

# **Servicemember's Civil Relief Act**

The former Soldier's and Sailor's Civil Relief Act (SSCRA) has been revised as the Servicemember's Civil Relief Act (SCRA) of 2003. The Act seeks to protect the economic and legal interests of servicemembers and their families from adverse impact due to the performance of military service. These protections include limiting when a servicemember may be evicted for nonpayment of rent or have his or her mortgage foreclosed, reducing the amount of interest charged on certain consumer debt agreements and mortgages; providing for the "stay" of certain civil judicial and administrative proceedings that the servicemember is unable to attend, allowing for the termination of certain leases, and restoring some types of insurance coverage.

The SCRA protections apply to all active duty members, reservists, and members of the National Guard called to active duty. Generally these protections come into play where the financial/economic or judicial interests of the servicemembers are "materially effected" by receiving military orders calling them to active duty. The servicemember generally has the burden of proof to show that he or she is entitled to the protection of the applicable provision. Thus, affirmative action must be taken by servicemembers to avail themselves of the protections granted under this law.

## **a. Automatic Extension of Agency**

The effective time periods for certain Power of Attorney documents executed by a servicemember, while on active duty or prior to deployment, are extended under the SCRA if the documents would otherwise expire while the servicemember is in a missing status.

## **b. Default Judgments**

Before a court enters judgment for the plaintiff, the plaintiff is required to file an affidavit stating whether the defendant is a servicemember. If the status of the servicemember is unclear, the court may require the plaintiff to file a bond that may be used to indemnify a servicemember defendant against losses or damages resulting from entry of the court's judgment.

## **c. Eviction for Nonpayment of Rent.**

Servicemembers, whose ability to pay rent is materially effected by their military service, may not be evicted during the period of their military service from premises that serve primarily as the servicemember's residence unless ordered by the court. The court has equitable powers to adjust the obligations of the parties under the lease. Also, the court may stay the eviction action for 90 days. These protections apply to premises where the rent does not exceed \$2,465.00 per month during 2004. Similarly, for mortgages, the SCRA provides protection against foreclosure actions.

#### **d. Health Care Reinstatement**

The SCRA provides for reinstatement of health care coverage once the servicemember is released from military duty. [This protection does not apply to participation in insurance offered by employers pursuant to Title 38 of the United States Code]. Upon reinstatement, coverage is restored free of exclusions or waiting periods where: a) the coverage was in effect on the day before military service commenced; b) exclusion or waiting periods would not have normally been imposed; and c) the condition in question has not been designated (by the Secretary of Veteran Affairs) as a disability incurred or aggravated in the line of duty.

Again, like many of the other protections under the SCRA, the servicemember must take affirmative action. Application for reinstatement of health care must be made within 120 days of leaving active duty.

#### **e. Interest Reduction**

If a servicemember is called to active duty and experiences a reduction in pay such that his ability to meet his pre-active duty obligations decreases, he may be entitled to have the interest rate on these bills reduced to 6%. The remaining interest amount is written off and forgiven, not simply deferred and considered still owed by the servicemember. The benefit usually covers larger ticket items, purchased pursuant to a lending agreement, such as home appliances or cars. The interest rate reduction also applies to mortgages.

#### **f. Life Insurance**

The SCRA protects servicemembers from reductions of coverage amounts or increases of premiums for certain commercial life insurance policies that were in effect at least 180 days prior to the servicemember's entry into military service. The servicemember must make a request for this protection to the Secretary of Veteran's Affairs. If approved, the insurance policy will not be allowed to lapse for non-payment of premiums during the insured's military service. This protection is available for a period of up to two years after the release from active service.

#### **g. Stay of Court and Administrative Proceedings**

The SCRA provides for a mandatory minimum delay of 90 days, for judicial and administrative proceedings where the soldier is unable to attend because of military duties. To obtain this protection, the servicemember needs to make a written request that includes: the reason why current military duties prevent an appearance in court along with a supporting letter from a Commander that the servicemember can't take leave; and an alternate date when the the servicemember can appear.

The written request to the court does not constitute an appearance for jurisdictional purposes. Thus, servicemembers do not forfeit any meritorious claim that the Court may lack proper jurisdiction in the particular case.

#### **h. Taxation**

Provisions under the SCRA limit the ability of a municipality to sell real property to enforce payment of taxes assessed. If the property is sold or forfeited for non-payment of taxes during the period of military service, the servicemember has the right to redeem the property if an action to redeem is initiated within 180 days from the end of military service.

Regarding payment of income tax, a service member is entitled to delay the payment of taxes due before, or coming due during, his period of service. The deferment period is for up to 180 days following the end of service provided the ability to pay those taxes is materially affected by military service.

#### **i. Termination of Leases**

Servicemembers, who have entered into lease agreements and subsequently deploy for 90 days or more or have a permanent change of station (PCS) move, may terminate their leases. Automobile leases may be terminated if entered into prior to being called to active duty and the servicemember is then ordered to active duty for 180 days or more. These leases include automobile leases for personal or business reasons.

For servicemembers already on active duty, if a lease is entered into during their service such agreements may be cancelled if the member PCSs outside the continental United States or deploys for 180 days or more. Servicemembers must provide written notice of termination to the Lessor.