



PREVENTIVE LAW SERIES

SERVICEMEMBERS CIVIL RELIEF ACT



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WHAT IS THE SERVICEMEMBERS' CIVIL RELIEF ACT?

The Servicemembers Civil Relief Act (SCRA) provides a wide range of protections for individuals entering or called to active duty in the military. The SCRA is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty. The act does not apply to criminal matters. Reservists and members of the National Guard are also protected under the SCRA while on active duty. The protections generally begin on the date of entering active duty and terminate within 30 to 90 days after the date of discharge from active duty. Members who face problems in the areas below should visit the legal office without delay.

RENT

Where a member must move pursuant to military orders (e.g. PCS, deployment), the SCRA permits a member to terminate a lease. It also prohibits eviction, without a court order, of a service member and their dependents from rented housing where the rent does not exceed approximately \$3,451.20 per month (as of January 1, 2016, see <https://federalregister.gov/a/2016-02445>). Please note that this amount is subject to annual change, see 50 U.S.C. §3951. The court may delay eviction proceedings for up to three months. These provisions apply equally to dependents (See 50 U.S.C. §3955 and §3959).

INSTALLMENT CONTRACTS

A service member who enters into an installment contract prior to entering active duty is protected if the member's ability to make payments is materially affected by military service. Installment contracts are any contracts that require you to make monthly payments. The courts will compare the service member's pre-service income and military income to determine the member's financial condition. The creditor is prevented from exercising rights of rescission, termination or repossession without a court order. Certain cell phone contracts were added to this section in 2008 (See 50 U.S.C. §3956)

REDUCTION OF INTEREST TO 6%

If, prior to entering active duty service, a member incurs a loan or obligation with an interest rate in excess of 6%, the member will, upon application to the lender, not be obligated to pay interest in excess of 6% per year. The request must be in writing and include the service member's deployment papers. This relief applies during the period of active duty service unless a court finds the member's ability to pay has not been materially affected by military service. Loans include credit card debt, mortgages, and car loans. In 2008, "intentional failure to grant the 6% interest rate cap" was named a federal misdemeanor (See 50 U.S.C. §3937).

STAY OF PROCEEDINGS

Courts must delay a **civil court proceeding** when the requirements of military service prevent the member from either asserting or protecting a legal right. In order to request a stay, a service member must give written notice to the court (See 50 U.S.C. §3932). In 2008, child custody proceedings were added to the applicable proceedings under this section. The application to stay the proceedings must include:

- A statement why the current military duty requirements materially affect the member's ability to appear at the proceedings; and
- A date when the member will be available to appear; and
- A statement from the member's commanding officer indicating that:
 - the member's current military duty prevents his/her appearance; and
 - that military leave is not authorized for the member.

Upon receipt of the application with the two statements, the court or administrative body must stay the action for a period of 90 days or more.

WARNING: PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT INTENDED TO BE TAKEN AS SPECIFIC LEGAL ADVICE.
FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.

- The military member may apply for **additional stays** based on continuing material effect of military duty on his/her ability to appear.
- If a court or administrative body refuses to grant additional stays, it must **appoint counsel** to represent the member in the action or proceeding.
- An application for stay does not constitute an appearance for jurisdictional purposes and will not waive any defenses.

Usually, requests for a stay are granted if the time period requested is limited (TDY, exercise, deployment). Availability of leave (including excess leave) and duty requirements are key factors.

DEFAULT JUDGMENTS

Before a court can enter a default judgment (for failure to respond to a lawsuit or appear at trial) against a military member, the person suing the member must provide the court with an affidavit stating the defendant is not in the military. If the defendant is in the military, the court may appoint an attorney to represent the defendant's interests (usually to seek a stay of proceedings). If a default judgment is entered against a Servicemember, the judgment may also be reopened if the member makes application within 90 days of leaving active duty and demonstrates both prejudice and a legal defense. In 2008, child custody proceedings were added to the applicable proceedings under this section (See 50 U.S.C. §3931).

LIFE INSURANCE

A Servicemember's private life insurance policy is protected against lapse, termination or forfeiture for nonpayment of premiums for a period of military service plus two years. The insured or beneficiary must apply to the Veteran's Administration for protection. Also, any health insurance in effect on the day before active military service commenced is reinstated without waiting periods or physical condition restrictions (See 50 U.S.C. §3957).

TAXATION AND VOTING

A Servicemember's state of legal residence may tax military income and personal property. Also, Servicemembers are entitled to vote in federal, state, and local elections in their state of legal residence. A member does not lose legal residence solely because of a transfer pursuant to military orders. For example, if a member is a Virginia resident and PCS'd to a base in California, the member will not lose Virginia residency nor be subject to California state income tax on military pay. These provisions apply equally to a spouse who is moving from the same state of legal residence as the member (See 50 U.S.C. §4001).

ADVERSE ACTIONS

Creditors and insurers are prohibited from pursuing adverse actions (i.e. notifying credit agencies, denying credit, changing terms) against Servicemembers who exercise their rights under the SCRA.

RESOURCES:

Publication of Housing Price Inflation Adjustment, Federal Register; Updated annually by the Under Secretary of Defense for Personnel and Readiness.

Servicemembers Civil Relief Act, 50 U.S.C. Sections 3901 - 4043 501 et seq. (2015)

[www.defenselink.mil/specials/Relief Act Revision/;](http://www.defenselink.mil/specials/Relief_Act_Revision/)

<http://www.abanet.org/legalservices/lamp/downloads/SCRAguide.pdf>