



THE SERVICEMEMBERS CIVIL RELIEF ACT

Last Reviewed: 16 March 2012

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OVERVIEW

The Servicemembers Civil Relief Act (SCRA), formerly known as the Soldiers' & Sailors' Civil Relief Act (SSCRA), provides a wide range of protections to active duty members involved with civil matters. The SCRA applies to all military members on federal active duty. This includes the regular forces, the reserve forces, and the guard forces in active duty. In limited circumstances, the SCRA may apply to dependents of the military member. The SCRA applies **ONLY** to civil matters, not to criminal actions, in all 50 states of the United States and to all territories subject to U.S. jurisdiction.

COURT AND ADMINISTRATIVE PROCEEDINGS

The act allows a servicemember who is a party to a suit (Plaintiff or Defendant) and unable to appear in a court or administrative proceeding because of military duties to postpone the proceeding at least 90 days upon request. A judge can order a stay in two ways:

- (1) A trial judge may postpone the proceedings on his or her own, or
- (2) The trial judge must grant a postponement for at least 90 days upon a proper request. A request must include in writing
 - a. Why the current military duty materially affects the member's ability to appear,
 - b. The earliest date that the servicemember will become available, and
 - c. A letter from the commander stating that the member's duties prevent his or her appearance.

DEFAULT JUDGMENT

Under the SCRA, a plaintiff must file an affidavit stating whether the defendant is serving in the military. If the court finds that the defendant is serving in the military and absent, it may not enter a default judgment until an attorney is appointed. The judgment will also be postponed if the servicemember has a defense or the attorney cannot contact the servicemember. If the court enters a default judgment, the servicemember may vacate the judgment with an application to reopen the case submitted within 90 days of termination or release from active duty. **Note:** Both of these protections apply only when the servicemember did not receive actual notice of the proceedings and do not apply if the servicemember chooses not to appear in court.

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AUTOMOBILE LEASES

The SCRA allows a servicemember to cancel a pre-service automobile lease when the member

- (1) Enters the military under a call or order not less than 180 days, or
- (2) Is currently an active duty military member and receives orders for
 - a. A PCS either
 - i. From a location in the continental US to a location outside of the continental US, or
 - ii. From a State outside the continental US to any location outside that State; or
 - b. To deploy for not less than 180 days.

To cancel a lease, the servicemember must send a written termination notice and a copy of his or her military orders to the lessor and return the vehicle within 15 days after the delivery of the written termination notice. The lease is terminated effective on the day the servicemember surrenders the vehicle to the lessor. The lessor may not impose any penalties for early termination.

RENTAL LEASES

Lessees may terminate leases when entering the military during the lease term and, if on active duty, when receiving orders for a PCS or a deployment for a period of at least 90 days. To cancel a lease, the servicemember must send a written termination notice and a copy his or her military orders to the landlord either

- (1) In-person by hand;
- (2) By commercial mail or package delivery services; or
- (3) By US mail, return receipt requested, to the address designated by your lessor.

It is recommended that the servicemember obtain verification that the landlord received the termination notice. If the rent is paid monthly, the termination is effective 30 days after the first date on which the next rental payment is due subsequent to the date when notice is delivered. Thus, if rent is due monthly on the 5th and notice is given on April 15th, the termination is effective on June 5th (May 5th plus 30 days). The landlord must return any prepaid rent, along with the security deposit, and is not allowed to impose any penalties for early termination.

INSTALLMENT CONTRACTS

The SCRA provides some protections to military people with regard to real or personal property contracts made *prior to* entry into the service. Courts have broad authority to grant a stay on an installment contract when military service materially affects the servicemember's ability to comply. This provision does not cancel the underlying obligation, but the court does have the discretion to require a creditor to return part or all of prior installments and deposits as a condition of repossession (including foreclosure). If a creditor attempts to repossess property without following the required procedures (approval of the court), the servicemember may be able to sue for damages.

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EVICTION

Servicemembers are not excused from paying rent, but the SCRA does afford some protection from eviction if military service renders payment difficult. In order to evict a servicemember or dependents, a landlord must obtain a court order by proving to the court that the servicemember's failure to make rent payments is not materially affected by military service. This protection is available when a landlord is attempting to evict an active duty servicemember or dependents from a family residence with rent not exceeding the statutory maximum, which is adjusted each year for inflation. Upon an application for eviction the court may stay the proceedings for 90 days or as justice requires, or adjust the underlying obligation in the interests of justice.

INTEREST PAYMENTS

If, *prior to* entering the military, the servicemember borrows money at an interest rate in excess of 6%, he or she may have the interest reduced to 6% while on active duty for all debt, and for one year thereafter for mortgage debt. As a result, monthly payments must be lowered and any interest in excess of the 6% cap must be forgiven. To receive this benefit the servicemember must provide the creditor with written notice and a copy of the military orders within 180 days after termination or release from active duty. The lender must reduce the interest unless the lender can show that the servicemember's ability to pay is not *materially affected* by military service. For debts incurred after entry into the military, the 6% cap does not apply.

LIFE INSURANCE

The SCRA prevents qualifying life insurance policies from lapsing. In essence, government guarantees payment of policy premiums for qualifying policies. **Only individual whole, endowment, universal, or term life insurance up to the greater of \$250,000 or an amount equal to your SGLI maximum limit qualify; SGLI or any other group term life insurance coverage do not qualify.** The policy must be in place for at least 180 days before entry into the military. Active duty military members must request in writing to defer commercial life insurance premiums during military service plus two years thereafter. If the Department of Veteran Affairs approves the request, then the policy continues in effect and the member has two years after the service period of service to repay all premiums and interest. It is important to note that this is a deferment and not a waiver of the premiums or interest. Therefore, full payment of premiums and interest is only delayed and cannot be avoided.

OTHER INSURANCE

The SCRA provides for the reinstatement upon service release of any health insurance policy in effect before active duty service began and terminated during service. Reinstatement of the insurance is not subject to exclusions or a waiting period if the medical condition arose before or during the period of service. This protection does not apply to employer-offered health insurance policies covered under USERRA.

The SCRA also allows servicemembers to suspend professional liability policies upon entry into active duty and to reinstate them upon termination.

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LEGAL RESIDENCE

See the handout on State Residency and Tax Rights under the SCRA and MSRRA. These provisions allow you to keep your state of legal residence, driver's license and car registration in your home state.

FEDERAL AND STATE INCOME TAX

A servicemember may apply to have his or her state and federal income taxes deferred, without interest or penalties, if military service materially affects the ability to pay. Income taxes may be deferred for up to 180 days after a servicemember's termination or release from military service. Additionally, a servicemember's income does not become subject to tax in the stationing state, unless that state is his or her legal residence. For more information on state income tax protection consult an attorney or see the handout on State Residency and Tax Rights under the SCRA and MSRRA.

PROPERTY (REAL AND PERSONAL) TAXES

SCRA exempts military people, absent from his or her state of legal residence by virtue of military orders, from having to pay any personal property taxes to the state in which they are stationed. For example, a serviceman from Colorado assigned to Hanscom need not pay property taxes to Massachusetts on his jeep. The taxes instead are paid to Colorado. Additionally, personal and real property cannot be used satisfy a tax debt if military service materially affects the servicemember's ability to pay. If a tax collection foreclosure is obtained through a court order, the servicemember retains a right of redemption (pay the tax and reclaim the property) for 180 days after terminating service.

STATUTE OF LIMITATIONS

A person's military service is excluded in computing the statutory period of limitation under law, regulation or order of the court. This benefits a servicemember plaintiff, but militates against a servicemember defendant. Note this protection does not apply to statute of limitations set by the Internal Revenue Code (IRS) of the United States.

WAIVER OF YOUR RIGHTS UNDER THE ACT

A servicemember may waive any rights under the SCRA. Waivers are generally, but not always, only effective if made in writing *after* the servicemember is on active duty or has received orders to report for induction. Waivers made prior to that time are unenforceable. It is recommended that any servicemember considering waiving any protection provided by the SCRA make an appointment with an attorney in the legal office to ensure understanding of the risks of a waiver.

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