

Servicemembers Civil Relief Act (SCRA)

The Servicemembers Civil Relief Act (SCRA) of 2003, and amended in 2004, completely rewrote and replaced the Soldier's and Sailor's Civil Relief Act (SSCRA) of 1940. Both acts offer protection to active duty service members and are intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty. The SCRA strengthens those protections, extends certain protections for dependents, and creates new protections.

Who Does it Apply to?

The SCRA applies to all military members on federal active duty. This includes regular forces, reserve and guard in title 10 active duty, and the Coast Guard while in support of the Armed Forces. In limited circumstances the SCRA may also apply to dependents of the military member. It applies to all 50 states and all territories subject to U.S. jurisdiction.

When does it apply?

SCRA protections generally begin the first day of active duty and may extend from 30 days up to 180 days after being released from active duty.

Invoking the SCRA protections:

Many SCRA protections are not automatic and require the member to request the protection in a timely manner. For certain SCRA protections (i.e., interest rates), the member also may have to show that the active military service materially affects the member's ability to pay.

SIGNIFICANT SCRA PROTECTIONS

Court and Administrative Proceedings:

The SCRA provides for an automatic stay of at least 90 days upon a proper request from the member in civil administrative and civil matters. The member who is unable to appear in court on the date required because of active military service must request this SCRA protection in writing and include certain information with the request. After receiving the written request, the judge, magistrate or hearing officer must grant a minimum 90- day delay. Unlike the SSCRA, under the SCRA, this delay is mandatory, and the member's letter requesting postponement is not an appearance or waiver of any defense by the



member. Any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate or hearing officer. This protection does not apply to criminal court or criminal administrative proceedings. Consult with a legal assistance attorney for the strict statutory requirements before requesting a stay.

Default Judgments:

A member may request that the court re-open a matter and set-aside a default judgment if the judgment was entered against the member during the member's active duty period, or within 60 days after the member's release from active duty. The member must make a timely request for such relief (i.e., within 90 days from release from active duty), show the active service materially affected the member's ability to defend against the action, and show that he or she has a good defense. Consult with a legal assistance attorney to obtain information on possible relief available to you.

Credit Agency Information:

A credit agency may not identify a member's status as guard or reserve because such identification may cause a lender to deny or revoke credit, change credit terms, or view the credit report negatively against the member.

Reduced Interest:

A member may reduce the higher interest rates the member pays for any financial obligation (credit card, loan, mortgage) individually or jointly entered into before active service to six percent (6%) if active service materially affects the member's ability to repay the financial obligation. In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and forgives (vs. defers) the excess interest payments that would have been due under the higher interest rate so that the member is not liable for the excess after he or she is released from active service. This reduced interest rate is effective only during the period of active military duty. Finally, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service, or to federal guaranteed student loans.

Termination of Automobile Leases:

The SCRA creates a new protection to allow a member to terminate an automobile lease that the member signed either before or during active duty if the member meets certain conditions.

Generally, a reserve or guard member must, after entering the lease, be called to active duty service for at least 180 days or more. An active duty member must, after entering the lease, **EITHER** (a) receive military orders for a permanent change of station either i) from the



continental United States (CONUS) to outside CONUS or (ii) from a state outside CONUS to any location outside that state OR (b) deploy for 180 days or more.

Termination of Real Estate Leases:

A member may terminate, without penalty, leases and rental agreements entered into before or during active military service for real estate properties (i.e., residences, businesses) if the member meets certain conditions. Previously, the SSCRA did not permit such terminations if the lease or rental agreement was entered into during active service. Generally, the member must be called to active duty service for at least 90 days, or receive military orders for a permanent

change of station or orders to deploy for at least 90 days. Such terminations also terminate any obligation of the member's dependents under the lease.

Evictions:

The SCRA makes it a requirement for landlords in all states to obtain a court order to evict a military member (or the member's dependents) during the period of the member's active duty service. If the member (or the member's dependents) meet certain qualifications, the member or the member's dependent may request a stay of an eviction action. The court will grant relief it deems appropriate. The SCRA creates criminal offenses for landlords who violate this SCRA protection.

Foreclosures and Repossessions:

If because of active military service, a member breaches the terms of a purchase contract for real property or an automobile, the property may not be foreclosed or repossessed without a court order. The member, under certain circumstances, may request a stay of the proceedings.

Insurance:

The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist. The SCRA also provides protection against termination of policy or forfeiture of premiums to members who have individual life insurance policies. For SCRA protection for life insurance policies, the member must submit a written request to the Department of Veteran Affairs.

Domicile (Legal Residence):

A member does not lose the domicile (legal residence) in a state when absence from that state is due to military orders. Members, however, can change his or her domicile if the member meets the conditions for changing legal residence. Legal residence (domicile) should not be confused with residence. A person can have as many residences as he/she can afford, but can have only one legal residence (domicile).

Taxation:

A member does not acquire a new domicile or legal residence for purposes of income tax when the member's presence in the state is solely due to military orders. Furthermore, the SCRA prohibits states (where the member is located merely because of military orders) from including military income of a nonresident member to increase the tax liability imposed on nonmilitary income earned by the nonresident member or spouse subject to tax by the state. The military income is taxable only by the member's domicile state, if the domicile state has an income tax.

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