

## SERVICEMEMBERS CIVIL RELIEF ACT

### INTRODUCTION

The Servicemembers Civil Relief Act (SCRA) was signed into law in December 2003. The SCRA amends the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. The new law contains many of the same protections under the SSCRA, and strengthens many protections as well. Reservists and members of the National Guard (when in active federal service) are protected under the SCRA. Additionally, some of the SCRA's protections extend to the soldier's family members. The protection begins on the date the soldier entered active duty service and terminates upon release from active duty. However, some protections under the act extend for a limited time beyond discharge but are tied to the discharge date.

#### A. Termination of Lease Agreements

1. A service member who is leasing or renting property used for dwelling, professional, business, agricultural or similar purposes may terminate a lease that was (1) signed before the service member entered active duty, or (2) signed while on active duty and the soldier receives orders for a permanent change of station (PCS) or a deployment of at least 90 days.

2. The service member must deliver written notice of termination to the landlord after entry on active duty or receipt of orders for active duty. The termination date for a month-to-month lease is 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if rent is due on the 1st of the month and notice is delivered to the landlord on August 5th, the next rent due is September 1st. Therefore, the Servicemember must pay the rent through September 30.

3. For all other lease and rental agreements, the termination date will be the last day of the month after the month in which the notice was given. For example, if the term of the lease or rental agreement is yearly and notice was given August 5th, then the termination date will be September 30th.

4. If the rent has been paid in advance, then the landlord must return any unearned portion within 30 days of the termination date of the lease. The landlord may not withhold the refund of a service member's security deposit for early termination of the lease or rental agreement. However, the landlord may withhold return of the security deposit for damages, repairs, and other lawful provisions of the lease/rental agreement.

## B. Evictions From Leased Housing

A landlord may not evict a service member *without a court order*, so long as rent does not exceed \$2,465 per month and the premises are occupied primarily as a residence. If the service member's military service "materially affects" his or her ability to pay, the court must stay the proceedings for 90 days if the service member submits a request to the court for protection under the SCRA. A proper request should explain how the service member's military service "materially affects" his or her ability to pay rent. For instance, if a service member is deployed, a court would likely find that his or her deployed status "materially affects" his or her ability to pay rent.

## C. 6% Interest Rate

1. The SCRA allows a service member to have his or her interest rate on pre-service debts capped at 6%. The 6% interest rate cap only applies to debts incurred **before** the service member entered active duty. Examples of such debts are loans, mortgages, credit cards, etc. For example, if a person received an 8% loan for a car he bought on 1 February 2003 and enlisted in the Army on 1 November 2004, the soldier's interest rate on the car loan must be lowered from 8% to 6% for the duration of the soldier's military obligation. The difference between the 6% and 8% is forgiven.

### 2. Qualifying debts

- a) Debts that were incurred *prior to* the service member coming on active duty.
- b) The service member must be on active duty at the time of the request.
- c) This provision does not apply to federally guaranteed student loans.

### 3. How to implement the 6% cap.

## **The service member should:**

- a) Write a certified letter advising the creditor of his/her deployment and ask for a reduction in the interest rate to 6% according to the terms of the SCRA.
- b) The letter must state that the service member's service on active duty has had a material effect on his/her ability to pay.
- c) The servicemember should include a copy of his/her orders to active duty.
- d) The letter to the creditor should also request written confirmation from the creditor that the interest rate has been reduced.
- e) The servicemember should always keep a copy of the letter for possible proof at a later date in court.

## **The creditor is required to:**

- a) Reduce the interest rate on the date the service member enters active duty according to his/her orders.
- b) Reduce the monthly payments on the debt to reflect the reduction of the interest rate.

**\*Be advised:** The creditor can challenge the reduced interest rate in court if it can show that the service member's military service has not "materially affected" his or her ability to pay.

### **D. Delay (Stay) of Court Proceedings / Re-opening Default Judgments**

1. A service member who is the defendant in a *civil* (not a **criminal**) lawsuit may request a stay, or postponement, of a court proceeding for at least 90 days at any point in the proceedings.

2. In order to obtain a stay of proceedings, a Servicemember must actually be the defendant in a civil lawsuit, suit for paternity, child custody suit, bankruptcy debtor/creditor meeting, and/or an administrative proceedings.

3. This provision does not apply to:

- a) criminal proceedings,
- b) proceedings in which the service member is merely a material witness to the lawsuit, but not an actual party, or
- c) situations in which the service member has leave available, but has made no attempt to use that leave to attend the proceedings.

4. What a Servicemember must do to stay the proceedings:

If the service member has notice of the proceedings, he or she must send written notice to the court or administrative body stating that: (a) the service member's military service "materially affects" his or her ability to appear at the proceeding; and (b) a date when the service member will be able to appear.

The service member must also have his or her commander write a letter to the court and the opposing party's attorney stating that: (a) the service member's military service prevents him or her from attending the proceeding; and (b) the service member's military duty does not allow him or her to use leave to attend the proceedings. An attorney from the Legal Assistance Office can help the soldier draft such a letter. The soldier, however, must sign the letter and is responsible for sending the written notice and military orders to the court or administrative body.

5. Default Judgments

A default judgment is an order by the court where the service member had no opportunity to defend him or herself. If the service member had no notice of a civil proceeding and a default judgment is entered against him or her, the service member may request the court to set aside and reopen that judgment. The service member must apply to the court stating: (1) his or her military service "materially affected" the service member's ability to defend him or herself in the case, and (2) that the service member has a legal defense to the action. The application must be made while he or she is still on active duty or within 90 days of release from military service. Additionally, the default judgment must have been entered while the service member was on active duty or within 60 days of release from military service.

#### E. Installment Contracts and Self Help

An installment contract is an agreement in which the obligation of one of the parties to the contract is delivered or performed into a series of successive performances. (Ex. Car payments.)

A service member may request protection from creditors under the SCRA for **installment contracts incurred before entry into military service**. The service member must prove:

1. that his or her military obligations have materially affected his or her ability to pay on the debts.
2. the service member must have made at least one deposit or installment payment on the contract before entry on active duty.

If the court should determine the contract falls under the protection of the SCRA, the creditor is thereafter prohibited from exercising any right or option under the contract, such as the right to rescind or terminate the contract or to repossess the property, unless authorized by a court order.

#### F. Auto Leases

A service member may terminate an automobile lease under the SCRA if he or she entered into the lease before entering military service. Additionally, service members may terminate automobile leases any time after receiving orders for a PCS outside the continental United States or a deployment for at least 180 days. The service member must do the following to effectively terminate his or her automobile lease: (1) provide to the lessor written notice of termination of the lease under the SCRA and a copy of his or her orders; and (2) return the automobile with 15 days after the date of the written notice. The effective termination date of the automobile lease is the date the service member has both provided written notice and a copy of his or her orders, and returned the automobile.

## G. State Income Tax

Under the SCRA, states cannot use the military income of the service member who is not a resident of the state to determine the tax rate for non-military income. This means that if a soldier is stationed at Camp Shelby, but is *not* a resident of Mississippi, and his wife is working in the state, Mississippi cannot consider the soldier's military income when determining the tax bracket of the soldier's spouse.

## H. Enforcement of Obligations, Liabilities, Taxes

A service member may, at any time during his or her military service, or within 180 days thereafter, apply to a court for relief of any obligation or liability incurred by the service member prior to active duty. Additionally, the service member may apply to the court for relief from any tax or assessment that was due before or during his or her active military service. One form of relief the court may grant is a stay of enforcement during which time no fine or penalty can accrue.

For more information see the following websites:

### **ONLINE INFORMATION:**

<https://www.jagcnet.army.mil/legal>. Select "Servicemembers' Civil Relief Act"

### **FAQ's**

<https://www.jagcnet.army.mil/legal>. Select "Servicemembers' Civil Relief Act", select "FAQ's".

### **IN DEPTH INFORMATION ON THE SCRA:**

<http://www.abanet.org/legalservices/lamp/home.html>

### **AMERICAN BAR ASSOCIATION – INFO PAPERS**

<http://www.abanet.org/family/military/SCRA-short.pdf>

[http://www.abanet.org/family/military/scra\\_agencyguide.pdf](http://www.abanet.org/family/military/scra_agencyguide.pdf)

### **PRINTER FRIENDLY SCRA:**

[http://www.operationhomefront.org/Info/info\\_laws\\_legislation\\_scra.shtml](http://www.operationhomefront.org/Info/info_laws_legislation_scra.shtml)

All information compiled from materials provided by the Judge Advocate General's School of the Army and Legal Assistance website, as well as, information provided by other Army Legal Assistance Offices.