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# Servicemembers Civil Relief Act



America has had special laws protecting servicemembers dating back to the Civil War. Such laws have protected the legal rights of members of the armed services who cannot sue or defend a lawsuit while they are on active duty. Interpreting one such law in, Lemaistre v. Leffers, 33 U.S. 1 (1948), the United States Supreme Court has said that these laws are meant to benefit, “those who dropped their affairs to answer their country’s call.” It is in that spirit in 2003 that the United States Congress passed 50 U.S.C. App. 501, The Servicemembers Civil Relief Act (“SCRA”).

## Who is Covered by the Servicemembers Civil Relief Act?

1. Members of the Armed Services.
2. Members of the Armed Services Reserves who are on active duty.
3. Members of the National Guard if they are activated under a federal call to active duty. It also applies when Guardsmen are activated more than thirty days in response to a president’s declaration of a national emergency.
4. Many portions of the SCRA apply to the dependents of servicemembers.

## The SCRA Helps with Residential Leases

1. A servicemember and his or her dependents may not be evicted from a residence for which the monthly rent does not exceed \$2,400 during a period of military service except by court order. The amount of rent can be higher if adjusted for inflation. The figure in 2006 was \$2615.16.
2. A landlord also may not subject the servicemember’s residence to a distress during a period of military service.
3. A court may on its own motion, but must on a motion made by a servicemember, stay eviction or distress proceedings for a period of 90 days, or adjust the obligation under the lease to preserve the interests of all parties.
4. A servicemember may, at his or her option, terminate a residential lease any time after the lessee enters into military service. Leases that may be terminated include leases for premises occupied by the servicemember or a servicemember’s dependents and leases entered into by a servicemember for professional, business, or agricultural purposes.





## The SCRA Helps with Mortgages



1. Servicemembers can receive a stay of foreclosure proceedings during periods of active duty or within 90 days of return from active duty.
2. A court may adjust the amount of mortgage payments and the maturity dates of mortgages to preserve the interests of the servicemember and his or her dependents during a period of active duty.
3. These protections apply to an obligation on real or personal property that a servicemember is still paying for and that the servicemember acquired prior to going into military service.
4. To be granted this relief a court must find that a servicemember's ability to meet his or her financial obligation as to the property is materially affected by military service.

## The SCRA Helps with Automobile Leases and Credit Purchases

1. When a servicemember has been on active duty for 180 days, he or she may terminate an automobile lease agreement.
2. Servicemembers may also terminate automobile leases if they have received permanent change of station orders moving them outside the continental United States. Other scenarios involving permanent change of station orders can also trigger the protections of the SCRA as they affect automobile leases.
3. Interest bearing debt acquired before a servicemember goes into military service can have the interest rate capped at 6% on the servicemembers notice to creditors.
4. The intent of this part of the SCRA is to lower the debt payments for servicemembers while they are on active duty.
5. Interest in excess of 6% that would have been charged is completely forgiven. It cannot be collected after the period of military service, and it cannot be collected under any other name or theory.
6. In addition, a creditor may not accelerate the due date of payments in response to a request for the 6% interest cap.



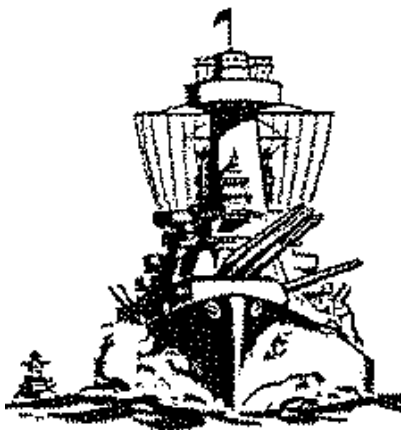
## **The SCRA Helps with Health Insurance**

1. Servicemembers are entitled to have their health insurance policies fully reinstated after they return from a period of active duty.
2. The reinstatement is to be immediate and without exclusions for conditions that arose before or during the period of military service as long as the condition would not have entailed an exclusion or waiting period had the servicemember remained covered and if the condition has not been determined by the Secretary of Veteran's Affairs to be a disability incurred or aggravated in the line of duty.
3. Servicemembers must apply for the reinstatement of their health insurance policy within 120 days after they are released from military service.

## **The SCRA Helps with Voting Rights**

1. For the purposes of voting in any federal, state, or local election, a person who is absent from a State in compliance with military orders shall not, merely by reason of that absence be deemed to have lost residence or domicile in that State. This is true without regard to the servicemember's intent to return or not return to that State.
2. Further a servicemember absent on orders will not be deemed to have gained residence or domicile in any State for voting purposes.
3. It is the purpose of this provision to allow active servicemembers to vote in their home state elections regardless of their absence from the jurisdiction due to military duty.

## **The SCRA Helps with Civil Lawsuits**



1. A servicemember's deadline to bring a lawsuit can be extended by not counting periods of active military service when computing a Statute of Limitations period.
2. A servicemember's deadline to redeem real property can be extended by not counting periods of active military service when computing the redemption deadline.
3. Servicemembers who have been sued but have made no appearance in the lawsuit (usually due to the servicemember not being properly served with



the lawsuit while deployed) have protections from the court though they are absent.

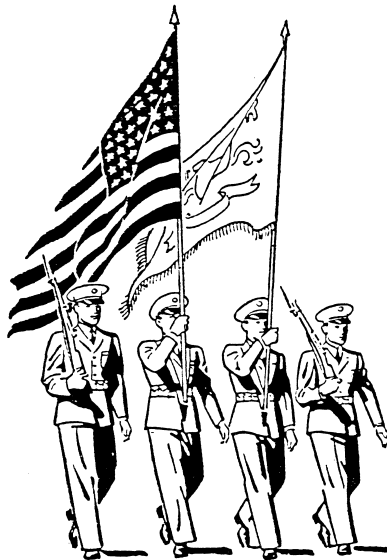
4. One such protection is the requirement on the opposing party to file an affidavit stating either that the person being sued is not on active military duty or that the party could not determine whether or not the person being sued is engaged in military service before a judgment can be granted. There are penalties for filing false affidavits in these matters.
5. Further, the court in a lawsuit against a servicemember who has made no appearance can order an attorney to be appointed to defend a litigant that is found to be in military service. A court or administrative body may not enter judgment (also known as default judgment) against a defendant on active duty until it has appointed an attorney to represent the servicemember.
6. An appointed attorney may request a 90 day stay of proceedings if there may be a defense to the civil action and the defense cannot be presented without the servicemember attending court or if counsel cannot contact the defendant.
7. For servicemembers who are in a period of military service or within 90 days of a period of military service, and have received notice of a lawsuit against them, a stay of proceedings is available.
8. A court can on its own motion grant a stay of proceedings of not less than 90 days when a servicemember has notice of a suit but is in a period of military service.
9. The court must grant a stay of not less than 90 days when a servicemember requests it. The request must: 1) communicate to the court that military service materially affects the defendant's ability to participate in the case, 2) provide the court with a date that the servicemember can appear in court, 3) and include a letter from a commanding officer indicating that the defendant's military duty prevents him or her from appearing in court and that a leave of absence will not be available.
10. A servicemember may request and receive additional stays if the court deems it appropriate and can even receive a stay from having to comply with an order or decree that may have been entered.
11. Judgments entered during a period of military service or within 60 days after military service can be set aside.
12. A servicemember must make an application with the court within 90 days of release from military in order to have such a judgment set aside.
13. The application must show that the servicemember was materially affected in his or her handling of the suit by military service. The application must also show that the servicemember has a meritorious defense to all or part of the lawsuit.

## The SCRA Helps with Taxes

1. Servicemembers, as a general proposition, are not to be taxed both by their state of residence and by the state they are stationed in. To that end, a servicemember will not acquire or lose residency for tax purposes by virtue of being at an active duty station.
2. Military pay is not income for purposes of taxation at an active duty station if the servicemember is not normally a resident of the state he or she is stationed in.
3. Servicemember's personal property is not subject to taxation at their active duty station if the personal property is not normally located in the state he or she is stationed in.
4. The spouse of a servicemember who has gone to a duty station with the servicemember can have his or her income and personal property taxed by the state they have moved to.
5. However, the servicemember's income cannot be added to the accompanying spouse's income when calculating the spouse's tax burden.
6. Servicemembers will have to pay sales and use taxes in the states of their service.
7. Only a servicemember's home state can collect Ad Valorem taxes from a servicemember.
8. Property taxes can be collected by the state in which the servicemember's real property is located whether that be the home state or the duty state.
9. Servicemembers will only have to pay license and registration for automobiles in one state. That can be either the duty state or the home state but not both.
10. Host states can require servicemembers to obtain local driver's licenses even at the servicemember's expense.
11. Payment of income taxes can be deferred up to 180 days after the termination of military service if, the servicemember's ability to pay was materially affected by military service and the servicemember has given notice to the IRS, state, or local taxing authority.
12. No interest or penalties will accrue on unpaid taxes during the period of deferral.
13. The Statute of Limitations for collecting taxes from a servicemember is tolled during the period of military service and through 270 days after service.
14. Servicemembers must still file tax returns even when benefiting from these provisions.
15. If taxes become due on a servicemember's personal property before or during the servicemember's entry into military service and said taxes remain unpaid, the personal property cannot be sold to pay the taxes without a court order. To issue such an order the court



- must find that the military service did not materially affect the servicemember's ability to pay the unpaid tax.
16. The court may also stay collections proceedings during the period of military service and up to 180 days after military service.
  17. If property is sold to collect taxes during a period of military service the servicemember has the period of service and 180 days after military service ends to initiate an action to get the property back.
  18. Interest that accrues on unpaid taxes or assessments is limited to 6%.
  19. If taxes come due on real property, that is used for a dwelling, professionally, for a business, or agriculturally, before or during the period of military service and the taxes remain unpaid, the property cannot be sold to pay the taxes without a court order. To issue such an order the court must find that the military service did not materially affect the servicemember's ability to pay the unpaid tax.
  20. The court may also stay collections proceedings involving real property during the period of military service and up to 180 days after military service.
  21. If real property is sold to collect taxes during a period of military service the servicemember has the period of service and 180 days after military service ends to initiate a redemption action to get the property back.



## Who You Can Contact



**Armed Forces Legal Assistance**  
<http://legalassistance.law.af.mil/>

**American Bar Association**  
<http://www.abanet.org/legalservices/lamp/>  
1.800.285.2221

**The Full Text of The SCRA**  
[http://www.uscg.mil/Legal/la/topics/sscra/sscra\\_guide.htm](http://www.uscg.mil/Legal/la/topics/sscra/sscra_guide.htm)

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