

THE SERVICEMEMBER'S CIVIL RELIEF ACT

(current as of June 2010)

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

What the SCRA Does: The Servicemembers Civil Relief Act of 2003 (SCRA), 50 USC App §§501-596, signed into law on December 19, 2003 and amended December 10, 2004, completely rewrote and replaced the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940. The SCRA (and previously the SSCRA) protects those persons who serve on active duty for the nation's defense, from adverse consequences to their legal rights that may result because of such service, so that such persons may devote their full attention and all their energies to the nation's defense. The SCRA strengthens the protections originally granted by the SSCRA, extends certain protection for dependents of the member on active duty, and creates new protections for members. The SCRA provides protection for members in civil court and administrative actions. It also provides protections for issues involving taxation, house/apartment leases, car leases, interest rates and insurance.

Who Does it Apply to: The SCRA applies to all military members on federal active duty. This includes the regular forces, the reserve forces, and the guard forces in Title 10 active duty. The SCRA also applies to the Coast Guard and officers in the Public Health Service and National Oceanic and Atmospheric Administration in support of the Armed Forces. In limited circumstances (i.e., evictions, joint leases), the SCRA may apply to dependents of the military member. In November 2009, President Obama signed into law the Military Spouses Residency Relief Act (MSRRA) which amends the SCRA to provide additional protections to spouses of servicemembers relating to residency, taxes, and voting rights. The SCRA applies to all 50 states of the United States and to all territories (i.e., Puerto Rico, U.S. Virgin Islands, Guam and the Marianas Islands) subject to U.S. jurisdiction.

When Does it Apply: SCRA protections generally begin the first date of the active duty period, and may extend from 30 days up to 180 days after the member is 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.

Waiving SCRA Protections: A member may waive any SCRA right and protection. Waiver of certain SCRA rights or protections requires a written waiver that meets the applicable requirements of the SCRA (e.g.: waiver must be separate document, waiver text in 12 point type). Prior to waiving SCRA protections, it is advisable to consult with a legal assistance attorney.

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. You should know that this protection does not apply to criminal court or criminal administrative proceedings. You should consult with a legal assistance attorney for the strict statutory requirements before requesting a stay.

Default Judgments. A member may request the court to 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 military duty. The member must timely request 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. You should 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 for most obligations; however, for a mortgage obligation, the reduced interest rate continues for 1 year following release from military service. 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. Terminating the lease requires written notice to the lessor with a copy of military orders.

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. Terminating the lease requires written notice to the lessor with a copy of military orders.

Termination of Cell Phone Contracts: Cell phone installment contracts are also protected. These contracts may be cancelled or suspended if the servicemember is deployed overseas for 90 days or longer or if he makes a permanent change-of-station (PCS) move. The servicemember may cancel or suspend the cell phone contract without penalties or extra fees as long as the deployment or PCS materially affects the servicemember's ability to satisfy the contract or utilize the service.

Evictions. Some states require a court order for a landlord to evict and other states do not require such a court order. The SCRA makes it a requirement for all states that landlords obtain a court order to evict a military member or the member's dependents during the period of the member's active duty service. The monthly rental amount for the leased residence cannot exceed \$2,958.53 (as of 1 Jan 10) for the protections to apply. 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) & Taxation: The SCRA continues the protection the SSCRA granted for domicile and residence. A member can maintain the domicile or legal residence in the state the member resided before entering active duty. 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). Generally, the domicile is considered to be the state entered in the member's pay records. The domicile is the state where the member resided at some point in time and while residing there formed the intent to return to the state after his or her military service ends and remain there indefinitely.

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.

The Military Spouses Residency Relief Act (MSRRA) and Taxation: In November 2009, the MSRRA became law and amended the SCRA. This new law changes some basic rules of taxation that could affect servicemembers and their spouses. Under the new law, a military spouse who is present with a service member (SM) in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile (permanent home). However, the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. Some States, of course, don't have State income taxes.

The MSRRA does not allow a spouse to pick or chose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to "inherit" or assume the SM's domicile upon marriage without the necessary contacts with the State.

The law is complicated, and because its effect will depend on the interpretations of each State, SMs and their spouses are encouraged to seek free, confidential advice from a military legal assistance office.

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

This information can be found at:

<https://aflegalassistance.law.af.mil/las/las.html>