upon the Declaration, the magistrate is unable to determine whether the tenant is in military service, the magistrate may require the plaintiff to file a bond in an amount approved by the magistrate. If the defendant is later found to be in military service, the bond shall be available to indemnify the tenant against any loss or damage he or she may suffer by reason of any judgment for the plaintiff should the judgment be set aside in whole or in part.

QUESTION: Can a servicemember waive their SCRA rights?

ANSWER: Yes. The SCRA provides that a servicemember can waive his or her rights under the SCRA if the waiver is made during the period of his or her military service. NC REALTORS® has a Waiver of Rights Relating to Rental Contract (Form 435-T) that may be signed by a servicemember to waive his or her SCRA rights at the time he or she enters into a lease agreement. Assuming that the court determines that the waiver was knowingly and voluntarily signed by the

servicemember during the period of his or her military service, the eviction action should go forward.

QUESTION: Thanks for the refresher on a servicemembers rights under the federal SCRA. Back to the North Carolina SCRA, you mentioned that the North Carolina SCRA provides some additional protections. Can you tell me more about that?

ANSWER: Yes, of course. In addition to the protections provided by the federal SCRA, the North Carolina SCRA provides that if a member of the North Carolina National Guard, or a member of the National Guard of another state who resides in this State, has a lease agreement on their residence and the lease agreement expires while they are engaged, for any period of time, in State active duty or service under an order of the governor of another state that is similar to State active duty, they are entitled to extend the lease agreement to terminate ten days after their State active duty or service terminates, upon providing written or electronic notice to the landlord or the landlord's representative. The terms of the lease agreement during this period of extension are on the same terms that applied during the month before the expiration.

QUESTION: What if they are behind on their rent?

ANSWER: This additional protection applies only to National Guard members who are current on all rents and required security deposits and in good standing regarding the lease agreement. Nothing in the law relieves National Guard members of the obligation to pay rent, fees, dues, or other monies required in the lease agreement on time and in full.

QUESTION: Thanks. One more question—what are the penalties for violating the North Carolina SCRA?

ANSWER: A civil action may be filed by the North Carolina Attorney General's office or by a servicemember. The court may order an injunction, payment of restitution, damages, civil penalties in an amount of up to \$5,000.00 per violation, and attorneys' fees and court costs. In addition, a knowing violation of the North Carolina SCRA is an unfair or deceptive trade practice under Chapter 75 of the General Statutes, which, among other things, provides that any damages awarded in a case involving a violation of Chapter 75 will be trebled.

NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. If you or a client requires legal advice, the services of a private attorney should be sought. Always consult your broker-in-charge when faced with a question relating to the practice of real estate brokerage.

© Copyright 2022. NC REALTORS®. All rights reserved. No reproduction of any part may be made without the prior written consent of the copyright holder. Any unauthorized reproduction, use, disclosure or distribution is strictly prohibited.