



## **Servicemembers Civil Relief Act**

The **Servicemembers Civil Relief Act (SCRA)** is a federal statute passed by Congress to allow military members to suspend or postpone some civil obligations so that the military member can devote his or her full attention to military duties. The original Soldiers' and Sailors' Civil Relief Act was passed during World War I. The statute was reenacted during World War II, and was later modified during Operation Desert Storm. The Servicemembers Civil Relief Act amended the Soldiers' and Sailors' Civil Relief Act and was signed into law on December 19, 2003 as Public Law 108-189. The Servicemembers Civil Relief Act can be found at 50 United States Code Appendix Sections 501-593.

### **WHO DOES IT PROTECT?**

The SCRA is designed to protect active duty military members, reservists who are in active federal service and National Guardsmen who are in active federal service. Some of the benefits under the SCRA extend to dependents of active duty military members as well.

### **WHAT KIND OF RELIEF CAN IT PROVIDE?**

The SCRA can provide many forms of relief to military members. Below are some of the most common forms of relief.

1. **6% CAP ON INTEREST RATES:** Under the SCRA, a military member can cap the interest rate at 6% for all obligations entered into before beginning active duty if the military service materially affects his or her ability to meet the obligations. This can include interest rates on credit cards, mortgages, and even some student loans (except for Federal guaranteed student loans), to name a few. To qualify for the interest rate cap the military member has to show that he or she is now on active duty, that the obligation or debt was incurred prior to entry on active duty, and that military service materially affects the members' ability to pay. To begin the process, the military member needs to send a letter along with a copy of current military orders to the lender requesting relief under the SCRA. The interest rate cap lasts for the duration of active duty service. The interest rate cap will apply from the first date of active-duty service. The military member must provide written notice to the creditor and a copy of military orders not later than 180 days after the servicemember's termination or release from military service.

2. **STAY OF PROCEEDINGS:** If you are served with a complaint indicating that you are being sued for some reason, you can obtain a "stay" or postponement of those proceedings if your military service materially affects your ability to proceed in the case. A stay can be used to stop the action altogether, or to hold up some phase of it. According to the SCRA, you can request a "stay" during any stage of the proceedings. However, the

burden is on you, the military member, to show that your military service has materially affected your ability to appear in court. In general, you can request a stay of the proceedings for a reasonable period of time (30-60 days). For example, if you are being sued for divorce, you can put off the hearing for some period of time, but it is unlikely that a court will allow you to put off the proceedings indefinitely. The stay can be granted in administrative proceedings.

3. **DEFAULT JUDGMENTS:** A default judgment is entered against a party who has failed to defend against a claim that has been brought by another party. To obtain a default judgment, a plaintiff must file an affidavit (written declaration of fact) stating that the defendant is not in the military service and has not requested a stay. If you are sued while on active duty, you fail to respond and as a result a default judgment is obtained against you, you can reopen the default judgment by taking several steps. First, you must show that the judgment was entered during your military service or within 30 days after you've left the service. Second, you must write to the court requesting that the default judgment be reopened while you are still on active duty or within 90 days of leaving the service. Third, you must not have made any kind of appearance in court, through filing an answer or otherwise, prior to the default judgment being entered. Finally, you must indicate that your military service prejudiced your ability to defend your case and show that you had a valid defense to the action against you.

4. **PROTECTION FROM EVICTION:** If you are leasing a house or apartment and your rent is below a certain amount, the SCRA can protect you from being evicted for a period of time, usually three months. The dwelling place must be occupied by either the active duty member or his or her dependents and the rent on the premises cannot exceed \$2400.00 a month in 2003 and this rent ceiling will be adjusted annually for consumer price index (CPI) changes. In 2004, the amount of the rent ceiling is now \$2465.00. Additionally, the military member must show that military service materially affects his or her ability to pay rent. If a landlord continues to try to evict the military member or does actually evict the member, he or she is subject to criminal sanctions such as fines or even imprisonment. However, if you feel that you are in this situation, don't just stop paying rent and wait three months. Come in and talk to a legal assistance attorney.

5. **TERMINATION OF PRE-SERVICE RESIDENTIAL LEASES:** The SCRA also allows military members who are just entering active duty service to lawfully terminate a lease without repercussions. To do this, the service member needs to show that the lease was entered into prior to the commencement of active duty service, that the lease was signed by or on behalf of the service member, and that the service member is currently in military service or was called to active-duty service for a period of 180 days or more. Proper written notice with a copy of orders must be provided to the landlord.

6. **TERMINATION OF RESIDENTIAL LEASES DURING MILITARY SERVICE:** The SCRA allows military members who receive permanent change of station (PCS) orders or are deployed for a period of 90 days or more to terminate a lease by providing written notice to the landlord along with a copy of the military orders. The termination of a lease that provides for monthly payment of rent will occur 30 days after the first date on

which the next rental payment is due and payable after the landlord receives proper written notice.

7. **MORTGAGES:** The SCRA can also provide temporary relief from paying your mortgage. To obtain relief, a military member must show that their mortgage was entered into prior to beginning active duty, that the property was owned prior to entry into military service, that the property is still owned by the military member, and that military service materially affects the member's ability to pay the mortgage.

8. **TERMINATION OF AUTOMOBILE LEASES DURING MILITARY SERVICE:** The SCRA allows military members to terminate pre-service automobile leases if they are called up for military service of 180 days or longer. Members who sign automobile leases while on active-duty may be able to terminate an automobile lease if they are given orders for a permanent change of station outside the continental United States or to deploy with a military unit for a period of 180 days or longer.

#### **CONCLUSION:**

As you can see, the SCRA can be a big help to military members in times of need. In fact, the United States Supreme Court has declared that the Act must be read with "an eye friendly to those who dropped their affairs to answer their country's call." The SCRA actually provides many more protections than those listed here. If you think that you may qualify for protection under the SCRA, you should contact a military legal assistance office to talk with an attorney about your specific case.