



## **Servicemembers' Civil Relief Act**



### **The Servicemembers' Civil Relief Act (SCRA)**

The SCRA is a federal law that protects all active duty servicemembers. It is intended to postpone or suspend certain civil obligations to enable servicemembers to devote full attention to their duties and relieve stress on the family members of those deployed. Coverage includes: financial obligations and liabilities, such as rent, installment contracts and leases; civil (but not criminal) legal proceedings; life insurance; and taxes. Although you can waive your rights under the SCRA, which means that you can contractually agree that these rights will not apply to you, a waiver is only effective if it is: (1) written in a document that is separate from all other agreements; and (2) signed while on active duty in the military. The most significant provisions of SCRA are discussed below.

### **No Default Judgments**

A “default judgment” is a judgment entered against a defendant who fails to appear in court. If you were never notified of a lawsuit against you the court cannot enter a default judgment until it appoints a lawyer to represent your interests. If the court enters a default judgment you can “vacate,” or “set aside,” the judgment. However, to do so you must be able to show both that your military service materially affected your ability to defend against the lawsuit (i.e., you were deployed) and you have a valid defense. If you have actual notice of the lawsuit before a default judgment is entered and you fail to appear you cannot set aside the resulting default judgment.

### **Automatic Stay of Legal Proceedings**

A “stay” is when a lawsuit is put on “hold” for a certain period of time, during which time neither party can take any further legal action, including action to enforce a judgment such as by attaching your property or garnishing your wages. If you have actual notice of a lawsuit or judgment against you and you are going to be deployed (or similarly incapable of defending), the court must stay all proceedings for at least 90 days. The stay can be longer if needed. You must submit an application to the court which includes: (1) a letter stating how and why your current military duty requirements “materially affect” your ability to appear in court and stating a date when you will likely be available to appear; and (2) a letter from your commanding officer stating that your current military duty prevents you from appearing and that military leave is not authorized. The legal office can draft these letters for you.

**Disclaimer:** This information is general in nature and presented to assist those eligible in preparing for a legal assistant appointment with a professional in the legal office. Do not rely upon this general restatement of background information without discussing your specific situation with a legal professional.

## **6% Interest Cap**

If, before you entered active duty, you signed a contract that requires you to pay interest of more than 6% per year, the interest rate must automatically be reduced to 6% for as long as you are on active duty. You must provide your creditor with written notice that you have been called to active duty and a copy of your military orders. The 6% interest rate cap only applies to debts incurred before you entered active duty.

## **Protection Against Eviction**

If you fail to pay rent or violate the terms of your lease and the landlord wishes to evict you, the landlord must first give you a five-day notice to vacate. If you do not move out within five days, then the landlord can file an eviction lawsuit with the court. If your ability to pay rent is materially affected by your military service (i.e., you are deployed), or within one year of service, a court may: (1) stay the eviction proceedings for a period of 90 days; or (2) adjust the terms of your lease.

## **Protection Against Foreclosure or Repossession**

If you can't make your monthly mortgage payments on your house, the bank cannot sell your home at a foreclosure sale without a court order if you are serving or within one year after you serve. If your ability to make your mortgage payments is "materially affected by military service" (i.e., you are deployed), or within one year of service, a court may: (1) stay the proceedings; or (2) adjust the terms of your mortgage. The same rule applies if a creditor tries to repossess any other personal property, such as your car. However, the rule only applies to mortgages and contracts entered into before you were called to active duty. One exception to this rule is that a storage company may not take possession of a servicemember's stored goods for failure to pay the storage costs, even if the military member stored the goods after entering active duty. The storage company will need a court order.

## **Right to Terminate Residential and Automobile Leases**

An active duty servicemember who has received Permanent Change of Station ("PCS") orders or who is being deployed for at least 90 days may terminate a residential lease. Under SCRA, you must give your landlord written notice of your intent to terminate the lease due to military orders. If you do not yet have a copy of your orders, you may obtain a written statement from your commander. The lease termination is effective 30 days after the next rent due date after you give notice. For example, if you usually pay rent on the first of every month, and you give notice on the 20<sup>th</sup> of July, your lease termination date under the SCRA is 30 days after August

## **Right to Terminate Cellular Telephone Contract**

If you are deployed for at least 90 days or you receive PCS orders you may terminate your contract for cellular telephone service if you cannot pay for or use the service because of your

**Disclaimer**  
appointment  
without

deployment or PCS. If your dependents are covered by a family plan with the cellular service provider, you may also terminate the family plan if your dependents will be moving with you. tant  
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## **Life Insurance**

The SCRA may prevent your life insurance policy from being cancelled if you miss a payment.

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