



# LEGAL BRIEF

## SERVICE MEMBERS CIVIL RELIEF ACT (SCRA)

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### I. What is the Servicemembers Civil Relief Act and who does it protect?

The Servicemembers Civil Relief Act (SCRA) is a federal law (50 U.S.C. §§ 3901-4043) designed to support our national defense. It does so by extending legal and financial protections to servicemembers, enabling them to devote their full energy to their mission without being adversely affected by certain civil obligations. The SCRA allows for the temporary suspension of judicial and administrative proceedings that could negatively impact a servicemember during their period of military service.

The SCRA protection applies to:

- (1) Full-time active duty members of one of the United States Military Branches, including the Coast Guard.
- (2) Reservists on federal active duty (Title 10).
- (3) Members of the National Guard on federal orders for a period of more than 30 days.
- (4) Commissioned officers in active service of the Public Health Service or the National Oceanic and Atmospheric Administration

Many of the SCRA's protections also extend to dependents of active-duty servicemembers. However, this varies by the specific section of the law, so it is important to verify eligibility for each protection.

### II. When does the SCRA protect me?

While you use your orders to invoke your rights, most SCRA protections formally begin on your first day of active duty.

However, some rights, such as the ability to terminate a lease, require you to provide a written notice to a landlord or creditor along with a copy of the order..

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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 from under SCRA.

When you present your orders to a creditor, landlord, or business, it is strongly advised that you also provide a signed letter of notification. Send both documents by U.S. Certified Mail, Return Receipt Requested. This provides you with proof that your notification and orders were received. Some may accept notice via electronic communications, such as email and fax.

### III. What kind of relief can the SCRA provide?

The rights extended under the SCRA can be complicated. It is important to obtain advice from your military legal assistance office for information on how the SCRA applies to your 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:

- The 6% Interest Rate Cap (50 U.S.C. § 3937): For debts (like credit cards, mortgages, or student loans) incurred *before* entering service, the interest rate can be capped at 6% per year. To receive this benefit, you must provide the creditor with written notice and a copy of your military orders or “other appropriate indicator of military service” (such as a letter from a commanding officer). The interest above 6% is permanently forgiven and is not deferred. The creditor cannot collect it later.
- Residential (house/apartment) Lease Terminations (50 U.S.C. § 3955): A servicemember can terminate a residential (e.g., apartment) lease without penalty if they are entering military service, receive Permanent Change of Station (PCS) orders, or are deployed for 90 days or more. You must provide written notice and a copy of your orders to the landlord. Once notice is given, the lease terminates 30 days after the next rent payment is due. If a servicemember (lessee) dies while in the military service, the spouse of a lessee may terminate the lease within one year of the death.
- Protection from Eviction (50 U.S.C. § 3951): Although the SCRA does not excuse military members from paying rent, it does afford some relief if military service makes payment difficult. The SCRA prevents your landlord from evicting you or your dependents without a court order if: (1) the property is occupied or intended to be occupied primarily as a residence; and (2) the rent does not exceed the dollar threshold (adjusted annually for the consumer price index changes). If your ability to pay rent is materially affected by your military service, you may request the court to halt the eviction.

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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.

- Mortgage and Foreclosure Protection (50 U.S.C. § 3953): For mortgages taken out before service, a lender cannot foreclose on your home without a court order. If your service materially affects your ability to make payments, a court can pause the foreclosure or adjust your payment obligations.
- Non-judicial Foreclosures (50 U.S.C. § 3953): Courts have the ability under the SCRA, to stay a non-judicial foreclosure proceeding or adjust the payments, if the servicemember's ability to meet the obligation is materially affected because of his or her military service. However, the obligation on real or personal property needs to have been taken out prior to the servicemember entering military service.
- Installment Contracts and Repossessions (50 U.S.C. § 3952): A creditor cannot repossess your personal property (such as a vehicle) during your military service without a court order, provided you made at least one payment on the item *before* your service began. This also applies to storage liens.
- Protection from Default Judgments (50 U.S.C. § 3931): If a civil lawsuit is filed against you while you are on active duty, a court cannot enter a default judgment against you for failing to appear until it has appointed an attorney to represent your interests. The court must then grant a delay (a "stay") of at least 90 days if your service prevents you from participating in your own defense.
  - If a civil lawsuit is filed against you while you are on active duty and you fail to respond and as a result a default judgment is entered against you, you can reopen the default judgment by:
    - Showing the judgment was entered during your military service (or within 60 days after you've left the service)
    - Writing the court to request the default judgment be reopened while you are still on active duty (or within 90 days of leaving the service)
    - Indicating to the court that your military service prejudiced your ability to defend your case and show you had a valid defense to the action against you
- Tolling of Statutes of Limitations (50 U.S.C. § 3936): A statute of limitation 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.
- Leases of Motor Vehicles (50 U.S.C. § 3955): A vehicle lease can be terminated if:
  - The lease is executed by or on behalf of a person who, during the term of the lease, enters military service under a call or **order specifying a period of not less than 180 days**
  - The servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station from a location in the continental US to a location outside the continental US; OR from a location in a state outside the continental US to any location outside that state.

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- The servicemember receives orders to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days
- The servicemember receives a stop movement order in response to a local, national, or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the servicemember, or the servicemember's dependents, from using the vehicle for personal or business transportation.
- Termination of Cell Phone Agreement (50 U.S.C. § 3956): The SCRA allows you to terminate cell phone contracts without an early termination fee if you relocate for 90 days or more *to a location not supported by the contract*. You must provide written or electronic notice to the provider stating the date which service is to be terminated with a copy of your orders.
- Professional License Portability (50 U.S.C. § 4025a): If you (or your spouse) have a professional license (e.g., in teaching, nursing, law) and move to a new state due to military orders, this provision allows you to use your existing, valid license in the new state, provided you meet the new state's standards.

#### IV. Special Focus: Key SCRA Protections for Deploying Servicemembers

This section summarizes the SCRA benefits that are most commonly used by and critically important for servicemembers who are deploying. While much of this information is covered in detail above, this serves as a focused checklist for your deployment preparations.

Remember, to invoke most of these rights, you will need to provide written notice and a copy of your deployment orders to the relevant business or landlord.

##### Key Actions to Consider Before You Deploy:

1. Terminating a Residential Lease:
  - If your deployment orders are for 90 days or more, you have the right to terminate your residential (apartment or house) lease without penalty. Once you provide proper written notice and a copy of your orders, the lease will terminate 30 days after your next rent payment is due. This is one of the most important rights for deploying servicemembers.
2. Terminating a Vehicle Lease:
  - If you are deploying for 180 days or more, you can terminate your vehicle lease. This allows you to avoid making payments on a car you cannot use while overseas.
3. Terminating a Cell Phone Contract:
  - If you are relocating for 90 days or more to a location where your current provider does not offer service, you can cancel your cell phone contract without paying an early termination fee.
4. Lowering Your Interest Rates:
  - Apply the 6% interest rate cap to all of your pre-service debts, including credit cards, personal loans, and auto loans. This can significantly lower your monthly

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payments and reduce financial stress while you are deployed. Remember, the interest above 6% is forgiven, not just deferred.

#### Protections for You and Your Family While You Are Deployed:

1. Protection From Eviction:
  - Your dependents are protected from being evicted from a primary residence without a court order while you are away. This provides crucial housing stability for your family.
2. Protection From Default Judgments:
  - If a civil lawsuit is filed against you while you are deployed, the court is prohibited from entering a default judgment against you for failing to appear. The proceedings must be postponed for at least 90 days to protect your rights while you are unavailable to defend yourself.
3. Protection From Repossession and Foreclosure:
  - Creditors cannot repossess your property (like a vehicle) or foreclose on your home without a court order. This ensures your major assets are secure while you are focused on your mission.
4. Child Custody Protection:
  - The SCRA prevents a court from using your absence due to deployment as the *sole factor* in a decision to modify a child custody arrangement. This helps protect your parental rights while you are serving.

**Advice for Deployers:** Before you deploy, schedule an appointment with your installation's Legal Assistance Office. A legal professional can review your specific situation, help you draft the necessary notification letters, and ensure you and your family are fully protected under the SCRA.

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