

Q & A on SOLDIERS' AND SAILORS' CIVIL RELIEF ACT (SSCRA)

INTRODUCTION

The Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"), Title 50 United States Code Appendix §§ 500 et seq. as amended, was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard are also protected under the SSCRA (hereafter referred to as the "Act"). The protection begins with the date of entering active duty service and generally terminates within 30 to 90 days and in certain cases for up to six months after release from active duty. Should you have a question regarding the applicability of the SSCRA to your individual situation, please do not hesitate to seek advice from your local military legal assistance office.

QUESTIONS AND ANSWERS

Q. CAN A SERVICEMEMBER GET OUT OF A LEASE OR RENTAL AGREEMENT?

A. Yes -- a lease covering property used for dwelling, professional, business, agricultural or similar purposes may be terminated by a servicemember. Two conditions must be met:

1. The lease/rental agreement was signed before the servicemember entered active duty; and
2. The leased premises must have been occupied for the above purposes by the servicemember or his or her dependents.

Q. HOW DOES THE SERVICEMEMBER GO ABOUT TERMINATING THE LEASE?

A. To terminate the lease, the servicemember must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

1. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination.
2. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

Q. CAN I GET A REFUND OF SECURITY DEPOSIT OR PREPAID RENT?

A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the servicemember upon termination of the lease. The servicemember is required to pay rent only for those months before the lease is terminated.

Q. CAN I STOP AN EVICTION ACTION BY MY LANDLORD?

A. If the property is rented for \$1,200 per month or less, you may ask the court to delay the eviction action for up to three months. The court must grant the stay if you request it and can prove that your ability to pay was materially affected by your military service.

Q. DOES THE ACT APPLY TO TIME PAYMENTS OR INSTALLMENT CONTRACTS?

A. Servicemembers who signed an installment contract for the purchase of real or personal property before active duty will be protected if their ability to make the payments is "materially affected" because of active duty service. Remember--

- a. The servicemember must have paid, before entry into active duty, a deposit or installment payment under the contract.
- b. If the servicemember is not able to make payments because of his or her military duty, the Act applies.
- c. The vendor (seller) is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.
- d. The court may determine whether a servicemember's financial condition is "materially affected" by comparing the servicemember's financial condition before entry on active duty with his financial condition while on active duty.

Q. WHAT ABOUT MY CREDIT CARDS--CAN I STOP PAYING ON THEM?

A. No--you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

Q. WHAT ABOUT THE INTEREST RATES ON MY DEBTS AND MORTGAGE PAYMENTS -- DO THEY GO DOWN WHEN I ENTER MILITARY SERVICE?

A. Yes--when an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The terms "interest" includes service charges.

Q. ARE THERE PROTECTIONS AGAINST MORTGAGE FORECLOSURES?

A. The Act protects servicemembers against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The property was owned by the servicemember or dependent before entry on active duty status;
- d. The property is still owned by the servicemember or dependent at the time relief is sought;

- e. The ability to meet the financial obligation is "materially affected" by the servicemember's active duty obligation.

Q. CAN JUDICIAL PROCEEDINGS BE DELAYED?

A. A servicemember who is involved in civil (not criminal) judicial proceedings as either a plaintiff or defendant is entitled to a stay of these proceedings if the court finds that his or her ability to prosecute or defend an action is "materially affected" by reason of his or her active duty service. Courts are reluctant to grant long-term stays of proceedings and tend to require servicemembers to act in good faith and be diligent in their efforts to appear in court. A servicemember's ability to prosecute or defend a civil suit is shown to be "materially affected" when it can be satisfactorily demonstrated to the court that his or her military duties prevent him or her from appearing in court at the designated time and place. An affidavit setting out all the facts and circumstances is usually required.

Q. IF A SERVICEMEMBER IS SUED, CAN A DEFAULT JUDGMENT BE ENTERED AGAINST HIM IN HIS ABSENCE?

A. When a suit is filed, notice of it must be served on the defendant. There are deadlines for filing the servicemember's response. When no response is filed on time, a default is usually entered against the defendant. The SSCRA requires the plaintiff to sign and file an affidavit with the court stating that the defendant is not in the military service before a default can be taken. When the affidavit shows that the defendant is in the military, no default can be taken until the court has appointed an attorney to represent the servicemember defendant. The filing of a false affidavit subjects the filer to a misdemeanor prosecution; the maximum punishment is one year's imprisonment, a fine of \$1,000, or both. Any such matter should be brought to the attention of the U.S. Attorney's Office, as well as the servicemember's civilian attorney.

Q. WHAT IF I CANNOT PAY MY INCOME TAXES BECAUSE OF A CALL TO ACTIVE DUTY?

A. The servicemember's ability to pay the tax must be "materially affected" (impaired) by reason of the active duty service. If this is the case, the Act defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

Q. WHAT IF I CANNOT PAY MY LIFE INSURANCE PREMIUMS?

A. If you can no longer pay your premiums on commercial life insurance purchased prior to entry into the service, the government may guarantee the payment of the premiums, or require that the insurance carrier treat the unpaid premium as a loan against the policy. Upon separation, you would have up to two years to pay the premiums.

Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

A. Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives.

(Adapted, with prior permission, from the State of North Carolina Legal Assistance for Military Personnel Take 1 Handout.)