

# Servicemembers' Civil Relief Act

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## **INTRODUCTION**

The Servicemembers' Civil Relief Act ("SCRA") provides a wide range of protections for active duty and reservist military personnel. The Act applies in civil matters only, not criminal. It does not relieve military personnel from paying their debts or other civil obligations. However, the Act may suspend civil legal actions against military personnel during their service.

## **Who Qualifies?**

SCRA benefits and protections are afforded to 1) full time active duty members of any of the five branches of military (Army, Navy, Marine Corps, Air Force, and Coast Guard); 2) Reservists on federal active duty; and 3) members of the National Guard on federal orders for a period of more than 30 days. Service members who are absent from duty for a lawful cause, wounds, sickness, or leave are also covered.

## **Dependents of Service members**

SCRA may apply to a service member's dependent(s) in certain instances where a dependent co-signed or took out a loan with the service member. Dependent under SCRA is defined as the service member's spouse, children, or any other person where the service member has provided more than half of their financial support in the past 180 days.

## **How to File a Complaint**

Non-attorney service members must first seek assistance of a military legal assistance office. If that office cannot resolve the complaint they may forward the complaint to the Department of Justice where the Attorney General has authority to file a federal lawsuit on behalf of the service member.

The following is a list of the key provisions in the Act:

## **CIVIL ACTIONS**

The SCRA provides for an automatic, non-discretionary 90-day stay of civil proceedings upon application by the service member. However, stays are at the court's discretion. The court will look to see if being in the military has *materially affected* the military member's ability to take part in the proceedings. Thus, if a member can obtain leave, the member may get little to no relief.

## **SUSPENDED ENFORCEMENT**

Courts may also postpone attachments of property and garnishments of military personnel when the military member's ability to take part in the proceedings has been *materially affected* by military service.

## **SIX PERCENT INTEREST RATE CAP**

If a military member obtained a loan *prior* to entering active duty at an interest rate in excess of six percent, the SCRA sets a cap of six percent which provides for a reduction of monthly payments while on active duty. The six percent cap is mandatory and any interest amounts in excess of six percent are forgiven. However, a court may grant a creditor relief from the limitation of the ability of the service member to pay interest in excess of six percent the member's ability to pay is not *materially affected* by military service. In order to have interest rates capped at 6% a servicemember must provide the creditor with written notice or and a copy of their military orders *within 180 days* of the end of the servicemember's military service.

A creditor must forgive all interest greater than 6% per year in response. The creditor must also forgive interest retroactively.

**Financial obligations that qualify:** credit cards, automobile, ATV, boat and other vehicle loans, mortgages, home equity loans, and student loans.

*Note:* For *mortgages*, interest is capped at six percent during the entire period of military service **and** for one year after the period of military service. For all other obligations, interest is capped at six percent **only** for the duration of the period of military service.

## **LIFE INSURANCE**

Insurers may not decrease the amount of coverage or require payment of an additional amount as premiums because of the insured's military service. The insurer also may not limit or restrict coverage for any activity required by military service.

## **RESIDENCY AND INCOME TAX**

A military member does not lose his residency ("home state") because of transfer due to military orders nor does his military income become subject to state income tax in the state to which he is transferred. For example, if you are a Kansas resident and are transferred to a base in Nebraska you do not lose your Kansas residency nor do you have to pay Nebraska income tax on your military pay. You still have to pay Kansas's income tax on your military income. Military income can only be taxed by a member's home state. Non-military income and income earned by dependents may be taxed by the state where it is earned and by the home state, although most states will allow a credit for tax paid to another state to prevent double-taxation.

## **INCOME TAX PROTECTION**

Collection of income tax of a service member due before or during military service will be deferred for a period not more than 180 days after termination of or release from military service if the service member's ability to pay is *materially affected* by military service. No interest and penalty will accrue for the period of deferment. The service member must notify the IRS and/or state tax authority of inability to pay income tax as a result of military service.

## **PROTECTION AGAINST EVICTION**

The act prohibits eviction of a service member or the member's dependents during a period of military service. A service member who entered into a lease prior to military service, for \$2400 or less per month cannot be evicted without a court order. If the member's ability to pay has been *materially affected*, the court shall stay the proceedings for 90 days unless, in the opinion of the court, justice and equity require a longer or shorter period of time.

## **PERSONAL PROPERTY TAXES**

The Act protects military personnel who are absent from their state of legal residence because of military orders from having any of their personal property taxed by another state. For example, a Kansas resident assigned to Offutt is relieved from paying Nebraska property taxes on the automobiles that he either brings with him to Nebraska or purchases while in Nebraska. This provision does not apply to leased vehicles, however, because the leasing company -- not the military member -- is the owner of the vehicle. Consequently, military members who lease a vehicle while stationed at Offutt must pay Nebraska personal property taxes on the leased vehicle.

## **REPOSSESSION**

The Act provides protection against repossession of a servicemember's vehicle that was purchased *prior* to entry into the military. The seller cannot rescind the contract and repossess the property for any reason without a court order as long as the servicemember placed a deposit for the vehicle, or made at least one installment payment on the contract before entering military service.

## **FORECLOSURES**

In order for the protections against non-judicial foreclosures to apply, a servicemember must have taken out the obligation on real or personal property prior to entering military service. During the period of military service and for one year after service the creditor must obtain a court order to foreclose on a mortgage. Courts additionally have the ability to stay a non-judicial foreclosure proceeding or adjust the payments if the servicemember's ability to meet the obligation was *materially affected* by his or her service.

## **RESIDENTIAL LEASES**

Leases entered into prior to military service, by a service member who has received permanent change of station orders or is being deployed for not less than 90 days, may be terminated with a 30 day written notice and a copy of his or her military orders submitted to the landlord or the landlord's agent. If the rent is paid monthly, the termination is effective 30 days after the first date on which the next rental payment is due subsequent to the date when notice is delivered. If a servicemember lessee dies while in military service, the spouse of a lease may terminate within one year of the death.

For example, if the rent is due on the 5th of each month and notice is given on April 15th, the termination is effective on June 5th. Member must pay extra month rent because notice was not 30 days before the next rental payment was due.

### **AUTOMOBILE LEASES**

Leases entered into prior to military service, by a service member who has received permanent change of station orders or is being deployed for not less than 180 days, may be terminated with a written notice. The vehicle must be returned to the lessee within 15 days of the written notice.

### **DRIVERS LICENSES**

Military members can keep their drivers license from their home state or obtain a new license from the state in which they are residing. Nebraska offers dependents the same choice, but many states require dependents to obtain a new license from the host state. There is also the possibility of a three state situation: a member from Colorado stationed at Offutt and living in Iowa can keep his Colorado license or obtain an Iowa license, but cannot get a Nebraska license. Military members can renew their home state license by writing the agency in charge of drivers licenses in their home state. Some states allow dependents the same option.

### **AUTOMOBILE REGISTRATION**

Military members can register their automobiles in their home state or in the state in which they are now residing. This is true even if both the military member and the spouse jointly own the automobile. If you chose to register your vehicle in Nebraska, make sure you register as a military non-resident to avoid paying Nebraska personal property taxes on the vehicle. Once again, this provision does not apply to leased vehicles. If you lease a vehicle and live in Nebraska, you must register the vehicle in Nebraska and pay Nebraska personal property taxes.

### **STATUTE OF LIMITATIONS**

The period of a person's military service is excluded in computing any period of limitations within which actions or proceeding must be brought. This benefits the member if he is bringing the lawsuit, but works against him if he is a defendant.

### **WAIVER**

Any of the rights and protections under SCRA may be waived. For contracts, leases, and mortgages, all modifications, terminations and cancellation require a written waiver of rights.

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