

#### OFFICE OF THE JUDGE ADVOCATE GENERAL LEGAL ASSISTANCE POLICY DIVISION



#### THE SERVICEMEMBER'S CIVIL RELIEF ACT

The Servicemembers Civil Relief Act provides legal protections for active-duty Soldiers, individuals entering the military, individuals called to active duty (such as National Guard and Reservist Soldiers), and deployed service members. Some of the protections afforded service members under the SCRA are:

#### **Lease Terminations**

The SCRA allows service members to terminate residential and automobile leases in certain circumstances. To terminate a residential lease, you must have been ordered to PCS, (includes retirement and separation from service, check state law as well), mobilize, or deploy for at least 90 days. To terminate an automobile lease, you must have been ordered to PCS outside the continental United States or deploy for more than 180 days.

#### **Cell Phone Contracts**

To terminate a cell phone contract, you must be ordered to PCS or deploy to an area where your ability to receive cell phone service is *materially* impacted. This means that the phone carrier does not have adequate services available in the new location. To terminate a cell phone contract, you must provide the cell phone carrier a written notice of termination and a copy of your military orders.

#### **Six Percent Interest Cap**

Loans incurred prior to entry onto Active Duty that have an interest rate higher than 6%, are eligible to have the interest rate lowered to 6% under the SCRA. The SCRA also states that creditors must forgive any interest charged over 6% and refund the additional interest paid since entering on active duty. This 6% cap applies to your individual debt as well as any debt held jointly. To take advantage of this interest reduction, contact the creditor in writing and attach a copy of your orders.

#### **Stay of Legal Proceedings**

Under the SCRA, if you are a named party (plaintiff or defendant) to a non-criminal court case, you may request a stay (postponement) of the case. This section of the SCRA applies anytime that your military service materially affects your ability to appear at the pending court hearing. The law requires that the court grant at least a 90-day stay upon the request of a service member. Additional stays may be granted at the discretion of the judge or hearing official, but if the judge denies the additional stay, he must appoint counsel to represent you in your absence. To take advantage of this protection, you'll need to send two letters to the court explaining why you can't attend, one from you and one from your commander. You must also provide a copy of your military orders.

#### **Eviction**

The SCRA also prevents landlords from evicting service members or their family members from premises without a court order. To qualify for protection, the premises must be used primarily as a residence and where the monthly rent is less than \$4,089.62. This rent ceiling is subject to increase due to inflation.

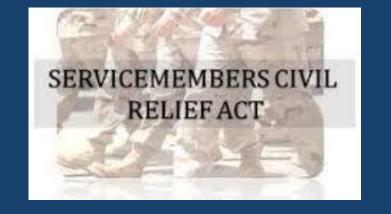
If you have questions, contact your local legal assistance office to speak with an attorney.

Updated Sep 24

# ARMY STANDARD TRAINING PACKAGE



**Updated 1 September 2024** 



# THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)





#### SCRA BRIEFING OUTLINE

- Background
- Who receives the protections?
- When do the protections begin and end?
- Protections and Benefits
  - Procedural Protections
  - Financial Protections
  - Leases, Evictions, Installment Contracts, & Mortgages
  - Residence for Tax Purposes and Voting Rights

# SCRA Background Information

• 1918: Soldier's & Sailor's Civil Relief Act (SSCRA) Enacted

• 1940-2003: Amended SSCRA

2003: Servicemembers Civil Relief Act (SCRA)

\* 2004, 2008, 2009, 2010, 2012, 2020, 2021, and 2023: SCRA Amendments

## SCRA Background Information

 In general, the SCRA provides various legal and financial protections to qualified service members during their military service

 The SCRA enables Service members to devote their entire energies to the Nation's defense

#### SCOPE OF THE SCRA

- Stay of Proceedings
- Default Judgments
- Suspension of Statutes of Limitations
- 6% interest cap
- Lease terminations
- Cell Phone contract termination
- Eviction Protection, Mortgage Foreclosure Protection, Installment Contracts Repossession Protection
- Taxation provisions
- Voting rights
- Portability of Professional Licenses

#### WHO RECEIVES THE PROTECTIONS?

- Reserve When on Active Duty in Title 10 status
- National Guard On active duty in Title 10 status OR when called to active service by SecDef or POTUS for national emergency purpose under 32 U.S.C. § 502(f) for more than 30 days.
- Active Duty SCRA applies to all active duty under Title 10, but some protections only apply to preservice obligations
- Family Members Sometimes

# NATIONAL GUARD SCRA APPLICABILITY

#### • Examples:

- Overseas deployments in Title 10 active duty status
- Title 32 (30 days or more + Nat. Emergency)
  - Airport Security after 9/11
  - Hurricane Katrina
- <u>Not</u> in response to a <u>state</u>-declared emergency.
   Must be Federally-declared emergency

#### WHEN DO PROTECTIONS BEGIN?

Entry on Active Duty

Reserve Components - Receipt of active-duty orders

#### WHEN DO PROTECTIONS END?

Normally, on date of release from Active Duty

#### Exceptions:

- Stay of civil proceeding: File application within 90 days after release from Active Duty (REFRAD)
- Default Judgments: File application to set aside the judgment no later than 90 days after REFRAD
- 6% max interest rate: For mortgages only, reduction continues one year after REFRAD
  - Court order required for foreclose (pre-service mortgage) & opportunity to request a foreclosure stay: Right continues 1 year after REFRAD

### **ENFORCING SCRA RIGHTS**

 Private right of action – may personally bring civil action for damages, equitable or declaratory relief

 Court <u>may</u> award attorneys fees to person harmed by SCRA violation

### **ENFORCING SCRA RIGHTS**

 The US Attorney General may sue a person engaging in a pattern or practice of violating the SCRA

 The US Attorney General also may sue a person who violates the act in a manner that raises an issue of significant public importance

# PROCEDURAL PROTECTIONS



# STAY OF PROCEEDINGS SERVICEMEMBER WITH NOTICE

- Who?
  - Servicemembers with notice of proceedings
- What Proceedings?
  - Civil Court & Administrative Hearings? Yes.
    - Including child custody proceedings
  - Criminal Proceedings? No!
- When?
  - Service member is <u>unavailable</u> and <u>material effect</u> on ability to appear

### "MATERIAL EFFECT" PROVISIONS

 "Material Effect" is a recurring concept throughout much of the SCRA

- The person's military service must materially affect the person's ability to meet the obligation
  - Stated otherwise, the person's military service must prejudice the person's ability to meet the obligation
- Material Effect is a CENTRAL issue to the SCRA stay provision analysis

#### STAY REQUESTS

- Extremely important to follow the steps required for a stay request!
- Stay request <u>must</u> be by letter or other communication and include:
  - 1. Facts establishing there is a <u>material effect</u> on ability to appear
  - 2. Date when service member can appear
  - 3. Letter (or other communication) from commander stating no leave authorized

#### **DEFAULT JUDGMENTS**

- Applies <u>only if</u> the Service member has not appeared
- Basic Rule: Before a judgment is entered against any person not appearing, the plaintiff must submit an affidavit stating:
  - Whether or not defendant is in military; or
  - That plaintiff cannot determine whether defendant is in military

#### REOPENING DEFAULT JUDGMENTS

#### Upon application by Service member, the court SHALL:

- Reopen any default judgment entered while the service member was on active duty or w/in 60 days of REFRAD
- This provision applies to child custody proceedings.

#### Service member's application must:

- Be made while applicant is still on active military duty or within 90 days thereafter
- Show material effect on ability to provide a defense
- Assert a <u>meritorious defense</u> to all or part of the action

#### STATUTES OF LIMITATION

- SCRA tolls (stops) the running of civil statutes of limitations
- Civil and administrative proceedings
- Applies whether the Service member is plaintiff or defendant
- Except for internal revenue laws!
- Does not apply to criminal proceedings

# FINANCIAL PROTECTIONS



#### 6% INTEREST CAP

#### Basic Rule:

- Limits interest to 6% on **pre-service** obligations (includes student loans but be mindful of pre-service obligation if refinancing)
- Pre-service means pre-active duty
- Lender <u>must</u> forgive interest above 6% back dated to the date the SCRA first applied to the service member
- Lender <u>cannot</u> accelerate payment of principal

#### 6% INTEREST CAP REQUIREMENTS

- Service member must write a letter to creditor
- Must provide a copy of orders and any extensions
- Must give notice only
  - NO initial requirement for Service member to show "material effect"
  - Creditor must reduce rate after SM's notice
- Creditor may avoid reducing the interest rate only through COURT FINDING of no "material effect"

### 6% RULE FOR MORTGAGES

- Expansion of the 6% interest cap period for mortgages:
  - Interest rate on mortgages may be reduced to 6% during AD and for ONE YEAR after AD

#### 6% EXAMPLES

- Active Army Soldier financed his education with student loans at 9% prior to entering active duty
- National Guard SFC Jones took out \$50,000 in business loans at 8% in 2015; mobilizes to active duty at Ft. Riley in 2018
- Army Reserve Soldier purchased home at 7.5% in 2001; was mobilized for active duty to Afghanistan in 2017

#### NON-DISCRIMINATION PROTECTION

- Basic Rule: Claiming rights under SCRA cannot serve as basis for –
  - Adverse credit report
  - Denial/revocation of credit
  - Denial of insurance coverage
  - Change in terms of existing credit/insurance
  - Annotation identifying SM as member of Guard or Reserve

# LEASES, EVICTIONS, INSTALLMENT CONTRACTS & MORTGAGES



#### RESIDENTIAL LEASE TERMINATIONS

- Service member may terminate <u>residential</u>\* leases as follows:
  - All pre-service leases (leases executed prior to active duty service) upon the SM coming on to Active Duty or receipt of active-Duty orders
  - Leases executed while on active duty IF:
    - Soldier receives PCS orders;
    - Soldier will deploy for more than 90 days;
    - Solider receives retirement or separation orders;
    - Receives a stop movement order issued by SecDef for an indefinite period or a period of not less than 30 days; or
    - Families of SM who are killed or catastrophically injured
  - Requires written notice with orders
- \* This lease termination provision includes other types of leases, such as professional, business, agricultural and similar leases

# RESIDENTIAL LEASE TERMINATIONS JOINT LEASES

- Dependent's lease obligation terminates along with Service member's
- Landlords cannot hold dependents liable on a joint lease

#### RESIDENTIAL LEASE TERMINATIONS

- <u>Lease Terminations Special Circumstances:</u>
- Stop Movement Orders
  - If a lessee receives a stop movement order issued by the Secretary of Defense in response to a local, national, or global emergency, effective for an indefinite period or for a period of not less than 30 days, which prevents the Service member or Service member's dependents from occupying the lease, the lessee can terminate the lease. Termination is effective immediately.
- Death of a lessee Sec. 3955(a)(3).
  - If a lessee dies while in military service, the spouse of the lessee may terminate the lease within one year of the lessee's death.
- Catastrophic injuries and illnesses Sec. 3955(a)(4)
  - If a lessee incurs a catastrophic injury or illness during a period of military service, the spouse
    of the lessee may terminate the lease within one year of when the injury or illness was
    incurred.

#### **AUTOMOBILE LEASE TERMINATIONS**

- Service member may terminate an auto lease as follows:
  - Pre-service lease (lease signed before active-duty service)
    - Can terminate if entering AD for 180 days or more
  - Leases executed while on active duty IF:
    - PCS from CONUS to OCONUS
    - PCS from OCONUS location to any other OCONUS location
    - Deployment for 180 days or more
    - Solider receives retirement or separation orders; or
    - Families of SM who are killed or catastrophically injured
  - Requires written notice w/orders and return of the vehicle w/in 15 days of notice

#### CERTAIN CONSUMER CONTRACTS

#### Covered Contracts:

 Commercial mobile service; telephone exchange service; internet access service; multichannel video programing service; (NEW) a gym membership or fitness program; or (NEW) home security services.

#### Telephone:

- Termination authorized when SM receives orders to relocate for 90 days or more to a location not supported by the contract
- Service member must provide written or electronic notice to the carrier
- Service member may keep phone number if relocation for 3 years or less
- Family members relocating with the SM also may terminate service

#### **EVICTIONS**

 Basic Rule: Landlord can evict SM (or dependents) only with court order – no self help (landlord cannot do it on his own)

- For 2023, this section applies to rentals not exceeding \$9,106.46 per month
  - The amount increases <u>yearly</u> (calendar year) based on housing price inflation adjustment

Service member must show material effect to receive judicial stay

#### INSTALLMENT CONTRACTS

- Prohibits <u>self-help repossession</u> of items purchased on installment contract
- <u>Pre-service</u> (pre active-duty) obligations only
- Common examples: Appliances, furniture, motor vehicles
- Requires court order before
  - Termination for breach of contract
  - Repossession
- Must show <u>material effect</u> to receive judicial stay of repossession

#### **MORTGAGES**

- Prohibits foreclosure without a court order
- Applies to <u>pre-service</u> (pre active-duty) obligations secured by a mortgage
- Must show material effect
- Court may stay the proceedings or adjust the obligation as equity requires

# RESIDENCE FOR TAX PURPOSES AND VOTING RIGHTS



### Residence for Tax Purposes

#### General Rule:

A Service member or spouse shall neither lose or acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the Service member based on the presence in a state due to military orders

## Residence for Tax Purposes

- <u>Military Income</u>: Deemed earned in the state of domicile
- Personal Property: Deemed located in the state of domicile
- A SM's non-military income earned outside the state of domicile is not protected by the SCRA

### RESIDENCE FOR TAX PURPOSES

- (2023 Update). A Service member and the spouse may <u>elect</u> to use for purposes of taxation, regardless of the date of marriage, any of the following:
  - a) The residence or domicile of the Service member
  - b) The residence or domicile of the spouse; or
  - c) The permanent duty station of the Service member

### SERVICEMEMBER VOTING RIGHTS

- A Service member's home state (domicile) voter registration remains valid despite presence in another state due to military orders
- Be cautious about changing voter registration to the new (host) state

### SPOUSE VOTING RIGHTS

- As of November 2009, a spouse's home state (domicile) voter registration remains valid despite presence in another state due to service member's military orders IF:
  - Spouse is living with SM in the duty state, AND
  - Spouse has the same domicile as the SM, but (NEW) spouse may elect to have same domicile as SM.

# Ways to Help Establish or Maintain Domicile

- Purchase a home or land (burial plot very effective)
- Register to vote
- Register vehicles
- Physical presence
- Driver's license
- Membership in organizations
- Own bank accounts or investments

### Motor Vehicle Registration & Fees

- If Soldier registers with home state, host state cannot require vehicle registration
- Otherwise, Soldier must comply with host state
  - But host state cannot apply property tax to the vehicle ("ad valorem" tax)

### "WAIVER" OF SCRA PROTECTIONS

# Waiver of SCRA protections is allowed, but the waiver must be:

- In writing and at least in 12-point type
- Executed separate from the original obligation to which it applies
- Executed during or after the period of active duty

### OTHER SCRA PROTECTIONS

- Reinstatement of Private Health Insurance Upon Return to Civilian Life
- Suspension of Professional Liability Insurance During Active Duty
- Stays of Execution of Judgments or Attachments
- Portability of Professional Licenses of Service members and their Spouses (2023)

#### CONCLUSIONS

- The SCRA provides numerous protections and benefits to Service members in both the Active and Reserve Components
- SCRA protections may apply in both deployment and non-deployment situations
- Consult with a Legal Assistance Attorney for more detailed information regarding the numerous SCRA protections

# QUESTIONS?