

Servicemembers Civil Relief Act & Consumer Protection

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This handout deals with the consumer protection aspects of the Servicemembers Civil Relief Act (SCRA). For information on the SCRA's state taxation and voting provisions (including their applicability to military spouses) please see our handout on Domicile & State of Residency.

The SCRA (50 United States Code Appendix §§501-596) is a federal statute that allows military personnel, and sometimes military dependents, to postpone or suspend some civil obligations so they can devote their energy and attention to the defense needs of the Nation. Some states have also enacted similar statutes, and you should not overlook those state statutes when seeking protection. This handout provides general information about portions of the SCRA our clients may come into contact with, but is not a substitute for seeing an attorney. If you think your situation involves a protection under the SCRA, see an attorney for a more detailed discussion about your rights and responsibilities.

SECTION I: GENERAL PROVISIONS

1. Persons Protected

Active duty members are covered by the SCRA. Reservists are covered while on annual training, but are *not covered* while on inactive duty training. National Guard members are covered only if in active federal service (Title 10 Status). State National Guard personnel on full-time state duty are not covered by the SCRA, and must look to similar state statutes for protection. Military dependents are covered in certain situations (see Sec. III, Part 4 below).

2. Period of Coverage

Active duty members are protected as of the date they receive orders. Reservists are sometimes protected as of the date they receive orders, but will most often be protected as of the date they report for duty. Ordinarily, the date of discharge terminates all coverage. Some important protections, however, extend for a limited time beyond discharge, but are directly tied to the discharge date.

SECTION II: PRE-SERVICE OBLIGATIONS

These are several areas in which the SCRA affords protection to military members when dealing with obligations incurred prior to entry on active duty.

1. Termination of Leases

A service member may terminate a lease covering premises used for dwelling, professional, business, agricultural or similar purposes if the lease was entered into prior to entry on active duty, and the military member or his/her dependents used the property for one of the designated purposes. The provision is triggered by entering onto active duty, for orders to deploy for a period of 90 days or longer, or for a PCS.

The termination must be in writing, and must be delivered to the landlord. For a month-to-month lease, termination is effective 30 days after the first date on which rent is due after notice is given. In other cases, termination is effective on the last day of the month following the month in which notice is given. Therefore, it is best to give notice at the end of a month so the termination date is at the end of the following month. Also, the lease that is ended is ended as to any dependant (for example your spouse) who is also on the lease.

2. Termination of Automobile Leases

A servicemember may also terminate a car lease if the car is used for business or personal use. A servicemember is eligible to cancel the lease after 180 days of service. A lease can also be canceled if the member receives PCS orders from CONUS to OCONUS. Finally, the lease can be ended if the member is ordered to deploy for a period of 180 days.

The termination must be in writing delivered to the lessor. The car must be delivered to the lessor within 15 days of delivery of the written notice. The effective date for termination of the lease is when the written notice and the car have been delivered to the lessor. The lessor may not impose an early termination charge, but any taxes, summonses,

and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor within 30 days of the effective date of the termination of the lease.

3. Interest on Credit Obligations

Any credit obligation incurred prior to entry on active duty is eligible for a statutory reduction in the interest rate to 6% per annum. This includes federal and private student loans. However, for a federal loan to be covered by the SCRA, it must have been disbursed after 14 August 2008. The creditor must reduce the interest rate to 6% for the period of military service unless the creditor can prove in court that the member's ability to pay the higher interest rate is not "materially affected" by his/her military service.

4. Installment Contracts

If a military member entered into an installment contract for the purchase of real or personal property before entering active duty, and paid a deposit or installment on the contract, the creditor cannot exercise any right or option to rescind or terminate the contract or resume possession of the property because of non-payment or other breach, except by court order. In order to gain the protection of this provision, the member must prove his/her military service "materially affected" his/her ability to pay. If the member does not prove this "material affect," the contract can be terminated, however, the court may order the repayment of the member's prior deposit or installment(s).

5. Life-Insurance Policies

A private insurance policy on the life of a service member which is owned and held by, the member may be protected against lapse or termination for nonpayment of premiums while the member is serving on active duty, and for one year thereafter. The policy must have been in effect for at least 180 days prior to the member entering active duty. The court may refuse to grant such relief to the member if in the court's opinion, the ability, of the member to comply with the terms of the policy is not "materially affected" by reason of military service.

6. Health Insurance

SCRA provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect before such service commenced and terminated during the period of military service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement does not apply to a servicemember entitled to participate in employer-offered insurance. The member must apply for the reinstatement of the health insurance within 120 days after termination or release from military service. As always, submit such request to the insurance company in writing with a copy of the orders for active duty and release from active duty.

7. Cell Phone Contracts

A servicemember may terminate or suspend a cell phone contract if the member receives orders to either deploy outside the continental United States for at least 90 days or for a PCS within the U.S.. The orders must "materially impact" the ability to satisfy the contract or utilize the service, and the contract must have been entered into prior to receiving the orders. The cell phone company may not charge a penalty, early termination fee, or require an extension of the contract equal to the period of suspension.

SECTION III: GENERAL PROTECTIONS

There are four primary areas in which the SSCRA affords protection to military members regardless of whether the obligation was incurred prior to, or after entry on active duty

1. Default Judgments

No plaintiff can obtain a default judgment (a judgment for plaintiff based upon defendant's failing to answer or appear) without first filing an affidavit asserting facts showing that defendant is not in the military service. If such facts cannot be shown, or if the defendant is in the military service, the court will appoint an attorney to protect the member's rights. If a default judgment is granted against a military member while on active duty, or within 30 days after leaving active duty, the court may reopen the case if the member can show he/she had a meritorious defense to the action. The member must file an application to reopen the proceeding no later than 90 days after leaving active duty.

2. Stays of Court Proceedings

At any stage of a court proceeding involving a military member as either plaintiff or defendant during the member's service on active duty or 60 days thereafter, the member can seek to stay the proceedings. The court will stay the proceedings unless, in the opinion of the court, the member's ability to prosecute or defend the action is not "materially affected" by reason of military service.

3. Statute of Limitations

The statute of limitations for bringing a civil action is suspended while on active duty. For example, if an individual normally has two years from the date of an accident to sue for an injury, a military member injured during service on active duty would have two years to sue from the date he/she leaves the service. On the flip side, if the military member causes an injury, the injured party will also have the statute of limitations suspended, giving that person more time to sue the military member. If a military member is injured or causes an injury before entering active duty, the statute of limitations stops on the day he/she enters the service, and starts again on the day he/she leaves the service.

4. Protection from Eviction

A landlord may not evict a military member and/or his/her family or dependents without approval of a court. This protection covers any residence chiefly occupied by the member and/or his/her family or dependents if the rent (for 2010) does not exceed \$2,958.53 per month (the amount was originally set at \$2,400, but each year an adjustment for inflation is made and reported in the *Federal Register*). The court will grant a three month stay in any eviction proceeding unless it determines that the member's ability to pay is not "materially affected" by virtue of military service.

SECTION IV: MATERIAL EFFECT

The SCRA often refers to "material affect." This requires a showing that military service has put the member at some disadvantage making him/her unable to address the situation adequately. Material affect will usually be geographic or financial.

If a dependent's ability to comply with a lease, contract or other obligation is materially affected by a member's military duty and the member is entitled to the protections of this title, the dependent is entitled to the same protections.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations and circumstances.

SECTION V: WAIVER

Servicemembers may waive some rights under the SCRA by agreeing to do so in a contract, lease or other obligation. For the waiver to be effective, it must be executed during the servicemember's period of active military service. The waiver must specify the legal instrument to which the waiver applies. Finally, the waiver must be executed or signed separately from the lease or contract and must be in at least 12 point font. Although each situation is unique, generally it is recommended that a service member not waive their protections under the SCRA.

SCRA Checklist

The Servicemembers Civil Relief Act (SCRA) protects persons serving on active duty from adverse consequences to their legal rights that may result from such service. Some SCRA protections apply to reservists and guardsmen called to serve on active duty. Other protections apply to members who have always been on active duty while some protections apply to military dependents.

This checklist will assist in determining if specific protections apply to you. If so, you must take action either before or during your activation to be afforded some protections, while other protections allow you to take action within 30 to 180 days after completing an active duty assignment.

CHECK ALL THAT APPLY

- Administrative or Court Proceeding:** Are you involved in an administrative proceeding of any kind or a civil court case that you wish to postpone while serving on active duty or within 90 days after completing an active duty assignment?
- Automobile Lease:** Do you wish to terminate an automobile lease that was entered into before: (1) being called to active duty for a period of 180 or more days; or (2) receiving orders for a permanent change of duty station outside the U.S.; or (3) from a state outside CONUS to a state outside that state or (4) deploying with a military unit for 180 days or more?
- Rental Lease:** Do you wish to terminate a rental lease that was entered into before: (1) being called to active duty; (2) receiving orders for a permanent change of duty station; (3) deploying with a military unit for 90 day or more; or (4) separating or retiring from the military?
- Contracts:** Is a creditor threatening to terminate an installment contract for the purchase, lease or bailment of real or personal property, such as an automobile, that you entered into before serving on active duty?
- Eviction:** Are you or your dependents being threatened with eviction from your primary residence while serving on active duty?
- Foreclosures and Forced Sales:** Is a mortgagor or lien holder attempting to foreclose a mortgage or enforce a lien on property you acquired before serving on active duty?
- Cell Phone Contracts:** Does the member have orders to deploy outside the US for at least 90 days or a PCS? Was the contract entered into before the orders? Does the new location materially impact the servicemember's ability to pay or utilize the service?
- Interest Rates:** On purchases you made before serving on active duty, are you paying an interest rate of over 6%— including credit cards, mortgages and most student loans?
- Insurance:** Are you having difficulty paying private professional, health or life insurance premiums, or has your insurance been terminated, while on active duty?
- Judgments:** Has a court judgment been entered against you while on active duty, or do you anticipate that a judgment might be entered against you while on active duty?
- State Taxes and Voting:** Are you having difficulty paying income taxes while on active duty? Are you paying state taxes based on your military income or other property, such as a car, to a state other than your home state of legal residency?