

The Servicemembers Civil Relief Act (SCRA)



SERVICEMEMBERS CIVIL
RELIEF ACT



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SCRA Briefing Outline

- Background
- Who receives the protections?
- When do the protections begin and end?
- Protections and Benefits
 - Procedural Protections
 - Financial Protections
 - Leases, Evictions, Installment Contracts, & Mortgages
 - Residence for Tax Purposes and Voting Rights

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SCRA Background Information

- 1918: Soldier's & Sailor's Civil Relief Act (SSCRA) Enacted
- 1940-2003: Amended SSCRA
- 2003: Servicemembers Civil Relief Act (SCRA)
- 2004, 2008, 2009, 2010, and 2012: SCRA Amendments

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SCRA Background Information

- In general, the SCRA provides various legal and financial protections to qualified Servicemembers during their military service
- The SCRA enables Servicemembers to devote their entire energies to the Nation's defense

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Basic SCRA Protections

- Stay of Proceedings
- Default Judgments
- Suspension of Statutes of Limitations
- 6% interest cap
- Lease terminations
- Cell Phone contract termination
- Eviction Protection, Mortgage Foreclosure Protection, Installment Contracts Repossession Protection
- Taxation provisions
- Voting rights

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Who Receives the Protections?

- Reserve - When on Active Duty
- National Guard - Federal Service (Title 10)
& Sometimes Title 32 (32 USC § 502f)
- Active Army - Sometimes
- Family Members - Sometimes

National Guard

SCRA Applicability

- Examples:
 - Overseas deployments in Title 10 active duty status
 - Title 32 (30 days or more + Nat. Emergency)
 - Airport Security after 9/11
 - Hurricane Katrina

When Do Protections Begin?

- Entry on Active Duty
- Reserve Components - Receipt of active duty orders

When Do Protections End?

- Normally, on date of release from Active Duty
- Exceptions:
 - Stay of civil proceeding: File application within 90 days after release from Active Duty (REFRAD)
 - Default Judgments: File application to set aside the judgment no later than 90 days after REFRAD
 - 6% max interest rate: For mortgages only, reduction continues one year after REFRAD
 - Court order required for foreclose (pre-service mortgage) & opportunity to request a foreclosure stay: Right continues 1 year after REFRAD (returns to 9 months on 1 Jan 16)

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Enforcing SCRA Rights

- Private right of action – may personally bring civil action for damages, equitable or declaratory relief
- Court may award attorneys fees to person harmed by SCRA violation

Enforcing SCRA Rights

- The US Attorney General may sue a person engaging in a pattern or practice of violating the SCRA
- The US Attorney General also may sue a person who violates the act in a manner that raises an issue of significant public importance

Procedural Protections



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Stay of Proceedings

Servicemember with Notice

- Who?
 - Servicemembers **with notice** of proceedings
- What Proceedings?
 - Civil Court & Administrative Hearings? **Yes.**
 - Including child custody proceedings
 - Criminal Proceedings? **No!**
- When?
 - Servicemember is unavailable and material effect (on ability to appear)

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“Material Effect” Provisions

- “Material Effect” is a recurring concept throughout much of the SCRA
- The person’s military service must materially affect the person’s ability to meet the obligation
 - Stated otherwise, the person’s military service must **prejudice** the person’s ability to meet the obligation
- Material Effect is a **CENTRAL** issue to the SCRA stay provision analysis

Stay Requests

- Extremely important to follow the steps required for a stay request!
- Stay request **must** be by letter or other communication and include:
 1. Facts establishing there is a material effect on ability to appear
 2. Date when Servicemember can appear
 3. Letter (or other communication) from **commander** stating no leave authorized

Default Judgments

- Applies only if the Servicemember has not appeared
- Basic Rule: Before a judgment is entered against any person not appearing, the plaintiff must submit an affidavit stating:
 - Whether or not defendant is in military; or
 - That plaintiff cannot determine whether defendant is in military

Reopening Default Judgments

- Upon application by Servicemember, the court SHALL:
 - Reopen any default judgment entered while the Servicemember was on active duty or w/in 60 days of REFRAD
 - This provision applies to child custody proceedings.
- Servicemember's application must:
 - Be made while applicant is still on active military duty or within 90 days thereafter
 - Show material effect on ability to provide a defense
 - Assert a meritorious defense to all or part of the action

Statutes of Limitation

- SCRA tolls (stops) the running of civil statutes of limitations
- Civil and administrative proceedings
- Applies whether the Servicemember is plaintiff or defendant
- Except for internal revenue laws!
- Does not apply to Criminal proceedings

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Financial Protections



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6% Interest Cap

- Basic Rule:
 - Limits interest to 6% on **pre-service** obligations (includes student loans)
 - Pre-service means pre-active duty
 - Lender must forgive interest above 6%
 - Lender cannot accelerate payment of principal

6% Interest Cap Requirements

- Servicemember must write a letter to creditor
- Must provide a copy of orders and any extensions
- Must give notice only
 - NO initial requirement for Servicemember to show “material effect”
 - Creditor must reduce rate after SM’s notice
- Creditor may avoid reducing the interest rate only through COURT FINDING of no “material effect”

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6% Rule for Mortgages

- Expansion of the 6% interest cap time period for mortgages:
 - Interest rate on mortgages may be reduced to 6% during AD and for ONE YEAR after AD

6% Examples

- Active Army Soldier financed his education with student loans at 9% prior to entering active duty
- National Guard SFC Jones took out \$50,000 in **business loans** at 8% in 2008; mobilizes to active duty at Ft. Riley in 2010
- Army Reserve Soldier **purchased home** at 7.5% in 2001; was mobilized for active duty to Afghanistan in 2009

Non-Discrimination Protection

- **Basic Rule: Claiming rights under SCRA cannot serve as basis for –**
 - Adverse credit report
 - Denial/revocation of credit
 - Denial of insurance coverage
 - Change in terms of existing credit/insurance
 - Annotation identifying SM as member of Guard or Reserve

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Leases, Evictions, Installment Contracts & Mortgages



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Residential Lease Terminations

- Servicemember may terminate residential* leases as follows:
 - All pre-service leases (leases executed prior to active duty service)
 - Leases executed while on active duty IF:
 - Soldier receives PCS orders; or
 - Soldier will deploy for more than 90 days
 - Requires written notice with orders

* *This lease termination provision includes other types of leases, such as professional, business, agricultural and similar leases*

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Residential Lease Terminations

Joint Leases

- Dependent's lease obligation terminates along with Servicemember's
- Landlords cannot hold dependents liable on a joint lease

Automobile Lease Terminations

- Servicemember may terminate an auto lease as follows:
 - Pre-service lease (lease signed before active duty service)
 - Can terminate if entering AD for 180 days or more
 - Leases executed while on active duty IF:
 - PCS from CONUS to OCONUS
 - PCS from Alaska or Hawaii to anywhere
 - Deployment for 180 days or more
 - Requires written notice w/orders and return of the vehicle w/in 15 days of notice

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Cell Phone Contract Terminations

- Termination authorized when SM receives orders to relocate for 90 days or more to a location not supported by the contract
- Servicemember must provide written or electronic notice to the carrier
- Servicemember may keep phone number if relocation for 3 years or less
- Family members relocating with the SM also may terminate service

Evictions

- Basic Rule: Landlord can evict SM (or dependents) only with court order – no self help (landlord cannot do it on his own)
- For 2017, this section applies to rentals not exceeding \$3,584.99 per month
 - The amount increases yearly (calendar year) based on housing price inflation adjustment
- Servicemember must show material effect to receive judicial stay

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Installment Contracts

- Prohibits self-help repossession of items purchased on installment contract
- Pre-service (pre active-duty) obligations only
- Common examples: Appliances, furniture, motor vehicles
- Requires court order before
 - Termination for breach of contract
 - Repossession
- Must show material effect to receive judicial stay of repossession

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Mortgages

- Prohibits foreclosure without a court order
- Applies to pre-service (pre active-duty) obligations secured by a mortgage
- Must show material effect
- Court may stay the proceedings or adjust the obligation as equity requires

Residence for Tax Purposes and Voting Rights



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Residence for Tax Purposes

General Rule: A Servicemember neither acquires nor loses domicile based on the presence in a state due to military orders

Residence for Tax Purposes

- Military Income: Deemed earned in the state of domicile
- Personal Property: Deemed located in the state of domicile
- A SM's nonmilitary income earned outside the state of domicile is not protected by the SCRA

Spouse Tax Rules

Military Spouses Residency Relief Act (MSRRA)

- SCRA now protects spouse's income from taxation if domicile is same as SM's
- Beware: Does not mean spouse can merely “pick” the SM's domicile. Spouse must establish domicile under normal domicile analysis!

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Servicemember Voting Rights

- A Servicemember's home state (domicile) voter registration remains valid despite presence in another state due to military orders
- Be cautious about changing voter registration to the new (host) state

Spouse Voting Rights

- As of November 2009, a spouse's home state (domicile) voter registration remains valid despite presence in another state due to Servicemember's military orders IF:
 - Spouse is living with SM in the duty state, AND
 - Spouse has the same domicile as the SM

Warning Regarding Domicile

If Soldier (or Spouse under MSRRA) loses “contacts” with state of domicile, the “new” state might pursue domicile status (and attempt to tax the Soldier!)

Ways to Help Establish or Maintain Domicile

- Purchase a home or land (burial plot very effective)
- Register to vote
- Register vehicles
- Physical presence
- Driver's license
- Membership in organizations
- Own bank accounts or investments

Motor Vehicle Registration & Fees

- If Soldier registers with home state, host state cannot require vehicle registration
- Otherwise, Soldier must comply with host state
 - *But host state cannot apply property tax to the vehicle (“ad valorem” tax)*

“Waiver” of SCRA Protections

Waiver of SCRA protections is allowed, but the waiver must be:

- In writing and at least in 12 point type
- Executed separate from the original obligation to which it applies
- Executed during or after the period of active duty

Other SCRA Protections

- Reinstatement of Private Health Insurance Upon Return to Civilian Life
- Suspension of Professional Liability Insurance During Active Duty
- Stays of Execution of Judgments or Attachments

Conclusions

- The SCRA provides numerous protections and benefits to Servicemembers in both the Active and Reserve Components
- SCRA protections may apply in both deployment and non-deployment situations
- Consult with a Legal Assistance Attorney for more detailed information regarding the numerous SCRA protections

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QUESTIONS?

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