

Servicemembers' Civil Relief Act



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INTRODUCTION

Congress passed the Servicemembers' Civil Relief Act (SCRA) in 2003 to add to the protections granted by the Soldiers' and Sailors' Civil Relief Act (SSCRA). The SCRA was enacted in 1940 to enable service members to devote their full attention to duty. The SCRA gives new benefits to service members, including the ability to terminate a residential or automobile lease if deployed or PCSing, the right to delay eviction proceedings for up to three months, the right to be granted a stay of proceedings in administrative proceedings, and a protection against the lapse of life insurance policies. Reservists and the members of the National Guard are also protected under the SSCRA and SCRA while on federal active duty orders. The protections generally begin on the date of entering active duty and terminate within 30 to 90 days after the date of discharge from active duty. Members who face problems in the areas below should visit the legal office without delay. In 2015, SCRA was recodified under 50 U.S.C. § 3901 et. Seq.

LANDLORD – TENANT

Upon application by a landlord for an eviction order against a servicemember, the court shall, if a request is made by or on behalf of a service member whose ability to pay the agreed upon rent is materially affected by military service, 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 SCRA grants a right for any active duty member who has permanent change of station (PCS) order or who is being deployed for more than 90 days to terminate a housing lease within 30 days written notice, if the lease is executed **before** the member receives the deployment or PCS order. Written notice to the lessee must include a copy of the PCS order or the deployment order. Even though the SCRA only specifies release upon PCS or deployment, the Department of Justice supports release from the rental agreement concerning moves due to separation and retirement.

AUTOMOBILE LEASES (SCRA § 3955)

Any active duty service member who has received PCS orders or who is being deployed for not less than 180 days may terminate an automobile lease, if the lease was executed **before** the deployment order or PCS order was received by the service member. The member must provide written notice of termination and a copy of the PCS order or the deployment

order to the lessee and return the vehicle within 15 days of the written notice. No early termination fees may be charged.

CELL PHONE CONTRACTS (SCRA § 3956)

Any active duty service member who has received PCS orders or who is deploying for not less than 90 days may terminate a cell phone contract if where they are going has no cell phone service with that company, and if the lease was executed **before** the deployment order of PCS order was received by the service member. The member must provide written notice of termination and a copy of the PCS order or the deployment order. No early termination fees may be charged.

INSTALLMENT CONTRACT (SCRA § 3952)

A service member who enters into an installment contract **prior to entering** active duty is protected if the member's ability to make payments is materially affected by military service. The court will compare the service member's preservice income and military income to determine the member's financial condition. The creditor is prevented from exercising rights of rescission, termination, or repossession without a court order. SCRA allows motor vehicles to fall within the umbrella of installment contract protections. In other words, if a military member falls behind on car payments, the lessor must obtain a court order before repossessing the car.

MAXIMUM RATE OF INTEREST (SCRA § 3937)

If, **prior to entering** active duty service, a member incurs a loan or obligation with an interest rate in excess of 6%, the member will, upon application to the lender, not be obligated to pay interest in excess of 6% per year. Any interest amounts in excess of the 6% cap must be forgiven. This relief only applies if the member's ability to pay has been materially affected by military service.

STAY OF PROCEEDINGS (SCRA § 3932)

The SCRA provides for an automatic, non-discretionary 90-day stay of civil proceedings, including child-custody proceedings. The application does not constitute an appearance in court. To obtain an automatic stay, a service member must demonstrate that his or her military service materially affects his or her ability to appear in court. The member must also provide the court with a date when he or she will be available. Finally, the service member must submit a letter from his or her commander stating that duty prevents the member from appearing and that military leave is not authorized.

Additional stays are permitted at the court's discretion, if these requirements are met. If the military duty continues to materially prevent the service member from appearing in court, he or she can apply to the court for an extension over the first 90-days.

DEFAULT JUDGMENTS (SCRA § 3931)

Before a court can enter a default judgment (for failure to respond to a lawsuit or appear at trial, including child custody proceedings) against a military member, the person suing the member must provide the court with an affidavit stating the defendant is not in the military.

If the defendant is in the military, the court will appoint an attorney to represent the defendant's interests (usually to seek a stay of proceedings).

If a default judgment is entered against a service member, the judgement may also be reopened if the member makes application within 90 days of leaving active duty and demonstrates both prejudice and a legal defense.

LIFE INSURANCE (SCRA §§ 3972-3979)

A service member's private life insurance policy is protected against lapse, termination or forfeiture for nonpayment of premiums for a period of military service plus two years. The level of protection against lapse is \$250,000 or the Servicemember's Group Life Insurance (SGLI) maximum, whichever is greater. The insured or beneficiary must apply to the Veteran's Administration for protection. The application must be signed, identify the insurer, and acknowledge that the insured's rights under the policy may be modified by SCRA.

HEALTH INSURANCE (SCRA §§ 4023-4024)

Any health insurance in effect on the day before active military service commenced is reinstated without waiting periods or physical condition restrictions.

RESIDENCE AND TAXATION (SCRA §§ 4000-4001)

The collection of income tax on military members may be deferred for a period of not more than 180 days after termination of or release from military service if a service member's ability to pay such tax is materially affected by his or her service. No interest or penalty may accrue during the deferment period.

A service member's state of legal residence may tax military income and personal property. A member does not lose legal residence solely because of a transfer pursuant to military orders. Under SCRA, a tax jurisdiction may not use the military compensation of a non-resident service member or spouse subject to tax by the jurisdiction.

ADVERSE ACTIONS (SCRA § 3919)

Creditors and insurers are prohibited from pursuing adverse actions (i.e. notifying credit agencies, denying credit, changing terms) against service members who exercise their rights under the SSCRA or SCRA.

MORTGAGES (SCRA § 3953)

During a member's period of military service and for one year after, a bank cannot foreclose upon that member's mortgage. However, the mortgage must have been started before that member's military service.

WAIVING SCRA RIGHTS (SCRA § 3918)

Any contract that attempts to waive a service member's rights under the SCRA must be acknowledged by the service member in writing, 12-pt font, and signed by the service member. The waiver must be in a document that is separate from the one creating the legal obligation.

PRIVATE RIGHT OF ACTION (SCRA § 4042)

Service members may sue individuals or entities that violate SCRA and ask for actual damages, punitive damages, and attorney fees.

CHILD CUSTODY PROTECTION (SCRA § 3938)

A court in a child custody case cannot consider deployment or the possibility of deployment as the sole factor in determining the best interest of the child.

CONCLUSION

If you have any questions about whether the SCRA or SSCRA applies to you, stop by the Peterson Legal Office for more information about your rights.

Sources:

<http://www.military.com/benefits/military-legal-matters/scra>
50 U.S.C. app. § 3901-4043

The information provided in this document is meant for the sole use of Active Duty service members, retirees, and their families. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the facts and circumstances in each case. Laws can vary across states, services, and civilian jurisdictions. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.