



OFFICE OF THE STAFF JUDGE ADVOCATE
101ST AIRBORNE DIVISION (AIR ASSAULT) AND FORT CAMPBELL
CLIENT SERVICES
(270) 798-0910/0918

SERVICEMEMBERS' CIVIL RELIEF ACT

The Servicemembers' Civil Relief Act of 2003 (SCRA) is a federal law that gives all military members some important rights as they enter active duty. It covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. The SCRA protects active duty military members and reservists or members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents of military members (e.g., certain eviction actions). To receive protection under some parts of the SCRA, the member must be prepared to show that military service has had a "material effect" on the legal or financial matter involved. Protection under the SCRA must be requested during the member's military duty or within 30 to 180 days after military service ends, depending on the protection being requested. In many situations, the SCRA protections are not automatic, but require some action to invoke. For example, to obtain a reduction of your pre-active duty mortgage or credit card interest rates, you should send your lender/creditor a written request and a copy of your mobilization orders.

6% Rule.

One of the most widely known benefits under the SCRA is the ability to reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances. How does the 6% interest rule work? Consider this example: Three months ago Mr. Smith and his wife bought a car for \$13,000, paying \$1,000 down and financing \$12,000 at 9% interest. Last week, Mr. Smith was called to active duty as Staff Sergeant (SSG) Smith. **Before** entering active duty Mr. Smith earned \$42,000 per year. As a staff sergeant he now earns about \$39,000. Because of the SCRA, SSG Smith may ask the car financing company to lower the interest rate to 6% while he is on active duty. Military service has *materially affected* his ability to pay since he is earning less money on active duty than before. SSG Smith should inform the finance company of his situation in writing with a copy of the orders to active duty attached, and request immediate confirmation that they have lowered his interest rate to 6% under the SCRA. SSG Smith *must* provide this writing within 180 days after he leaves military service. The finance company must adjust the interest down to 6% unless it goes to court. In court, the finance company, not SSG Smith, would have to prove that SSG Smith's ability to pay the loan has not been materially affected by his military service. The 3% difference is forgiven or excused, and SSG Smith need not pay that amount. In addition, any service charges, renewal charges, fees, or other charges are considered as interest forgiven. SSG Smith does need to continue making the monthly payments of principal and interest (at 6%) to avoid his account being considered delinquent. If SSG Smith had gone through this process on a home mortgage, the 6% interest rate would have continued for an additional year after military service. What if instead of buying the car before he came on active duty, SSG Smith left his car at home for his wife and purchased a used car at his duty station. To do so, he borrowed \$4,000 at 9% interest. Since SSG Smith took this debt **after** entering active duty the SCRA 6% interest limit does not apply.

Delay of Court Proceedings.

The SCRA permits active duty servicemembers who have received notice but are unable to appear in a court for a civil action or administrative proceeding due to their military duties to

postpone the proceeding for a mandatory minimum of 90 days upon the servicemember's request. The request must be in writing and:

- (1) explain why the current military duty materially effects the servicemember's ability to appear;
- (2) provide a date when the servicemember can appear; and
- (3) include a letter from the commander stating that the servicemember's duties preclude his appearance and that he is not authorized leave at the time of the hearing. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the servicemember.

Default Judgment Protection.

If a default judgment is entered against a servicemember during his active duty service, or within 60 days thereafter, the SCRA allows the servicemember to reopen that default judgment and set it aside. In order to set aside a default judgment, the service member must show that his defense of the case was materially affected by his military service and that he has good defenses to the claims against him. The servicemember must apply to the court for relief within 90 days of the termination or release from military service.

Termination of Leases.

The SCRA allows termination of leases by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also includes automobiles leased by servicemembers and their dependents. The pre-service automobile lease may be cancelled if the servicemember receives active duty orders for a period of 180 days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a location outside the continental United States:

- (1) if the servicemember was within the continental United States;
- (2) location outside a State if the servicemember was within a State outside the continental United States; or
- (3) deployment orders for a period of 180 days or more.

Eviction Protection.

Military members and their dependents (in their own right) have some protection from eviction under the SCRA. The landlord must obtain a court order to evict a military member or his dependents. The court must find the member's failure to pay is **not** materially affected by his military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the eviction can be stayed for 3 months (this may be adjusted longer or shorter in the interest of justice) or the obligation may be adjusted. The court *may* stay the eviction or adjust the obligation on its own, but it *must* stay the eviction or adjust the obligation if the servicemember requests.

Life Insurance Protection.

The SCRA permits a servicemember to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after



**OFFICE OF THE STAFF JUDGE ADVOCATE
101ST AIRBORNE DIVISION (AIR ASSAULT) AND FORT CAMPBELL
CLIENT SERVICES
(270) 798-0910/0918**

the period of military service to repay all premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of \$250,000.00 or the maximum limit of the Servicemembers Group Life Insurance.

State Taxation Protection.

The SCRA provides that a nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders. The state is also prohibited from using the military pay of a nonresident servicemember to increase the state income tax of the spouse.

Income Tax Deferral

The SCRA allows servicemembers to defer payment of income tax for 180 days

More Information. You can find the full text of the SCRA on many websites including <http://usmilitary.about.com/od/sscra//blscramenu.htm>. For more information and assistance, you may contact the Fort Campbell Client Services Office, Building 2765 Tennessee Ave. (270) 798-0910/0918 or book an appointment to speak with an attorney at www.sjaclientservices0366.setmore.com.