



LEGAL BRIEF

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

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PREPARED BY

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1. **What is the Servicemembers Civil Relief Act and who does it protect?**

The Servicemembers' Civil Relief Act (SCRA) is a federal law that provides all service persons several important rights and protections as they enter active duty. This information paper outlines some of those rights and benefits. The information in this paper is for Active Duty and personnel in the Reserve Components (all branches of the Reserves, the National Guard and the Air National Guard) who are activated to serve on active duty and Active Component personnel deployed away from home station or who have recently received PCS orders.

The SCRA protects all service members on Federal active duty, including:

- (1) Regular members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard);
- (2) Reserve, National Guard, and Air National Guard personnel who have been activated and are on Federal active duty for 30 days or more.
- (3) Public Health Service and National Oceanic and Atmospheric Administration Officers detailed for duty with the armed forces.

Many of the SCRA's protections also extend to dependents of active-duty service members, but this varies from section to section of the SCRA.

2. **When does the SCRA protect me?**

Most SCRA protections commence on the day you receive your orders to active duty. As a practical matter, you should be ready and expect to present a copy of those orders to whomever you ask for a right or benefit under the Act.

When you present the orders to your creditor (or other person with whom you are asserting rights under the SCRA), it is strongly advised that you present a copy of the orders along with a letter of notification (a general sample is at the end of this information paper), and send the letter and orders by U.S. Certified Mail, Return Receipt Requested, so that you can prove receipt of the letter of notification and orders by the creditor.

3. What kind of relief can it provide?

The rights extended under the SCRA are sometimes complicated. It is important to obtain advice from your military legal assistance office for information about how the Act applies to your own circumstances. For example, the SCRA frequently conditions the availability of certain rights upon whether your ability to meet certain obligations is “materially affected” by your military service. Whether you are “materially affected” can mean different things in different situations. A legal assistance attorney will help you understand your rights under the SCRA and can help you enforce those rights.

The SCRA can provide many forms of relief to military members. Below are some of the most common forms of relief.

- **6% CAP ON INTEREST RATES** (50 U.S.C. § 527):

Under the SCRA, a military member can cap the interest rate at 6% for all obligations entered into before beginning active duty *if the military service materially affects his or her ability to meet the obligations*. This can include interest rates on credit cards, mortgages, and even some student loans (except for Federal guaranteed student loans). To qualify for the interest rate cap the military member has to show that (1) he or she is now on active duty; (2) that the obligation or debt was incurred prior to entry on active duty; and (3) that military service materially affects the member’s ability to pay.

To begin the process, the military member needs to send a letter along with a copy of current military orders to the lender requesting relief under the SCRA. The interest rate cap lasts for the duration of active duty service. The interest rate cap will apply from the first date of active-duty service. The military member must provide written notice to the creditor and a copy of military orders not later than 180 days after the service member’s termination or release from military services.

If the loan is otherwise eligible for relief (it was incurred as discussed above), any loans incurred by the service member BEFORE his or her entry onto active duty qualify for the SCRA interest rate relief (except for Government guaranteed student loans), including:

- Home mortgages;
- Credit card accounts;
- Personal loans from banks or credit unions;
- Department store accounts; and
- Business loans for which the service member is personally liable as a result of having either signed the promissory note individually or having personally guaranteed the business debt.

- PROTECTION FROM EVICTION (50 U.S.C. § 531):

Although SCRA does not excuse military members from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents have some protection from eviction under SCRA § 531.

SCRA prevents your landlord from evicting you or your dependents without a court order if—

- the property is occupied or intended to be occupied primarily as a residence; and
- the rent on the premises does not exceed \$2,400.00 a month in 2003 adjusted annually for the consumer price index (CPI) changes (\$3,217.81 currently).

If your ability to pay rent is materially affected by your military service, you may request the court to halt the eviction proceedings for 90 days (unless the court determines justice requires a longer or shorter period) or to adjust the obligations under the lease to preserve the interests of all parties.

These rights can be invoked by both the service member *and his/her dependents*.

If a landlord continues to try to evict the military member or does actually evict the member, he/she is subject to criminal sanctions such as fines or even imprisonment.

However, if you feel that you are in this situation, don't just stop paying rent and wait three months, *come in and talk to a legal assistance attorney*.

- PROTECTION FROM FORECLOSURE (50 U.S.C. § 533)

During the period of military service, or within 9 months after, in actions to enforce *pre-service obligations for real or personal property secured by a mortgage or trust deed*, a court is required to grant a stay of proceedings if the service member's ability to comply with the obligation is *materially affected by military service*. The court also has the ability to adjust the obligation to preserve the interests of all parties.

Additionally, no sale, foreclosure, or seizure of property for nonpayment or any other breach of contract shall be valid if made during the period of military service or within 9 months thereafter, except pursuant to a written waiver of the SCRA rights or upon a **court order**.

- PROTECTION FROM REPOSSESSION OF PROPERTY UNDER A PRE-SERVICE INSTALLMENT CONTRACT (50 U.S.C. § 532):

During the period of military service, a service member may not have their property repossessed—or an installment contract unilaterally terminated by the obligee—if such property was acquired pursuant to a **pre-service** installment contract and the obligee has received an payment or deposit, **except by court order**.

In addition the SCRA prohibits self-help repossessions. Criminal sanctions are possible where an obligee either resumes possession of property or attempts to resume possession of property in violation of this section.

This applies to actions not only to repossess under the law but also actions to rescind or terminate the contract. As a condition to terminating the contract and allowing the obligee to resume possession of the property, the court may order repayment of prior deposits or installments. Alternatively, the court may order a stay of proceedings.

- **TERMINATION OF LEASES OF LAND (50 U.S.C. § 535):**

If you are leasing a house, an apartment, or even a business lease, you may be able to get out of the lease when your military obligations would prevent you from enjoying the benefit of that lease.

You may terminate an existing lease when—

- (1) you enter military service (no military clause in the lease is required); or
- (2) if you are reserve or guard member and recalled to active duty for 180 days or more; or
- (3) you receive military orders for permanent change of station; or
- (4) you receive deployment orders for 90 days or more.

Written notice must be given to your landlord that you want to terminate the lease. You will still have to pay rent for a short while. Your landlord is allowed to charge you rent for 30 days after the date your next rent is due. For example, if you gave written notice on 15 December, and your next rent is normally due on the first of the month, the landlord can make you pay rent until 31 January. Therefore, *the key is to get the written notice to the landlord as soon as possible.*

This provision applies to joint leases with spouses or other dependents.

You may not be charged early termination fees, but other obligations under the lease (such as charges for damage to the property) must still be paid.

NOTE: Although the law does provide for early termination of leases, service members should still incorporate a “military clause” into their lease. This will provide additional protection.

- **TERMINATION OF AUTOMOBILE LEASES (50 U.S.C. § 535):**

SCRA allows a service member to get out of an automobile lease if one of three conditions is met.

- (1) If pre-service, the lease may be terminated at any time after entry to service, as long as there are at least 180 day of military service.

- (2) If the lease is made during service, a lease may be terminated if there are military orders for a permanent change of station from a location inside the continental United States to a location outside the continental United States or from a location in a State outside the continental United States to any location outside that State; or
- (3) If there are military orders for a deployment for 180 days or more.

Written notice is required as well as a copy of the orders and the vehicle must be returned within 15 days of the delivery of notice. The lease is terminated upon return of the vehicle. This applies to servicemembers and their dependents.

- **TERMINATION OF CELL PHONE AGREEMENT (50 U.S.C. 535a)**

SCRA allows a service member to get out of a cellular phone contract if you receive military orders to relocate for a period of 90 days or more to a location that does not support the contract

You must provide written or electronic notice to the provider stating the date on which service is to be terminated with a copy of your orders.

- **STAY OF PROCEEDINGS (50 U.S.C. § 522):**

If you are served with a complaint indicating that you are being sued for some reason, you can obtain a "stay" or postponement of those proceedings if your military service *materially affects* your ability to proceed in the case.

A stay may be ordered *sua sponte* at the discretion of the trial judge, or may be ordered if the application by the service member is made while the service member is on active duty *or within* 90 days of his or her termination of active duty.

To prevail the court must find that your ability to prosecute the action, or conduct your defense, is *materially affected by reason of military service*, AND a letter from the *individual's commander stating that your duty prevents appearance and leave is not authorized at the time of the letter*.

A stay can be used to stop the action altogether or to hold up some phase of it. According to the SCRA, you can request a "stay" during any stage of the proceedings. In general, you can request a stay of the proceedings for a period of 90 days. Further, stays may be granted by the court if necessary. For example, if you are being sued for divorce, you can put off the hearing for some period of time, but it is unlikely that a court will allow you to put off the proceedings indefinitely. If additional stays are not granted, the court must appoint a lawyer to represent you in the action. The stay can be granted in administrative proceedings.

- **DEFAULT JUDGMENTS (50 U.S.C. § 521):**

A default judgment is entered against a party who has failed to defend against a claim that has been brought by another party. As a preliminary matter, to be eligible for this protection, you must not have made any appearance in court (or had an attorney or other individual appear for you) for this SCRA protection to apply.

Under the SCRA, before a court may render a default judgment, a plaintiff must first satisfy the court that a defendant's inability to appear was not by reason of military service. To do this, a plaintiff must file an affidavit (written declaration of fact) stating that the defendant is not in the military service and has not requested a stay.

The court cannot enter a judgment until it appoints a lawyer to represent you. The proceeding can be stayed for 90 days or more if you may have a defense in the case that requires you to be in court or your lawyer cannot contact you.

If you are sued while on active duty and you fail to respond and as a result a default judgment is obtained against you, you can *reopen the default judgment* by taking several steps. First, you must show that the judgment was entered during your military service or within 60 days after you've left the service. Second, you must write to the court requesting that the default judgment be reopened while you are still on active duty or within 90 days of leaving the service. Third, you must indicate that your military service prejudiced your ability to defend your case and show that you had a valid defense to the action against you.

- **STAY OF EXECUTION/VACATION OF JUDGMENTS (50 U.S.C. § 524)**

A stay of execution is a court order to temporarily suspend the execution of a court judgment or other court order.

A service member may request a stay before the period of service begins, while the service member is on active duty, or within 90 days of his/her termination of active duty.

To receive a stay of execution of judgment and vacating attachment or garnishment of property, the service member must show that his/her ability to comply with the court order is materially affected by reason of military service.

- **TOLLING OF STATUTES OF LIMITATION (50 U.S.C. § 526):**

A statute of limitations is a statute that sets forth the maximum period of time, after certain events, that legal proceedings based on those events may be initiated.

During the period of active duty, statutes of limitations (both for and against the service member) are tolled and do not run. This applies to any action "by or against any person in military service or by or against his heirs, executors, administrators or assigns." The tolling is automatic, meaning *no showing of material affect is required*.

- DEFERRAL OF PROPERTY TAXES (50 U.S.C. § 561)

SCRA restricts both state and local governments from selling service member's property to enforce the collection of a tax or assessment—other than income tax—whether made prior to or during the period of military service. A court is allowed to order the sale upon a determination that the member's ability to pay the unpaid tax or assessment is not *materially affected* by military service. Alternatively, the court may stay the sale during military service and for a period not exceeding 180 days after the termination of service.

This provision applies to joint property as well.

- PROTECTION FROM INCOME TAX COLLECTION (50 U.S.C. § 570):

The collection of income taxes from a service member's income—whether falling due prior to or during his/her military service—shall be *deferred* for a period extending no more than 180 days after the termination of service if the service member's ability to pay such income tax is materially impaired by military service.

- RESIDENCY AND INCOME TAX (50 U.S.C. § 571)

A military member does not lose his residency ("home state") because of transfer due to military orders nor does his military income become subject to state income tax in the state to which he is transferred. For example, if you are a Arizona resident and are transferred to a base in California you do not lose your Arizona residency nor do you have to pay California income tax on your military pay. You still have to pay Arizona income tax on your military income. Military income can only be taxed by a member's home state. Non-military income and income earned by dependents may be taxed by the state where it is earned and by the home state, although most states will allow a credit for tax paid to another state to prevent double-taxation.

THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE NELLIS AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.

SAMPLE LETTER TO TERMINATE LEASE

DATE

NAME OF LANDLORD
ADDRESS
CITY, STATE, ZIP

RE: LEASE DATED _____ FOR PREMISES AT _____.

Dear Sir or Madam:

This is my notice to quit the leased premises on _____(date). This notice is made pursuant to 50 U.S.C. App. § 535 of the Servicemembers' Civil Relief Act (the "SCRA") as legislated by Congress and signed into law in December 2003.

Per the enclosure, I am (required to deploy in support of Operation _____ for ninety (90) days or longer) (entering active duty) (permanently changing stations) (a reservist called to active duty for one hundred eighty (180) days or longer). The SCRA requires that the subject lease be terminated no later than 30 days from the date of the next rental due date. The next rental due date on this lease is _____ (date). Therefore, according to the SCRA this lease shall terminate on _____(date).

All prorated future rents paid must be returned to me within thirty (30) days of the termination date of the lease. You may forward this refund to _____ at _____(address).

Should you have any questions, you may contact me at _____. (May add contact info. for dependent or agent holding tenant's power of attorney).

Thank you for your understanding and support in this matter.

Sincerely,

John Doe, Rank, USAF

**** ENCLOSE A COPY OF YOUR ORDERS THAT (1) ACTIVATED YOU AS A RESERVIST OR (2) BROUGHT YOU FROM CIVILIAN LIFE TO ACTIVE DUTY OR (3) PERMANENTLY CHANGE YOUR CURRENT DUTY STATION OR (4) ORDER YOUR DEPLOYMENT FOR 90 DAYS OR MORE.**