



Legal Briefs

From the Fort Knox Legal Assistance Office

SERVICEMEMBERS CIVIL RELIEF ACT

FACTS: The Servicemembers Civil Relief Act (SCRA) was passed by Congress to provide protection for individuals deploying or called to active duty in the military service. Changes enacted in 2003 altered several provisions of the former Soldiers' and Sailors' Civil Relief Act (SSCRA). Members of the National Guard are now protected under the SCRA while serving in either Title 10 status or Title 32 status as defined in the Act. The protection begins with the date of entering active duty and generally terminates within 30 to 90 days after the date of discharge from active duty. The SCRA also applies to individuals who are entering permanent active duty status.

This legal brief provides questions and answers in areas of concern to reservists and members of the National Guard entering active duty, as well as to permanent active duty personnel.

JUDICIAL STAY OF CIVIL PROCEEDINGS (50 U.S.C. App. 521)

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

A. To permit delay of civil court and administrative agency proceedings where military service prevents a plaintiff or defendant from asserting or protecting a legal right.

Q. What type of proceeding does the stay apply to?

A. Both plaintiffs and defendants can request stays in civil proceedings or administrative proceedings. The SCRA applies in all federal, state, and territorial CIVIL courts. It does NOT apply in foreign courts, and it does NOT apply to criminal proceedings.

Q. When can a request for a stay be made?

A. A request 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. A new provision of the SCRA makes clear that a request for a stay does not mean you are making an appearance (important when arguing over a court's jurisdiction) and does not mean you are waiving any defense.

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

A. Maximum duration of stay is the period of service plus three months after discharge. Following this period, the service member must appear in court (50 U.S.C. App. 524).

Q. What is the burden of proof for a stay of proceedings?

A. The SCRA now requires a court or administrative agency to grant at least a 90 day stay if requested by the service member. Additional stays can be granted at the discretion of the judge or hearing official. The request must explain why the current military duty materially affects the service member's ability to appear, provide a date when the service member can appear, and include a letter from the commander stating that the service member's duties will not allow him to appeal in court and that he will not be authorized leave. The court must appoint counsel to represent the service member if the court denies the request for an additional stay.

MAXIMUM RATE OF INTEREST (50 U.S.C. App. 526)

The maximum rate of interest (including service charges) on debts incurred by Soldiers prior to entering active duty is 6 percent per year during the service of the Soldier. The Soldier must show that the ability to pay has been "materially affected" by military service.

- Q. Can a Soldier lose this protection after it has been granted?
- A. Yes. This 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.
- 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. Does the service member need to inform the creditor about the SCRA 6% interest cap?
- A. Yes. The Soldier must make a written request to reduce the interest to 6% and must include a copy of his/her applicable active duty orders.
- Q. Is a service member entitled to a refund of interest paid above 6% for the period of time beginning when he/she came on active duty and ending when the interest rate was reduced to 6%?
- A. The SCRA does not explicitly entitle service members to a refund of interest paid. This is an issue you should resolve with individual creditors.
- Q. What happens to the difference between 6% and the service member's interest rate?
- A. The difference in interest rate must be forgiven, not deferred or accrued. The amount of interest above 6% does not accrue during the period of service and the service member does not have to pay back interest upon discharge.
- Q. Does the SCRA 6% interest cap apply to joint obligations?
- A. Yes. If the service member and a family member share an obligation, they receive the 6% interest rate protection. For example, if a husband and wife are both liable for a debt, they are both entitled to the 6% cap even if only one is a service member.

TERMINATION OF LEASES (50 U.S.C. App. 535)

- Q. What criteria must be met for relief?
- A. The service member must show (a) The lease was entered into prior to entry into military service OR the soldier has subsequently received orders for a permanent change of station or a deployment for a period of 90 days or more; (b) the lease was executed by or on behalf of the service member; (c) the leased premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the service member or the service member's dependents; (d) the service member is currently in military service.
- Q. What is the procedure to terminate the lease?
- A. The service member must deliver written notice to the landlord at any time after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient!
- Q. What is the effective date of termination?
- A. For month-to-month rentals, the termination becomes effective after 30 days - starting the day the next rental payment is due after 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, the next rental payment is due and payable on 1 September, and the effective date of termination is 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 is a year long and notice of termination is given on 2 October, the effective date of termination would be 30 November.
- Q. What if the rent has been paid in advance?
- A. The service member is required to pay rent for only those months before the termination date. If rent has been paid in advance, the landlord must prorate and refund the unearned portion. If a security deposit was paid, it must be returned to the service member upon termination of the lease based upon the conditions of the lease.

Q. Does this apply to automobile leases as well?

A. Yes. Under the new SCRA, service members may cancel automobile leases entered into prior to military service if the service member receives orders to report to active duty for a period of 180 days or more. Also, active duty service members may terminate automobile leases if the service member receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

EVICTION FROM LEASED HOUSING (50 U.S.C. App. 530).

Q. What criteria must be met for relief? What conditions do I have to have met in order to be able to avoid eviction?

A. (a) The premises were occupied as a dwelling by the service member or a dependent; (b) Military service materially affected the service member's or dependent's ability to pay; (c) The rent does not exceed \$2465.00 per month for the year 2004.

Q. What relief is available? How can I avoid eviction?

A. (a) Stay of eviction proceedings for up to three months following the service member's discharge; (b) "Such other order as may be just," meaning a court can make any orders it deems fair and equitable; (c) Criminal sanctions for landlords can include one year confinement and a \$1,000.00 fine for taking part in an eviction in violation of this section.

NOTE: This protection applies regardless of whether the dwelling was rented before or after entry on active duty.

INSTALLMENT CONTRACTS AND MORTGAGE FORECLOSURES (50 U.S.C. App. 530-36)

FACTS: A service member, who, prior to entry into active duty, entered an installment contract for the purchase of real or personal property, will be protected under the SCRA if the service member's ability to make the payments is "materially affected" by the service. A service member can always renegotiate their obligation with individual creditors or with a group of creditors. A creditor may offer to forgive a debt in exchange for other property, reduce payments and/or interest rates, or any other change.

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

A. The creditor must file a lawsuit. If the court determines that the service member's ability to make payments was materially affected by his military service, the judge can prevent foreclosure and can scale down the installment payment obligations or defer them until after the service member is separated from the military.

Q. Can the service member 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 foreclosure or repossession of the property. The court may require, as a condition of the repossession, that the property be appraised and that its value, less the outstanding debt, be paid to the service member.

Q. What are the criteria for relief against foreclosures of mortgages? What conditions do I have to meet in order to prevent a foreclosure?

A. (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 service member or family member prior to entry on active duty; (d) The property is still owned by the service member or family member at the time relief is sought; (e) Military service materially affects the ability of the service member to comply with the terms of the obligation, such breach occurring prior to or during the period of military service.

TAXES (50 U.S.C. App. 574)

Q. Where is a service member'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. When the soldier is stationed outside his state of domicile, he does not become subject to

the state income taxes of the state where he is stationed. The soldier continues to be subject only to the state income tax, if any, of his home state of his domicile. This rule only applies to active duty military and not civilian spouses.

- Q. Can a state include the military income of a non-domiciliary service member for purposes of determining the nonmilitary spouse's state income tax bracket?
- A. The SCRA prohibits state taxation of the military income of a non-domiciliary service member. The SCRA also precludes states from using the military pay of nonresident service members to increase the state income tax bracket of a service member or spouse .
- Q. Is the service member's tangible personal property, such as his car, subject to personal property taxes in his duty state?
- A. No. It is subject to taxation in the state of domicile. However, service members 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 (land, homes, condos, etc.)?
- 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 (50 U.S.C. App. 540-547)

- Q. May life insurance coverage be precluded (not allowed) if it contains a war clause?
- A. Yes. In the event of hostilities or death connected with military activity, life insurance coverage or payment, if the policy contains a war clause, may not be permitted.
- Q. How can a soldier know if his commercial life insurance policy contains a war clause?
- A. DA policy and AR 210-7 para 3-4(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. Service members should read policies carefully so they understand their coverage.
- Q. Is it ethical to inform soldiers which insurance companies offer policies without the war clause?
- A. Yes. It is DA's position that a soldier may be provided a list of insurance companies which do not have war, hostility, or military activity exclusion clauses.

NOTE: Another relief provision in the SCRA allows a soldier to obtain a government guarantee of premium payments on the greater of \$250,000 of life insurance or the maximum limit of SGLI owned by him prior to entry on active duty. 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.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at www.knox.army.mil/center/sja/. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.
