



Servicemembers Civil Relief Act (SCRA)



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.

The Servicemember's Civil Relief Act (SCRA), formerly the Soldier's and Sailor's Civil Relief Act (SSCRA), is a federal law that gives servicemembers critical protections from debts and lawsuits when the servicemember is on active duty.

Protection of Servicemembers in Judicial Proceedings

The SCRA provides that (1) a default judgment cannot be taken against a servicemember, and (2) the court has the authority to stay court proceedings against the servicemember.

Default Judgments:

Generally, when a Plaintiff in a lawsuit files a Complaint against a Defendant, the Defendant has a certain amount of time to provide his/her Answer to that lawsuit. If the Answer is not filed within the allotted time limit, a default judgment is issued by the Judge. This means that a judgment is taken out against the Defendant without the Defendant having the right to defend against the lawsuit. The SCRA states that a default judgment may not be taken against a Servicemember and the court may not enter a judgment unless/until an attorney is appointed to represent the servicemember. If a judgment is entered against a Servicemember during the servicemember's period of service, the SCRA provides that a Judge must reopen the judgment and allow the Servicemember to defend against the lawsuit.

Stay of Proceedings:

When a Servicemember is informed of a lawsuit or administrative action (e.g., drivers license revocation hearing, administrative child support proceeding, etc.) against him/her, the SCRA requires that a Judge delay the proceedings for a period of ninety (90) days if: (1) the servicemember's military service prevents him/her from appearing in Court at the time of the hearing, and (2) the servicemember's commander sends a letter to the Court stating that the servicemember's military service prevents his/her appearance and that leave is not authorized for the servicemember at the time of the letter. If the servicemember requires an additional stay based on their military service, he/she may apply for additional delay of the lawsuit. If the court denies the additional stay, the court must then appoint counsel for the servicemember to act on his/her behalf during that proceeding.

Protections of Servicemembers in Lease Agreements

We all know that servicemembers are required to pick up and move at a moment's notice. Whether the move is permanent or only temporary, flexibility in leases is required to ensure that soldiers do not incur unnecessary debts when their branch of service calls them to duty. As a result of this need for flexibility, the SCRA contains provisions that allow for both the cancellation of residential leases, and protection against non-judicial eviction from rental property.

Protections against Eviction:

The SCRA prohibits landlords from evicting servicemembers from rental property without a court order if: (1) the property is being used primarily as a residence for the servicemember and/or his/her dependants and, (2) the monthly rent is less than \$2,400. This does not, however, mean that Landlord is not entitled to payment for the rental property. The SCRA provides that the court has the power to "adjust the obligation under the lease to preserve the interests of the parties." This means that the court can order rent to be deferred, order that the security deposit be applied to rent, or make other orders that will preserve the tenancy.

Early Termination of Real Property Lease Agreements:

If a servicemember has received PCS orders or is being deployed for a period of ninety (90) days he/she has the right to terminate his/her lease. So long as the servicemember provides the landlord with written notice of the termination and a copy of his/her orders, the termination is effective thirty (30) days after the first date on which the next rental payment is due. The SCRA has effectively eliminated the need for military clauses in lease agreements. Landlords who fail to comply with the SCRA may be punished under federal law.

Termination of Automobile Leases:

Pre-service automobile leases may be cancelled if the servicemember receives orders to active duty for a period of one hundred and eighty (180) days or more. Automobile leases 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 or deployment orders for a period of one hundred and eighty (180) days or more. The servicemember must provide the lessee with written notice of the termination and a copy of his/her orders. Termination is effective upon return of the vehicle to the lessee which must occur no later than fifteen (15) days after the date of delivery of notice of termination.

Other Protections Under the SCRA

Protection upon Breach of Contract:

The SCRA protects servicemembers and their dependants who breach contracts (i.e., fail to make car payments on time or in full) for the sale or lease of motor vehicles. If the breach occurred before or during the person's military service the *vehicle may not be repossessed without a court order*. If the vehicle is wrongfully repossessed, such repossession may be punishable by federal law. In fact, the SCRA even gives courts the power to order repayment to the servicemember all or part of the prior payments made towards the vehicle as a condition of repossession.

6 % Interest Rate Cap:

One of the most powerful provisions of the SCRA is the requirement that creditors reduce the interest rate to a maximum of 6% on any unsecured credit obligation incurred prior to the servicemembers entry into active duty. The servicemember need only provide a written request, along with a copy of his/her orders, which states that his ability to pay the higher interest rate is "materially affected by the military service." The creditor must then adjust the interest rate accordingly and the interest in excess of 6% must be forgiven, not deferred.

Terminating Your Cell Phone Contract

The SCRA also allows a Soldier to cancel a cell phone contract when he or she receives orders to deploy outside the continental United States for 90 days or more or is required to PCS in a location that has no coverage by the current carrier. The law requires that the Soldier's ability to utilize the cell phone service be materially affected by the deployment or PCS.

Waiver of Rights under the SCRA

A servicemember may waive any/all rights and protections provided by the SCRA. As such, it is crucial that servicemembers read all contracts—such as real property leases, motor vehicle lease agreements, and credit card agreements—very carefully to avoid losing their rights.

For further information, contact the Legal Assistance Office, Stuttgart Law Center, DSN 421-4152; Civ 0711-729-4152 or make an appointment at www.stuttgartcitizen.com/appointments.