

DUTY FIRST

Laws protect service members when called into active duty

By Anthony J. (Buddy) Amoroso, ARM

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A young tenant walks into apartment community's management office and tells the manager that he has been activated into military service and is being deployed to Afghanistan. He informs the manager that the **Soldiers' and Sailors' Civil Relief Act of 1940** allows his girlfriend to live in the apartment rent free and that she can not be evicted until he is discharged.

With America's war against terrorism in full swing, and more reservists called to active duty, this scenario is a familiar one to many property owners, management companies, and landlords across the country. According to General Hunt Downer, Special Assistant to the Adjutant General of the Louisiana Army National Guard, more than fifty percent of our military strength is derived from the Guard and Ready Reserve and not enough active duty military to meet the demands of America's War on Terrorism. Nearly every apartment community in America will be affected. Every property owner, management company and landlord must have policies in place to help these soldiers when they are activated to service and deployed. Too often, both tenants and landlords are ignorant of the laws of our land that address emergency situations such as these.

Sandy Avery, director of property management at R. W. Day Associates, a Baton Rouge-based manager of campus and military properties, said, "Since September 11 we feel that our country is at war. It is the policy of R. W. Bay and Associates to do whatever is necessary to help these soldiers when they are called into active duty."

Since the Civil War, Congress has recognized that members of the Armed Forces should be able to serve their country without having to worry about problems at home. From 1864 to 1940, American servicemen were granted certain rights and protections during these periods of war. These expired after the war ended. With World War II looming on America's horizon, Congress passed the **Soldiers' and Sailors' Civil Relief Act of 1940**, which had no provision for its expiration at war's end. This law remains in effect to this day, protecting military personnel in exchange for the great sacrifices they making for our country.

Certain provisions of this Act apply directly to the apartment industry. General Downer suggests that the apartment industry, as good Americans, interpret these provisions of the law in a manner friendly toward soldiers who are fighting to keep our freedoms.

Although the Soldiers' and Sailors' Act covers active military personnel and their dependents, the Act does not specifically define who is a "dependent." The courts have ruled that the individual invoking the Act must be dependent upon a service member for support and maintenance. General Downer clarifies the military position, "A dependent is one who lives with you and is dependent for income. Generally speaking, a dependent will have a military identification." Only legal marriages licensed by individual states are recognized by the Armed Forces. Typically, a girlfriend or boyfriend is not recognized as a dependent, even if the couple lives together. Furthermore, Reservists and the members of the National Guard are protected while on active duty. The protection begins on the date of entering active duty and terminates within thirty to ninety days after the date of discharge from active duty.

TERMINATION OF LEASES:

An active duty service member may terminate a lease if he/she or his/her dependents entered into a lease prior to the active military duty or if they have been issued orders where they have to move. To terminate a lease, the service member must deliver to his/her landlord a written notice of the intent to terminate the lease. Verbal notice is not valid. If the service member is on a month-to-month lease, the termination date is thirty days after the next date the rent is due. For example, if the member's rent is due on the first day each month, and the landlord is given written notice of termination on August 1, the next date that rent is due is on September 1, and the lease would terminate on October 1. All other leases terminate on the last day of the following month after valid notice has been given. For example, if proper notice were given on July 20, the lease would terminate on August 31.

"After I was activated in May, I was given a week to get my affairs in order," said Spc. Howard Wallace Bushey, III, a medic with HSC 769th Eng. Bn. "I spent that last week moving out of my apartment, withdrawing from Louisiana State University, notifying my employer, as well as taking care of personal business and saying goodbye to family and friends. My landlord was very helpful with everything."

The service member is required under the act to pay all rent prior to termination. If the service member has paid rent in advance, upon termination, the unused pro-rated portion must be refunded. If a deposit has been paid to the landlord, the deposit must be returned to the service member, provided all other terms of the lease have been met. If necessary, normal damage and cleaning charges may be deducted from the deposit.

EVICTION AND NON-PAYMENT OF RENT

The **Soldiers' and Sailors' Civil Relief Act of 1940** protects active service members from eviction for non-payment of rent. A landlord cannot evict a service member or his/her dependents for non-payment of rent unless the landlord obtains permission from the courts and if the rent is less than \$1,200.00 per month. The courts may, at their own

discretion, delay eviction proceedings for up to three months; the courts have authority under this act to lower rents.

The military services value their reputation in the local community and generally do not tolerate their members shirking their obligations. The most effective way of collecting on non-payment of rent is to contact the tenant's commanding officer. It has been this author's experience that the tenant's C. O. can be very persuasive to the tenant of the necessity for the tenant to honor his or her obligations.

Spc. Bushey said his landlord's as a veteran gave him greater incentive to lend a hand.

"My landlord went out of his way to help me, even to the point of letting me pay my last month's rent late and releasing me from my lease without any hassles," Bushey said.

The opening scenario in which an Army Reservist informed his apartment manager that because he was being activated and deployed to Afghanistan, his girlfriend could stay rent free while he was deployed, actually occurred at an apartment community. This tenant informed their manager if they tried to evict him and his girlfriend that the Army Judge Advocate General's (JAG) office would file a lawsuit against the apartment community. The manager requested a copy of his orders and called the Army JAG office that was listed on the tenant's orders.

Concerned, the manager talked with one of the attorneys in the JAG office who was assigned to help the service members who were being deployed to active duty. When this attorney was informed what the service member had told the apartment management, the attorney responded, "That's crazy; he can't do that!" They were told that this service member had the option of either terminating the lease or maintaining the apartment and being responsible for the rent. The attorney from the JAG office agreed to contact the service member's C. O. and inform him of the misinterpretation of the Soldiers' and Sailors' Civil Relief Act of 1940 by one of his personnel. Within ten minutes, the tenant called the apartment management to make arrangements to pay his rent.

GLOBAL DEPLOYMENT, LOCAL PROTECTION

Many states have laws that give active service members and their dependents additional rights and protections. Recently, Louisiana passed a law that allows a service member to notify his landlord when he is entering into a residential lease that he is on a waiting list for on-base housing. When the base housing comes available, the service member may terminate his/her lease and move onto the base. This law was passed at the request of the Pentagon and with the cooperation of the Apartment Association of Louisiana.

Given both federal and state regulations, property management companies and landlords owe it to themselves to familiarize themselves with the laws protecting service people while on active duty. Most of these laws have criminal sanctions for those convicted of breaking these laws. The Soldiers' and Sailors' Civil Relief Act of 1940 imposes a one-year imprisonment and hefty fines on violators. In the grand scheme of things, a few months rent from one tenant pales in comparison.

WE'RE ALL IN THIS TOGETHER

According to General Downer, America needs the full support of the apartment industry to prevent service men and women from being overly burdened with civil affairs while they're fighting for our freedoms. "I understand that it is inconvenient and even a sacrifice to help these soldiers, but they are worth the sacrifice they make to protect our freedom and blessings that we have," Downer concurs.

Property Management Companies and Landlords should interpret these laws as the United States Supreme Court has declared them to be understood, "with an eye friendly to those who dropped their affairs to answer their country's call."

General Hunt Downer of the Louisiana Army National Guard, is Staff Judge Advocate of the 256th Infantry Brigade and the 204th Area Support Group. He is a citizen-soldier and also a Louisiana State Representative representing the Houma, Louisiana area. Representative Downer has always been a friend of the Apartment Association of Louisiana, and was named Representative of the Year for his advocacy of market-based rents.

Spc. Howard Wallace Bushey, III, since this article has been published Spc. Bushey has returned from Afghanistan, and is planning on returning to Louisiana State University, there is a possibility that he might be reactivated for Iraq.

Anthony J. (Buddy) Amoroso owns and operates Prime Properties XL in Baton Rouge and the Executive Vice President of the Baton Rouge Apartment Association