



7th JMTTC Legal Assistance Information

SERVICEMEMBERS' CIVIL RELIEF ACT

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

Since the Civil War, Congress has enacted a series of legislation that has aimed at providing relief for soldiers, in many civil matters, while they are fulfilling their duties to the armed forces. The Servicemembers Civil Relief Act (or SCRA) was enacted in 2003, and was legislation that updated the previous act of 1940 (the Soldiers' and Sailors' Civil Relief Act) passed on the eve of World War Two. The purpose of the act is to enable servicemembers to devote their entire energy to the defense needs of the nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

This information sheet will provide answers to common questions that arise with regard to this act.

Q: Who is covered by the SCRA?

A:

According to the act, a "servicemember" is a member of the armed forces (Army, Navy, Air Force, Marine Corps and Coast Guard) on active duty. Members of the National Guard who are called to active duty as authorized by the President or the Secretary of Defense for over 30 consecutive days to respond to a national emergency declared by the President and supported by federal funds are also covered as servicemembers under the act, and are covered from the time they receive their orders to report for duty. Lastly, commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration (NOAA) are covered. A servicemember is also covered for any period of time when he or she is absent from duty because of sickness, wounds, leave, or other lawful cause.

Under certain sections of the SCRA, individuals who are covered by the act include family members and other dependants for whom the servicemember, as defined above, has provided more than half of that person's support for the 180 days preceding an application for relief under the act.

Q: What types of courts and cases are required to give relief under the act?

A:

Any court or administrative agency of the United States, any state, or any political subdivision thereof, is covered by the act. The act extends to cases arising from civil disputes only, and does not cover criminal cases.

Q: What does "materially affect" mean?

A:

Throughout the SCRA, many clauses require that military service in some way "materially affect" the ability of the servicemember to fulfill the applicable transaction. While there is no one definition of "material effect," generally courts require that military duties prevent the member from appearing in court at the designated time and place, or from assisting in the preparation or presentation of a case, or when military service impairs substantially the member's ability to pay financial obligations.

JUDICIAL STAY OF CIVIL AND ADMINISTRATIVE PROCEEDINGS

Q: What is the purpose of a stay of proceedings?

A:

A stay of proceedings permits the delay of civil and administrative (but not criminal) court proceedings where military service prevents a plaintiff *or* defendant from asserting or protecting a legal right.

Q: When can a request for a stay of proceedings be made?

A:

Requests for a stay may be made at any stage of the court action or proceeding as long as the request is made during military service or within 60 days thereafter.

Q: What is the maximum duration of a stay of proceedings?

A:

Maximum duration of stay of proceedings is the period of service plus three months (90 days) after discharge. After this time period, the servicemember must appear in court.

Q: What must the servicemember show, in order to receive a stay of proceedings?

A:

The servicemember must prove that his military duty has “materially affected” his ability to be present in court. However, servicemembers are required to be diligent in their attempts to appear and courts will be reluctant to grant long-term stays of proceedings. Additionally, it is usually necessary that the servicemember’s presence in court be absolutely necessary to preclude irreparable harm.

MAXIMUM RATE OF INTEREST

The maximum rate of interest (including service charges) on debts incurred by soldiers prior to entering active duty is 6 percent per annum during the service of the soldier. Interest rates on debts incurred during service have whatever interest rate the servicemember contracts for, and are not protected by the SCRA. The 2003 SCRA specifies that interest incurred above this 6 percent limit during time of service must be forgiven, as opposed to simply deferred or accrued. Again, the soldier must show that his military service “materially affected” his ability to pay.

Q: Can a soldier lose this protection after it has been granted?

A:

Yes. The protection will end if the creditor convinces the court that the soldier's ability to pay a greater amount of interest is not materially affected by the military service. (For example, if the soldier's role changes during his/her active duty, then the new position may not have the necessary "material affect" on payment of said interest, and a court could then remove the protection)

Q: What types of obligations and liabilities does the 6% interest cap apply to?

A:

It applies to all commercial financial obligations and liabilities, including home mortgages, credit card debts, and automobile loans.

Q: Are there any exceptions to the SCRA 6% interest cap?

A:

Yes. For example, the Higher Education Act states that no provision of any law which limits the interest rate on a loan shall apply to the Government Student Loan program. Thus, the SCRA 6% interest cap does not apply to GSL loans.

Q: Does the servicemember need to inform the creditor about the SCRA interest cap?

A:

Yes. Even though the 6% interest cap automatically applies to individuals on active duty, entering active duty, or called to active duty, the soldier should inform his creditors he has been called to active duty by enclosing a copy of his orders with a request to reduce interest to 6%.

Q: Is a servicemember entitled to a refund of interest paid above 6% for the period of time beginning when he came on active duty and ending when the interest rate was reduced to 6%?

A:

This question must be resolved with the individual creditor. A court could rule that the servicemember was entitled to the reduced rate from the time he came on active duty.

Q: Does the SCRA 6% interest cap apply to joint obligations?

A:

Yes. If family members have joint contractual liability with the servicemember, they receive the 6% interest rate protection. Legislative history indicates that business partners should receive protection, but this is not explicit in the Act.

PREMATURE TERMINATION OF LEASES

Q: What criteria must be met for relief?

A:

There are a few routes for utilizing the SCRA's ability to prematurely terminate leases. First, there is an umbrella provision that if a lease was entered into, by or on behalf of a servicemember, prior to entry into military service, then the servicemember must just show that he/she is currently in military service and that the leased premises were occupied for dwelling, professional, business, agricultural or similar purposes. Second, if the lease is entered into by, or on behalf of, a servicemember during military service then the lease can only be terminated if the servicemember subsequently receives PCS orders or a deployment for a period of more than 90 days.

As well, the newest incarnation of the SCRA provides for the termination of automobile leases (business or personal use). Pre-service leases may be canceled if the servicemember receives orders to active duty for a period of 180 days or more, and leases entered into during active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more. Under all termination of lease provisions of the SCRA, it is not necessary to show "material affect."

Q: What is the procedure to terminate the lease?

A:

The servicemember must deliver written notice to the landlord (or lessor) at any time after entry on active duty or receipt of orders for active duty. Verbal notice is not sufficient.

Q: How is the effective date of termination determined?

A:

For month-to-month rentals, the termination becomes effective 30 days after the first date on which the next rental payment is due, subsequent to the date when the notice of termination is delivered. For example, if the rent is due on the first day of each month, and notice is mailed on 1 August, then the next rental payment is due and payable on 1 September. The effective date of termination would be 30 days after this date, in this case 1 October. For all other leases, termination becomes effective on the last day of the month following the month in which proper notice is delivered. For example, if the lease requires a yearly rental and proper notice of termination is given 20 October, the effective date of termination would be 31 November.

Q: What if the rent has been paid in advance?

A:

The servicemember is required to pay rent for only those months before the lease is terminated. If rent has been paid in advance, the landlord must prorate and refund the unearned portion. If a security deposit was required, it must be returned to the servicemember upon termination of the lease.

EVICTION FROM LEASED HOUSING

Q: What criteria must be met for relief?

A:

In order to be protected from eviction under the SCRA, a servicemember must show that the premises in question were occupied as a dwelling by the servicemember or a dependent; that their military service materially affected the servicemember's or dependent's ability to pay; and that the monthly rent does not exceed a set amount. The limit on monthly rent is adjusted from year to year.

Q: What relief is available?

A:

A court may proscribe relief including the following: (a) Stay of eviction proceedings for up to three months following the servicemember's discharge; (b) "such other order as may be just;" (c) criminal sanctions including one year confinement and a \$1,000 fine for taking part in an eviction in violation of this section. This protection applies regardless of whether the dwelling was rented before or after entry into active duty.

INSTALLMENT CONTRACTS AND MORTGAGE FORECLOSURES

A servicemember who, prior to entry into active duty, entered an installment contract for the purchase of real or personal property, will be protected under SCRA if the servicemember's service "materially affects" his ability to make the payments. The servicemember may attempt to renegotiate obligations either with individual creditors or with a group of creditors. A creditor may offer to forgive a debt on condition that certain property be given up to him, offer to reduce the longer period of payment at the same or higher rate of interest, or may make some other offer to change the existing relationship.

Q: How can a creditor foreclose on or repossess property?

A:

The creditor must file a lawsuit. Unless the court determines that the servicemember's military service did NOT materially affect his ability to make payments, the judge can prevent foreclosure and can scale down the installment payment obligations or defer them until after the servicemember is separated from the military service.

Q: Can the servicemember petition the court to obtain relief?

A:

Yes. The court can either defer the obligations or set up a schedule or plan of payment that can be met. The court can order a stay of proceedings during the period of military service and three months afterwards. The court also may determine that the most equitable solution is to permit foreclosure or repossession of the property, but require as a condition of the repossession that the property be appraised and that its value, less the outstanding debt, be paid to the servicemember.

This will avoid the common occurrence of a creditor foreclosing and purchasing the property at the foreclosure sale for far less than the property's value.

Q: What are the criteria for relief against foreclosures of mortgages?

A:

The criteria are: (a) the relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property; (b) the obligation originated prior to entry onto active duty; (c) the property was owned by the servicemember or family member prior to entry on active duty; (d) the servicemember or family member still owns the property at the time relief is sought; and (e) military service materially affects the ability to comply with the terms of obligation, such breach occurring prior to or during the period of military service.

TAXES

Q: Where is a servicemember's income taxed?

A:

Military pay is deemed to have been earned in the state of domicile and, therefore, is taxable only by the state of domicile. This means that when the Army details a soldier to various duty stations around the country, he does not become subject to the state income taxes of those states. The soldier continues to be subject only to the state income tax, if any, of his home state where his domicile continues.

Q: Can a state include the military income of a non-domiciliary servicemember for purposes of determining the non-military spouse's state income tax bracket?

A:

The SCRA prohibits state taxation of the military income of a non-domiciliary servicemember.

Q: Is the servicemember's tangible personal property, such as his car, subject to personal property taxes in the duty state?

A:

No. It is subject to taxation in the state of domicile. However, servicemembers must keep their vehicles currently licensed and if they do not comply with the licensing requirements of the state of domicile, they will be required to license their vehicles in the duty state.

Q: Does the SCRA affect the taxation of real property?

A:

No. Real property is taxed by the laws of the state in which it is located. Similarly, the taxation of the income and property of military dependents is not protected by the act.

LIFE INSURANCE

Q: May life insurance coverage be precluded if it contains a war clause?

A:

Yes. In the event of hostilities or death connected with military activity, life insurance coverage may be precluded if the policy contains a war clause.

Q: How can a soldier know if his commercial life insurance policy contains a war clause?

A:

DA policy and AR 210-7 paragraph 4(b) requires commercial life insurance groups selling insurance on a military installation to include the war clause on the front page of the policy. The war clause must be set out in bold print.

Q: Is it ethical to inform soldiers which insurance companies offer policies without the war clause?

A:

Yes. A soldier may receive a list of insurance companies which do not have war, hostility, or military activity exclusion clauses. Another relief provision in the SCRA allows a soldier to obtain a government guarantee of premium payments on up to the greater of \$250,000 or the maximum limit of the Servicemembers Group Life Insurance. In effect, the soldier can obtain a moratorium on payment of premiums during the period of his active duty but to do so the soldier must file an application with the Veterans' Administration. The insured service member must repay the unpaid premiums and interest no later than two years after the expiration of the term of military service.