

Landlord News

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MILITARY RESIDENT RIGHTS -----THE LAW AND YOUR RIGHTS

Military personnel have enjoyed special legal protections since WW I. At that time,



Congress enacted the Soldiers & Sailors Civil Relief Act. After 9/11 and the resulting war on terror, Congress changed the name of the law in 2003 to "Servicemembers

Civil Relief Act of 2003" or SCRA for short. The law's expressed purpose is to provide for, strengthen, and expedite the national defense by enabling persons serving in the military service to devote their entire energy to the defense needs of the United States. The law accomplishes this by providing for the temporary suspension of judicial proceedings that may adversely affect the civil rights of servicemembers during their military service, and by allowing servicemembers to terminate certain contractual obligations.

To understand the law, you must familiarize yourself with the law's key concepts. Traditionally, one who was in the military was in the "military service" or "armed forces". Similarly, this law applies to "servicemembers". A "servicemember" is a member of the uniformed services. Uniform services means "armed forces" (army, navy, air force, marines), but also includes the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

If you are a servicemember, you must be serving. The law does not apply to non-active duty or retired servicemembers. The servicemember must be "in the military service"
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NEW NORTH LOCATION FOR CLIENT LUNCH IN SEPTEMBER

The Firm has selected a new location for the NORTH Client Luncheons.

This change is in effect for the September 23rd Client Lunch. The new luncheon Restaurant is the Rock Bottom Restaurant & Brewery in Westminster. The exact address is 10633 Westminster Blvd. Directions and a map can be



found on our web site by clicking on the September 23 date in our Events Calendar.

The Restaurant can be reached by taking the Boulder Turnpike and exiting the 104th Avenue Exit toward Church Ranch Blvd, Turn Right onto W 104th Avenue and then Turn Left onto Westminster Blvd.

We are very excited about the new site and believe that it will provide a hospitable environment for our north location client luncheons. Please circle your calendar now and join us at the new luncheon restaurant on Friday September 23rd.

Call And Make Your Reservation
Today or Register on Line at
www.htspc.com

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of the United States for the law to apply. For traditional armed forces such as Army, Navy, Air Force, and Marines, this means the servicemember must be on active duty. Active duty 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. Active duty does not include full-time National Guard duty under normal circumstances.

However, a National Guard member shall be "in the military service" of the United States for purposes of the law if such a member is serving under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds.

Applicability to Evictions

You cannot evict a resident in military service if the resident's rent is less than \$2465 per month without court order. The \$2,465 is the 2004 figure and will be adjusted upward in the future based on the Consumer Price Index. This means for all intents and purposes, you cannot evict a residential tenant who is a servicemember without a court order. If you violate this law, you have committed a crime. Violation of the law is a misdemeanor punishable by up to one year in jail.

If you file an eviction against a servicemember, the court or the servicemember may request a stay of the eviction.

Specifically, the court on its own motion (without anyone asking) may stay an eviction proceeding against a servicemember for 90 days if it finds that the servicemember's ability to pay the rent is materially affected by his military service. The court may also, on its motion, appoint an attorney for the servicemember who could also seek a stay if they are unable to contact the servicemember or if the attorney has contacted the servicemember but the defense would require the



servicemember's appearance in court. Similarly, the court has no discretion and must enter a stay (up to 90 days) of any eviction proceeding upon request from a servicemember if the court finds that the service-member's ability to comply with the lease is materially affected by military service. A stay means any eviction is on hold until further order of the court. A stay does not stop the rent from accruing or release anyone from responsibility for paying the rent. If a court stays any eviction against a servicemember, the rent continues to accrue during any stay, and ultimately the servicemember is liable to you for the payment of this rent.

The court may condition any stay upon any terms that in the opinion of the court, justice and equity require. The court has wide discretion to "balance the equities" between you and the resident (servicemember), and to order appropriate relief.

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AURORA PIT BULL PROPOSAL

The new Aurora Pit Bull proposal will go in front of the full city council this month. The proposed regulations would apply to nine different breeds, including American Pit Bull Terrier, American Staffordshire Terrier, Stafford Bull Terrier, American Bulldog, Dogo Argentino, Canary dog, Perro de Presa Mallorquin, Tosa Inu and Cane Corso Italiano, and would close the door on dogs not licensed before August 9, 2005.

The proposal is not an outright ban, and does protect "responsible" owners from having to get rid of their pets. However, the proposal does impose new regulations that are meant to protect other Aurora residents from potential harm.



The proposed regulations include: that owners must be 21 years old; owners must have at least \$100,000.00 in liability insurance; signs must be posted at the front door of the residence alerting visitors to the presence of pit bulls; when dogs are inside, the windows and doors must be closed; dog runs must be fully enclosed; and dogs must be spayed or neutered.

We are keeping a close eye on the situation, and will continue updating our clients on the situation as it develops.



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For example, if the rent has not been paid and there are severe non-compliance issues, the court could deny the stay and allow the eviction to continue. Similarly, if the amount of unpaid rent was significant (say 3 months for example), the court could presumably order a shorter stay.

Servicemember's Right to Terminate a Lease

A servicemember may terminate a lease under certain circumstances. If not in military service at lease execution, a person may terminate the lease if they join the military at any point after the lease was executed and prior to the end of the lease term. If in the military at the time of lease execution, a servicemember may terminate a lease upon receiving orders for a permanent change of station, or upon receiving orders to deploy for a period of not less than 90 days. A servicemember's termination of a lease under the law also terminates any obligation a dependent may have under the lease.

SCRA does not define the term

"permanent change of station" with respect to residential leases.

This has led to the term "permanent change of station" being the subject of dispute. Some



property managers have attempted to resolve disputes by adopting the "50 mile test". Specifically, if the servicemember moves more than 50 miles away, the servicemember has "permanently changed stations" and thus may terminate the lease. The "50 mile test" has nothing to do with SCRA but rather has been adopted from the IRS code. Under the IRS code, the IRS allows deductions for moving expenses if you have moved more than 50 miles. However, applying the 50 mile test to servicemembers is clearly wrong because under the IRS code the 50 mile test specifically does not apply to members of the armed forces. Rather, cases interpreting the tax code have held that a servicemember "permanently changes station" when the servicemember moves from one permanent post of duty to another permanent post of duty at a different duty station regardless of distance.

Termination Procedures and Issues

To terminate a lease, the servicemember must deliver written notice of termination along with a copy of applicable orders to you or your agent. The Servicemember may make delivery in person, by business courier, or by U.S. First Class

Mail Return Receipt Requested. Regardless of how delivered, the termination notice is effective thirty days after the first date on which the next rental payment is due and payable after the date when such notice is delivered or mailed. For



example, if the notice is served 2/15/04, the lease termination would become effective on March 31, 2004, or 30 days after the 1st date (March 1st) upon which the next monthly rent payment was due. The servicemember is always liable to pay rent through the effective termination date. If the effective termination date does not end exactly on the last day of the month, rent for any odd amount of days is pro-rated on a daily basis.

If you receive notice of termination from a servicemember, you may apply for relief with the court. A court may modify the rights of the person in military service to terminate any lease subject to such modifications or restrictions as in the opinion of the court that justice and equity may in the circumstances require. Application for a court order upon receipt of a notice of termination from a servicemember is appropriate in limited circumstances. For example, you should apply for a court order if an active duty servicemember attempts to terminate a lease but doesn't have permanent change of station orders.

However, any opposition to termination should be weighed and evaluated carefully. If you interfere with the termination of lease by a servicemember, or withhold or use a servicemember's security deposit for rent owed after the lease termination date, you are committing a criminal misdemeanor. If a servicemember is already in the military at the time lease execution, the servicemember may waive their rights under SCRA. However, any waiver of a servicemember's rights under SCRA must be contained in a conspicuous waiver agreement, and such waiver agreement must be separate and apart from the servicemember's lease.

If a servicemember takes advantage of any of these rights, you may not use this against the servicemember. Specifically, if a servicemember rightfully terminates a lease under the act, you may not report this to any credit reporting agency or credit bureau as an adverse or negative event. Finally, you may not deny a servicemember's application to rent based upon credit worthiness if the Servicemember has exercised any right under the law in the past.



FIRM WORKSHOPS ATTENDANCE GROWS

The Firm Workshops continue to draw large attendance and as we head toward the last quarter of 2005 it is appropriate to remind you about the workshops that are on the schedule for the remainder of 2005.

The last Non-Monetary Eviction

Workshop this year at our facility is scheduled on Thursday September 15th. The last Advanced Fair Housing Workshop at our facility is on Tuesday October 11th. To register for these classes please call Nancy at 303-699-3484.



In Colorado Springs HTS will be presenting a Basic Evictions Workshop on September 7th and an Advanced Fair Housing Workshop on November 9th. To sign up or for further information Contact the AACCS at 719-264-9195. Additionally we will be doing a special workshop for IRAC in the Springs on the evening of September 28th.

We will also be giving our Non-monetary Evictions (September 22), Fair Housing Advanced (October 20) and Basic Evictions (November 17) at the AAMD. For information on charges and registration for the AAMD workshops please call Gayle Gahagan at 303-329-3300.



To Kill an American

Nice to know that there are some who know who we are and what it means— something to think about!

You probably missed it in the rush of news last week, but there was actually a report that someone in Pakistan had published in a newspaper an offer of a reward to anyone who killed an American, any American. So an Australian wrote the following to let everyone know what an American is ... so they would know when they found one. (Good one, mate!!!!)

"An American is English, or French, or Italian, Irish, German, Spanish, Polish, Russian or Greek. An American may also be Canadian, Mexican, African, Indian, Chinese, Japanese, Korean, Australian, Iranian, Asian, or Arab, or Pakistani, or Afghan. An American may also be a Comanche, Cherokee, Osage, Blackfoot, Navaho, Apache, Seminole or one of the many other tribes known as native Americans. An American is Christian, or he could be Jewish, or

Buddhist, or Muslim. In fact, there are more Muslims in America than in Afghanistan. The only difference is that in America they are free to worship as each of them chooses.

An American is also free to believe in no religion. For that he will answer only to God, not to the government, or to armed thugs claiming to speak for the government and for God.

An American lives in the most prosperous land in the history of the world. The root of that prosperity can be found in the Declaration of Independence, which recognizes the God given right of each person to the pursuit of happiness.

An American is generous. Americans have helped out just about every other nation in the world in their time of need, never asking a thing in return. When Afghanistan was over-run by the Soviet army 20 years ago, Americans came with arms and supplies to enable the people to win back their country!

As of the morning of September 11, Americans had given more than any other nation to the poor in Afghanistan.

Americans welcome the best of everything --- the best products, the best books, the best music, the best food, the best services. But they also welcome the least. The national symbol of America, The Statue of Liberty, welcomes your tired and your poor, the wretched refuse of your teeming shores, the homeless, tempest tossed. These in fact are the people who built America.

Some of them were working in the Twin Towers the morning of September 11, 2001 earning a better life for their families. It's been told that the World Trade Center victims were from at least 30 different countries, cultures, and first languages, including those that aided and abetted the terrorists. So you can try to kill an American if you must. Hitler did. So did General Hirohito, and Stalin, and Mao Tse-Tung, and other blood-thirsty tyrants in the world. But, in doing so you would just be killing yourself. Because Americans are not a particular people from a particular place. They are the embodiment of the human spirit of freedom. Everyone who holds to that spirit, everywhere, is an American."





CLIENT HOLIDAY PARTY DEC 2nd



YOUR CALENDAR