

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 \$3,851.03 per month (as of April 2019). Please note, this amount is subject to annual change. The court may delay eviction proceedings for up to three months. These provisions apply equally to dependents.

LEASE TERMINATION

The SCRA contains provisions for terminating both premises leases (e.g. your house, apartment or place of business) and motor vehicle leases.

Residential Leases

To terminate a *residential lease*, the soldier must submit TWO items to his landlord:

- A written request for termination of the lease, explaining the need to terminate the lease due to military orders that activate, PCS or deploy the soldier *for 90 days or more*; and
- A copy of the soldier's orders.

Motor Vehicle Leases

To terminate a *motor vehicle lease*, the Servicemember also must submit a written request for termination and give a copy of his orders to the lessor. Unlike when terminating a residential lease, for vehicle-lease termination the orders must specify that the soldier will be activated or deployed *for 180 days or more*, or PCS'd to OCONUS. Once the soldier has submitted these documents, he has *15 days to return the vehicle* to the lessor.

Effective Date of Lease Termination

The effective date of termination depends on the type of lease. For residential leases, termination becomes effective *30 days after the date on which the first rental payment following notice of termination is due*. Thus, if a soldier's rent is due on the first of each month, and he submits his paperwork to his landlord on August 5, then the first payment date following termination is September 1. Termination takes effect 30 days later, on October 1.

For motor vehicle leases, termination takes effect on the date that all requirements have been met (i.e. letter of termination delivered, copy of orders delivered, vehicle returned).

For all other leases, termination occurs on the last day of the month following the month in which proper notice was delivered. If proper notice was given on April 15, for example, then lease termination would occur on the last day of the month following, or May 31.

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 Servicemember's deployment orders. 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. Intentional failure to grant the 6% interest rate cap is a federal misdemeanor.

INSTALLMENT CONTRACTS

A Servicemember 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 Servicemember'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.

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. App. §522). Child custody proceedings were included 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.

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.

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.

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 an installation 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.

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:

Servicemembers' Civil Relief Act, 50 United States Code, Section 3901 and following; see also <https://cascom.army.mil/staff/sja/SCRA.htm>.