

## **Servicemembers Civil Relief Act**

50 U.S.C. App. §§501 -596

Public Law 108-189

The Servicemembers Civil Relief Act (SCRA) was enacted on December 19, 2003. It amends the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). The amendment was intended to expand the scope of protection offered for active duty service members and their families. Several states have also enacted statutes intended to help members of the National Guard who are activated for more than 30 days.

### **General Scope of the SCRA:**

#### A. Eligible service members (10 U.S.C. 101(a)(5):

- United States Army
- Navy
- Marine Corps
- Air Force
- Coast Guard (32 U.S.C. 502(f))
- National Guard
- Commissioned Officers of the Public Health Service
- Commissioned Officers of the national Oceanic and Atmospheric Administration

#### B. Dependent

- The Servicemember's spouse
- The Servicemember's child (38 U.S.C. 101(4))
- An individual for whom the Servicemember provided more than ½ of the individual's support for 180 days immediately preceding an application for relief under the SCRA.

#### C. Active Duty

- The date active duty orders are received.
- Ends upon discharge.

#### D. Obligation or Liability

- Incurred prior to the date that the servicemember entered the military.
- Incurred prior to the date a member of the reserves is called to active duty.
- The servicemember must be personally obligated.
- A waiver of rights and protection may only be exercised by a written instrument executed during the period of active duty. A written waiver must be used for any obligation secured by a mortgage, trust, deed, lien or other security in the nature of a mortgage. In addition, a written waiver is required for the repossession, retention, foreclosure, sale, forfeiture, or taking possession of a property that is security for any obligation; or was purchased or received under a contract, lease or bailment.

E. Exercise of Rights Under the Act Shall Not Affect Certain Future Financial Transactions.

If a servicemember applies for and receives a stay, postponement, or suspension in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability under the Act, it shall not by itself, without regard to other considerations, provide the basis for:

- A creditor's determination that the servicemember is unable to pay the civil obligation in accordance with its terms;
- A denial or revocation of credit by the creditor;
- A change in terms of an existing credit arrangement by the creditor;
- A refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the same terms requested;
- An adverse credit report relating to the creditworthiness of the servicemember;
- A refusal to insure the servicemember;
- An annotation on the servicemember's record by a creditor or person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component;
- A change in the terms offered or conditions required for the issuance of insurance.

F. Legal Representative

- An attorney acting on behalf of the servicemember.
- An individual possessing a power of attorney for the servicemember.

## General Relief

### A. Stay of Proceedings

- In which the servicemember is a defendant.
- For a minimum of 90 days if the court determines there may be a defense to the action and the defense cannot be presented without the presence of the defendant, and after due diligence, counsel has been unable to contact the defendant or otherwise determine a meritorious defense exists.
- If the defendant is, at the time of filing, on active duty, or within 90 days of termination of active duty, at any stage before final judgment, the court may on its own motion, and application of the servicemember, stay the action for not less than 90 days if:
  1. Documentation stating the manner in which current active duty requirements materially affect the servicemember's ability to appear, with a date when the servicemember may be able to appear;
  2. A letter from the servicemember's commanding officer stating the servicemember's current active duty prevents the appearance and military leave is not authorized at the time of the letter.

### B. Fines and Penalties under Contracts

- When an action for compliance with the terms of a contract is stayed pursuant to the Act, a penalty shall not accrue for failure to perform during the stay.
- If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred for non-performance, a court may reduce the penalty or fine if it finds the military service materially affected the servicemember's ability to perform under this contract.

### C. Stay or Vacation of Execution of Judgments, Attachments, and Garnishments.

- 90 days after the end of active military service.

### D. Statute of Limitations

The Statute of Limitations does not apply to computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax or assessment. It also does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

### E. Maximum Rate of Interest on Obligations Incurred Before Military Service.

- Interest at a rate in excess of 6% per year that would otherwise be incurred but for the prohibition of the Act, is forgiven. (Congress has been exploring a different method of calculation to assist servicemembers when the interest rates are already below 6%, making the Act ineffective in providing the intended relief.)

- The amount of any periodic payment due under an instrument shall be reduced by the amount of the interest that is forgiven, allocable to the period for which such payment is made.
- In order to utilize this protection under the Act, the servicemember must provide the creditor with written notice and a copy of the military orders, and any orders extending service, not later than 180 days after the date of the servicemember's termination or release from military service.
- Upon receipt of the written notice and copy of orders, the creditor shall treat the debt as subject to the Act as of the date on which the servicemember is/was called to military service.
- A court may grant relief to the creditor if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6% a year is not materially affected by reason of the servicemember's military service.
- The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance premiums) with respect to the obligation or liability.

### **Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases**

#### A. Eviction and Distress

- Triggering Rent \$2,400 a month, to be adjusted by the housing price inflation each year.

#### B. Installment Contracts

- For the purchase of real or personal property – including motor vehicles. If a servicemember entered into an installment contract prior to entering active duty service, a creditor may not rescind, terminate or repossess for breach of the contract, without a court order.

#### C. Mortgages and Deeds of Trust

- In an action to enforce an obligation that is filed during active duty, or within 90 days after the servicemember's period of active duty, if the court, after a hearing and on its own motion, determines that the servicemembers ability to comply with the obligation is materially affected by active duty, the court may stay the proceeding for a period of time that justice and equity require, or adjust the obligation to preserve the interests of all parties. The court has wide discretion.
- Language was removed from the Act requiring that property be "owned and still owned" by the servicemember.
- Sale or foreclosure is not valid unless conducted after 90 days from the date active duty ended, unless by a court order made pursuant to a written waiver by the servicemember under Section 107.

#### D. Settlement of Stayed Cases Relating to Personal Property

When a stay is granted, or a proceeding to foreclose a mortgage on real property, or to repossess personal property, or rescind or terminate a contract, the court may appoint three disinterested parties to appraise the property. Based on the independent appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

#### E. Administrative Remedies

If a court determines that any interest in property, or contract has been transferred or acquired with the intent to delay the just enforcement of a civil right by taking advantage of the Act, the court will enter such judgment or make such order as might lawfully be entered concerning such transfer of acquisition. (Section 601)

#### F. Extended Protection

- If a servicemember anticipates difficulty in paying obligations after release from active duty, the court has the power to extend the maturity dates of such obligations. The servicemember must apply for such assistance under a stay of enforcement. (Section 701)
- During the 180 days of termination of active duty, a servicemember may apply to a court for relief from any obligation or liability incurred before the servicemember's active duty began, and from a tax or assessment falling due during active duty.
- In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage, the court may grant a stay in the enforcement of the obligation:
  - during the servicemember's period of active duty;
  - from the date of termination of active duty; or
  - from the date application is made after termination of active duty.
- A period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of active duty, or a combination of the two, may be determined as the extent of the stay.
- Restrictions: Subject to the payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from active duty, or the date of application, in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation.

#### State Military Statutes

A number of states have extended protection to citizens called to active duty by the National Guard or other reserves called to active duty by the President, or for specific

actions. The state statutes mirror the Act but clarify the extent of benefits intended by the states to be made available for its citizens.

A. California Military and Veterans Code

- Residents who are members of the California National Guard and United States Military Reserve called to active duty as a part of the Iraq or Afghanistan conflicts (“Reservists”).
- While on active duty, a Reservist may defer payments on:
  - i. An obligation secured by a mortgage or deed of trust;
  - ii. A credit card;
  - iii. A retail installment contract;
  - iv. Up to two auto loans;
  - v. Property tax or special assessment imposed on real property used as a primary residence.
- In order to utilize the benefits to Division 4, Section 1, Chapter 3, the Reservist or designee must deliver to the creditor:
  - i. A signed letter, under penalty of perjury, requesting deferment of the financial obligation;
  - ii. Proof that the Reservist’s employer does not provide continuing income to the person on active duty that is not more than 90% of the monthly salary and wage income earned before the call to active duty, including military pay. The employer must provide this documentation within 5 days of receiving the request.
- Upon receipt of this information, the creditor must defer payments for the LESSER of:
  - i. 180 days; or
  - ii. the period of active duty plus 60 days.
- Additional considerations:
  - The deferred payments only apply to those incurred after the notice is provided to the creditor.
  - No interest may accrue during the deferral period.
  - The creditor “shall” extend the maturity date on a closed end obligation or an open-end obligation that contains a maturity date.
  - If the account is an open-end account, the creditor may restrict advances during the period of deferral.
  - The amount deferred may be accelerated if the property is sold, further encumbered, or the maturity date in the loan documents is reached or the extended maturity date (required under this section of the statute) is reached.
  - A Reservist may choose to make payments during the deferral period.
  - There cannot be any penalty for the deferral.

- There cannot be any negative credit reporting with respect to the deferral.

Additional Family Protection in California

Under California Civil Code § 409.13, and to the extent permitted under federal law and the California Constitution, any principal and interest on any financial obligation incurred by a member of the California National Guard, shall automatically be deferred for six months after the death of the member, without penalty, accrual of interest, or negative credit impact. This applies to financial obligations incurred by the member or surviving spouse prior to the entry into active duty. A written request must be submitted to the lender in order to obtain the protection under this section of the statute.

Additional States Affording Protection for Active Duty Citizens:

Florida

Iowa

Michigan

New Jersey

New York

Ohio

Pennsylvania

Utah

Wisconsin

Wyoming