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# CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series  
Cyber Center of Excellence Office of the Staff Judge Advocate  
Legal Assistance Division, Fort Gordon

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## ***SERVICE MEMBERS CIVIL RELIEF ACT (SCRA)***

Congress passed the Servicemember's Civil Relief Act (SCRA) to provide protection for individuals entering or called to active duty in the military service. Reservists and the members of the National Guard receive protection while on active duty. The protection begins with the date of entering active duty and generally terminates within 90 days after the date of discharge from active duty. Some of these protections are described below.

### ***JUDICIAL STAY OF CIVIL PROCEEDINGS (50 U.S.C. § 3932)***

#### **WHAT IS OF A STAY OF PROCEEDINGS?**

A stay of proceedings permits delay of civil – **not criminal** – court proceedings where military service prevents a plaintiff or defendant from asserting or protecting a legal right. The SCRA applies in all federal, state, and territorial CIVIL courts. It does NOT apply in foreign courts. However, the period of military service does not count toward any statutes of limitation – 50 U.S.C. § 3936 and 50 U.S.C. app. §§ 521.

#### **WHEN CAN A REQUEST FOR A STAY BE MADE?**

Request for a stay may be made at any stage of the court action or proceeding, before a final judgment has been entered, as long as the request is made during military service or within 90 days thereafter.

#### **HOW LONG CAN I REQUEST A STAY OF PROCEEDINGS?**

For at least 90 days, and servicemembers can request additional stay beyond the 90 days based upon continuing material effect of military duty. A request for a stay beyond 90 days can be done when the servicemember makes their initial application for a stay.

#### **WHAT IS THE BURDEN OF PROOF FOR A STAY OF PROCEEDINGS?**

The servicemember must provide a letter or communication setting forth facts stating that his/her military duty "materially affects" their ability to be present in court and state a date when the servicemember thinks they could be present. Additionally, the servicemember must provide the court with a letter or communication from his/her commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized at the time of the letter.

### ***MAXIMUM INTEREST RATE (50 U.S.C. § 3937)***

#### **WHAT IS THE MAXIMUM INTEREST RATE UNDER THE SCRA?**

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.

#### **WHAT TYPES OF OBLIGATIONS AND LIABILITIES DOES THE 6% INTEREST CAP APPLY TO?**

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

#### **DOES THE SERVICEMEMBER NEED TO INFORM THE CREDITOR ABOUT THE SCRA 6% INTEREST CAP?**

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 the interest rate to 6%.

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### **IS A SERVICEMEMBER ENTITLED TO A REFUND OF INTEREST PAID ABOVE 6%?**

You must resolve this question with the individual creditor. The argument exists that the servicemember was entitled to the reduced interest rate from the time he came on active duty.

### **DOES THE SCRA 6% INTEREST CAP APPLY TO JOINT OBLIGATIONS?**

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

## ***INSTALLMENT CONTRACTS AND MORTGAGE FORECLOSURES (50 U.S.C. § 3952-53)***

### **HOW CAN A CREDITOR FORECLOSE ON OR REPOSSESS PROPERTY? (50 U.S.C. § 3953(C))**

The creditor must file a lawsuit. A foreclosure shall not be valid if made during, or within one year of the servicemember's military service except upon a court order granted before such foreclosure.

### **CAN THE SERVICEMEMBER PETITION THE COURT TO OBTAIN RELIEF?**

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.

### **WHAT IS THE CRITERIA FOR RELIEF AGAINST FORECLOSURES OF MORTGAGES?**

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.

## ***TERMINATION OF MOTOR VEHICLE LEASES (50 U.S.C. § 3955)***

### **WHEN CAN I TERMINATE A MOTOR VEHICLE LEASE UNDER THE SCRA?**

Service members can terminate an auto lease if they receive: 1) deployment orders for 180 days or more; 2) PCS orders from CONUS to OCONUS; 3) PCS orders from an OCONUS state (Alaska or Hawaii) to any location outside that state); or 4) a stop movement order that prevents the vehicle from being used for personal or business transportation.

### **ARE THERE ANY OTHER REQUIREMENTS TO BREAK AN AUTO LEASE?**

The lease must be in the service member's name and must be intended for use by the service member or service member's dependents. The lease also must have been signed prior to receiving the orders in question, unless the service member is using a stop movement order to terminate the lease.

### **HOW DO I TERMINATE AN AUTO LEASE?**

The service member must deliver written notice of termination, along with a copy of the deployment/PCS orders. The lease termination is effective as of the date of the notice.

## ***TERMINATION OF RESIDENTIAL LEASES (50 U.S.C. § 3955)***

Please reference the separate information paper, **Early Lease Terminations**, for information on terminating your residential lease under the SCRA.

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## **TERMINATION OF CONSUMER CONTRACTS (50 U.S.C. § 3956)**

### **WHAT KIND OF CONSUMER CONTRACTS CAN I TERMINATE UNDER THE SCRA?**

The SCRA can allow service members to terminate certain consumer contracts that were entered into prior to receiving military orders. These include:

- Cell phone coverage
- Internet
- Television
- Gym membership or fitness program
- Home security services

### **WHEN CAN I TERMINATE ONE OF THESE CONSUMER CONTRACTS?**

A service member can terminate these kind of contracts at any time 1) after orders are received to relocate for at least 90 days to an area that does not support the contract; or 2) if the service member receives orders, signs the contract, and then receives a stop movement order.

### **HOW DO I TERMINATE A CONSUMER CONTRACT?**

The service member must provide written or electronic notice of the termination and a copy of orders to the service provider, together with the date upon which the service is to be terminated. The servicemember does have to return any provider-owned equipment no later than 10 days after the date on which the service is disconnected.

### **WHAT IF I'M ON A FAMILY CELL PHONE PLAN?**

If a service members is a part of a family plan, whether or not the service member is the account holder, the contract can be terminated either for just the service member, or for anyone else on the family plan who will be accompanying the service member during the period of relocation.

### **IF I TERMINATE, CAN I KEEP MY CELL PHONE NUMBER?**

Yes, the phone service provider must allow the service member to keep their telephone number if the period of relocation is for three years or less and the servicemember re-subscribes to the phone company within 90 days of their return to the coverage area.

### **DO I HAVE TO PAY ANY FEES?**

No. no early termination fees may be charged for termination, other than any tax or other obligation that is unpaid at the time of termination. There can also be no fees assessed at reinstatement, other than the normal installation fees.

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