

SUBJECT: Comparison of Permanent Change of Station moves under the Servicemembers Civil Relief Act and the Virginia Residential Landlord and Tenant Act

1. Purpose. To discuss whether the Servicemembers Civil Relief Act (SCRA) contains a “distance test” for permanent change of station (PCS) moves, similar to that found in the Virginia Residential Landlord and Tenant Act (VRLTA).

2. Active Duty Servicemembers (SM)¹ in Virginia who must relocate due to PCS orders and must terminate a residential lease are protected under both the SCRA and the VRLTA. The VRLTA largely mirrors the SCRA in its protections, though there are some differences. Because the SCRA is a Federal Statute, Virginia is free to provide greater protections, but cannot enact laws that provide fewer protections. In any instance where the VRLTA contradicts the SCRA to the SM’s detriment, the SCRA will control.

3. One instance where the SCRA and VRLTA differ is whether a “distance test” is applicable when a SM receives PCS orders.

a. Under the SCRA, there is no requirement that a PCS be a given distance from a SM’s previous assignment. As long as the SM receives PCS orders, for at least 90 days, the SCRA applies and the SM may terminate a residential lease without penalty.

b. By contrast, the VRLTA imposes a “35 mile radius” requirement before the VRLTA is applicable; the SM’s PCS orders must require a move of at least 35 miles from his or her previous duty station before the protections of the VRLTA apply.

4. Examples under the SCRA and VRLTA:

a. Under the SCRA, an Active Duty SM stationed at Fort Lee who receives PCS orders to the Defense Supply Center-Richmond (DSCR) may terminate their residential lease, without penalty, even though the DSCR is barely 20 miles from Fort Lee.

b. If the VRLTA is applied to the same PCS there is no justification for terminating the residential lease. Since the DSCR is less than 35 miles from Fort Lee, the PCS orders would not satisfy the VRLTA’s “distance test”.

5. Which Law Controls? As mentioned above, because the SCRA is a Federal Statute, the protections and rights it affords a SM cannot be reduced or limited by subsequent Virginia Law.² In the example above, the Active Duty SM with PCS orders to the DSCR can use the SCRA to terminate his or her residential lease, regardless of the short distance such a PCS would require.

6. Does the VRLTA “distance test” ever control during a PCS move? The SCRA is applicable only to Active Duty SMs. It does not apply to full-time National Guard (NG) Soldiers or Technicians. By contrast, the VRLTA applies to both Active Duty SMs and full-time Virginia NG Soldiers and Technicians. While the VRLTA’s “distance test” would not control the PCS of an Active Duty SM, it would control during the PCS of a full-time NG Soldier or Technician.

¹ Active Duty SM includes Army Reserve or National Guard (NG) members mobilized, deployed, on extended training status, or responding to a national emergency, but does not include full-time NG duty. (10 USC §101(d)(1))

² This is an example of the Supremacy Clause of the US Constitution (Article VI, Clause 2), which establishes that the Constitution and federal laws made pursuant to it, constitute the supreme law of the land. It provides that state courts are bound by the supreme law; in case of conflict between federal and state law, the federal law must be applied.