

**TAKE-1**

# **SERVICEMEMBERS CIVIL RELIEF ACT**

**XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE**



## **THE SERVICEMEMBERS CIVIL RELIEF ACT**

### **INTRODUCTION**

Congress passed the Servicemembers Civil Relief Act (SCRA) in 2003 to protect those entering or on active duty in the U.S. armed forces when their legal rights or financial obligations are involved. Reservists and members of the National Guard are also protected under the SCRA. The starting date for SCRA protections is generally the date you enter active duty service, although some rights are triggered by deployment or PCS (permanent change of station) orders. The protections generally terminate within 30 days to six months after release from active duty. The SCRA is not intended to cancel or discharge lawful obligations. It does, however, allow the reduction of interest rates for some debts, the extension of time limits for repayment, the suspension of garnishment, delays for court and administrative proceedings, and other protections which are needed by the servicemember (SM).

### **QUESTIONS AND ANSWERS**

#### **1. Q. I'M ABOUT TO GO ON ACTIVE DUTY. CAN I GET OUT OF A RENTAL AGREEMENT?**

A. Yes. You can get out of a lease or rental agreement covering property used for dwelling, professional, business, agricultural or similar purposes if:

>You signed the lease before you went on active duty; and

>You or your family members occupied the leased premises for one of these purposes.

#### **2. Q. HOW DO I GO ABOUT TERMINATING THE LEASE?**

A. To terminate the lease, you must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not enough. The effective date of termination is determined as follows:

>For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination. However, if notice had been given on 30 July, the next rent payment would be due 1 August and the effective date of termination would be 1 September.

>For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example, if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

#### **3. Q. CAN I GET A REFUND OF SECURITY DEPOSIT OR PREPAID RENT?**

A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded upon termination of the lease. You must to pay rent only for those months before the lease is terminated. If you damaged the rented premises, however, the landlord may withhold an appropriate amount of the deposit for repairs.

#### **4. Q. CAN I STOP AN EVICTION ACTION BY MY LANDLORD?**

A. If the rent is no more than \$2,465 per month for the year 2004, your landlord cannot evict you while you are on active duty unless he or she first obtains a court order. If your landlord attempts to obtain such an order, you may ask the court to delay the eviction for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by either your military service or your spouse's military service. The SCRA also provides a formula to calculate the rent ceiling for future years, using the cost of living to increase this number.

#### **5. Q. DOES THE SCRA ALSO COVER DEPLOYMENTS AND VEHICLE LEASES?**

A. Yes. A new provision extends coverage to premises leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. It also adds a new provision allowing the termination of automobile leases (for business or personal use) by SMs and their dependents. Pre-service automobile leases may be canceled if the SM receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the SM is on active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

#### **6. Q. DOES THE ACT APPLY TO TIME PAYMENTS OR INSTALLMENT CONTRACTS?**

A. If you signed an installment contract to purchase or to lease with intent to purchase real or personal property before active duty, you will be protected if your ability to make the payments is "materially affected" because of active duty service. Remember--

>You must have paid, before entry into active duty, a deposit or installment payment under the contract.

>If you are unable to make payments because of his or her military duty, the Act applies.

>The vendor (seller) is then prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.

>The court may determine whether your financial condition is "materially affected" by comparing your financial condition before entry on active duty with your financial condition while on active duty.

**7. Q. WHAT ABOUT MY CREDIT CARDS - CAN I STOP PAYING ON THEM?**

A. No - you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

**8. Q. WHAT ABOUT THE INTEREST RATES ON MY DEBTS AND MORTGAGE PAYMENTS - DO THEY GO DOWN WHEN I ENTER MILITARY SERVICE ?**

A. Yes - when an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The terms "interest" includes service charges.

**9. Q. ARE THERE PROTECTIONS AGAINST MORTGAGE FORECLOSURES?**

A. The Act protects you against foreclosures of mortgages, deeds of trust, and similar security devices, if these conditions are met:

>The debt involves a mortgage, deed of trust or similar security on either real or personal property;

>The obligation originated before you went on active duty;

>You (or your family member) owned the property before your entry on active duty status;

>You (or the family member) still own the property at the time relief is sought;

>Your ability to meet the financial obligation is "materially affected" by your active duty obligation.

**10. Q. CAN JUDICIAL PROCEEDINGS BE DELAYED?**

A. If you are involved in civil (not criminal) proceedings in court, as either a plaintiff or defendant, you may be entitled to a stay of these proceedings. You may obtain a stay of at least 90 days when your request includes a letter or other communication that states the manner in which your current military duty requirements materially affect your ability to appear and gives a date when you will be available to appear. This must be accompanied by a letter or other communication from your commanding officer stating that your current military duty prevents your appearance before the court and that you are not allowed military leave.

**11. Q. WHAT ABOUT A STAY AFTER THE INITIAL 90 DAYS? MY ORDERS TO KOSOVO ARE FOR 12-18 MONTHS!**

A. If the court finds that your ability to prosecute or defend an action is "materially affected" by reason of your active duty service for a longer period of time, additional extensions may be granted. Courts are reluctant to grant long-term stays of proceedings and tend to require service-

members to act in good faith and be diligent in their efforts to appear in court. To prove that your ability to prosecute or defend a civil suit is "materially affected," you need to show the court that your military duties prevent you from appearing in court (or in any part of the legal proceedings, such as a deposition) to present or defend your case. You'll probably need to sign and file an affidavit setting out all the facts and circumstances to help make your case for a stay of proceedings.

## **12. Q. IF SOMEONE SUES ME, CAN A DEFAULT JUDGMENT BE ENTERED AGAINST ME IN MY ABSENCE?**

A. When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the your response. When no response is filed on time, a default is may be entered against you. Here are the main points to remember:

>Before any default may be taken, the SCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service.

>When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent, in a very limited capacity, the SM-defendant. The court-appointed attorney will only represent the SM's rights under the SCRA interests by determining if a request for a stay of proceedings should be made to allow the servicemember an opportunity to appear and defend.

> When the SM lacks notice of the proceedings, the SCRA requires a court or administrative agency to grant a stay (or continuance) of at least 90 days when the defendant is in military service and --

a. the court or agency decides that there may be a defense to the action, and such defense cannot be presented in the defendant's absence, or

b. with the exercise of due diligence, counsel for the SM has been unable to contact him or her (or otherwise determine if a meritorious defense exists).

>It's up to you to hire an attorney to represent you for your case.

>If a false affidavit is filed, that can subject the filer to misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of \$1,000, or both. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as your civilian attorney.

>If a default is entered against you during military service or within 30 days afterwards, you can apply to the court to set it aside if you can show you were prejudiced by not being able to appear in person, you have a legal defense to the claim, you've filed for reopening within 90 days after ending military service, and you've made no prior appearance in court, either representing yourself or through an attorney.

**13. Q. I'M IN A DISPUTE WITH MY LOCAL HOUSING BOARD AND MY DEPLOYMENT ORDERS JUST ARRIVED. DOES THE SERVICEMEMBERS CIVIL RELIEF ACT ALSO APPLY TO ADMINISTRATIVE AGENCIES?**

A. Yes. The 2003 changes to the Act included expanding the protections regarding a stay of proceedings and default. These protections now cover, in addition to civil courts, all administrative agencies of the United States, of a state or within a state. Does this mean the Pottstown, Nevada Safety Commission? The North Carolina Department of Economic and Community Development? The federal Environmental Protection Agency? The answer is YES to all the above!

**14. Q. WHAT IF I CANNOT PAY MY INCOME TAXES BECAUSE OF A CALL TO ACTIVE DUTY?**

A. Quite possibly your ability to pay the federal or state income tax may be "materially affected" (or seriously impaired) because active duty service. If you can show that this is the case, the SCRA defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

**15. Q. WHAT IF I CAN'T PAY MY LIFE INSURANCE PREMIUMS?**

A. If you can no longer pay your premiums on commercial life insurance purchase prior to entry into the service, the government may guarantee the payment of the premiums, or require that the insurance carrier treat the unpaid premium as a loan against the policy. Upon leaving active duty, you would have up to two years to pay the premiums.

**16. Q. DOES THE SCRA ALSO PROTECT ME FROM DOUBLE TAXATION ON MY MILITARY INCOME?**

A. Yes. Your military income is taxable only by your state of legal residence, or "domicile." And the SSCRA provides that you neither gain nor lose your domicile based on your presence in a given state pursuant to military orders. Thus if you are a legal resident of North Carolina - voting there, paying N.C. income taxes, living there, possessing a North Carolina driver's license - you are entitled to retain your N.C. residency even though you might be stationed at Naval Submarine Base, Pearl Harbor, or Camp Pendleton, California. The latter states cannot impose state income taxes upon your military pay so long as you've retained North Carolina as your state of residence. Merely being stationed in another state does not make that state your domicile.

**17. Q. ARE THERE OTHER TAX PROTECTIONS?**

A. The SCRA prevents states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the service member's military income for the limited purpose of determining the nonmilitary spouse's tax bracket. This practice has had the effect of increasing the military family's tax burden.

**18. Q. DOES THE ACT COVER VOTING RIGHTS ALSO?**

A. The SCRA states that you are allowed to keep your original legal residence, or domicile, for voting purposes (as well as for income tax purposes), just as if you were living there. It doesn't matter if you're currently residing at Travis AFB, California or Camp Lejeune , North Carolina - you can still vote through the board of elections back in Possum Hollow, Arkansas .

**19. Q. WHAT IF I CANNOT AFFORD TO MAKE PAYMENTS ON MY LOANS BECAUSE I WAS CALLED TO ACTIVE DUTY?**

A. If you file a petition with the court, it may "stay" or suspend payments on obligations incurred prior to active duty. To obtain relief, you must make application to the court during the period of military service, or within six months after release from active duty, and must establish that your ability to pay the loan is "materially affected" by reason of your active duty service.

**20. Q. ARE THERE ANY OTHER PROVISIONS OF THE SCRA?**

A. Yes. Here are some examples:

>Adverse financial information against members who have invoked SCRA protections cannot be reported against them or used to deny them credit in future financial arrangements.

>The statute covers professional liability insurance for certain persons ordered to active duty, such as doctors, dentists and other professionals; it allows for suspensions of policies while on active duty, refund of premiums attributable to active duty time and guarantee of reinstatement of insurance upon termination of active duty service.

>Provisions are made for reinstatement of health insurance coverage upon release from service.

**21. Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?**

A. Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your rights and your options. Our legal assistance office stands ready, willing and able to help you in these matters.