

But remember that under N.C.G.S. § 42-45, 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.



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: Under the SCRA, 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. N.C.G.S. § 42-45, however, 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 termination provisions in N.C.G.S. § 42-45 cannot be waived or modified under any circumstances. However, the SCRA lease termination rights may be waived, but to be legally effective, a 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 asks 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 gives 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 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, 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.

Q: I am a member of the Armed Services and booked a vacation rental but can no longer go because I received orders; can I terminate my vacation rental agreement?

A: North Carolina General Statute § 42A-37 allows members of the United States Armed Forces to seek termination of a vacation rental agreement in the following cases:

- The service member receives permanent change of station orders requiring the member to relocate on a date prior to the beginning of the lease term; or
- The service member tenant is deployed for a period that will overlap with the rental period.

In order to terminate the vacation rental agreement, you or your spouse must provide the landlord written notice of termination within 10 calendar days of receipt of the orders, along with a copy of your military orders or a letter from your Commanding Officer verifying the reason for the need to terminate the lease. Termination will be effective immediately upon receipt of the notice by the landlord. The landlord must refund any money you have paid in connection with the vacation rental agreement, with the exception of nonrefundable fees paid to third parties as described in North Carolina G.S. § 42-16(a), within 30 days of termination of the agreement.

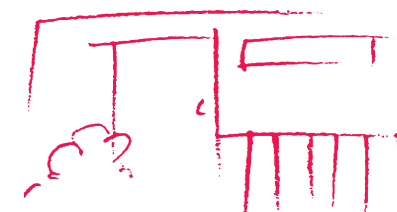


Additional Resources:

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 below to access the Commission Website from your mobile devices.



**THE NORTH CAROLINA
REAL ESTATE COMMISSION**

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Questions and Answers on:

N.C. MILITARY PERSONNEL RESIDENTIAL LEASE TERMINATION



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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, National Guard, Marine Corps, and Coast Guard to terminate a lease contract under North Carolina and 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 Armed Forces.



Q: I am a military technician and I signed a 1-year lease for quarters in North Carolina. May I terminate my residential lease early?

A: North Carolina General Statute § 42-45 allows military technicians to seek early lease termination in the following cases:

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

Q: Under North Carolina law, how do I exercise my right to terminate and when will my lease end?

A: You must give your landlord written notice of your intent to terminate, along with a copy of your military orders or a letter from your Commanding Officer verifying the reason for the need to terminate the lease.

If you receive permanent change of station orders to relocate at least 50 miles away, are prematurely or involuntarily discharged, or are released from active duty, your lease will terminate 30 days after the landlord receives your written notice.

If you are being deployed for 90 days or more, after you landlord receives the written notice, your lease will terminate 30 days after the next rental payment is due, or 45 days after the landlord received the notice, whichever is shorter. For example, if rent is due on the 1st of the month, and you provide written 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.

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

A: Under N.C.G.S. § 42-45, you are responsible for paying rent through the effective date of termination of the lease. And if you terminate within the first nine months of your lease term, you may be required to pay an additional amount, called liquidated damages.

The liquidated damages amount will depend on how much of the lease you have completed. If you have completed fewer than six months of the tenancy, the maximum liquidated damages can be up to one full month’s rent. If you have completed more than six months, but fewer than nine months, the maximum amount of liquidated damages will be up to one-half of a month’s rent.

Q: Will I always have to pay liquidated damages if I terminate my lease within the first nine 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: An immediate family member or lawful representative may terminate the lease with written notice. Termination will be 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. The notice to the landlord 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 will remain obligated under the lease.

Q: What if N.C.G.S. § 42-45 doesn’t apply to my situation?

A: The Service members Civil Relief Act (SCRA), a federal and state law, provides a wide range of protections for service members. (50 U.S.C. App. § 501-597b. and N.C.G.S. § 127B25-36.) 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 SCRA, how do I exercise my right to terminate and when will my lease end?

A: The notice requirements under both the SCRA and N.C.G.S. § 42-45 are similar. You must give your landlord written notice of your intent to terminate, along with a copy of your military orders or a letter from your Commanding Officer verifying the reason for the need to terminate the lease. Under the SCRA, you must give notice by hand delivery, private business carrier, or by U.S. Mail with return receipt requested.

Lease termination will be effective 30 days after the next rental payment is due following your 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.

Q: What will I have to pay under the SCRA if I terminate my residential lease early?

A: If you terminate your lease under the SCRA, you must pay rent through the effective termination date

of the lease, but your landlord cannot require you to pay any liquidated damages.

Q: Should I use N.C.G.S. § 42-45 or the SCRA to terminate my North Carolina lease?

A: In some cases, only one of the laws will apply. In cases where both laws apply, you should utilize the law that is most advantageous given the facts at hand.



Q: Which law is going to cost me less to terminate my lease — N.C.G.S. § 42-45 or the SCRA?

A: It will typically less expensive to terminate under N.C.G.S. § 42-45 if 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 N.C.G.S. § 42-45, 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. However, if you have been in the lease for less than nine months, the SCRA may be more economically favorable, because, as discussed above, the SCRA does not permit liquidated damages under any circumstances. *Continued*