

# SERVICEMEMBERS CIVIL RELIEF ACT



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**354 FW/JA**  
Legal Assistance & Preventive  
Law  
Pamphlet Series

## INTRODUCTION

The Servicemembers Civil Relief Act (SCRA), signed into law 19 December 2003, completely rewrote and replaced the Soldiers' and Sailors' Civil Relief Act of 1940. The SCRA was designed to ensure that servicemembers are not disadvantaged either legally or financially when serving their country. The SCRA provides protections for members in civil and administrative actions. It also provides protections for issues involving taxation, residential leases, vehicle lease, interest rates, and insurance.

## APPLICATION

The SCRA applies to all military members on active duty. In limited circumstances, such as evictions and joint leases, SCRA protections may be extended to dependents of a military member.

## INVOKING SCRA PROTECTIONS

Most of the SCRA protections are not automatic. Generally, the member must request SCRA protection (usually in writing) in a timely manner.

## DEFAULT JUDGMENTS

A default judgment is like a forfeit in a lawsuit; if you are sued but fail to appear you may lose by default. If you are ever sued while on active duty, you have certain protections against losing by default.

## STAY OF PROCEEDINGS

Where military service prevents a plaintiff or defendant from asserting or protecting a legal right, the SCRA **requires** a delay of civil court proceedings. The SCRA affords **no** protection in criminal matters. Upon application by the member to the court an automatic stay of 90-days on all civil proceedings is granted.

The member must provide a letter or other written communication to the court showing: (1) how military service materially affects his or her ability to appear, (2) the date when the member will be available to appear, and (3) a letter or other written communication from the member's commander stating that the member's military service prevents his or her appearance and leave is not authorized. Factors used to determine material effect include geographic and economic challenges, amount of available leave, and specific duty requirements.

Before a court can enter a default judgment against a military member, the person suing the member must provide the court with an affidavit stating the defendant is not in the military. If the defendant is in the military, the court will appoint an attorney to represent the defendant's interests. Failure to file the affidavit makes any default judgment voidable.

If a default judgment is entered against a military defendant, the defendant may petition the court to reopen the case. To reopen a case, the defendant must show: (1) they were materially affected in presenting a defense; and (2) they have a meritorious defense to the lawsuit.

## STATUTES OF LIMITATIONS

Once the statute of limitations, or time limitation, runs on a civil action, a once-potential plaintiff can no longer sue and the intended defendant can no longer be sued. If military service prevents filing or defending suit, the statute of limitations is stayed, or put on hold, during periods of active duty.

## LANDLORD/TENANT

SCRA also provides several protections related to residential leases.

**Eviction:** Pursuant to the SCRA, all landlords must obtain a court order prior to evicting a military member or the member's dependents during the member's active duty service. If the member or the member's dependent meet certain qualifications, the member or the member's dependents may request a stay of the eviction action.

**Terminating Leases:** Under the SCRA, a member may terminate, without penalty, leases and rental agreements entered into *before* or *during* active military service if the member meets certain conditions. The member may terminate a residential lease if he or she: (1) is called to active duty service for at least 90 days, (2) receives orders to PCS, or (3) receives orders to deploy for at least 90 days. Terminating the lease requires written notice to the lessor. The member must provide the lessor with a copy of his or her military orders. Termination is effective 30 days after the day that the next rental payment is due, following the delivery of the written notice.

## INTEREST RATES

If you had interest-bearing debts *before* entering active duty, you may be able to reduce the interest rate to six percent. A pre-military creditor is required to reduce your interest rate to six percent upon receipt of written notice the debtor has entered active duty military service. This reduced interest rate is effective only during the period of active duty service. The reduction does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active duty.

## WHAT ELSE?

The Act has too many applications to include on this fact sheet. As a general rule, if you feel your military service prevents you from enforcing or defending yourself in a civil matter, contact an attorney to determine whether the SCRA can help you. The Legal Office is here to help. Please call us at 377-4114.



**This pamphlet provides basic information on the Servicemembers Civil Relief Act. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.**

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