

## **Servicemembers Civil Relief Act**

The Servicemembers Civil Relief Act ("SCRA") is codified at 50 U.S.C. App. § 501 *et seq.* Originally the Soldiers' and Sailors' Civil Relief Act, the statute was adopted in 1940 at the start of World War II. The SCRA's purpose is to enable servicemembers to devote their full attention to the defense needs of our nation. To that end the SCRA provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. The Supreme Court has stated that the statute should be interpreted "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre*, 333 U.S. 1, 6 (1948).

### **Who is covered by the SCRA?**

All full-time active duty personnel from all branches of the Armed Forces and commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration while on active service.

All Reserve personnel when on active duty.

Members of the Army National Guard and the Air National Guard only when they are called to active duty or duty under 32 U.S.C § 502(f) by the President or Secretary of Defense, for the purpose of responding to a national emergency declared by the President, for a period of more than thirty days in a row.

A servicemember's dependents (including spouse, children, and anyone the servicemember has been providing at least one-half of the support for during the 180 days before applying for SCRA protections).

### **The SCRA Only Applies to Civil Proceedings**

- The SCRA does not apply to criminal cases, only civil cases. Civil cases are those in which one individual or business sues another to protect, enforce, or address private or civil rights. Examples of civil cases impacted by the SCRA include suits dealing with creditors, landlord-tenant disputes, and family legal situations, such as divorce, child custody, and support proceedings. The SCRA also applies to federal matters such as bankruptcy.

### **Who Can Assert SCRA Rights for a Service Member?**

- Anyone holding power of attorney for a servicemember can assert the servicemember's SCRA rights. Further, an attorney for the servicemember may assert a servicemember's SCRA rights in their absence. Under the SCRA, when nobody else is available to represent the servicemember's interests, the court is required to appoint an attorney.

### **Which Courts and What Types of Decisions Are Covered by the SCRA?**

The term "court" as defined in § 511 of the SCRA "means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record."

The term "judgment" as defined in § 511 of the SCRA means "means any judgment, decree,

order, or ruling, final or temporary."

## **Default Judgments**

- When a party has not made an appearance in a proceeding it is the duty of the court to determine whether the party is in the military, *i.e.* non-military affidavit requirement. The court or a party may request information from the Department of Defense regarding whether an individual is in the armed forces. Requests may be sent to:

Defense Manpower Data Center [Attn: Military Verification]  
1600 Wilson Blvd, Suite 400  
Arlington, VA 22209-2593  
Telephone 703-696-6762 or Fax 703-696-4156

- If the court determines a party is in military service it may not enter any adverse ruling against the party. Instead the court must stay the proceeding and appoint an attorney for the servicemember. The attorney must attempt to contact the servicemember and determine whether a meritorious defense exists to the claim. If a defense exists and the defense cannot be presented without the servicemember's presence the proceeding must be stayed for at least 90 days. If after the appointment of counsel it is determined that no defense exists then the court may proceed.

## **Default Judgments Improperly Entered May Be Vacated**

- Default judgments entered during a servicemember's military service or 60 days thereafter may be vacated if an application is made while on active duty or within 90 days thereafter which demonstrates the servicemember was prejudiced in their ability to appear and defend themselves due to military service and there was a meritorious or legal defense to the claim.

## **Requests for Stay of Proceedings**

- Servicemembers with notice of proceedings may apply for a stay. An application for a stay may be filed during military service or within 90 days of existing military service. Upon receipt of an application for a stay of proceedings containing the following information the court shall enter a stay of not less than 90 days:

1. A statement of how the servicemember's military service materially affects their ability to appear;
2. A statement for the servicemember's commanding officer stating that military service interferes with appearance and that leave is not authorized.

A request for a stay does not constitute an appearance for jurisdictional purposes or for the purposes of waiver of any substantive or procedural defense.

Servicemembers may request additional stays based on the continuing effect of their service on their ability to appear and defend the proceeding.

If the court refuses a request for an additional stay an attorney must be appointed to represent the servicemember in the proceeding.

## **Stay of Execution on Judgments or Garnishments**

- If upon motion, or on its own initiative, a court determines a servicemember is materially affected by reason of military service in complying with a judgment or order, the court may stay execution of judgments or garnishments entered prior to, during, or within 90 days of exiting military service. 50 U.S.C. App. § 524.

## **Tolling of Statute of Limitations**

- Statute of limitations periods are tolled during military service regardless of whether military service impacted a servicemember's ability to bring their claim. 50 U.S.C. App. § 526.

## **Interest Rate Reductions**

Interest on loans and obligations incurred prior to military service is capped at 6% per annum during military service. 50 U.S.C. App. § 527 (guaranteed student loans not included). Obligations and loans incurred during military service are not impacted. The interest cap may be rescinded if a creditor can demonstrate military service has no material effect on a servicemember's ability to pay.

It is a federal misdemeanor for a creditor to intentionally refuse to grant a servicemember an interest reduction on a qualifying loan or obligation.

## **Protection for Eviction and Distress**

Servicemembers with residential rental obligations of \$3,329.84 per month or less for 2015, this amount adjusts annually, may apply for 90 day stay of eviction if their military service has materially impacted their ability to pay. 50 U.S.C. App. §531.

The court may also in the interests of equity adjust the lease obligations and order installment payments by the servicemember.

## **No Repossession without Court Order**

- Property such as automobiles purchased or leased on installment contracts prior to the commencement of military service may not be repossessed based on default without a court order. 50 U.S.C. App. § 532. Violation of this provision by a creditor is a misdemeanor.

## **Foreclosure of Mortgages and Deeds of Trust**

- Actions filed during military service or within 9 months of termination of military service to foreclosure mortgages or deeds of trust which were entered into prior to military service may be stayed for the period of time justice and equity requires. Further, courts may adjust the obligation to preserve the interest of the parties. Receipt of a stay is contingent upon servicemember's ability to demonstrate that military service materially affected ability to meet the obligation. 50 U.S.C. App. § 533.

## **Termination of Residential Leases**

Servicemembers may terminate residential leases entered into prior to military service upon

entering the military. 50 U.S.C. App. § 534.

Servicemembers may terminate residential leases entered into during military service upon receipt of overseas orders or domestic orders for 90 days or more.

### **Termination of Auto Leases**

Servicemembers may terminate auto leases entered into prior to military service upon entering the military for a period of not less than 180 days. 50 U.S.C. App. § 534.

Servicemembers may terminate auto leases entered into during military service if:

- o Orders are received for permanent change of station from location in continental U.S. to location outside continental U.S.; or
- o Order are received for permanent change of station for location outside continental U.S. to location in continental U.S.

### **Termination of Cell Phone Contracts**

- A servicemember may terminate a cell phone contract upon receipt of orders to report to a location not supported by the contract for a period of not less than 90 days.

### **Malpractice Insurance**

- Physicians, lawyers, and other professionals called to military service may have their malpractice insurance suspended during period of active service with no premiums owed during the suspension. Servicemembers are entitled to reinstatement of the policy at conclusion of service at original rates. 50 U.S.C. App. § 593.

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