

The Servicemembers Civil Relief Act (SCRA)

Overview

A review of the financial and legal protections provided to service members under the Servicemembers Civil Relief Act (SCRA).

- Who is covered by the SCRA?
- Key parts of the SCRA
- Waivers of rights under the SCRA
- Locating the SCRA
- Other resources

In December 2003, the Servicemembers Civil Relief Act (SCRA) was signed into law, replacing and expanding the previous Soldiers and Sailors Civil Relief Act (SSCRA). It's important to know about the SCRA in order to take full advantage of the financial and legal protections it can provide to service members -- including caps on interest rates, stays of certain legal proceedings, protection from eviction, and termination of leases without repercussions.

Who is covered by the SCRA?

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

- Regular members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard).
- Reserve, National Guard, and Air National Guard personnel who have been activated and are on Federal active duty for 30 days or more.
- 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.

Key parts of the SCRA

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 following section provides information about your key rights under the SCRA and what to do in order to be protected under the Act.

- *Creditors must reduce the interest rate on debts you incurred before active duty to 6 percent per year during your period of military service.* This can include credit card debts, mortgages, car loans, business obligations, and other debts, as well as fees, service charges, and renewal fees. The cap does not apply to insurance. It applies

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only to liabilities you incurred before mobilization or going on active military duty. All interest in excess of 6 percent is forgiven. That is, the creditor may not try to collect the extra interest from you later. Note that *this cap does not apply to new debts you incur while on active duty, and it does not apply to most federally-guaranteed student loans.*

To start the interest-cap process, mail the creditor a letter requesting the interest reduction, and include a copy of your orders to the creditor in advance of your assignment or as soon as possible. The interest cap will apply from the first date of active-duty service.

Keep in mind that a creditor has the right to challenge this provision by going to court, if the creditor believes he or she can show that your ability to pay a rate greater than 6 percent is not “materially affected” by your military service.

- *Mortgage foreclosures or lien actions initiated during your military service or within 90 days after the end of your military service must be stayed.* This applies only to obligations that you have undertaken before entering active duty. A court may instead “adjust the obligations in a way that preserves the interests of all parties.”
- *If you are living in a certain state just because of your military orders, you don't necessarily have to pay taxes there.* If you are serving in the military and living in a U.S. state due to your military orders, your military income is not considered for tax purposes *if you are not a resident of that state.* The tax liability of your nonmilitary spouse cannot be increased because of your military income or your personal property. Be sure to see your legal assistance office for advice.
- *You may request income-tax deferral.* The IRS and state and local taxing authorities may grant a deferral of income taxes due before or during your military service for not more than 180 days after your release from military service. No interest or penalty can be added as a result of this type of deferral.
- *If you are a small-business owner, your nonbusiness assets and military pay are protected from being available to satisfy creditors while you are on active duty.* This applies to debts or obligations you may have due to your business.
- *The law prevents you and your dependents from eviction while you are on active duty.* You and your family cannot be evicted from housing for nonpayment of rent without a court order, no matter what your rental agreement or local laws say. This protection applies to residences for which the monthly rent is not more than \$2,465 per month (in 2006). The cap is automatically adjusted by the yearly increase in the November Consumer Price Index.

If your ability or your family's ability to pay rent is “materially affected” by your military service, you may apply to the court and the court must grant either a 90-day delay in eviction proceedings or adjust obligations under the lease in a way that preserves all parties' interests. Be sure to see your legal assistance office for

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advice if you are concerned that you or your family will be evicted or if eviction proceedings have begun.

- *The SCRA allows you to request a delay regarding a legal matter.* If your military service will prevent you from participating in a civil court action or administrative proceeding, you can request a 90-day delay (or “stay”) in the proceeding and are automatically entitled to this delay. These proceedings can include actions for divorce, child paternity and support cases, and foreclosure proceedings.

To request a stay, you must send the following:

- *a letter or other communication from you* stating how your current military duties “materially affect” your ability to appear and stating a date when you can appear, **and**
- *a letter or other communication from your commanding officer* stating how your current military duties prevent your appearance and that military leave is not authorized for you at the time of the letter.

It is important to see your legal assistance office for advice about requesting court delays and writing or obtaining letters such as these.

- *The SCRA provides protections against default judgments.* Anyone who brings a civil action or proceeding, or an administrative proceeding against you must file a signed, sworn statement (an “affidavit”) about whether you are in the military service before any judgment is made. If you are on active military duty, the judge must appoint a lawyer to represent you in your absence. The court must grant a stay of at least 90 days if it determines that there may be a defense to the action and that the defense cannot be presented without your attendance. Under the SCRA you may also apply for the re-opening of a default judgment entered during your period of military service or within 60 days after the termination of your service or of your release from service. You must make the application to re-open the proceedings not later than 90 days after the date of the termination or release from service.

When an action against you for compliance with the terms of a contract is stayed under the SCRA, fines or penalties for failure to comply with a contract cannot be assessed against you during the period of the stay.

See your legal assistance office if you have any questions about default judgments.

- *If you have received PCS, TDY or TAD (90+ days), or mobilization orders, you may terminate your residential lease (and some other kinds of leases, including agricultural, professional, and business) by delivering written notice of termination.* This applies whether (1) you entered into a lease and then started military service, or (2) you entered into a lease during military service and then received a permanent change of station or deployment order for 90 days or more.

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In either situation, you must provide written notice of termination and a copy of your military orders (hand-delivered or by return-receipt mail) to the landlord.

If your lease provides for monthly rent payments, termination is effective 30 days after the first date on which the next rental payment is due and payable after the date on which notice is delivered. For other leases, termination is effective on the last day of the month following the month in which the notice is delivered.

You must pay any pro-rated rents or lease amounts owed prior to effective termination. The landlord must refund advance rents or lease amounts that you have pre-paid within 30 days of the lease's effective termination.

Lease terminations under this law are effective for dependents of the service member who are also tenants under the lease.

- *You may terminate an automobile lease.* You may request termination of a lease in the following situations:
 - if it is a pre-service lease and you are called to duty for a period of 180 days or more, or
 - you signed the lease while on active duty and then received orders for a permanent change of station outside the continental U.S. or deployment orders for a period of 180 days or more.

In either situation, you must provide written notice of termination and a copy of your military orders (hand-delivered or by return-receipt mail) to the lessor. You must return the vehicle to the lessor no later than 15 days after your delivery of written notice. The lessor may not charge you for early termination, but certain fees and taxes may be imposed in accordance with the lease, including reasonable excess wear, use, and mileage charges.

- *If you made a deposit or an installment on an installment contract for the purchase or lease of any type of property prior to active duty, your contract cannot be terminated without a court order.* The property cannot be repossessed for nonpayment or the contract terminated or rescinded for any "breach" by you prior to or during your military service unless a court of proper jurisdiction has issued an appropriate order.
- *An insurer may not decrease your life insurance coverage or require the payment of any additional amount as premiums if you engage in military service (except for increases in premiums in individual term insurance that are based on age).* An insurer also may not limit or restrict coverage for any activity required by military service.

This applies to a policy you have for at least 180 days before you begin a period of military service. Also, policies up to \$250,000 cannot be terminated due to your nonpayment of premium, interest, or indebtedness. See your legal assistance office for information about how to apply for insurance protection.

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- *If you are a professional in health care or legal services, or another professional as determined by the Secretary of Defense, and you are called to active duty, you may suspend your professional liability insurance policy upon written request to the insurance carrier. You don't have to pay premiums for suspended insurance and any premiums paid by you while on active duty must be refunded. To reinstate your suspended insurance, you must transmit a request to the insurance carrier within 30 days of release from active duty.*
- *You can vote in your home state. Your residency for state, federal, or local voting purposes, like your tax residency, is unaffected by your absence from your usual voting state due to military service.*

Waivers of rights under the SCRA

It is possible to cancel (or “waive”) your rights under the SCRA. Only written waivers signed *during* or *after* a service member’s period of military service are effective. If you sign a waiver of your SCRA rights *before* you enter military service, the waiver will be considered invalid. Whether you are considering signing a waiver document at any time -- before, during, or after military service -- it is extremely important to read the document carefully, and sign it only after obtaining the advice of a qualified attorney.

Locating the SCRA

The SCRA provides service members with many substantial financial and legal protections. Be sure to review its provisions before or during your military service so you can obtain the full benefits of this law for you and your family.

The SCRA can be found at 50 United States Code Appendix sections 501-596, as amended. You can access a copy of the SCRA online at www.gpoaccess.gov. Click on “public and private laws”, then click “browse public and private laws”, then click on “108th Congress Catalog”, and scroll to Pub.L. 108-189. (Note: This will take you to the SCRA as enacted in 2003, but not to the 2004 or later amendments. To be sure of seeing the most current version of the SCRA, look at 50 United States Code Appendix sections 501-596, as amended, available at larger public libraries.

Other resources

Legal assistance attorney

Members of the U.S. Armed Forces and their family members are generally entitled to free help from licensed military lawyers known as legal assistance attorneys. A legal assistance attorney can help you understand the SCRA and how its protections may apply to you. You can find a legal assistance attorney through your unit or installation legal office. Military OneSource can also help refer you to a legal assistance attorney.

Military OneSource

This free 24-hour service, provided by the Department of Defense, is available to all active duty, Guard, and Reserve members and their families. Consultants provide information and make referrals on a wide range of issues. You can reach the program by telephone at 1-800-342-9647 or through the Web site at *www.militaryonesource.com*.

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NOTE: The article above is intended to provide general information only. To find out how the law applies to your individual situation, or how to provide notice in the appropriate way, it is important to contact your legal assistance office and speak with qualified legal counsel.