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WE GOTTA GET OUT OF THIS PLACE: WHEN RESIDENTIAL
TENANTS LEAVE DUE TO EXIGENT CIRCUMSTANCES

Elena Marty-Nelson*

*We gotta get out of this place
if it's the last thing we ever do.
We gotta get out of this place
'cause girl, there's a better life
for me and you.¹*

* Professor of Law, Nova Southeastern University Shepard Broad Law Center, J.D. Georgetown University Law Center, 1983; LL.M., Georgetown University Law Center, 1986. I sincerely appreciate the opportunity I had to participate in the William H. Bowen School of Law University of Arkansas at Little Rock Ben J. Alzheimer Symposium on A Question of Balance: 40 Years of the Uniform Residential Landlord and Tenant Act and Tenants' Rights in Arkansas. I gained invaluable insights both during the presentations and in the conversations throughout the conference from the faculty organizer, Professor Lynn Foster, the keynote speaker, Professor Dale Whitman, and my fellow panelists Professor Alice Noble-Allgire, Douglas Smith, Esq., Professor Donald Campbell, Professor Eloisa Rodriguez-Dod, Professor Missy Lonegrass, and Professor Lawrence McDonough, Esq. My thanks as well to the members of the University of Arkansas at Little Rock Law Review especially Kitty L. Cone, the Symposium Editor, and Abtin Mehdizadegan, the Editor-in-Chief. I am also deeply grateful for the exceptional research assistance of Michelle Nichols DeLong and Kelli Feneran Lago.

1. THE ANIMALS, WE GOTTA GET OUT OF THIS PLACE (MGM Records 1965). Using a song in the title of a law review article or in a court opinion is not an uncommon tactic simply to pique interest and to set a tone for the discourse. See Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531, 533–34 (2007). While I never shy away from popular culture references in my teaching and scholarship, in this instance I inserted the title and portions of the lyrics for a more significant reason. The song lyrics quoted here vividly express a raw need to leave a place hurriedly. This article advocates for early lease terminations without ongoing economic liability for victims of domestic violence. Empowering victims of domestic violence to move away from their abusers may save their lives. See discussion *infra* Part III. In addition, the song, *We Gotta Get Out of This Place*, has a particular meaning for servicemembers. It was incredibly popular with soldiers serving in Vietnam and it was also popular with a new generation of servicemembers serving in Iraq. See *500 Greatest Songs of All Time*, ROLLING STONE MUSIC, <http://www.rollingstone.com/music/lists/the-500-greatest-songs-of-all-time-20110407/the-animals-we-gotta-get-out-of-this-place-20110527> (last visited May 21, 2013). The connection of active duty servicemembers to the song serves as a reminder of the sacrifices made by active duty servicemembers today.

I. INTRODUCTION

There are many compelling circumstances where tenants must leave their residential dwellings quickly. For my presentation at the Ben J. Altheimer Symposium on the fortieth anniversary of the Uniform Residential Landlord and Tenant Act (“URLTA”),² I concentrated on two categories of residential tenants who may need to terminate their leases early because of exigent circumstances. First, I focused on domestic violence victims who need to flee their abusers. Second, I examined the need for active duty servicemembers to terminate their leases early when called to deploy or given orders for a permanent change of duty station. While in many respects these two categories of tenants present very different challenges, ensuring early lease terminations for both—without continuing obligations or penalties—serves critical societal goals that transcend the immediate parties involved.

Clearly, domestic violence is a complex and debilitating problem.³ Similarly, supporting our active duty servicemembers in their efforts to fulfill their missions requires multifaceted and sustained efforts.⁴ Helping victims of domestic violence and supporting our servicemembers involves addressing issues far beyond landlord-tenant laws. Both goals require effective mobilization of social, political, and legal forces as well as significant public and private economic commitments. The complexity of alleviating the broader issues should not, however, deter focused efforts at mitigating the immediate landlord-tenant problems that arise for victims of domestic violence and for servicemembers and who must terminate their residential leases early. Accordingly, this article explores how the discrete area of the law on early residential lease termination affects both categories of tenants and suggests possible changes to alleviate ongoing concerns. This targeted research into early lease termination for victims of domestic violence and for servicemembers may spur two other important lines of research. First, it may encourage similar research into early lease termination for other cate-

2. Uniform Law Commission, *Residential Landlord and Tenant Act*, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, <http://www.uniformlaws.org/Committee.aspx?title=Residential%20Landlord%20and%20Tenant%20Act> (last visited May 21, 2013) [hereinafter *Residential Landlord and Tenant Act*].

3. See Memorandum from Alice Noble-Allgire, Reporter, Joint Editorial Board for Uniform Real Property Acts, on Early Lease Termination for Domestic Violence and Other Reasons to the URLTA Drafting Committee, Uniform Law Commission (Feb. 12, 2012), http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_memo_earlyleasetermination_021212.pdf; Anne C. Johnson, Note, *From House to Home: Creating a Right to Early Lease Termination for Domestic Violence Victims*, 90 MINN. L. REV. 1859, 1865 (2006).

4. See JOHN S. ODOM, JR., A JUDGE’S BENCHBOOK FOR THE SERVICEMEMBERS CIVIL RELIEF ACT 4 (2011).

gories of tenants facing exigent circumstances.⁵ Second, shining a light on the effects of landlord-tenant laws on domestic violence victims and servicemembers may spur research into different areas of the law affecting them and may lead to necessary changes in those areas.⁶

In terms of the structure of the article, it continues a conversation among the symposium participants as to when landlord-tenant laws should—for public policy reasons—allow tenants who are victims of domestic violence or active duty servicemembers to terminate their residential leases early without continuing obligations. Part II briefly describes traditional landlord-tenant laws dealing with tenant abandonment of a lease. This part also discusses a more recent movement away from the concept of tenant abandonment and in favor of some excused early terminations. Part III turns specifically to the issue of domestic violence victims and early lease termination. It also analyzes options and suggests guidelines for uniform provisions for tenant-victims. Part IV examines the laws of early lease termination applicable to servicemembers. Unlike the situation with victims of domestic violence where the law is only recently developing, there already exists a robust framework of laws governing early lease terminations by servicemembers.⁷ The most important framework is found in the protections granted to servicemembers in the Servicemembers Civil Relief Act (“SCRA”).⁸ This part of the article discusses the SCRA generally and then

5. See generally Memorandum from Sheldon F. Kurtz, Study Comm. Chair, Joint Editorial Board on Uniform Real Property Acts, to the Scope and Program Committee, Uniform Law Commission (May 18, 2011), http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_studycommreport_051811.pdf [hereinafter Memorandum from Kurtz]. For example, research may be needed for tenants faced with relocation due to a need to move to assisted living facilities or to maintain or obtain employment. See *id.* at 16.

6. For example, victims of domestic violence could perhaps benefit from additional research on the laws governing privacy. Servicemembers may benefit from additional research into the laws governing health care and child custody.

7. See discussion *infra* Part IV.

8. Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. §§ 501–597(b) (2006). Appendices to United States Code titles generally contain court rules, or laws related to the subject matter of a positive law title, but not enacted as part of the title, or that were considered temporary. The statutes in both the Code title and the appendix have been enacted into law and are equally valid.

There are five appendices in the Code. The appendices to titles 11, 18, and 28 mostly contain Federal court rules. The appendix to title 5 contains freestanding laws that relate to the subject matter of title 5 but were not incorporated into that title by Congress. The appendix to title 50 contains freestanding laws that relate to the subject matter of title 50 but were probably thought to be inappropriate to that title because of their specificity or duration. Sections in the appendices to titles 5 and 18 retain their act section numbers while those in the appendix to title 50 have been assigned different Code section numbers. Translations are not

focuses on the provision of the SCRA that allows a servicemember to terminate his residential lease early. This part also addresses corresponding state statutes that provide additional protections for servicemembers and describes some of the continuing gaps in the protections offered servicemembers and their families both under the SCRA and the existing state statutes. Part V concludes the article with a recommendation for uniform laws on early lease termination for both tenant-victims and servicemembers.

II. MODERN CHANGES TO LEASE THEORY

A. Traditional Abandonment and Mitigation

When a landlord wants to terminate a landlord-tenant relationship prior to the termination date of the lease, the concept is referred to as an eviction.⁹ When the tenant is the party who wants to terminate the relationship early, the tenant's vacating is generally referred to as an abandonment of the lease.¹⁰

Traditionally a landlord had three options when a tenant abandoned leased premises before the termination date, regardless of the tenant's reasons for vacating. First, the landlord could absolve the tenant of any continuing obligation for the remaining term of the lease.¹¹ Second, the landlord could continue to hold the tenant responsible for the remaining term of the lease, but the landlord's damages would be reduced by the landlord's duty to

made in the appendices. The fact that an act is included in an appendix does not affect its meaning or validity.

Detailed Guide to the United States Code Content and Features, USCODEBETA.HOUSE.GOV, http://uscodebeta.house.gov/detailed_guide.xhtml#appendices (last visited October 25, 2013).

9. See generally Professor Rodriguez-Dod's article in this symposium issue for a thoughtful and perceptive discussion of modern changes to eviction laws. Eloisa C. Rodriguez-Dod, "But My Lease Isn't Up Yet!": Finding Fault with "No-Fault" Evictions, 35 U. ARK. LITTLE ROCK L. REV. 839 (2013).

10. See John V. Orth, *Leases: Like Any Other Contract?*, 12 GREEN BAG 53, 53-54 (Autumn 2008).

11. This release of the tenant from the tenant's continuing obligation under the lease contract is commonly referred to as an acceptance of the surrender. See Stephanie G. Flynn, *Duty to Mitigate Damages Upon a Tenant's Abandonment*, 34 REAL PROP. PROB. & TR. J. 721, 746 (2000). It is more likely to occur when a landlord would not suffer significant economic consequences from the tenant's abandoning of the premises. For example, when the landlord has a waiting list for the dwelling unit or when the market rent chargeable to a prospective new tenant would be higher than the rent on the existing lease with the vacating tenant. In these scenarios, the current law of abandonment does not pose any special problems for the tenant with exigent circumstances. Concerns arise, however, when a landlord chooses not to release the tenant but rather to hold the tenant responsible under the tenant's lease contract for the remaining term of the lease.

mitigate.¹² Finally, under the third option, the landlord could do nothing, leave the premises vacant, and hold the tenant liable for the remaining term of the lease as it became due.¹³

The URLTA eliminated the third option of doing nothing.¹⁴ In part as a testament to the strength of the URLTA many states no longer allow the option of doing nothing.¹⁵ In those states, if the landlord decides to hold the tenant responsible for the remaining term of the lease, the landlord's damages would be reduced to the extent the landlord could have mitigated the damages.¹⁶

Even in jurisdictions that eliminate the landlord's option of doing nothing, however, a tenant may have continuing economic obligations under the lease when the landlord cannot fully mitigate. This ongoing economic responsibility may be the logical consequence of entering into a contract. And, it may even be a fair and reasonable solution when the tenant's reasons for vacating and not fulfilling the terms of the lease contract are simply because the tenant chooses to relocate for a better opportunity.

Does the abandonment and mitigation system work, however, when the tenant must relocate due to exigent circumstances? Or, are there instances where the involuntary and almost compulsory relocation needs of the tenant make the abandonment and mitigation system inapt? This article posits that while the mitigation system may work in typical cases of voluntary moves by tenants, it is not the appropriate model in cases where the tenant must move due to exigent circumstances and the situation involves vital public policy considerations such as protecting victims of domestic violence or ensuring immediate deployment of active duty servicemembers. In those limited cases involving quasi-compulsory relocation, the public policy needs trump the need to hold tenants liable for the remaining terms of their lease contracts.¹⁷

12. Technically, a landlord does not owe a duty to anyone. The duty to mitigate terminology is simply shorthand to explain that the landlord's damages would be reduced by damages the landlord could have avoided by mitigating. *See id.* at 723.

13. *See id.* at 725–27.

14. *See* Kurtz, *supra* note 5, at 8 (indicating that the "URLTA require[d] 'an aggrieved party' to mitigate damages").

15. *See id.*

16. *See id.*

17. Another reason the abandonment model for early lease termination is inappropriate in these instances of quasi-compulsory relocation is because true abandonment implies a voluntary intent to abandon on the part of the tenant. The compulsory nature of the relocation in these quasi-compulsory cases suggests that the tenant has no such voluntary intent to abandon.

B. Moving Toward Early Lease Termination Clauses

Some states have moved away from the common law concepts of abandonment and mitigation for tenants with certain exigent circumstances.¹⁸ Delaware, in particular, has embraced the concept of excused early lease termination, allowing for termination without continuing obligation by tenants in several circumstances.¹⁹ For example, in Delaware a tenant may terminate his lease upon thirty days written notice if “the tenant’s present employer requires a change in the location of the tenant’s residence in excess of [thirty] miles.”²⁰ Additionally, a tenant in Delaware can terminate a lease if the tenant, or an immediate family member, suffers from serious illness or death that requires a permanent change in the tenant’s location.²¹ Other reasons a tenant may terminate without continuing obligation under the tenant’s contract in Delaware include the tenant’s acceptance into a senior citizens’ housing facility,²² the tenant’s admission into governmental housing,²³ the tenant entering into military service,²⁴ or the tenant becoming a victim of domestic violence.²⁵ Finally, Delaware also allows a personal representative or a surviving spouse to terminate a lease upon the tenant’s death.²⁶

Other states have also accepted certain, albeit more limited, circumstances for permitting excused early-lease terminations.²⁷ In Michigan, for example, a tenant who has occupied a rental unit for more than thirteen months may terminate a lease early if the tenant becomes eligible to take possession of a subsidized rental unit in senior citizen housing²⁸ or if the tenant becomes incapable of living independently during the lease term.²⁹ Michigan also provides a tenant-victim of domestic violence, stalking, or sexual assault the option to terminate a lease early.³⁰ Moreover, as awareness of domestic abuse has become more prevalent, a significant number of

18. *See, e.g.*, DEL. CODE ANN. tit. 25, § 5314 (2013).

19. *Id.* §§ 5314, 7010a.

20. *Id.* § 5314(b)(1).

21. *Id.* § 5314(b)(2).

22. *Id.* § 5314(b)(3).

23. DEL. CODE ANN. tit. 25, § 5314(b)(4).

24. *Id.* § 5314(b)(5).

25. *Id.* § 5314(b)(6).

26. *Id.* § 5314(b)(7).

27. *See, e.g.*, FLA. STAT. § 83.682(1) (2004); GA. CODE ANN. § 44-7-22(b) (2010); LA. REV. STAT. ANN. § 9:3261(A) (2009).

28. MICH. COMP. LAWS. § 554.601a(1)(a) (Supp. 2013).

29. *Id.* § 554.601a(1)(b). The statute expressly provides that it “applies only to leases entered into, renewed, or renegotiated after the effective date of this section, in accordance with the constitutional prohibition against impairment of contracts provided by section 10 of article I of the [Michigan Constitution].” *Id.* § 554.601a(2).

30. *Id.* § 554.601b(1).

states have adopted laws protecting tenants who are victims of domestic abuse.³¹

In addition, many states have enacted statutes that protect the interests of tenants who are servicemembers.³² Even though active duty servicemember tenants are generally protected from ongoing lease obligations by the SCRA,³³ many states have expanded on the federal law by adding additional provisions.³⁴ The state statutes generally enhance the federal protection for servicemembers by eliminating certain procedural hurdles or broadening the categories of servicemembers entitled to protection.³⁵

While the SCRA and the corresponding state statutes provide certain benefits for servicemembers, they do not cover several critical areas in practical and necessary ways. Similarly, while the state statutes protecting victims of domestic violence are indispensable enhancements to the common law, they, too, need to be expanded in order to provide practical protection. Many states still do not have statutes providing relief for tenant-victims of domestic violence. Moreover, as noted above, the states that currently do have statutes vary greatly in their protections. A set of uniform standards could serve as a best practice guide for states considering adopting protections and for states thinking of revising their statutes.³⁶ Uniform standards would help provide consistency.³⁷

31. Several states have specialized laws allowing for early lease termination for victims of domestic violence. *See, e.g.*, ARIZ. REV. STAT. ANN. § 33-1318 (Supp. 2012); CAL. CIV. CODE § 1946.7 (West 2010 & Supp. 2013); COLO. REV. STAT. § 38-12-402 (2013); CONN. GEN. STAT. § 47a-11e (Supp. 2013); DEL. CODE ANN. tit. 25, § 5314 (2009); D.C. CODE § 42-3505.07 (2001); 765 ILL. COMP. STAT. 750/15 (2009); IND. CODE § 32-31-9-12 (Supp. 2012); MD. CODE ANN., REAL PROP. § 8-5A-02 (LexisNexis 2010); MASS. GEN. LAWS ch. 186, § 24 (Supp. 2013); MICH. COMP. LAWS § 554.601b (Supp. 2013); MINN. STAT. § 504B.206 (Supp. 2013); N.J. STAT. ANN. § 46:8-9.6 (West Supp. 2013); N.Y. REAL PROP. LAW § 227-c (McKinney Supp. 2013); N.C. GEN. STAT. § 42-45.1 (2013); N.D. CENT. CODE § 47-16-17.1 (Supp. 2013); OR. REV. STAT. § 90.453 (2010 & Supp. 2013); TEX. PROP. CODE ANN. § 92.016 (West 2007 & Supp. 2012); UTAH CODE ANN. § 57-22-5.1 (LexisNexis 2010 & Supp. 2013); WASH. REV. CODE § 59.18.575 (Supp. 2013); and WYO. STAT. ANN. § 1-21-1303 (2013).

32. *See, e.g.*, FLA. STAT. § 83.682(1); GA. CODE ANN. § 44-7-22(b); LA. REV. STAT. ANN. § 9:3261A.

33. 50 U.S.C. app. § 535 (2006).

34. *See, e.g.*, FLA. STAT. § 83.682; GA. CODE ANN. § 44-7-22; LA. REV. STAT. ANN. § 9:3261.

35. *See, e.g.*, FLA. STAT. § 83.682; GA. CODE ANN. § 44-7-22; LA. REV. STAT. ANN. § 9:3261.

36. *See generally* Lawrence R. McDonough, *Then and Now: The Uniform Residential Landlord and Tenant Act and the Revised Residential Landlord and Tenant Act—Still Bold and Relevant?*, 35 U. ARK. LITTLE ROCK L. REV. 975 (2013).

37. *Id.*

III. EARLY LEASE TERMINATION FOR TENANT-VICTIMS

Ensuring that tenant-victims of domestic violence can successfully flee their abusers serves a critical societal goal.³⁸ “Experts in the area of domestic violence suggest that one of the most important factors in escaping domestic violence is for the victim to get away (physical separation) from the offender and the violent situation.”³⁹ It has become increasingly clear that staying in a home where domestic violence is either imminent or has already occurred will likely subject the victim to further abuse.⁴⁰ To distance the victim from the abuse requires either that the victim leave, or that the aggressor be removed. However, the threat of continuing liability under a residential lease agreement or the risk of the landlord withholding the security deposit may prevent tenant-victims from leaving.⁴¹ The “growing appreciation of the nature of the serious economic and personal safety problems faced by tenant-victims of domestic violence” has led twenty-one states to enact statutes regarding early termination of leases due to domestic violence.⁴² These statutes are, however, far from uniform.⁴³ In the past couple

38. Victims of domestic violence suffer many physical and emotional consequences. *Intimate Partner Violence: Consequences*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/violencePrevention/intimatepartnerviolence/consequences.html> (last updated Sep. 26, 2012). Some effects of the injuries, although not limited, include broken bones, bruises, head injuries, and depression. *Id.*

39. Memorandum from R. Wilson Freyermuth, Exec. Dir., Joint Editorial Bd. for Unif. Real Prop. Acts, to Uniform Law Commission Scope and Program Committee, on Recommendation for Study Committee on Potential Revisions to Uniform Residential Landlord-Tenant Act (URLTA) 2 (June 1, 2010), available at http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/urlta_jeburpa_proposal_060110.pdf [hereinafter Memorandum from Freyermuth].

40. See Lee Eshelman & Alytia A. Levendosky, *Dating Violence: Mental Health Consequences Based on Type of Abuse*, 27 VICTIMS & VIOLENCE 215, 216 (2012) (“[D]ating violence, like [intimate partner violence] in a marital/living together relationship, is typically a repeated trauma.”).

41. The ability [of the victim to gain distance from his or her abuser], however, has proven to be a problem for victims who are parties to a lease agreement. These victims may face steep early termination penalties or continued liability for unaccrued rent, simply for wanting to escape a dangerous situation. This is especially harmful for those victims who have little or no financial support. As a result, domestic violence victims may feel economically compelled to choose to stay with their abuser or in their current living situation, rather than face the economic hardship of leaving.

Memorandum from R. Wilson Freyermuth, *supra* note 39, at 2.

42. *Id.* at 3; see statutes referenced *supra* note 29.

43. Compare CAL. CIV. CODE § 1946.7 (West 2013) (a vacating tenant-victim must give 30 days’ notice to the landlord, within 180 days of the date of an order or report of domestic violence), with D.C. CODE § 42-3505.07 (2009) (a vacating tenant-victim must give 14 days’ notice to the landlord, within 90 days of the date of an order or report of domestic violence). Compare DEL. CODE ANN. tit. 25, § 5314(b)(6) (2009) (“tenancy may be terminated . . . [b]y

of years significant consideration has been devoted to the need for uniform laws on early lease termination by tenant-victims of domestic violence.⁴⁴

In 2010 the Joint Editorial Board on Uniform Real Property Acts recommended that the Scope and Program committee form a study committee to consider revising URLTA.⁴⁵ In determining whether it was time to consider revising the URLTA, the Joint Editorial Board noted two issues that were not addressed in the original URLTA: tenant security deposits and whether victims of domestic violence should be able to terminate their leases.⁴⁶ Shortly thereafter, the Study and Program Committee recommended that a study committee be formed to consider these issues and to consider more broadly whether it was time to revise URLTA. The Study Committee, comprised of some of the leading experts and voices in property law, analyzed these issues and unanimously agreed that a drafting committee be formed not just to consider the initial two issues that had been flagged as missing from the original URLTA, but also to address URLTA more comprehensively.⁴⁷

Focusing on the specific issue of domestic violence, the Study Committee examined the laws in several states that allow domestic violence victims to terminate their leases early and noted that they varied considerably in terms of their scope, requirements, and effects.⁴⁸ Accordingly, with near unanimous support of the stakeholders, the study committee recommended that the drafting committee “consider whether to revise URLTA to allow victims of domestic abuse to terminate leases.”⁴⁹

Subsequently, the drafters of the proposed revised URLTA (“RURLTA”) submitted drafts of the RURLTA that include early termination provisions for victims of domestic violence.⁵⁰ In analyzing the proposed

a tenant who is the victim of domestic abuse,” thus requiring “actual victim” status), *with* MICH. COMP. LAWS § 554.601b (Supp. 2013) (tenancy may be terminated by a “tenant who has a reasonable apprehension of present danger to the tenant . . . from domestic violence,” allowing for termination before violence has occurred), *and* N.J. STAT. ANN. § 46:8-9.6 (West Supp. 2013) (tenancy may be terminated by submitting notice to the landlord that the “tenant . . . faces an imminent threat of serious physical harm,” also allowing for termination before violence has occurred, but not requiring the tenant’s fear be reasonable).

44. Memorandum from Kurtz, *supra* note 5, at 9–15.

45. Memorandum from Freyermuth, *supra* note 39, at 2.

46. Memorandum from Kurtz, *supra* note 5, at 1.

47. The study committee members were Sheldon Kurtz, Chair, William Barrett, Jack Davies, Lynn Foster, William Hillman, Edward Lowry, Reed Martineau, Robert McCurley, Janice Pauls, Patrick Randolph, and Ken Takayama. Barry Hawkins is the Division Chair and Larry Ruth is the Scope and Program Liaison. *Id.* at 1. There were also four observers: John Sebert, Kieran Marion, Katie Robinson, and R. Wilson Freyermuth. *Id.*

48. *Id.* at 13–16.

49. *Id.* at 15.

50. As of the date of submission of this article there were three drafts of the RURLTA. REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT §§ 508–510 (Sept. 17, 2012)

RURLTA's provisions on early termination for tenant-victims, it helps to examine the various protections found in the existing state statutes dealing directly with early lease termination by tenant-victims. In addition, guidance for certain provisions is also available from various comparable federal laws, especially the recently reauthorized Violence Against Women Act ("VAWA").⁵¹

Draft), available at http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2012sep17_URLTA_MtgDraft.pdf [hereinafter RURLTA DRAFT 1]; REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT §§ 508–510 (Jan. 28, 2013 Draft), available at http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/2013jan28_RURLTA_MtgDraft.pdf [hereinafter RURLTA DRAFT 2]; REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT §§ 508–510 (April 2, 2013 Draft), available at http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2013apr2_RURLTA_MtgDraft.pdf [hereinafter RURLTA DRAFT 3].

51. The Violence Against Women Reauthorization Act of 2013 signed into law by President Obama on March 7, 2013, reauthorizes, with some changes, the Violence Against Women Act (VAWA) that was originally passed by Congress as Title IV of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). The full text of the reauthorized VAWA can be found at: <http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf> (last visited October 25, 2013). The VAWA, as reauthorized in 2013, expressly requires that any department carrying out a covered housing program adopt a model emergency plan providing for tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to relocate to another available and safe dwelling unit of assisted housing. *Id.*

Even beyond the VAWA, the federal government has recognized the importance of compensating victims of domestic violence for decades. Njeri Mathis Ruthledge, *Looking a Gift Horse in the Mouth--The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims*, 19 DUKE J. GENDER L. & POL'Y 223, 223 (2011). Under the Crime Victim Compensation statute, commonly known as VOCA, victims of various crimes can be compensated for their losses as a result of the crimes committed onto them. 42 U.S.C. § 10602 (2006). Pursuant to VOCA, the Federal Fund distributes money each year to various state compensation programs. *Id.* § 10602(a). States are also at liberty to create their own Crime Victim Compensation (CVC) programs, but must meet various criteria that the federal statute sets out. *Id.* § 10602(b). For example, a state compensation program must offer victims (including domestic violence victims) compensation for various expenses such as medical, lost wages, and funeral expenses resulting from the compensable crime. *Id.* Moreover, the state program must promote law enforcement cooperation and victims of federal crimes within the state must be compensated equally to victims of state crimes. *Id.* In addition, no program can deny compensation against a victim because of her familial relationship with her offender. *Id.* § 10602(b)(7). Currently, all fifty states have CVC programs established. Ruthledge, *supra* note 51, at 230. Almost half of the states have structured their programs to include distribution of relocation expenses, especially for victims of domestic violence. *Id.* at 232. Perhaps the most generous of these relocation programs is Alaska's, which distributes up to \$5,000 one-time only to a victim with a credible threat to her safety and in exceptional circumstances, maybe more. State of Alaska Violent Crimes Comp. Bd., *Relocation*, DOA.ALASKA.GOV, <http://doa.alaska.gov/vccb/pdf/RelocationPlan.pdf> (last visited October 28, 2013). However, distribution of funds is limited to certain criteria being met. *See id.* Similarly, Texas allows for a one-time award of \$3,800—\$2,000 for relocation expenses and \$1,800 for rental expenses. Attorney Gen. of Tex., *Rent and Relocation*, STATE.TX.US, <https://www.oag.state.tx.us/victims/relocation.shtml> (last visited October 28, 2013).

The main issues to consider when evaluating proposed uniform rules on early lease termination for tenant-victims of domestic violence are the provisions on who qualifies for relief and what relief should be provided. That in turn requires analysis of when a tenant is deemed to be a tenant-victim.

A. Definition of Tenant-Victims for Purposes of Early Lease Termination

Even defining a tenant-victim for purposes of early lease termination requires significant analysis and consideration. Should tenant-victims who obtain relief from their leases be limited to those who are abused by their spouses, former spouses, relatives, or by those with whom they cohabit? Or should the early lease termination provisions recognize that abuse necessitating an immediate change in location by a tenant-victim could be perpetrated by a former boyfriend, girlfriend, stepparent, non-relative, acquaintance, or even a stranger? Is the term “domestic violence,” even if broadly defined,⁵² the correct term to use in light of modern recognition of the risks from stalking and dating violence?

Interestingly, Florida has a statute completely dedicated to relocation expenses for victims of domestic violence. FLA. STAT. § 960.198 (2013). Florida offers up to \$1,500 per incident, but caps relocation assistance to \$3,000 per lifetime. *Id.* § 960.198(1). Even though some states offer relocation assistance to victims of domestic violence, all of them have stringent requirements attached to those awards that may prevent a tenant-victim from ever seeking the funds he or she may desperately need. *See* Ruthledge *supra* note 51, at 239. Although CVC programs are managed by individual states, their eligibility requirements are very similar. *Id.* “Programs generally require that the victim: 1) report the crime promptly to law enforcement, 2) cooperate with police and prosecutors in the investigation and prosecution of the case, 3) submit a timely application to the compensation program, 4) have a loss not covered by insurance or some other collateral source, and 5) be innocent of criminal activity or significant misconduct that caused or contributed to the victim’s injury or death.” *Id.* Additionally, many of the relocation assistance funds are underutilized by victims of domestic violence simply due to a lack of awareness. *Id.* at 240. If these victim compensation funds were truly funded and easily available, an argument could be made that early termination of leases for tenant-victims would not be as critical. Until such time as those alternatives are truly available, early termination statutes are necessary to ensure that the public policy goal of ensuring tenant-victims can relocate when faced with imminent harm.

52. North Dakota lists several types of abuse as domestic violence, and defines what constitutes a qualifying relationship. N.D. CENT. CODE § 14-07.1-01 (Supp. 2013). In North Dakota, domestic violence “includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.” *Id.* It goes on to define a “family or household member” as any number of cohabitants or persons who are in a dating relationship. *Id.* Interestingly, a few states, including Texas, use the term “family violence” rather than “domestic violence.” TEX. FAM. CODE ANN. § 71.004 (West 2001); *see also* CONN. GEN. STAT. § 46b-38a (Supp. 2013) (defining the term “family violence” and not “domestic violence”); D.C. CODE § 16-1001 (2001) (using “intimate partner violence” and “intrafamily violence,” but not “do-

Instead of attempting a broad definition of “domestic violence,” Draft Three of the proposed RURLTA explicitly provides that its early lease termination provisions apply to victims of “domestic violence,” “sexual assault,” or “stalking.”⁵³ Although laudable for expressly including sexual assault and stalking, Draft Three of RURLTA could perhaps be expanded even further to include “dating violence” in light of modern recognition of its devastating effects.⁵⁴ For guidance, it is instructive to note that the federal VAWA defines “dating violence” as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.⁵⁵

A related question is whether the RURLTA should attempt to define the various types of violence for purposes of early lease termination or if it should instead suggest that the adopting states refer back to their own various state definitions of domestic violence, sexual assault, stalking, and dating violence. Several of the existing statutes in this area provide a definition of “domestic” or other types of violence by reference to state statutes in different areas of the law, such as family law or criminal law.⁵⁶

Draft One of the proposed RURLTA defines “domestic violence” as “the infliction of physical injury, sexual assault, or the stalking of a tenant or an immediate family member by a perpetrator regardless of whether the perpetrator is related to the tenant or an immediate family member.”⁵⁷ By contrast, Draft Two of the proposed RURLTA does not provide a definitive and singular definition of domestic violence; instead it provides three alter-

mestic violence”). Despite the different terminology in Texas, the definition is largely similar to other states’ definitions of domestic violence, in that it is “an act [or threat that reasonably places one in fear] by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault,” as well as abuse or dating violence. TEX. FAM. CODE ANN. § 71.004. According to the National Coalition Against Domestic Violence (“NCADV”), domestic violence is “the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior perpetrated by an intimate partner against another.” *Domestic Violence Facts*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (last visited May 21, 2013) [hereinafter NCADV Facts].

53. RURLTA DRAFT 3, *supra* note 50 § 508(a) provides in part that if a “tenant or an immediate family member becomes the victim of an act of domestic violence, sexual assault, or stalking, which creates a reasonable fear in the tenant or the immediate family member that the tenant or the immediate family member will suffer serious bodily harm or death by continued residence in the dwelling unit, the tenant is released from the lease”

54. See Comments submitted April 4, 2013, by the ABA Commission on Domestic and Sexual Violence on Draft 3 of RURLTA, *available at* http://www.uniformlaws.org/shared/docs/Residential%20Landlord%20and%20Tenant/2013apr4_RURLTA_ABA%20CDSV%20letter.pdf (last visited October 28, 2013).

55. 42 U.S.C. § 13925(a)(10) (2006).

56. See, e.g., ARIZ. REV. STAT. ANN. § 33-1318(A) (Supp. 2012) (directing the reader to another statutory provision for a definition).

57. RURLTA DRAFT 1, *supra* note 50 § 102(8).

native definitions.⁵⁸ Moreover, one of the three alternatives suggests that the adopting state insert its own existing definition of domestic violence.⁵⁹ The definition provisions of Draft Three of the proposed RURLTA provides that “domestic violence,” “sexual assault,” and “stalking” are to be defined by reference to their various definitions in other state law.⁶⁰

B. What Threat or Event Triggers the Early Termination Provisions?

Many of the statutes currently enacted require that the tenant seeking to vacate “is a victim” or “was a victim.”⁶¹ For example, Oregon requires a domestic violence victim to have a status of “actual victim.”⁶² The statute grants no relief unless violence has already occurred.⁶³ In addition, the statutes generally require the victim to give notice of intent to vacate within a certain period of time from the incident.⁶⁴ In Oregon, for example, the most recent act of violence must have occurred not later than ninety days prior to the notice of intent to terminate the lease in order for the victim to retain “actual victim” status.⁶⁵

By contrast, a group of states provide that a tenant who has not yet been a victim may nevertheless obtain relief from her lease if the tenant is in fear of an “imminent threat” of domestic abuse.⁶⁶ For example, New Jersey’s statute provides relief for tenants before actual physical abuse occurs.⁶⁷ The statute covers a tenant “fac[ing] an imminent threat of serious physical harm from another named person” if the tenant does not vacate.⁶⁸ Massachusetts—the most recent state to enact such a statute—also falls under this category.⁶⁹ In Massachusetts, a tenant may provide written notification to the landlord to terminate the lease if the tenant or “a member of a tenant’s

58. RURLTA DRAFT 2, *supra* note 50 § 102(11).

59. *Id.*

60. RURLTA DRAFT 3, *supra* note 50 § 102(13), (37), (39).

61. *See, e.g.*, DEL. CODE ANN. tit. 25, § 5314 (2009); IND. CODE § 32-31-9-12(c)(2) (2002 & Supp. 2012); WASH. REV. CODE § 59.18.575(1)(a) (2004 & Supp. 2013).

62. OR. REV. STAT. § 90.453 (2010 & Supp. 2013).

63. *Id.*

64. *See, e.g., id.*

65. *See id.*; *see also* CAL. CIV. CODE § 1946.7(c) (West 2010 & Supp. 2013) (notice shall be given within 180 days from an order or report); D.C. CODE § 42-3505.07(e) (2001) (notice must be given within 90 days of violence).

66. *See, e.g.*, N.D. CENT. CODE § 47-16-17.1 (1999 & Supp. 2013) (a tenant who “fears imminent domestic violence”); WYO. STAT. ANN. § 1-21-1303(a)(1) (2013) (the tenant “was under a credible threat of imminent domestic abuse or sexual violence”).

67. *See* N.J. STAT. ANN. § 46:8-9.6(a) (West 2003 & Supp. 2013).

68. *Id.* The New Jersey statute indicates that the lease termination is to take effect on the thirtieth day following receipt of notice, unless the parties agree to an earlier termination. *Id.* § 46:8-9.7(a).

69. *See* MASS. GEN. LAWS ch. 186, § 24(a) (2003 & Supp. 2013).

household is reasonably in fear of imminent serious physical harm from domestic violence.”⁷⁰

Interestingly, some state statutes require both—that the victim has experienced domestic violence and fears that such violence has not yet terminated.⁷¹ Minnesota, for example, requires that the tenant be “a victim of domestic abuse *and* fears imminent domestic abuse.”⁷² Similarly, in Connecticut the statute provides relief from the lease for “any tenant who (1) is a victim of family violence . . . *and* (2) reasonably believes it is necessary to vacate the dwelling unit due to fear of imminent harm” to terminate the rental agreement without penalty.⁷³

Draft Three of the proposed RURLTA appears to follow the group of states that requires both.⁷⁴ It provides that the early lease termination provision applies if the

tenant or an immediate family member becomes a victim of an act of domestic violence, sexual assault, or stalking, which creates a reasonable fear in the tenant or the immediate family member that the tenant or the immediate family member will suffer serious bodily harm or death by continued residence in the dwelling unit⁷⁵

Should instead, the RURLTA adopt the lead of the newer state statutes that allow early termination based on an “imminent threat” as long as there is appropriate verification of reasonable fear? The Draft Three requirement that the tenant or tenant's family member must have already have been a victim is particularly unwarranted since Draft Three very carefully and correctly provides an express section clarifying that the landlord has significant ongoing rights against the perpetrator of the violence.⁷⁶

Draft Three provides that a landlord “may recover from the perpetrator actual damages resulting from the tenant's exercise” of the tenant's early release rights.⁷⁷ The provision also provides that “if the perpetrator is a party to the lease” the landlord may “hold the perpetrator liable on the lease for further rent payable under the lease.”⁷⁸

Several states also specifically address the liability of the victim's perpetrator within their statutes.⁷⁹ For example, North Carolina is very explicit

70. *Id.*

71. *See, e.g.*, MINN. STAT. § 504B.206 (2002 & Supp. 2013).

72. *Id.* (emphasis added).

73. CONN. GEN. STAT. § 47a-11e(a) (2007 & Supp. 2013) (emphasis added).

74. RURLTA DRAFT 3, *supra* note 50 § 508(a).

75. *Id.*

76. RURLTA DRAFT 3, *supra* note 50 § 508.

77. *Id.* § 510(a).

78. *Id.*

79. *See, e.g.*, ARIZ. REV. STAT. ANN. § 33-1318I. (2007 & Supp. 2012); MD. CODE ANN., REAL PROP. § 8-5A-02(e) (West 2012); N.C. GEN. STAT. § 42-45.1(c) (2013).

in that “[t]he perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease . . . for rent or damages to the dwelling unit.”⁸⁰ Arguably, statutes that do not expressly address the ongoing liability of the perpetrator may obtain the same result by referring to general language in their early release provisions to the effect that no tenant other than the victim is released from the lease.⁸¹ However, providing specific language that a perpetrator may not be released from the lease mitigates or eliminates the loss a landlord is likely to experience by releasing a tenant-victim early from her lease. Another way to ensure that the “imminent threat” standard is not too lenient is by requiring significant verification requirements.

C. Statutory Verification Requirements

Regardless of the trigger for relief for a tenant-victim, all states require some form of verification for their relief provisions to apply.⁸² Even these verification requirements differ among states.⁸³

In Massachusetts, a tenant claiming to be a victim for purposes of early lease termination must show one of three types of proof.⁸⁴ First, the tenant can provide verification in the form of a valid protection order.⁸⁵ Second, a tenant can produce a record from a court or law enforcement agency of an act of domestic violence.⁸⁶ Third, in the absence of such documentation, the tenant-victim may provide “written verification from any other qualified third party to whom the tenant . . . reported the domestic violence.”⁸⁷ Notably, in Oregon, the statute provides a comprehensive sample verification form to be completed by the tenant and a “qualified third party” to be submitted to the landlord.⁸⁸ In New Jersey, the verification requirements can be

80. N.C. GEN. STAT. § 42-45.1(c).

81. Some statutes expressly provide that relief of early termination is only for the victim-tenant and co-tenants are not released from the lease. *See, e.g.*, N.D. CENT. CODE § 47-16-17.1(8) (2011); OR. REV. STAT. § 90.456 (2012); MASS. GEN. LAWS ch. 186, § 24(d) (2013).

82. *See, e.g.*, CAL. CIV. CODE § 1946.7 (West 2010 & Supp. 2013); D.C. CODE § 42-3505.07(b)–(c) (2001); MINN. STAT. § 504B.206(1)(b) (2002 & Supp. 2013); UTAH CODE ANN. § 57-22-5.1(2) (West 2010).

83. *See, e.g.*, IND. CODE § 32-31-9-12 (2002 & Supp. 2012) (mentioning that verification may include a copy of a court-ordered civil order for protection or a criminal no-contact order, plus a copy of a safety plan); MICH. COMP. LAWS § 554.601b(3)(e) (2005 & Supp. 2013) (giving a detailed example of a form of written verification that is to be certified by a “qualified third party”).

84. MASS. GEN. LAWS ch. 186, § 24(e)(1)–(3) (Supp. 2013).

85. *Id.* § 24(e)(1).

86. *Id.* § 24(e)(2).

87. *Id.* § 24(e)(3).

88. OR. REV. STAT. § 90.453(3) (2010 & Supp. 2013).

met by providing documentation from a health care provider or licensed social worker.⁸⁹ Police or court orders may be provided, but are not mandatory.⁹⁰ In fact, the requisite verification may take the form of any one of six enumerated types of documentation.⁹¹ Unlike the Oregon statute, however, the New Jersey statute does not provide a standard verification form.⁹² Draft Three of the proposed RURLTA contains a detailed verification provision and includes a verification form.⁹³ This section also includes an “example of verification” of instances of domestic violence that would qualify for early lease termination.⁹⁴

Moreover, Draft Three of RURLTA includes a provision that imposes significant penalties on a tenant who falsely claims protection as a victim.⁹⁵ Draft Three provides that “[i]f a tenant willfully submits a false verification to the landlord under subsection 508(2)(c), the court may award the landlord an amount up to [three] months’ periodic rent or [triple] actual damages, whichever is greater, and costs, and reasonable attorney’s fees.”⁹⁶

D. Notice and Obligations for Vacating Tenant-Victims

Early termination provisions are designed to ensure that once a tenant-victim “terminates his or her lease, the tenant is no longer responsible for the remaining rent due under the lease or any penalties for terminating the

89. N.J. STAT. ANN. § 46:8-9.6(b) (West Supp. 2013).

90. *Id.*

91. *Id.*

The tenant . . . [must] provide[] the landlord with . . . (1) a certified copy of a permanent restraining order issued by a court . . . ; (2) a certified copy of a permanent restraining order from another jurisdiction . . . ; (3) a law enforcement agency record documenting the domestic violence, or certifying that the tenant or a child of the tenant is a victim of domestic violence; (4) medical documentation of the domestic violence provided by a health care provider; (5) certification, provided by Domestic Violence Specialist, or the director of a designated domestic violence agency, that the tenant or a child of the tenant is a victim of domestic violence; or (6) other documentation or certification, provided by a licensed social worker, that the tenant or a child of the tenant is a victim of domestic violence.

Id. § 46:8-9.6.

92. *See id.* (outlining a list of potential documentation that a tenant-victim may provide to the landlord, rather than providing a sample form for any of the enumerated third parties to complete).

93. RURLTA DRAFT 3, *supra* note 50 § 509(a).

94. *Id.* § 509. The verification form includes a section for the tenant to complete, certifying that he or she has been a victim of domestic violence, sexual assault, or stalking that has “created a reasonable fear that [he or she] . . . will suffer serious bodily harm by continued residence in the dwelling unit.” *Id.*

95. *Id.* at § 509(b).

96. *Id.*

lease early.”⁹⁷ State statutes, however, have varying notice and rent payment obligation provisions before the lease is deemed terminated. For example, the Massachusetts statute indicates that the victim has three months from the most recent act of domestic violence to notify the owner of the intent to terminate the lease pursuant to the provision, and then the victim must vacate within those three months.⁹⁸ Prior to termination, the tenant is liable for thirty days’ rent or one full rental period following notice—whichever occurs later.⁹⁹ The Massachusetts statute also provides that the vacating tenant-victim may not be penalized by the owner withholding the security deposit, unless the owner has just cause for doing so.¹⁰⁰

In Oregon while a tenant-victim must notify the landlord within ninety days of the last incident to retain status as “actual victim”, the tenant only needs to provide fourteen days’ written notice of the intent to terminate before the lease is actually terminated.¹⁰¹ The Oregon statute indicates that a landlord may apply the vacating tenant-victim’s security deposit to the payment of rent past due, or may refund it to the vacating tenant.¹⁰²

Draft Three of the proposed RURLTA, similar to Oregon’s model, provides that the tenant must notify the landlord “not later than [90] days of the act of domestic violence, sexual assault, or stalking and at least [14] days before the release date specified in the notice. . . .”¹⁰³

States have actively been making progress toward protecting victims of domestic violence, sexual assault, and stalking in the area of early lease termination. RURLTA’s adoption of such provisions may encourage remaining states to provide similar protections for such victims. Another area in which RURLTA can take a leading role is in providing protection for servicemembers.

97. Memorandum from Kurtz, *supra* note 5, at 15.

98. MASS. GEN. LAWS ch. 186, § 24(a)–(b) (2013).

99. *Id.* § 24(c).

100. *Id.*

101. OR. REV. STAT. § 90.453(2)(a) (2010 & Supp. 2013).

102. *Id.* § 90.456. *See also* IND. CODE § 32-31-9-12 (Supp. 2013) (providing a vacating victim of domestic violence is responsible for thirty days’ rent before the lease will be deemed terminated); 765 ILL. COMP. STAT. 750/15 (2009) (only three days); MICH. COMP. LAWS § 554.601b (Supp. 2013) (providing it is the “first day of the second month that rent is due after notice is given” for which the vacating tenant is liable). Curiously, the Michigan termination provision allows the landlord to retain prepaid rental amounts including prepayment of the last months’ rent. *Id.*

103. RURLTA DRAFT 3, *supra* note 50 § 508(a).

IV. THE SCRA'S BENEFITS FOR SERVICEMEMBERS

A. History and Purposes of the SCRA

Congress' efforts to protect the nation's servicemembers while on active duty have dated as far back as the Civil War, when it placed a complete moratorium on all civil actions brought against servicemembers while on duty.¹⁰⁴ During World War I, Congress passed the Soldiers' and Sailor's Civil Relief Act (SSCRA), which did away with the moratorium, but protected servicemembers instead by granting trial courts the discretion to provide equitable resolutions when a servicemember's rights were affected by a civil action.¹⁰⁵ Congress essentially reenacted the World War I legislation during World War II, by continuing to provide relief to servicemembers in civil actions.¹⁰⁶ Since then, the protections for servicemembers have been renewed, amended, and frequently expanded.¹⁰⁷ Congress replaced the SSCRA with the Servicemembers Civil Relief Act (SCRA) in 2003 and it continues to be the law today, although it has been amended several times since 2003.¹⁰⁸

The SCRA has two stated purposes: (1) to strengthen national defense by providing for servicemembers, essentially enabling them to devote their time, energy, and focus on the needs of the Nation; and (2) to provide servicemembers with temporary relief in civil actions by suspending judicial and administrative proceedings while on active duty.¹⁰⁹

Generally, the SCRA defines a "servicemember" to include members of "the Army, Navy, Air Force, Marine Corps, Coast Guard, and the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service."¹¹⁰ While the definition seems relatively straightforward, applicability of the SCRA to Guardsmen depends on the

104. R. CHUCK MASON, CONG. RESEARCH SERV., RL 34575, THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA): AN EXPLANATION 1 (2012) *available at* <http://paulryan.house.gov/uploadedfiles/rl34575.pdf>. "During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors." *Id.*

105. *Id.* In 1918, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA). *Id.*

106. *Id.*

107. *Id.*

108. MASON, *supra* note 104, at 1. The Act continues to be amended regularly by Congress. *Id.*

109. 50 U.S.C. App. § 502 (2006). It is important to note that the SCRA does not forgive all contractual obligations or debts of a servicemember. MASON, *supra* note 104, at 2. Nor does it provide a servicemember with absolute immunity from civil lawsuits. *Id.* Instead, it protects servicemembers by suspending civil actions while a servicemember is on active duty. *Id.* This prevents default judgments from being entered against a servicemember, among other things, while he or she is serving the country. *Id.*

110. MASON, *supra* note 104, at 2.

status of the Guardsmen.¹¹¹ Army and Air Force National Guardsmen can serve in one of three statuses.¹¹² For example, “the Act does not apply to Guardsmen during state activations, weekend drills, and most Title 32 activities. It does [however], apply to Guardsmen who have been called to federal active duty.”¹¹³

In a recent case, *Freeman v. United States*, a servicemember was denied the protection of the SCRA because he was not serving under a protected federal status.¹¹⁴ In *Freeman*, a state servicemember brought a claim against the United States for wrongful termination.¹¹⁵ The government moved to dismiss his claim, stating that the statute of limitations had run.¹¹⁶ In response, the state servicemember claimed that under the SCRA, the statute of limitations had tolled, precluding dismissal.¹¹⁷ The court concluded that because the state servicemember was serving in his state capacity as opposed to serving on active duty in his federal capacity, he was precluded from claiming any rights under the SCRA.¹¹⁸

B. SCRA Protections for Servicemembers

Various procedural protections are in place to safeguard servicemembers under the SCRA.¹¹⁹ Some of those protections include limitations on default judgments, requests for stays of civil and administrative proceedings, tolling of civil statutes of limitations,¹²⁰ releases from contractual obligations in cell phone contracts,¹²¹ and early lease terminations from residential housing.¹²² Protections typically begin on the day the servicemember enters active duty and end on the day the servicemember is either released from or

111. Kenneth T. Lumb, *What Every Attorney Should Know About The Servicemembers Civil Relief Act*, 23 DCBA BRIEF 18, 18–19 (April 2011) http://www.dcbabrief.org/flipbook/0411/BRIEF_Apr2011.pdf.

112. *Id.* at 19.

Guardsmen can serve in any one of three statuses: (1) On state active duty under state command and control and with state funding; (2) On federal active duty, under federal command and control and with federal funding (Title 10 status); and (3) On active duty under state command and control, but with federal funding (Title 32 Status).

Id.

113. *Id.*

114. *Freeman v. United States*, 98 Fed. Cl. 360, 366 (Fed. Cl. 2011).

115. *Id.*

116. *Id.* at 370.

117. *Id.*

118. *Id.* at 372.

119. LUMB, *supra* note 111, at 19.

120. *Id.* at 18, 22–23.

121. 50 U.S.C. App. § 535a. (2010).

122. *Id.* § 535.

dies while on active duty.¹²³ Some sections of the SCRA, including the termination of cell phone contracts and early lease termination provisions, allow the protections to become effective earlier, such as on the date the servicemember receives his orders.¹²⁴ The SCRA also protects persons who are secondarily liable to the servicemember's obligations.¹²⁵ Persons secondarily liable include, "a surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily subject to the obligation or liability."¹²⁶ This protection applies to civil actions that are stayed, postponed, or suspended.¹²⁷

Each provision of the SCRA contains specific requirements.¹²⁸ Before turning to the specific section of the SCRA that governs early lease terminations, it helps to examine briefly some of the requirements of the other specific provisions for comparison. While some of the benefits offered to servicemembers are not directly applicable to early lease terminations, it is important to understand the overall benefits the SCRA offers to servicemembers and their families, as well as how various limitations in the statute can actually impose hefty burdens on servicemembers and even more so, on their families.

1. *Protection for Servicemembers Against Default Judgments*

Servicemembers have been protected from default judgments since the introduction of civil relief legislation.¹²⁹ Under the SCRA, for a plaintiff to obtain a default judgment against a servicemember, who has failed to appear in a civil action or proceeding, the plaintiff must submit an affidavit with the court, stating whether the defendant is on active duty accompanied by supporting facts.¹³⁰ If the plaintiff is without knowledge as to whether the defendant is on active duty, the plaintiff must state so.¹³¹ If it appears that the defendant is on active duty, the court must appoint an attorney to represent the servicemember before entering a judgment.¹³² The SCRA protects the servicemember by requiring appointed counsel when his whereabouts are unknown.¹³³ Moreover, if the whereabouts remain unknown, the servicemember will not be held to any judgment as a result of the attorney's ac-

123. LUMB, *supra* note 111, at 19.

124. *Id.*; 50 U.S.C. App. §§ 535(a)(1)(b), 535a.(c).

125. 50 U.S.C. App. § 513.

126. *Id.* § 513(a).

127. *Id.* § 513.

128. *See, e.g., id.* §§ 517, 521, 522, 535, 535a.

129. MASON, *supra* note 104, at 1-2.

130. 50 U.S.C. app. § 521(b)(1)(A).

131. *Id.* § 521(b)(1)(B).

132. *Id.* § 521(b)(2).

133. *Id.* § 521(b)(2)-(3).

tions.¹³⁴ Servicemembers are further protected from default judgments because the SCRA makes it a criminal misdemeanor for a plaintiff to knowingly submit a false affidavit regarding the servicemember's status, subjecting the plaintiff to a fine or imprisonment.¹³⁵

In addition, the SCRA provides that default judgments that have been entered against a servicemember while on active duty, may be vacated or set aside.¹³⁶ Upon application by or through the servicemember, the court is required to reopen the default judgment when the servicemember with a meritorious defense to the claim can demonstrate that because of his service, he was *materially affected* in bringing the defense at the time of the judgment.¹³⁷

2. *Stay on the Proceedings*

A servicemember who has received notice of a civil action or proceeding to which he is a party, and is on active duty or within ninety days of his termination or release from active duty, can apply to the court for a stay of proceedings.¹³⁸ Upon application, the court shall stay the proceedings for a mandatory ninety days.¹³⁹ Additionally, the court may stay the action on its own motion.¹⁴⁰ In both cases, however, the court must receive a letter that states the servicemember's active duty *materially affects* his ability to appear in court because he is not authorized at that time to leave the military.¹⁴¹ The letter must also state when the servicemember is able to appear.¹⁴² If a servicemember's military service continues to *materially affect* his ability to appear in court, he may apply for additional time to stay the action or proceeding.¹⁴³

134. *Id.*

135. *Id.* § 521(c).

136. 50 U.S.C. app. § 521(g).

137. *Id.* § 521(g)(1)(A)–(B). A servicemember has ninety days from his termination or release from active duty to file an application for vacation with the court. *Id.* § 521(g)(2).

138. 50 U.S.C. App. § 522(a)(1)–(2) (2006).

139. *Id.* § 522(b)(1).

140. *Id.*

141. *Id.* § 522(b)(1)–(2).

142. *Id.* § 522(b)(2)(A).

143. *Id.* § 522(d)(1). Additional time is rarely granted, especially in child custody proceedings. *See, e.g.,* George P. v. Super. Ct., 127 Cal. App. 4th 216, 219 (Cal.2005). By refusing to grant additional time to stay the proceedings or action, the court is required to appoint counsel to represent the servicemember. *Id.* § 522(d)(2). The statute however, is silent as to whether the servicemember is bound by the attorney's actions or whether any defense is deemed waived. *See id.* § 522.

3. *Tolling the Statute of Limitations*

In addition, the SCRA allows a servicemember to toll the statute of limitations on any action brought by or against the servicemember.¹⁴⁴ While “[t]he tolling provision [applies to] the servicemember’s heirs, executors, administrators or assigns, . . . it does *not* include a spouse or dependent[.]”¹⁴⁵ As a result, the statute of limitations for a spouse or dependent of a servicemember begins immediately once the cause of action arises, whereas the servicemember’s statute of limitations tolls until the servicemember is terminated or released from active duty.¹⁴⁶ While this may be a great benefit for the servicemember, it may cause some problems for his or her spouse and/or dependents, especially when both or multiple parties are involved in the same cause of action.¹⁴⁷ Although, the statute does not require the servicemember to show that his military service *materially affected* his ability to prosecute or defend a case,¹⁴⁸ the servicemember is not protected from a claim of laches.¹⁴⁹ “If the other party can show inexcusable delay and prejudice resulting from the delay, the claim can be dismissed.”¹⁵⁰

4. *Cell Phone Contracts*

Congress added the termination of cell phone contracts as a new benefit to servicemembers under the SCRA in 2010.¹⁵¹ Under the new provision, a servicemember may terminate a cell phone contract entered into before “receiv[ing] military orders to relocate for a period of not less than [ninety] days [only] to a location *that does not support the contract*.”¹⁵² Therefore, the termination of a cell phone contract is conditional on whether cell phone service is available in the servicemember’s new location.¹⁵³ While termination of the contract is likely to be available to servicemembers deployed out of the country, relocating within the United States is less likely to allow for termination.¹⁵⁴ As a result, the benefit is substantially limited.¹⁵⁵

144. LUMB, *supra* note 111, at 23; *see also* 50 U.S.C. app. § 526.

145. LUMB, *supra* note 111, at 23.

146. *See id.*

147. *See id.* For example, “a soldier injured in an automobile collision while on active duty will have two years after leaving active duty to file suit. If his wife is also injured in the collision, she must file suit for her own injuries within two years of the collision.” *Id.*

148. *Id.*

149. *Id.* Tolling of the statute of limitations during military service is not available under the internal revenue laws of the United States. 50 U.S.C. App. § 526(c) (2006).

150. LUMB, *supra* note 111, at 24.

151. 50 U.S.C. app. § 535(a) n.11.

152. *Id.* § 535(a)(1), (emphasis added).

153. *Id.*

154. *See id.*

When the cell phone termination provisions apply,¹⁵⁶ servicemembers are required to deliver written or electronic notice, along with a copy of military orders and the date on which service will end, to the service provider.¹⁵⁷ The service provider must comply with the SCRA provision, accept the termination, and may not impose an early termination charge.¹⁵⁸ Additionally, if the servicemember reinstates his or her cell phone contract within ninety days from his military release, the service provider cannot impose a reinstatement fee, other than the usual installation or equipment charges.¹⁵⁹ The SCRA also allows the servicemember to keep his cell phone number if his period of relocation is within a time period of three years or less and he re-subscribes to the service within ninety days after his or her release from active duty.¹⁶⁰ Because the provision lays out concrete requirements, it does not allow the service provider to obtain relief from the court.¹⁶¹ However, similar to other SCRA provisions, the right to terminate a cell phone contract can be waived by the servicemember or by a person secondarily liable if the waiver meets the requirements specified in the SCRA.¹⁶²

While the addition of the cell phone contract termination provision is a benefit to servicemembers, it does provide some limitations and complications.¹⁶³ As stated previously, because it is only applicable to contracts that will no longer receive service after the servicemember relocates, it can be argued that more than likely the termination rights only apply to servicemembers who are deployed overseas or are relocated to very rural areas of the United States.¹⁶⁴ The termination provision is also limited when dealing with cell phone family plan contracts.¹⁶⁵ If the servicemember is a designated beneficiary of the family plan contract, the servicemember may be removed from the contract if he meets the requirements to terminate.¹⁶⁶ The

155. *See id.*

156. *Id.* § 535a(a)(1), (b). A servicemember must receive military orders to relocate for more than ninety days and his cell phone provider cannot support service in the area the servicemember is relocating to. *Id.*

157. 50 U.S.C. app. § 535a(a)(3).

158. *Id.* § 535a(e). However, the servicemember can still be held liable for any tax or obligation that is due at the time the contract terminates. *Id.*

159. *Id.*

160. *Id.* § 535a(c).

161. *See id.* But *see id.* § 535(g). *See also* COLONEL JOHN S. ODOM, JR., *supra* note 4, at 58.

162. 50 U.S.C. app. §§ 513, 517 (2006); *see discussion supra* Part III.B.1.; *see also Servicemembers Civil Relief Act (SCRA) Questions and Answers for Servicemembers*, JUSTICE.GOV, http://www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf (last visited May 21, 2013).

163. *See* 50 U.S.C. app. § 535a.

164. *See id.* § 535a(a)(1).

165. *Id.* § 535a(d).

166. *Id.* § 535a(d)(1); *see also id.* § 535a(a)(1), (b).

designated beneficiaries, however, will remain liable under the contract, unless they relocate with the servicemember.¹⁶⁷ This limiting provision may provide some hardship for a servicemember's family, especially for a servicemember who is a Reservist or a Guardsman. Because Reservists or Guardsmen typically occupy different jobs before being called into active duty, the servicemember may earn less while in the military and may not be able to support a family plan in his new role.¹⁶⁸ Additionally, without the servicemember's financial support, the family may be in a difficult position—unable to pay the monthly contract fee, but also unable to cancel due to sizeable termination fees.

5. *Early Lease Termination—SCRA § 535*

Section 535 is the primary provision of the SCRA that allows for servicemembers to terminate a variety of leases early.¹⁶⁹ Leases covered by the provision are referred to in the SCRA as residential leases but are defined broadly to include residential, professional, business, agricultural, and any other lease with a similar purpose, such as motor vehicle leases.¹⁷⁰ The SCRA allows the tenant to terminate a lease of premises when the lease was entered into before the servicemember entered into military service for the first time or the lease was executed while the servicemember was already in military service if during the duration of the lease the servicemember is ordered to deploy or has received a permanent change in station for a period of time of not less than ninety days.¹⁷¹ In the case of joint leases, a servicemember's termination effectively terminates any obligation owed by a dependent under that lease.¹⁷²

The lease terminates when the servicemember provides written notice and a copy of military orders to the landlord.¹⁷³ The effective date is "on the last day of the month following the month in which the notice is delivered."¹⁷⁴ Any unpaid rent prior to termination shall be paid by the servicemember on a prorated basis.¹⁷⁵ The landlord, however, cannot charge the servicemember an early lease termination penalty but may enforce any obli-

167. *Id.* § 535a(d)(2).

168. *See* COLONEL JOHN S. ODOM, JR., *supra* note 4, at 4.

169. 50 U.S.C. app. § 535.

170. *Id.* § 535(a)(1).

171. *Id.* § 535(a)(1)(A)–(B).

172. *Id.* § 535(a)(2). Under the SCRA, a dependent is a servicemember's spouse, child, or "an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under [the] Act." *Id.* § 511(4).

173. *Id.* § 535(c)(1)(A).

174. *Id.* § 535(d)(1).

175. 50 U.S.C. app. § 535(e)(1).

gations or liabilities owed by the lessee.¹⁷⁶ Criminal charges may be assessed against a landlord who knowingly attempts to “seize[], hold[], or detain[] the personal effects, security deposit, or other property of a servicemember or a servicemember’s dependent who lawfully terminates a lease covered by this section.”¹⁷⁷ However, a landlord may seek equitable relief upon application to the court prior to the termination effective date of the lease.¹⁷⁸ If granted, the court may modify the relief to landlord “as justice and equity require.”¹⁷⁹

The early lease termination provisions allowed by the SCRA have not been without controversy.¹⁸⁰ Section 535 has been one of the most amended sections of the SCRA.¹⁸¹ The frequent amendments have been “a result of the continuing efforts of landlords and leasing companies to try and defeat the purpose of the section . . . to allow servicemembers to terminate premises and vehicle leases when they are not in a position to utilize the premises or vehicles because of their military service.”¹⁸²

Unfortunately, while the SCRA provisions appear straightforward and broadly written to ensure that servicemembers who find themselves having to terminate their leases are protected, there continue to be servicemembers whose rights are violated. In the past year, the Justice Department issued a press release announcing a settlement reached between a landlord and tenant under the SCRA.¹⁸³ According to the release, “Empirian Property Management Inc. (EPM) refused to terminate residential leases entered into by active duty members of the U.S. Air Force,” who were later reassigned to a permanent change of station more than ninety miles away.¹⁸⁴ The corresponding complaint and consent order explained that EPM violated the

176. *Id.* The United States commenced an action against landlord Occuquan Forest Drive, LLC and its agent, John Williams, on May 21, 2012, when the landlord and its agent refused to return a security deposit following proper termination by a servicemember under the SCRA. *United States v. Williams*, No. 1:12-cv-551, 2013 WL 596473, at *2 (E.D. Va. Feb. 14, 2013).

177. 50 U.S.C. app. § 535(h).

178. *Id.* § 535(g).

179. *Id.*

180. *See id.* § 535 n.10. Even though the early lease termination provisions of the SCRA are broad and seemingly clear, landlords and leasing companies continue to violate the section by refusing to allow a servicemember to properly terminate his lease. *Id.* *See also Williams*, 2013 WL 596473, at *4, for a recent example of a landlord attempting to defeat the purpose of the section by holding a servicemember, who properly terminated his residential lease, liable for continued rent payments and withheld his security deposit. *Id.*

181. 50 U.S.C. App. § 535 n.10

182. *Id.*

183. Press Release, Department of Justice, Justice Department Settles Landlord-Tenant Case Under Servicemembers Civil Relief Act (Mar. 1, 2012), <http://www.justice.gov/opa/pr/2012/March/12-crt-268.html>.

184. *Id.*

SCRA when it refused to allow early lease terminations to the servicemembers who were attempting to comply with their service orders.¹⁸⁵ The U.S. Attorney for the District of Nebraska, Deborah R. Gilg, explained that “[t]his settlement sends a strong message that the rights of our service personnel will be protected.”¹⁸⁶

C. State Solutions to SCRA Problems

1. *Waiver*

Although courts liberally interpret the SCRA protections for “those who have been obliged to drop their own affairs to take up the burdens of the nation,”¹⁸⁷ the waiver provisions within the SCRA can take any and all of those rights away from servicemembers and persons secondarily liable.¹⁸⁸ A servicemember can waive his rights under the SCRA, by written agreement regarding “the modification, termination, or cancellation of a contract, lease, or bailment; or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.”¹⁸⁹ Additionally, a servicemember can waive his rights to “[t]he repossession, retention, foreclosure,

185. *Id.*

186. *Id.* The Justice Department brought an action against a landlord under the SCRA for the first time in 2009. Press Release, Department of Justice, Justice Department Announces Settlement of Its First Landlord-Tenant Case Under the Servicemembers Civil Relief Act (Sept. 24, 2009) <http://www.justice.gov/opa/pr/2009/September/09-crt-1022.html>.

The Justice Department today announced that it had reached a settlement with a Virginia landlord to resolve allegations that she violated the Servicemembers Civil Relief Act (SCRA). The lawsuit alleged that the landlord failed to return prepaid rent and security deposits to a tenant who had terminated her lease early in order to comply with military orders to relocate from to Georgia. . . . The complaint, which was filed with the settlement, represents the first lawsuit involving a landlord-tenant matter brought by the Justice Department under the SCRA.

Id. Other actions on behalf of servicemembers, like this one, by the Justice Department can be found at the DOJ website. Civil Rights Cases and Investigations Involving Servicemembers and Veterans, JUSTICE.GOV, http://www.justice.gov/crt/spec_topics/military/cases.php. See also *United States v. Williams*, No. 1:12-cv-551, 2013 WL 596473, at *1 (E.D. Va. Feb. 14, 2013). The United States commenced an action on behalf of a servicemember who rightfully terminated his lease under the SCRA and his landlord continued to hold him accountable for subsequent rent payments and refused to return his security deposit. *Id.* at *2. The tenant had provided proper notice under the SCRA and had terminated his lease in compliance with the Act’s requirements. *Id.* at *4. Therefore, the servicemember did not owe any subsequent rent. *Id.* Additionally, the court found that “[d]efendants’ claims for property damage were not proper under the terms of the lease and [they] had no basis to withhold [the servicemember’s] security deposit.” *Id.*

187. *Boone v. Lightner*, 319 U.S. 561, 575 (1943).

188. 50 U.S.C. app. §§ 513, 517 (2006).

189. *Id.* § 517(b)(1)(A)–(B).

sale, forfeiture, or taking possession of property that is security for any obligation; or was purchased or received under a contract, lease, or bailment.”¹⁹⁰

For a waiver to be effective, it must be in writing—at least twelve point font¹⁹¹—and executed in a separate document from the obligation to which the waiver applies.¹⁹² Additionally, the waiver agreement must be executed either during or after the servicemember’s military service.¹⁹³ A waiver executed prior to a servicemember’s start of military service is therefore, ineffective.¹⁹⁴ This provides some protection for the servicemember, if he is given information about and understands how a waiver might affect him while he is in service. Whether servicemembers truly know their rights and knowingly waive them is the real question. If housing is scarce in the areas where the servicemember lives, will he routinely sign a waiver or other document the landlord requires?

Some states have addressed the issues associated with waiver by eliminating the option all together in early lease terminations.¹⁹⁵ For example, the states of Florida, Georgia, and Louisiana have all inserted non-waiver language into their state servicemember early lease termination statutes. Those statutes provide language to the effect that “[t]he provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.”¹⁹⁶ By eliminating the option of waiver all together, these states ensure that the critical public policy goals underlying the statutory protection for servicemembers are not undermined by private residential rental agreements that may have been entered into by parties without complete understanding of their rights or with unequal bargaining power.

2. *Materially Affected Language*

As described above, several sections of the SCRA require the servicemember and/or a dependent to make a showing of material effect in order to

190. *Id.* § 517(b)(2)(A)–(B).

191. *Id.* § 517(c).

192. *Id.* § 517(a).

193. *Id.* § 517(a). A final requirement for the waiver to be effective is to name the servicemember concerned, if he is not a named party in the original instrument. *Id.* This requirement alludes to the fact that a person secondarily liable to a servicemember’s obligation can also waive his rights under the SCRA. *Id.* § 513(d)(1). For a waiver to be effective it must comply with the same requirements that the servicemember’s waiver is subject to and it must be entered into after the servicemember enters active duty. *Id.* § 513(d)(2).

194. *See* 50 U.S.C. app. § 517.

195. *E.g.*, FLA. STAT. § 83.682(5) (2004).

196. FLA. STAT. § 83.682(5) (2004); GA. CODE ANN. § 44-7-22(f) (2010); LA. REV. STAT. ANN. § 9:3261(D.) (2009).

receive relief from the Act.¹⁹⁷ For example, when a servicemember attempts to vacate a default judgment or stay a proceeding, he must make a showing that his current military orders *materially affected* his ability to defend the civil action—in cases of default judgment; or appear in court—in cases of stay of proceedings.¹⁹⁸ *Materially affected*, however, is not defined in the SCRA.¹⁹⁹ While the court may consider several factors in order to determine whether a servicemember or his dependent has been *materially affected* as a result of his military orders, two factors in particular tend to be the most commonly considered: “(1) the servicemember’s availability, and (2) the necessity of the servicemember’s presence.”²⁰⁰ When determining the servicemember’s availability, the court will look at the servicemember’s geographic distance from the forum state, ability to leave service, and sometimes, economic circumstances.²⁰¹ A servicemember’s availability while stationed overseas, such as Afghanistan, would be *materially affected* by a pending civil action in the United States. In contrast, a servicemember stationed in Washington D.C. may not be *materially affected* by a pending action in Virginia.²⁰²

With regard to the second factor, the Supreme Court of the United States stated in *Boone v. Lightner*,²⁰³ that a defendant’s “[a]bsence when one’s rights or liabilities are being adjudged is usually prima facie prejudicial.”²⁰⁴ Despite the Supreme Court’s clear language, some courts have decided the issue of a servicemember’s presence based on whether it is essential to the action at hand.²⁰⁵ This has led to a denial of relief for many servicemembers, especially in child custody proceedings.²⁰⁶

While the “materially affected” language is not applicable directly to residential early lease terminations under the SCRA, in order for the SCRA’s protections to extend to dependents, Section 538 requires a show-

197. See, e.g., 50 U.S.C. app. § 522. But see *id.* § 535. Currently, “materially affected” language is not applicable directly to residential early lease terminations under the SCRA. *Id.*

198. *Id.* §§ 521, 522.

199. See *id.* § 511; see also ODOM, *supra* note 4, at 4.

200. See *Boone v. Lightner*, 319 U.S. 561, 572 (1943); *George P. v. Super. Ct.*, 127 Cal. App. 4th 216, 219 (Cal 2005).

201. See *Boone*, 319 U.S. at 572; ODOM, *supra* note 4, at 4.

202. *Rosier v. McDaniel*, 28 S.E.2d 908, 913–14 (W. Va. 1944).

203. 319 U.S. 561 (1943).

204. *Id.* at 575.

205. See, e.g., *id.*

206. See, e.g., *George P. v. Super. Ct.*, 127 Cal. App. 4th 216, 219 (Cal. 2005). While the court is generally required to grant an initial 90-day stay upon proper application with the court, any additional stays are deemed discretionary. *Id.* at 224. Despite his post-deployment to Iraq, the petitioner’s request for an additional stay in a child custody proceeding was denied because the court determined that petitioner had appeared in a critical hearing prior to the request for additional stay, was represented by counsel from the beginning, and was not prevented from communicating with DSS while in Iraq. *Id.* at 226.

ing of material effect.²⁰⁷ A dependent of a servicemember may be entitled to the protections of the SCRA, but must first apply to the court to obtain relief and then must make a showing that his or her “ability to comply with a lease, contract, bailment, or other obligation is *materially affected*” as a result of the servicemember’s military service.²⁰⁸ Admittedly, a spouse or dependent will be protected if the servicemember executes the lease or contract in his own name.²⁰⁹ However, if the lease or contract is only in the dependent’s name, the SCRA will not apply without the requisite *materially affected* showing.²¹⁰

In order to protect the dependents, it is recommended that the servicemember be a part of the agreement.²¹¹ However, this is not always feasible, especially when a dependent must enter into a contract or a lease while the servicemember is away on active duty.²¹² For example, a spouse may change apartments while the servicemember is deployed.²¹³ Sometimes in these circumstances, it is easier for the spouse to execute the lease in her own name rather than have her deployed husband co-sign. However, doing so will prohibit her ability to invoke the SCRA early lease termination protection directly.²¹⁴ The spouse could attempt to use the SCRA’s provisions for dependents, but those can be extremely burdensome because they require the spouse to apply to a court for relief and to demonstrate that the spouse’s ability to comply with the lease is *materially affected* by the servicemember’s service.²¹⁵

Interestingly, New York has eliminated the problem that arises when a servicemember’s spouse is the only party on the lease.²¹⁶ The New York state statute allows the spouse coverage under the servicemember’s early lease termination provision if the spouse solely executes the lease.²¹⁷ This

207. 50 U.S.C. app. § 538.

208. *Id.* (emphasis added).

209. See Kate, *Spouses and Leases*, PAYCHECK CHRONICLES BLOG (Mar. 6, 2010, 12:00 AM), <http://paycheck-chronicles.military.com/2010/03/06/spouses-and-leases/>.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. See 50 U.S.C. app. § 538. Additionally, a dependent may want to be cautious when deciding how to approach naming a servicemember on a contract or lease as it could be deemed an inappropriate use of the SCRA. ODOM, *supra* note 4, at 75. Colonel John S. Odom, Jr., warns that a nonservicemember debtor may not transfer his or her interest or obligation solely for the purpose of invoking the servicemember’s protections under the SCRA. *Id.* Therefore, a dependent must put the servicemember’s name on the instrument during the initial signing, rather than later amend a contract or lease in an effort to wrongfully invoke the SCRA’s protections.

216. See N.Y. MIL. LAW § 310.1. (McKinney 2013).

217. *Id.*

means that a military spouse in New York will not be required to apply to the court and show how she has been *materially affected* as a result of her spouse's military orders.²¹⁸ Instead, the state statute allows her to automatically receive the protections of the SCRA by executing the lease in her own name—extending her husband's protections as a servicemember to her.²¹⁹ This essentially protects the servicemember's spouse while also embracing judicial economy—by freeing up the courts from unnecessary proceedings.

3. *Landlord Relief When "Justice and Equity So Require" in Residential Leases*

Section 535 of the SCRA contains an additional hurdle for servicemembers to obtain relief. It allows the landlord to apply to a court for equitable relief prior to the termination date of the lease.²²⁰ In contrast, other sections, such as the one allowing termination of cell phone contracts, make the service provider abide by the statutory requirements without any ability for the provider to seek judicial or equitable relief.²²¹ For a landlord to block a servicemember's early termination of a lease by petitioning for equitable relief, Section 535(g) does not require the landlord to demonstrate any particular equitable theory.²²² The ability of the landlord to ask a court to balance the equities may completely gut the benefits of the early lease termination benefits. A goal of the SCRA is to have a servicemember focus on the mission and not be unnecessarily distracted by ongoing economic commitments at home.²²³ If a servicemember needs to be concerned that the lease will continue simply because a landlord will take him or her to court, the servicemember cannot rely on the provision and plan accordingly.

218. *Id.*; see also 50 U.S.C. app. § 538.

219. N.Y. MIL.LAW § 310.1.

220. 50 U.S.C. app. § 535(g). The SCRA also allows for landlord relief in the termination of motor vehicle leases. *Id.*; see also *id.* § 535(b)(2).

221. See *id.* § 535a.

222. *Climax, LLC v. Snake River Oncology*, 241 P.3d 964, 969 (Idaho 2010). Instead, the court is called to balance equities between the parties and then determine if a relief modification is warranted. *Id.* Ultimately, to use the protections under the SCRA, compliance with military orders must be the underlying reason for terminating a lease early. *Id.* However, if a servicemember uses the protection for an opportunistic gain, the court has broad discretion to craft a remedy "as justice and equity require" for the landlord. 50 U.S.C. App. § 535(g); *Snake River Oncology*, 241 P.3d at 969. The Idaho Supreme Court remanded a case to the district court to determine whether a landlord was entitled to relief—under broad discretion—when a servicemember rented an office building for his medical practice and then used the SCRA to get out of his lease after purchasing space in a new office building. *Id.* at 971.

223. See *supra* Part IV.A.

While some states have included court modification of equitable relief within their early lease termination statutes for servicemembers,²²⁴ others have excluded it completely.²²⁵ Similar to waiver, several states have done away with requiring the court to balance the equities between parties when dealing with a servicemember terminating his lease early.²²⁶ Eliminating equitable relief to the landlord all together ensures that the provision works in practice, not just in theory. Additionally, it is in the interest of judicial economy to do away with the procedure of involving the courts to determine whether an early lease termination by a servicemember was fair.²²⁷ States that wish to keep some equitable relief for the landlord should consider a balance between the two extremes—broad court discretion for modification versus no modification at all. Instead of eliminating equitable relief all together, states could allow a limited remedy when a landlord can show that the servicemember terminated his lease purely for opportunistic reasons.

4. *Coverage for State Servicemembers*

Currently, state servicemembers are not covered under the SCRA.²²⁸ Several problems can arise as a result of their lack of coverage. For example, when dealing with court proceedings, a state servicemember may be just as unlikely as a federal servicemember, to have the ability to leave active duty to attend to civil proceedings—even if the courthouse is down the street.²²⁹ While a civilian may risk losing his or her job as a result of attending civil proceedings, a state servicemember faces an even greater risk—failure to work constitutes a military offense that could lead to incarceration.²³⁰ A federal servicemember can request a stay of proceedings by complying with the requirements of the SCRA.²³¹ A state servicemember, on the other hand, does not have that option.²³²

Similarly, a state servicemember is not entitled to the SCRA protections under termination of cell phone contracts or early lease termination

224. See, e.g., N.Y. MIL LAW. § 310.2. (McKinney 2013); PA. CONS. STAT. ANN. § 7315.1(f) (West 2013).

225. See, e.g., FLA. STAT. § 83.682(5) (2013); GA. CODE ANN. § 44-7-22(f) (2013) (LexisNexis); LA. REV. STAT. ANN. § 9:3261(D.) (2013).

226. E.g., FLA. STAT. § 83.682(5) (2004).

227. Very few cases have been found showing the servicemember has been opportunistic in terminating his lease rather than doing so by necessity. See *Snake River Oncology*, 241 P.3d at 969.

228. 50 U.S.C. App. § 511(1)–(2) (2006); see also ODOM, *supra* note 4, at 5.

229. ODOM, *supra* note 4, at 5.

230. *Id.*

231. 50 U.S.C. App. § 522(b).

232. See *id.* §§ 511, 522(b).

provisions.²³³ Nor are they provided protection from default judgments, stay of proceedings, or an opportunity to toll a statute of limitations for a civil action brought by or against them.²³⁴

Some states have remedied this problem in the early lease termination protection by providing relief for state servicemembers within their own statutes.²³⁵ For example, Georgia defines and expands the term “servicemember” to include not only the SCRA’s definition, but also “the Georgia National Guard or the Georgia Air National Guard.”²³⁶ Likewise, Pennsylvania has expanded the SCRA’s definition of a servicemember by including “a member of the Pennsylvania National Guard serving on full-time duty or as a civil service technician with a national guard unit.”²³⁷ Notably, these states provide for their servicemembers to benefit from the protections provided by Section 535 of the SCRA for early lease terminations.²³⁸

D. Proposed Version for RURLTA

As this article has revealed, there are several gaps currently within the SCRA that can drastically limit the protections servicemembers or their dependents receive.²³⁹ These gaps offer states an opportunity to expand their own statutes to provide for state and federal servicemembers alike.

In drafting a section for servicemembers, the RURLTA Committee should consider the usage of waiver, the *material effect* language burden on dependents, balancing of equities, and expanding coverage. Regarding waivers, it is recommended that any RURLTA provisions for servicemembers disallow waivers. While waiver may be acceptable for some of the other rights for servicemembers found in the SCRA, the early termination of residential leases provisions are critical. Eliminating the ability to waive the servicemembers’ rights and protections for residential leases under the SCRA is necessary to ensure the protections work as a practical matter. As discussed, waivers can eliminate the benefits when there is unequal bargaining power.²⁴⁰ Second, the *material effect* language can be harsh on servicemembers and dependents alike. By eliminating this high standard, servicemembers and their dependents can benefit from the rights under the SCRA without undue burdens. Third, the RURLTA should eliminate the equitable relief provisions for landlords all together. Finally, RURLTA should include

233. *See id.* §§ 511, 535, 535a.

234. *See id.* §§ 511, 521, 522, 526.

235. *See, e.g.*, GA. CODE ANN. § 44-7-22(a) (2010).

236. 50 U.S.C. app. § 511; GA. CODE ANN. § 44-7-22(a).

237. 42 PA. CONS. STAT. ANN. § 7315.1(a) (West 2013).

238. GA. CODE ANN. § 44-7-22(a); PA. CONS. STAT. ANN. § 7315.1(a).

239. *See discussion supra* Part IV.C.4.

240. *See discussion supra* Part IV.C.1.

state servicemembers, in addition to federal servicemembers, so that both are equally protected.

V. CONCLUSION

As this article discusses, the ability of tenant-victims' of domestic violence, sexual violence, and stalking to terminate their leases early is a vital public policy concern. Similarly, the need for active duty servicemembers to readily comply with military orders is critical. The article demonstrates that there is a need for additional and uniform laws ensuring tenant-victims can terminate their leases. In addition, even though the SCRA provides protection to federal servicemembers who must relocate, it is not as efficient and effective as public policy would dictate. Moreover, the state versions of protections for servicemembers are not consistent. Both categories of tenants face exigent circumstances when terminating their leases and should be provided with effective and practical mechanisms for early lease terminations. Accordingly, the article strongly suggests that the proposed RURLTA contain provisions for both.