

## **SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

[In December 2003, Congress enacted the Servicemembers Civil Relief Act, which supersedes the Soldiers and Sailors Civil Relief Act (SSCRA) of 1940. It introduced significant changes and updates to the SSCRA, which had become outdated, and incorporates changes necessary so that the Act will benefit the modern servicemember.]

### **I. TITLE I – GENERAL PROVISIONS**

#### **A. Purpose**

*50 U.S.C. Appx. § 502*

- To strengthen national defense by allowing servicemembers to devote their entire energy to the defense needs of the nation through the temporary suspension of judicial *and* administrative proceedings involving the servicemember during the period of military service.
- **Significant change:** This section adds administrative proceedings and does not limit civil matters to court proceedings only. Administrative law judges are now compelled to follow the SCRA.

#### **B. Servicemembers Protected**

*50 U.S.C. Appx. § 511*

- Military servicemembers in Air Force, Army, Navy, Marines, or Coast Guard in active duty, or absent from duty because of illness, wounds, leave, or other lawful cause.
- If a National Guard servicemember, must be in active duty for more than 30 days in response to a national emergency supported by federal funds
- Commissioned officers of the National Oceanic and Atmospheric Administration
- Commissioned officers of the Public Health Service
- Any U.S. citizen serving with forces of an ally of the U.S.; however, protection of the Act terminates when the citizen is discharged or released from service.  
*50 U.S.C. Appx. § 514.*
- In sections where servicemember's dependent is protected, dependent is defined as:
  - 1) The servicemember's spouse
  - 2) The servicemember's child as defined in *38 U.S.C. § 101(4)*.
  - 3) Any individual for whom the servicemember provided more than half his support for 180 days preceding any application for relief under the Act.
- **Significant change/ addition:** This section of the Act defines the servicemember's dependent, which was not in the SSCRA. Also, in section 511(5), the definition of "court" is expressly expanded to include a court or administrative agency. The SSCRA did not include administrative agencies, so this is an additional protection afforded to the servicemember.

**C. Notice to Servicemembers**

*50 U.S.C. Appx. § 515*

- The Secretary concerned is responsible for ensuring that servicemembers are notified of their SCRA rights.

**D. Waivers of Rights and Protections**

*50 U.S.C. Appx. § 517*

- Servicemembers may waive any rights and protections given by the Act. Certain waivers are required to be made in writing and are effective **only** if executed **during or after** the servicemember's military service. Also, the waiver must be in a writing **separate** from the instrument creating the obligation, and must **specify** the legal instrument to which the waiver applies.

**E. Protection from Reprisal for Exercise of Rights**

*50 U.S.C. Appx. § 518*

- A lender, creditor, or insurer may not adversely affect the terms or conditions of their agreement with the servicemember upon the servicemember's exercising his/her rights under the Act. Specifically, the following acts are barred:
  - Determination by a lender that the servicemember is unable to pay
  - Denial or revocation of credit
  - Change in the terms or conditions of an existing credit agreement
  - Refusal to grant credit to the servicemember in substantially the terms requested.
  - Adverse credit report
  - Refusal by an insurer to insure the member or a change in the terms or conditions required for the issuance of insurance (Addition to Act from SSCRA)
  - Noting in the servicemember's credit report that the servicemember is a member of the National Guard or other reserve component (Addition to Act from SSCRA)

**Significant Changes/Additions:** Refusal to insure and notations of military reserve service in the member's credit record were not previously in the SSCRA. Also, § 519 adds a provision that allows the servicemember's legal representative to be either an attorney or an "individual possessing a power of attorney."

## **II. TITLE II – GENERAL RELIEF**

### **A. Protection from Default Judgments**

*50 U.S.C. Appx. § 521*

- If the servicemember does not make an appearance and does not receive notice of the court proceedings, the court **MUST** grant a stay *of at least 90 days*. Previously, granting a stay was at the court's discretion, but the new language makes a stay mandatory. Certain requirements must be met:
  - 1) The plaintiff must file a sworn affidavit in writing stating whether or not the defendant is engaged in military service, if known.
  - 2) If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant.
  - 3) If it cannot be determined whether the defendant is in the military, plaintiff may be required to post a bond in case a default judgment is set aside later.
  - 4) If defendant is in the military, at least 90 day stay is required if: Defense to the action requires the defendant's presence, or if counsel appointed to represent the servicemember is unable to contact the servicemember or to determine whether a meritorious defense exists.
- If a default judgment against a servicemember is later set aside, vacated or reversed, that court action does not impair any rights or title acquired by bona fide purchasers for value under the default judgment.
- If default judgment is entered during service or within 60 days after termination from service, it may be reopened and servicemember allowed to defend if: the servicemember was materially affected by reason of military service from defending the action, and the servicemember has a meritorious or legal defense to the action at issue. However, application must be filed within 90 days of termination of or release from military service.

### **B. Stay of Proceedings When Servicemember Has Notice**

*50 U.S. Appx. § 522*

- If servicemember receives notice of proceedings and is in military or within **90** days of termination of service, he may file an application for a stay of at least 90 days and up to 90 days after military service.
- Request for a stay *does not* constitute an appearance for jurisdictional purposes or a waiver of any substantive or procedural defense.
- If military duty continues to materially affect the servicemember's ability to appear, then the servicemember can apply for an additional stay.
- **Application for a stay must include:**

- A letter which shows that military duty materially affects the servicemember's ability to appear, the date that the servicemember can appear; and
- A letter from the servicemember's commanding officer stating that the servicemember's military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.
- Penalties or fines may not accrue during the period of the stay. *50 U.S.C. Appx. § 523.*
- These provisions regarding the application for a general stay do not apply to eviction disputes under Title III below ("Leases" – *50 U.S.C.Appx. § 531*).
- These provisions also apply to the execution of judgments, attachments, and garnishments. *50 U.S.C. Appx. § 524.*
- Statutes of limitations may not be tolled during military service, with the exception of internal revenue laws. *50 U.S.C. Appx. § 526.*

### **C. Interest Rate Limitation**

- Interest rates are capped at 6% per year on all obligations entered into before the servicemember enters military service. This cap is effective as of the date the servicemember is called to active duty.
- Interest in excess of 6% is expressly forgiven.
- Servicemember must provide written notice and copy of military orders to the creditor not later than 180 days from servicemember's termination or release from military service.
- Federally guaranteed student loans are not covered by this section, but the servicemember may apply for forbearance or deferment.
- Debts or obligations entered into after the member enters military service are NOT covered.

## **III. TITLE III – LEASES, MORTGAGES, INSTALLMENT CONTRACTS**

### **A. Leases**

*50 U.S.C. Appx. § 531*

- Servicemember or servicemember's dependent may not be evicted from premises that are used primarily as a residence and the rent does not exceed \$2400. The amount will increase yearly to reflect housing prices (for 2006, the amount is \$2,615.16). *71 F.R. 2530.*
- Servicemember may seek a stay or an adjustment in the lease obligation if shown that military service materially affects his ability to pay rent.

## **B. Installment Contracts**

*50 U.S.C. Appx. § 532*

- Applies only to personal property for which deposit was paid before entering military service.
- A contract for the purchase of real or personal property (including a lease or bailment for such property) may not be rescinded or terminated, or the property repossessed, without a court order.
- Mortgages are also protected, but only so long as they originate before the period of military service.
- When a mortgage is breached, property may not be sold, foreclosed, or seized unless done with court order or if done under a valid § 517 waiver.

## **C. Termination of Leases**

*50 U.S.C. Appx. § 535*

- Residential leases entered into before entry into military service may be terminated upon entering active duty, or receiving permanent change of station or deployment orders for 90 days or more.
- Motor vehicle leases may be terminated upon entering active duty, or receiving permanent change of station outside the continental United States or deployment orders for 180 days or more.
- Termination of Residential Leases - Termination is made by:
  - 1) Delivery by the lessee of written notice of such termination; AND
  - 2) A copy of the servicemember's military orders to the lessor.
- Termination of Motor Vehicle Leases - Termination is made by:
  - 1) Delivery by the lessee of written notice of such termination; AND
  - 2) A copy of the servicemember's military orders to the lessor; AND
  - 3) The vehicle must also be returned not later than 15 days following delivery of the written notice of termination.

## **IV. TITLE IV – LIFE INSURANCE**

*50 U.S.C. Appx. §§ 541-549*

- The servicemember can apply to have a pre-service policy protected under this title, and the Secretary of Veterans Affairs will determine whether protection will be granted
- United States guarantees payment of premiums on pre-service life insurance policies during military service, but only up to two years after termination of service.
- After a two year period following termination of military service, the servicemember is liable for all premiums and interest.
- Coverage maximum at \$250,000

- **Malpractice insurance:** Professionals who have such insurance may not have coverage suspended because of their military service. This includes both health professionals and legal professionals. *50 U.S.C. Appx. § 593.*

## **V. TITLE V – Taxes**

*50 U.S.C. Appx. §§ 561-571*

- States cannot include military income to determine state income tax rate on non-military income earned by servicemember's spouse.
- Military income may be taxed only by the servicemember's home state, which is preserved.
- Real property taxes, business property taxes, and intangible personal property may be taxed by the host state. Tangible personal property may not be taxed except if located within the servicemember's residence or used in trade or business.