

FACT SHEET

OSJA
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18 August 2004

SUBJECT: Residential Leases

PURPOSE: To provide leaders with information regarding residential lease termination in the Fort Hood/Killeen community. This paper will address common scenarios that arise between soldiers and landlords and answer questions that commanders may have regarding these same issues.

FACTS:

1. Most landlords and property managers in the Killeen/Harker Heights/Copperas Cove area are members of the Texas Apartment Association (TAA), and they use a lease promulgated by the TAA. The TAA lease is very landlord-friendly, especially when it comes to lease termination. The scenarios below discuss what will happen if a soldier breaches a TAA lease.
2. **General Breach of Lease Penalties.** Pursuant to the TAA lease, the contract is for one year. There is no provision that allows for a soldier to terminate a lease after 30 days notice. If a tenant “breaks the lease,” the penalties are severe. The landlord is allowed to make all of the future rent due immediately. Therefore, if there are 6 months remaining on the lease and the rent is \$700 per month, the soldier has immediately incurred a legally enforceable debt of \$4200. In addition, the TAA lease allows the landlord to charge a “Reletting Charge,” which is generally 85% of one months rent. The landlord is also still entitled to charge the tenant reasonable fees for damages to the property. If the landlord is not able to collect the debt from the soldier, they will turn the debt over to a collection agency. The outstanding debt will also be reported to credit reporting agencies, doing substantial damage to the soldier’s credit. A lawsuit is the last step, and a judgment will typically be entered in the landlord’s favor.
3. **Divorce Scenario.** A soldier is pending a divorce, and the non-soldier spouse does not want to leave the apartment, or cannot afford to. A reasonable solution is to have the soldier move back into the barracks. It is important to realize that the soldier is still legally responsible for the lease, and if the spouse fails to pay the rent, local landlords will pursue the soldier first. Therefore, the soldier should continue to pay the rent. This may also satisfy the soldier’s family support requirements pursuant to AR 608-99, which will generally require the soldier to pay his/her spouse BAH Type II (less than full BAH). A finalized divorce does not provide legal justification to terminate a lease. Therefore, unless the soldier works out a new agreement with the landlord, the soldier is still legally responsible for the lease. If the non-soldier spouse continues to live in the apartment after the divorce, the soldier should get his/her name removed from the lease, so that he/she is no longer legally responsible for it. If the soldier is instead going to move back into the apartment after the divorce, the unit commander should authorize the soldier to continue receiving BAH and live off-post until the lease term expires.
4. **Spousal Abuse.** Clearly, if spousal or child abuse is suspected or alleged, the command should order a soldier back into the barracks. However, the same rules apply with regards to the

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lease being legally enforceable against the soldier. The soldier does, however, remain liable for the lease both during and after the investigation.

5. On-Post Housing Becomes Available. A soldier cannot legally terminate a lease because on-post housing becomes available. The soldier is bound for the entire term of the lease. The penalties discussed above will apply to a soldier who moves out of an apartment and into on-post housing before the lease term expires.

6. Soldier is Having Financial Problems. Commanders may be tempted to move a soldier back into the barracks if they are having financial problems. However, if the soldier is forced to breach his/her lease to move into the barracks, the soldier's financial difficulties will only get worse. Any breach of lease will subject the soldier to the breach of lease penalties discussed above.

7. Soldier Gets PCS Orders. If a soldier gets PCS orders, the Servicemembers Civil Relief Act (SCRA) allows the soldier to legally terminate a residential lease without penalty. This longstanding protection provided by the Soldiers and Sailors Civil Relief Act (SSCRA) was kept intact when President Bush signed the new SCRA into law in December 2003. The SCRA amends and replaces the SSCRA. The law and the TAA lease provide that once written notice and a copy of the orders are given to the landlord, termination is effective 30 days after the date that the next rental payment is due. Therefore, if a soldier provides notice on 30 June, and the next rent is due on 1 July, the termination is effective 30 days later on 31 July. However, if the soldier unknowingly waits a few days until 2 July, the termination will not be effective until 30 days after the next rent due date, which is 1 August. Therefore, the effective termination date is 31 August. This is an important distinction that can result in an extra month's rent being due, and soldiers frequently confuse this provision. It is important to remember that a simple 30-day notice is not the standard. Additionally, SCRA rights are waivable. Soldiers should be advised never to waive their SCRA rights even though some local landlords ask soldiers to do so.

8. Soldier Gets Orders to Deploy for 90 Days or More. The SCRA contains a new protection for soldiers, which allows a soldier to legally terminate a lease without penalty if the soldier gets orders to deploy for 90 days or more. The same notice and date of termination rules as stated above apply in the deployment scenario. However, local landlords do not like this new law, and they have reacted. The TAA lease now states that although the soldier is released from the lease if they deploy, the soldier's spouse is not released. This is clearly counter to the intent of the new law, but the soldier has arguably waived his SCRA right by signing and agreeing to this lease. Therefore, it is very important that the soldier does not sign a TAA lease without lining through that particular sentence in the lease and getting the landlord to initial it. Another option is for only the soldier to sign the lease and not the spouse, but most landlords will require all adults to sign the lease.

9. Direct all landlord/tenant questions to the 4ID Legal Assistance Office at 287-1850. Commanders, First Sergeants, and Sergeants Major may also contact the Chief of Legal Assistance, CPT Matt Hover, at matthew.hover@hood.army.mil. The Legal Assistance Office is located in Room 175 of Division Headquarters. Soldiers should make an appointment for a legal assistance attorney to review a lease before signing it. It is also advisable for soldiers to see a legal assistance attorney before terminating a lease for any reason.