



FORT SILL LEGAL ASSISTANCE
SERVICEMEMBERS CIVIL
RELIEF ACT



1. On December 19, 2003, President Bush signed the new Servicemembers Civil Relief Act (SCRA) into law, which replaced and expanded the previous Soldiers' and Sailors' Civil Relief Act ("SSCRA"). This law provides important new legal protections to Servicemembers and their Family members.

2. This fact sheet is only a summary of the new law and cannot replace a thorough legal review by a Legal Assistance attorney of an individual's specific case. Questions regarding the matters in this fact sheet should be discussed with a Legal Assistance Attorney or other legal counsel.

3. Basic SCRA facts:

a. **Who does the SCRA protect?** Members of the Navy, Marine Corps, Army, Air Force, and Coast Guard on active duty (including reservists), Public Health Service (PHS) and National Oceanic and Atmospheric Administration (NOAA) officers, and National Guard members called to Federal active service for more than 30 days. U.S. citizens serving in the prosecution of a war or military action with a U.S. ally are also protected. Several sections also extend protections to Servicemembers' recognized Family members which generally includes spouse, children, and those provided more than one-half of their support by the Servicemember.

b. **When does the SCRA apply?** SCRA applies to all judicial and administrative proceedings in any Federal or state or lower level court or agency, but not to criminal proceedings.

c. **Can SCRA rights be waived?** Generally, any waiver of SCRA protections regarding a lease, contract, debt, obligation, or liability must be in writing and executed in a later stand-alone document. Any waiver of such SCRA protections executed before entry onto military service may be automatically invalid once a Servicemember enters active duty. Servicemembers and their Family members should not sign any waiver of SCRA protections before consulting a Legal Assistance Attorney.

d. **Can someone be appointed to assert SCRA rights?** All rights under SCRA can also be pursued and acted upon by a Servicemember's "legal representative". The SCRA defines "legal representative" as an attorney acting on your behalf or an individual possessing power of attorney to act on your behalf. Any actions you may take under SCRA may also be taken by your legal representative.

e. **Am I protected from retaliation if I exercise my SCRA rights?** Maybe. SCRA prohibits lenders, creditors, and insurers from retaliating against Soldiers for exercising their SCRA rights. The law prohibits denying credit, changing terms of credit, amending credit records to include information about military status, denying insurance, and changing the terms or conditions of offered insurance solely on the basis of exercising SCRA rights.

f. **May I sue if my rights under the SCRA have been violated?** Yes. The SCRA was amended in 2010 to permit an individual whose rights under the SCRA have been violated to bring a civil lawsuit against the violator and recover money damages, equitable relief and costs and attorney fees.

4. SCRA protections:

a. **Lease Termination.** In both of the below cases, you may terminate your lease by delivering written notice of termination, plus a copy of your military orders, by hand or by return-receipt mail to the lessor. "Military orders" are defined as either official military orders OR any notification, certification, or

verification from the Servicemember's commanding officer regarding the Servicemember's current or future military duty status.

i. Termination of leases for residential, professional, business, agricultural, or similar purposes, intended to be occupied by you or your dependents: You may terminate your lease if you sign a lease and thereafter enter the military service, or execute a lease during military service and thereafter receive permanent change of station (PCS) or deployment orders for 90 days or more. "Military orders" are defined as either official military orders OR any notification, certification, or verification from the Servicemember's commanding officer regarding the Servicemember's current or future military duty status. In the event of your death while in military service or while performing full-time National Guard duty, active Guard and Reserve duty, or inactive-duty training, your spouse may terminate the lease within one year from your date of death. Termination of your lease will be effective 30 days after the date the next rent payment is due. Security deposits must still be returned to you pursuant to applicable state laws.

ii. Termination of motor vehicle leases: A motor vehicle lease for you or your dependents may be terminated (a) if it is a pre-service lease and you later are called to duty or receive orders for a period of not less than 180 days, or (b) if it is a lease executed during military service, and you later receive PCS orders outside the continental United States, or deployment orders, for a period of not less than 180 days. You must return the vehicle to the lessor no later than 15 days after your delivery of written notice of termination to the lessor. No early termination charge may be imposed, but certain fees and taxes may be charged including reasonable charges for excess wear, use and mileage.

b. Maximum 6% Interest Rate Cap on Debt. Creditors must reduce the interest rate on your debts that you incurred before active duty to six percent (6%) per year during your period of service. For mortgages, the protection remains for the period of active duty service plus one year thereafter. All interest in excess of 6% is forgiven. It may not be postponed or deferred by the creditor. This cap does not apply to new debts you incur while on active duty. A court may grant a creditor relief from the 6% interest cap if the court finds that your ability to pay the obligation is not materially affected by your military service. To receive this protection you must notify the creditor in writing and include a copy of your military orders. You must provide this notification to the creditor no later than 180 days after your release from service.

c. Delays or Stays in Legal Proceedings. If your military duty requirements "materially" affect your ability to appear at a judicial or administrative hearing, you are entitled to an automatic ninety-day stay, or delay, of the proceedings. You must, however, request a stay. Your request for a stay consists of a letter or other communication from you stating how your current military duties materially affect your ability to appear and stating a date when you can appear. Your request must be accompanied by a letter or other written communication from your commanding officer stating how your current military duties prevent appearance and that military leave is not authorized for you. If you meet the requirements for a stay, the judge must grant a stay of a minimum of 90-days. Unlike the SSCRA, the SCRA permits you to write directly to a court to request a stay, and in so doing, you do not make an appearance, nor do you waive any defenses. Note that since the SCRA includes administrative forums, you may request, and must be granted, a stay of administrative child support hearings. You should see a Legal Assistance attorney or other legal counsel immediately when you find out you must appear in court or before an administrative proceeding, but know that your military duties must prevent you from appearing. If you request an extension of the automatic 90-day initial stay and the court denies an extension of the stay, the court must then appoint an attorney to defend your interests in court or in the proceeding.

d. Preventing and Reopening Default Judgments. A plaintiff is required to file an affidavit in civil lawsuits before obtaining a default judgment. The affidavit must state whether the defaulting party is a member of the armed services and a default judgment cannot be entered until an attorney has been appointed to represent the absent Servicemember. If a default judgment is entered in a proceeding during your military service, or within 60 days after you exit the military service, you may attempt to reopen the

judgment. To do so, your military service must have "materially" disadvantaged your ability to appear in the lawsuit, you must have a meritorious defense in the case, and you must file to reopen the judgment within 90 days after leaving military service. Of course, if you get actual notice of the lawsuit, you can request a stay from the court as stated above. If you find out you have been ruled against in a court or proceeding, seek legal assistance immediately. You may have a very short window of opportunity to protect your rights.

e. **Rental Housing Eviction Protection.** You and your family cannot be evicted from housing for nonpayment of rent without a court order, no matter what your rental agreement or local laws say. There is a ceiling on the amount of rent that is protected, but most Servicemembers are covered. If your family's ability to pay rent is materially affected by your military service, you may apply to the court and the court must either grant a 90 day stay in eviction proceedings or adjust obligations under the lease in a way that preserves all parties' interests. Seek a Legal Assistance Attorney immediately if you foresee or experience eviction due to military service.

f. **Pre-service Real/Personal Property Installment Contracts and Leases.** If you have made a deposit or installment on a contract for the purchase or lease of real or personal property prior to active duty, you are protected by the SCRA. Your installment contract cannot be terminated and your property cannot be repossessed for nonpayment or breach by you prior to or during your military service. Criminal penalties can result for knowing violations of this protection by creditors. Termination and repossession can occur, but only pursuant to a court order.

g. **Mortgage Protections.** A court order is required to foreclose on a mortgage loan you entered into prior to going on active duty. During the court proceeding, the court may stay the foreclosure or adjust your obligations upon a showing that your military service materially affects your ability to make the mortgage payments. As part of the 2012 National Mortgage Settlement reached between the Department of Justice and the nation's five largest banks (Wells Fargo, Citigroup, Ally, JP Morgan Chase and Bank of America) this protection prohibiting mortgage foreclosures without a court order has been extended to all Servicemembers, regardless of when their mortgage loan was secured, who within nine months of the foreclosure received Hostile Fire/Imminent Danger Pay and were stationed away from their home.

h. **Storage Lien Protection.** A lien for storage, repair, cleaning, or other purpose on your personal property or effects may not, during your active duty service and within 90 days of your release from active duty, be foreclosed or enforced without a court order.

i. **Termination of Phone Service, Multichannel Video Programming, and Internet Access Service Contracts.** The SCRA allows you to terminate cellular and landline telephone service, multichannel video programming, and internet access contracts if military orders require you to move to a location not supported by the contract for 90 or more days. You must deliver written or electronic notice of the intent to terminate with a copy of your military orders to the service provider. The notice must be delivered in accordance with the service provider's standards for notification of terminations and should contain the date on which service is to be terminated. The service provider may not impose an early termination charge. If you terminate a contract under this provision, you are to return any provider-owned equipment to the service provider no later than 10 days after the date on which the service is disconnect.

j. **Taxes.**

i. State residency for tax purposes: If you are serving and currently living within a State pursuant to military orders: (a) your residence and domicile (for tax purposes) is unaffected by that service; (b) your military compensation is not "income" (for tax purposes) in that State if you are a non-resident; (c) your personal property is not located in the State (for tax purposes) if you are a non-resident; and, (d) a State cannot use your military compensation to

increase your tax liability in states where you are a non-resident, or to increase your non-resident spouse's tax liability. Be on the lookout for states attempting to tax you or your spouse on your personal property or military compensation. Use your installation Income Tax Assistance Center for free tax preparation, and seek a Legal Assistance Attorney or other counsel for advice.

ii. **Income tax deferrals:** Upon your request, the IRS, State, and local taxing authorities may also grant a deferral of income taxes due before or during your military service. The deferral cannot be for more than 180 days after your release from military service and your ability to pay the tax must be "materially affected" by your military service. No interest or penalty may be added as a result of such a deferral.

iii. **Real and personal property taxes:** Your property cannot be sold or foreclosed to satisfy your unpaid taxes, except by a court order. In order to issue an order, a court must determine your military service did not "materially" affect your ability to pay the taxes. Courts can stay proceedings to enforce tax collection, assessment, or tax-related property sales, during your military service and for not more than 180 days after your release from military service. Penalties for non-payment are capped at 6% per year.

k. Professional Liability Insurance. Providers actively engaged in health care and legal services, or other professionals as determined by the Secretary of Defense, called to active duty, may suspend their professional liability insurance policies upon written request to the insurance carrier. You need not pay premiums for suspended insurance, and any premiums paid by you while on active duty must be refunded, or alternatively on your request applied to insurance premiums due once you leave active duty. If you transmit a request to the insurance carrier within thirty (30) days of release from active duty, you have the right to reinstatement of suspended insurance. Reinstated insurance must continue for a time period no shorter than it would have continued had you not been called to active duty. There are limitations on how and when your premiums may be increased while you are on active duty. Civil or administrative actions for damages filed before your coverage's suspension must in most cases be stayed until the suspension ends, if based on alleged professional negligence or other professional liability.

l. Health Insurance Reinstatement. If you are ordered to active duty, you have the right to reinstatement of any health insurance that was in effect on the day before your service commenced, but was terminated during that period of active duty. Generally, if you have a condition that arose before or during the period of active duty and your condition is not defined by the Veterans' Administration as "a disability incurred or aggravated in the line of duty", no exclusion or waiting period may be imposed on the reinstatement. You must apply for reinstatement within 120 days after your termination or release from military service.

m. Small Business Owner Protection. If you are personally liable for obligations of your business or trade, your non-business assets and military pay are, in general, sheltered from being available to satisfy creditors with respect to such obligations.

n. Life Insurance. Insurers may not decrease your coverage or require additional premiums (except for age-based increases in term insurance) if you engage in military service, nor limit or restrict coverage for activities required by your military service. This applies only to policies in force 180 days or more before you begin a period of military service. Policies up to \$400,000 (or the maximum SGLI limit, whichever is higher) may be protected from termination due to your nonpayment of premium, interest, or indebtedness, if you apply for protection in the correct format and the Secretary of Veterans Affairs grants your request. The period of protection lasts for your period of military service plus an additional two years. Note that the total death benefit proceeds may be reduced, however, by your unpaid premiums. Additionally, you may end up owing the United States for your unpaid premiums.

o. **Powers of Attorney.** Powers of attorney (POA) executed because of military service that designate a spouse or relative as your attorney in fact are in most cases automatically extended during any period you are in a "missing" status. In order to receive this protection your POA must not indicate it will lapse despite your missing status.

p. **Voting Rights.** Your residency for Federal, State, and local voting purposes is, like your tax residency, unaffected by your absence from your usual voting state due to military service.

q. **Statutes of Limitations.** With the exclusion of Internal Revenue laws, your period of military service is excluded from calculating any time periods prescribed by law or regulation that define when actions or proceedings may be brought by or against you or your interests. Note that this "suspension" period can both be beneficial, and detrimental to you.

r. **Other relief.** You can apply for general relief on other matters including liabilities and obligations incurred before service, and taxes due before or during service, by filing for relief with a court during your military service or no later than within 180 days of release from military service. There are criminal penalties in many sections of the SCRA for violations of the Act. Additionally, many sections preserve your basic right to bring lawsuits to protect your other legal rights independent of the SCRA.

5. Soldiers or their Family members with questions regarding the SCRA should visit their local Legal Assistance Office. Most, if not all, of the terms in the SCRA have very specific meanings and limitations that could not be fully explored here, so to fit your situation within the SCRA, you should seek legal advice. Legal Assistance Attorneys are trained in consumer, family, and tax law matters and can assist in interpreting the provisions and application of this law.

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This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058 or (580) 442-5059. The Fort Sill Legal Assistance Office is located on the 4th floor of Building 4700, Hartell Hall (Welcome Center) at 4700 Mow-Way Road.