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FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

The Servicemembers Civil Relief Act (SCRA)

1. **What is SCRA?** The Servicemembers Civil Relief Act of 2003 (SCRA), 50 USC App. §501, provides Servicemembers and their families with certain protections relating to civil court actions and credit issues, intended to reduce the chances of legal trouble while the servicemember is on active duty.
2. **Purpose of the SCRA:**
 - a. to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
 - b. to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.
3. **The types of protection the SCRA provides are:**
 - a. Protection from Civil Court judgments in the servicemember's absence.
 - b. A lengthening of statutes of limitations on the servicemember's behalf.
 - c. The right to break certain contracts and leases.
 - d. Protections against certain evictions and loan foreclosures.
 - e. Limitations on interest charges to 6%.
 - f. Maintaining home state residence.
 - g. Tax and Insurance protections.
4. **Civil Court protections.** The SCRA has provisions that protect you against a civil court going forward with a lawsuit against you when you cannot be present, due to military service. Note that this protection does not apply to criminal courts, traffic court, or magistrate actions. Specifically:
 - a. In all civil cases, a plaintiff filing a suit against a defendant must **certify to the court** whether the defendant is in the military service. In this way the court can be put on notice that SCRA protections apply. Certificates of Service *shall be* prima facie evidence as to all aspects of a person's military service, or non-service. Application for certificate may be obtained by way of DMDC website <https://www.dmdc.osd.mil/appj/scra/scraHome.do>
 - b. In civil cases where the defendant is a servicemember, courts at both state and federal level will **stay the proceedings** (postpone the action) for at least 90 days, if (1) the soldier requests it, (2) there is a defense that cannot be made without the soldier present, and the soldier is unavailable due to military service, or (3) the plaintiff's attorney (the lawyer for the person who is suing the servicemember) cannot contact the servicemember to determine whether there is a defense to be made. Making an application for a stay of proceedings does not

constitute an appearance before the court for jurisdictional purposes, and does not constitute a waiver of any substantive or procedural defense, including the court's lack of jurisdiction. The court may grant an extension of the stay based on continuing military duty materially affecting the servicemembers ability to participate in litigation. If an additional stay is not granted, the Court shall appoint an attorney to represent the servicemember.

- c. If a **default judgment** (a finding against a defendant who did not show up to court) is entered by a judge in a civil case, and the servicemember was unavailable to appear due to military service, the court must reopen the case to allow the servicemember to present his/her defense, if the servicemember makes the proper motion to the court within 90 days of release from military service. This protection applies even to default judgments entered within 60 days after the soldier's release from active service. A recent update to the act defines *judgment* as "any judgment, decree, order or ruling, final or temporary". This includes administrative law judgments.
 - d. For an existing judgment or court order, a court may *stay* the execution of the judgment or enforcement of the order against a servicemember whose military service materially affects the ability to comply. A court may also vacate an order of attachment of property or garnishment.
5. **Protection concerning Statutes of Limitation.** In a case or claim in which a statute of limitation sets a time limit for filing a petition, response, claim, or accounting, any period of time the servicemember spent in active service is added back, extending the time limit for the servicemember to act. This protection extends to the servicemember's heirs or representatives. This protection does not apply to statutes of limitation in federal internal revenue laws.
6. **Leases and Contracts.** Servicemembers may terminate certain leases and contracts that interfere with their military service, or as a result of a reassignment or deployment. Specifically:
- a. A servicemember (or dependents) may terminate a **lease for premises** (residential or business) as of the date of entry onto active duty if the lease was entered into prior to military service; or as of the date of military orders for a PCS move or deployment of 90 days or more.
 - i. The effective date of the lease termination for leases requiring a monthly rent payment is 30 days after the next rental payment following the day notice is delivered. (If notice is given August 15, and rent is due September 1, 30 days following would be October 1, the effective date of the termination).
 - ii. For leases that do not require a monthly rent payment, the effective date of termination is the last day of the month following the month in which notice was given. (If notice is given August 15, the last day of the following month would be September 30, the effective date of the termination).
 - b. A servicemember may terminate a **motor vehicle lease** (personal or business) as of the date of entry onto active duty if the lease was entered into at least 180

days prior to military service; or as of the date of military orders for an overseas PCS move or deployment of 180 days or more.

- i. The effective date of the lease termination is fifteen days following the date that notice, plus a copy of military orders, are provided to the lessor. The servicemember does not have to turn in the vehicle until the date of the lease termination.
 - ii. The lessor (leasing company) is prohibited from imposing an early-termination charge; but may charge any taxes, reasonable charges for excess wear, use and mileage, and other contractual obligations that are unpaid when the lease is terminated. Unpaid lease payments will be prorated for any part of a month that the lease payment remains unpaid, and any prepaid amount extending beyond the time of the lease termination must be refunded within 30 days.
- c. Generally, Section 535a of the SCRA allows termination or suspension of certain cellular phone contracts any time after the date the servicemember receives military orders to relocate (PCS or deploy) for a period of not less than 90 days to a location that does not support the contract.
 - d. If a Servicemembers has entered into a contract and military service prevents the servicemember from performing the contract, the SCRA permits a court to cancel the contract, or to reduce any penalties, fines or liquidated damages that may have been written into the contract as provisions for nonperformance.

7. Evictions and Foreclosures.

- a. During a period of military service, a landlord may not evict a servicemember or dependents from a residence without a court order, provided the monthly rent does not exceed \$2,400. Note: This provision is intended to protect a servicemember who has a temporary inability to pay due to their service, but servicemembers who fail to pay their monthly obligations without good cause may face civil and UCMJ action. If a court enters an order requiring the servicemember to pay overdue rent, the order can be filed with DFAS for an involuntary allotment.
 - If a landlord seeks a court order to evict the servicemember or dependents, a court may instead adjust the lease obligation, or stay (postpone) the proceeding on behalf of the servicemember.
- b. A contract by a servicemember to purchase or lease real estate or personal property (including a vehicle) may not be rescinded or terminated, or the property repossessed or foreclosed upon, for the servicemember's dishonoring the contract before or during military service, provided that a deposit or first payment had already been made before entry onto military service, unless a court order is issued.
 - i. If a servicemember owns real property (a piece of land, including a house, a business site, farmland, or an empty lot) that was obtained prior to entering active military service, and that property is secured by a lender's mortgage, trust deed, lien or other security, and a court action is filed to enforce the obligation while the servicemember is on active service, a court may stay the proceedings or adjust the obligation to preserve the interests of all parties.

- ii. If a foreclosure, sale, or seizure of real or personal property is made during the servicemember's active military service without a court order (or waiver by the servicemember), the foreclosure, sale, or seizure is invalid.
 - iii. A court may modify an obligation, rather than granting an order for foreclosure or repossession. The modification could include extending the mortgage maturity date to allow reduced payments, granting a conditional foreclosure that can be reopened, or extending the redemption period equal to the length of the servicemember's military service.
 - c. A court order to foreclose a lien based on a contract for the storage, repair, or cleaning of a servicemember's property may be stayed by a court upon a motion by the servicemember or on the court's own motion, "for as long as justice shall require."
- 8. **Limitation on Interest.** The SCRA provides that, for financial obligations that began before entering onto military service (including joint obligations with a spouse), interest shall be capped at 6%, provided that the entry onto military service has a material affect on the servicemember's ability to pay.
 - a. **Interest**, as SCRA defines it, includes any fees or charges. A creditor cannot get around the 6% cap by charging other fees.
 - b. The difference between the 6% interest and the contract rate is not deferred or added back into the loan, it must be **forgiven**.
 - c. **Material affect** means a reasonable interference with the ability to pay, including a decrease from the servicemember's civilian pay or an increase in costs because of family separation. There is a presumption that military service does have a material affect on a servicemember's finances, so to deny the 6% interest cap, a creditor must challenge the presumption, usually by going to court. If such a challenge occurs, the servicemember is required to cooperate in providing any documentation the creditor/court requires to make a determination.
 - d. The 6% interest cap applies to mortgage payments, credit cards, service contracts, installment loans, and other debts. It does not apply to vehicle leases.
 - e. To request the reduction in interest, send a letter to the creditor with a copy of the military orders calling you to active duty within 180 days of completion of the service. For large, national creditors (such as credit card companies) contact the customer service telephone number to determine the appropriate mailing address for your letter.
- 9. **Maintaining Home State Residence.** A servicemember who enters into military service and is moved to another state as a result of that military service maintains residence in the state where he/she had established residency. A servicemember is entitled to maintain driver and professional licenses, vehicle plates, voting rights, and tax residence in their home state, so long as they maintain that state's requirements to do so. The Military Spouses Residency Relief Act of 2009 recently expanded this provision to afford spouses of servicemembers the same relief. Military dependents share the same rights to home state taxation and voting rights, but may not share the same rights to home state driver and professional licenses, or to vehicle registration.

10. Tax and Insurance Protections.

- a. When proper notice is given to the IRS and state tax authority, collection of income tax from a servicemember whose ability to pay the tax is materially affected by military service shall be deferred for up to 180 days following discharge from active duty. No penalty or interest accrues during this deferment. The statute of limitations for enforcement of the taxes is extended, however, by the time on active duty plus 270 days.
- b. The SCRA does not provide for any postponement of real estate taxes.
- c. If a court action is begun to sell or forfeit property to satisfy overdue taxes on personal property or real estate (for taxes that became due prior to entry onto military service, which remain unpaid for the period of the military service), certain protections arise:
 - i. The property may not be sold or forfeited without a finding by the court that the military service did not materially affect the ability to pay,
 - ii. The court may stay the action for the period of military service plus 180 days,
 - iii. The servicemember has the right to redeem property sold or forfeited for the period of military service plus 180 days.
- d. Any interest that accrues on unpaid personal property taxes or real estate taxes cannot exceed 6%.
- e. Any life insurance policy with a face value equal to or below the maximum SGLI benefit, which was in effect for at least 180 days prior to entry of the servicemember onto active duty, cannot lapse or be terminated for nonpayment of premiums or interest, for the period of military service plus two years. The U.S. Government acts as a guarantor for the premiums and interest if the policy is paid out during this period.
- f. Any Health Insurance policy which was in effect the day preceding entry onto military service can be reinstated by the servicemember within 120 days after discharge from active service without exclusion or waiting period (subject to certain restrictions).

If you have any questions about SCRA, you may consult a Legal Assistance attorney by calling 239-3117 for an appointment.

This fact sheet is not intended to give legal advice on any specific case; it is only a reference providing general information. For legal advice, consult an attorney.

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