



SERVICEMEMBERS CIVIL RELIEF ACT

(50 U.S.C. APP. §§ 501–597)

Office of the Staff Judge Advocate, Luke AFB, AZ, (623) 856-6901

Active duty military members, Reservists on Title 10 status, and National Guard members on Title 32 status for more than 30 consecutive days are entitled to a number of rights under the Servicemembers Civil Relief Act (SCRA). SCRA postpones certain civil obligations when the military member's service materially affects his ability to meet that obligation. This handout provides general information regarding the protections of SCRA.

CIVIL LAWSUITS

DEFAULT JUDGMENTS

A default judgment occurs when you forfeit a lawsuit, i.e., you are sued but fail to appear in court. If you are sued while on active duty, SCRA makes it more difficult for the plaintiff to obtain default judgment against you.

Before a court enters a default judgment in any civil action, including any child custody proceeding, the plaintiff must file an affidavit as to the defendant's military status. If the defendant is active duty military or his military status is unknown, the court must appoint an attorney to represent the defendant's interests. The attorney must attempt to make contact with the defendant; however, acts of the court-appointed attorney are not binding on a military defendant, if the court-appointed attorney cannot locate the defendant.

If a default judgment is entered against a military defendant during his/her period of service or within 60 days thereafter, he/she may petition the court to reopen the case within 90 days of the end of his period of service. The defendant must show that he/she was "prejudiced by military service" and the existence of some legal defense to the action.

STAYS OF PROCEEDINGS

Where military service prevents a plaintiff or defendant from asserting or protecting a legal right, SCRA permits a delay of civil court proceedings, including any child custody proceeding. If a servicemember is being sued in civil proceedings, SCRA provides for an automatic, non-discretionary 90 day stay of the proceedings upon application by counsel or on the court's own motion. Under SCRA, to obtain the automatic stay, the court must determine there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

If the servicemember receives notice of the proceeding, SCRA permits a 90 day stay of a civil court proceedings; the conditions are, however, different. The servicemember must file an application that includes: a letter (or other communication) from his/her commander stating that the servicemember's military duty prevents the servicemember from appearing in court and that

military leave is not authorized; and a letter (or other communication) stating the why/how current military duty requirements materially affect the servicemember's ability to appear and stating a date when the he/she will be available to appear. Additional stays are permitted if the above requirements are met. These additional stays are at the court's discretion. If a court does not grant the additional stay, it must appoint counsel to represent the servicemember. Ultimately, the servicemember must show that actual prejudice would result from his/her non-appearance, i.e., the servicemember would be negatively affected in some way if the suit were to proceed without him.

STATUTE OF LIMITATIONS

When a statute of limitations runs on a civil action, a once-potential plaintiff can no longer sue on the specific claim which has run the statute. The statute of limitations is tolled for servicemembers during periods of active duty. Tolling of statute of limitations is automatic.

When a default judgment is rendered upon a servicemember during the period of active duty or within sixty (60) days from the release does not strictly comply with Sec 521, it is subject to motion to set aside the judgment, provided that the motion is filed within ninety (90) days after the servicemember's release from active duty.

MORTGAGES AND TRUST DEEDS

As a general rule, for preservice mortgages, a creditor may not sell, foreclose upon, or seize property secured by a mortgage or trust deed without a waiver or a valid court order at any time during the period of service or for one year after the servicemember is released from active duty.

To knowingly make a sale, foreclosure or seizure of property in violation of SCRA is a misdemeanor under federal law. 50 U.S.C. 597a and 597b authorize an award of damages and attorney fees for violating any SCRA provisions, as well as any remedy otherwise available under other law, including consequential and punitive damages.

LEASES & OTHER LANDLORD/TENANT ISSUES

EVICTION

If a servicemember enters a lease for up to \$3,329.84 per month (for 2015), with the premises being a residential dwelling (not a business) that servicemember cannot be evicted without a court order. In addition, if the landlord makes an application to the court to evict a servicemember, the servicemember or their designee can request the court to stay the proceedings for 90 days (unless in the opinion of the court, justice and equity require a longer or shorter period of time). The servicemember will have to show that their ability to pay the agreed rent is "materially affected" by military service. A person or entity that takes part in the eviction of a servicemember and/or dependents without the benefit of a valid authorizing court order is guilty of a misdemeanor under federal law.

TERMINATION OF PRE-SERVICE LEASES

SCRA permits a new military member to terminate a pre-service lease for a private dwelling. Written notice of termination must be provided to the landlord. The effective date of termination for month-to-month rentals is 30 days after the next rental payment is due. The effective date of

termination for all other leases is the last day of the month following the month notice of termination was delivered.

TERMINATION OF POST-SERVICE LEASES

An active duty servicemember who has received PCS orders or who is being deployed for 90 days or more may terminate a housing lease with written notice and a copy of the servicemember's military orders to the lessor or the lessor's agent. The effective date of termination for month-to-month rentals is 30 days after the next rental payment is due. The effective date of termination for all other leases is the last day of the month following the month notice of termination was delivered. When signing your lease, read carefully to ensure that the military clause does not waive this right.

INTEREST RATES

SCRA caps interest rates on all pre-service obligations at 6% (including business loans signed personally by someone called to active duty) during military service. The 6% cap extends for one year beyond the period of military service for a mortgage, trust deed, or other security in the nature of a mortgage. The member must notify the creditor and send copies of his orders with the request.

RESIDENCE OR DOMICILE

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

RIGHT TO TERMINATE AUTOMOBILE LEASES

Any active duty servicemember who has received permanent change of station orders outside the continental United States (or from Alaska or Hawaii to a CONUS location) or who is being deployed for not less than 180 days may terminate an automobile lease. The member must provide written notice of termination and a copy of the member's military orders to the lessor and return the vehicle within 15 days of the written notice; the date of termination will be the date of return within the 15 day window.

Upon lawfully terminating a residential or motor vehicle lease covered by Sec. 535, any person/entity who subjects (or attempts to subject) any such property to a claim for rent accruing subsequent to the lawful termination of the lease, can be prosecuted for a misdemeanor under Title 18 of the U. S. Code. This title authorizes a fine and imprisonment for up to one year.

INSTALLMENT CONTRACTS AND REPOSSESSION

SCRA contains installment contract protection for real property and personal property (including vehicles). What this means is that if a servicemember falls behind on car payments, the lessor must obtain a court order before repossessing the property. The contract must have been entered into before service began, but the nonpayment or other breach may have occurred either prior to or during the period of military service.

To knowingly repossess property in violation of Sec. 532 is a misdemeanor under federal law. Under 50 U.S.C. 597a and 597b authorizes an award of damages and attorney fees for violating

any SCRA provisions, as well as any remedy otherwise available under other law, including consequential and punitive damages.

CELL PHONE CONTRACTS

If you receive orders to relocate, to location that does not support the contract, for a period of 90 days or longer, you may terminate the contract. A member must provide written or electronic notice of such termination and a copy of the his/her military orders to the service provider, along with the date service is to be terminated. The service provider may not charge an early termination fee for a contract terminated via SCRA.

LIFE INSURANCE

The amount of life insurance coverage for protection against the lapse of life insurance policies when an individual enters military service or deploys is \$250,000 or the Servicemembers' Group Life Insurance (SGLI) maximum, whichever is greater.

As a general rule, a life insurance company policy on the life of a servicemember, obtained prior to military service, may not exercise the right or option obtained under contract to secure payment of an obligation, during the period of military service or within one year thereafter without a court order. Any person/entity who acts contrary to Sec. 536, or who attempts to do so, can be prosecuted for a misdemeanor under Title 18 of the U.S. Code. This title authorizes a fine and imprisonment for up to one year.

TAXES

SCRA protects active duty servicemembers from tax sales of real property, unless there is a court order and a determination that military service does not materially affect servicemember's ability to pay the unpaid tax or assessment. It also protects members from double taxation of military income—only the state of residence can tax military income. Generally, tangible, non-business personal property of the servicemember may not be taxed by the host state. Intangible assets, non-military income, and real property are taxable.

Income for services performed by the spouse of a servicemember is not income for services performed or from sources within a tax jurisdiction of the United States, if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders. Spouses need to file a new withholding form with their employer, specifically citing the MSRA exemption.

SCRA Violations Remedy

If you believe that your rights under the SCRA were violated, you should first contact your nearest Military Legal Assistance Program office to discover whether SCRA applies to your particular situation. Dependents of servicemembers can also contact or visit local military legal assistance offices where they reside.

In order to have your SCRA matter reviewed by the Department of Justice (DOJ), you must first seek the assistance of your military legal assistance office. If that office cannot resolve the

complaint, it may choose to forward the complaint to the DOJ. The DOJ then will review the matter to determine whether DOJ action is appropriate. In an emergency situation (such as an imminent foreclosure, eviction, or repossession), you can contact Civil Rights Division's Housing and Civil Enforcement Section:

(202) 514-4713
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section, NWB
Washington, D.C. 20530

For further information on asserting your rights under SCRA, contact the Luke Air Force Base legal office at (623) 856-6901.

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