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February 8, 2018

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ATTORNEY GENERAL
STATE OF WASHINGTON
GSE/OLYMPIA

The Honorable Bob Ferguson
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504-0100

Dear Attorney General Ferguson:

As the Adjutant General for the Washington State Military Department, which includes the Washington Army and Air National Guard, I am seeking a formal opinion from your office to clarify provisions of Washington State law affording protections to military members who must terminate their residential leases prematurely as a result of military service. This can be an issue of great importance to our military members currently serving on or who will be called to active duty in defense of our nation. Current military residential lease termination provisions lack clarity and sometimes result in landlord-tenant disputes that hinder a servicemember's ability to mobilize or return to civilian life. The negative financial and emotional impact greatly exacerbates an already stressful situation for servicemembers already in transition with civilian employment and school.

The Washington Residential Landlord-Tenant Act ("RLTA"), RCW 59.18, affords some relief to servicemembers and their families who are forced to terminate a lease due to military orders. Section 59.18.220(2) states, "Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives reassignment or deployment orders. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt." However, the term "reassignment or deployment orders" is not defined in the RLTA nor is the effective date of the lease termination specified.

Other states have statutes similar to RCW 59.18.220 but offer more clarity in the definitions and applicability of the statutes. For example, Virginia protects a servicemember who must terminate his/her rental agreement if the member

- a. Has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit;
- b. Has received temporary duty orders in excess of three months duration to depart 35 miles or more (radius) from the location of the dwelling unit;



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c. Is discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the National Guard; or

d. Is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters. See Va. Code Ann. Section 55-248.21:1 (2007).

Florida's statute is similar to Virginia's. The member is protected in the following circumstances:

a. The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

b. The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

c. The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

d. After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

e. The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

f. The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises. See Fla. Stat. Ann. Section 83.682.

Washington, like several other states, provides protections to servicemembers and their families beyond those set forth in the Servicemember Civil Relief Act ("SCRA") (50 USC 3901 et seq). The SCRA is a federal law that provides protections to servicemembers in civil matters including a provision that permits a servicemember to terminate a residential lease where a) the servicemember received permanent change of station (PCS) orders or (b) received orders to deploy in excess of 90 days (50 USC 3955). The Department of Defense Joint Travel Regulations in Chapter 5, Section 5000B defines PCS orders as those involving

a. Transfer

b. Change in a Unit's Home Port/Permanent Duty Station.

c. Call to Active Duty

d. Separation or Retirement

The Department of Justice adopted the Department of Defense definition of PCS in U.S. v. Emperian Property Management, Inc. No. 8-12 CV 87 (D. Neb. Mar. 8, 2012).

Servicemembers and their families in Washington have on occasion faced landlords that read the RLTA and SCRA in the narrowest of terms. Specifically, some landlords believe the provisions of the SCRA and RLTA apply ONLY in instances of movement between duty stations or deployments overseas greater than three months. Some landlords view retirement or separation orders as not being covered by the SCRA and RLTA. Such a narrow reading causes financial hardship and additional stress for servicemembers and their families. However, RCW 38.42.120 provides that the SCRA applies in cases in Washington courts and a violation of the SCRA is a violation of RCW 38.42. In addition, RCW 38.42.020(3) directs that the chapter shall be construed liberally so as to provide fairness and do substantial justice to servicemembers and their families. Therefore, I recommend that "reassignment or deployment orders" found in RCW 59.18.220 be read liberally and consistent with the DOJ's interpretation of "PCS orders" to include retirement orders, separation orders, and orders requiring servicemembers to move into government quarters. Also, this interpretation affords Washington greater enforcement powers under RCW 38.42. Accordingly, I request a formal opinion on the following questions with respect to RCW 59.18.220:

a. Does the term "reassignment or deployment orders" include retirement orders, separation (from active duty) orders, and orders requiring the servicemember to move into government quarters?

b. Provided that the servicemember provides notice to the landlord of his/her reassignment or deployment, what is the effective date of the lease termination?

Please let me know if you have any questions or need additional information. My point of contact in this matter is MAJ Alex Straub and can be reached at (253) 512-8262 or alexander.m.straub.mil@mail.mil.

Thank you for your attention to this matter.

Sincerely,



Bret Daugherty
Major General
The Adjutant General