

SERVICEMEMBERS CIVIL RELIEF ACT BRIEFING

PURPOSE

“Protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”

“The Act should be read with an eye friendly to those who dropped their affairs to answer their country's call.”

APPLIES TO

Persons in military service
Active Duty
Guard in federal active duty (Title 10)
Persons secondarily liable (spouses)

WHAT IT DOES:

Protects against default judgements
Stays court proceedings in certain instances
NEW STAY PROVISION OF §521
If defendant **is in military**, court SHALL stay proceedings
Minimum 90 days on application of counsel or court's own motion
Court must determine that there may be a defense that cannot be presented without presence of defendant; or after due diligence counsel has been unable to contact defendant or otherwise determine if a meritorious defense exists
Provides financial relief in certain situations
Extends the Statute of Limitations

SCRA AND CHILD CUSTODY PROCEEDINGS --NEW 2008 AMENDMENTS TO SCRA

Cannot obtain default proceeding in child custody proceedings (50 U.S.C. App. 521(a))

Stay of Proceedings are now applicable to custody (50 U.S.C. App. 522(a))

SPECIFIC RELIEF PROVIDED IN SCRA

CONTRACT FINES & PENALTIES -- §523

NO penalties under a contract in certain situations

STAY OR VACATION OF JUDGMENTS -- §524

Service materially affects compliance with judgment or order:
Court SHALL on application of Servicemember
Stay execution; *and*
Vacate or stay attachment or garnishment
Court may also act on its own motion

STATUTE OF LIMITATIONS §526

Does not apply to IRS

Material affect NOT required

MAXIMUM RATE OF INTEREST §527

PRE-SERVICE loans incurred by SM, or SM and spouse jointly
NOT guaranteed student loans (20 USC §1078(d))

Cap of 6% per annum; all excess **FORGIVEN**

Have to recompute payments at 6% rate

Cap rescinded if creditor shows no material affect

SM must give written notice w/copy of orders

HOW TO ENFORCE 6% CAP?

Notify Lender - See Section 527(b)(1)

What if Creditor Ignores Your Notice?

Send Notice and just pay loan at the 6% interest rate amount amortization

EVICCTIONS §531

Residential rent does not exceed \$2,720/mo

Must show material affect

Court SHALL stay for minimum 90 days, or

INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE --§532

In event of breach of pre-service contract, no termination or repossession of property **by creditor** without court order

MORTGAGE FORECLOSURES 533

PRE-SERVICE OBLIGATIONS secured by a mortgage

Material affect required

Protects from foreclosure during service + 90 days

RIGHT TO TERMINATE LEASES §535 – HOME, BUSINESS, AUTO

May apply regardless of whether lease is pre-service or not

Takes into consideration the realities of long-term deployments on both active duty and Guard/Reserve members

Adds ability to cancel vehicle leases in certain situations

TERMINATION OF PREMISES LEASES

Pre-service leases of premises; or

Premises leases signed by SM (or on SM's behalf) after entering military service when SM receives PCS orders or deployment orders for not less than 90 days

Qualifying lease is terminated by delivery of written notice with copy of orders to lessor or lessor's agent (hand delivery, mail, FedEx)

TERMINATION OF VEHICLE LEASES

Pre-service vehicle leases

Deployment for >180 days overseas

Written notification with orders

Vehicle must be surrendered within 15 days of termination notice

No material affect required

INCOME TAXES §570

Must be able to show material affect

Payment of Federal, State or Local tax deferred for period of service plus
180 days

No interest or penalty

Statute of limitations suspended for period of service plus 270 days

ANTICIPATORY RELIEF §591

Anticipatory relief available for a number of **Pre-service**
obligations

Court can stay enforcement of obligation during military service plus
period needed to repay deferred amount (“subject to other terms as may be
equitable”)

Must show material affect

Must apply (file suit) during service or within 180 days after

OTHER PROTECTIONS

Malpractice insurance protections -- §593

Private Health insurance reinstated -- §594

State of domicile for voting -- §595

May not use personal assets to satisfy trade or business obligations even though
SM personally liable -- §596 (result of Cathey case)

SUMMARY

SCRA provides protections for citizens called to military duty and their
dependents

Provides for suspension of certain civil liabilities during the period of service