

# **SOLDIERS' AND SAILORS' CIVIL RELIEF ACT**

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## **GOALS**

- Familiarize bench and bar with the SSCRA
- Learn the operative provisions of the SSCRA
- Prepare civilian attorneys to represent service members in matters related to the SSCRA

## **SSCRA OUTLINE**

- "A Guide to the Soldiers' and Sailors' Civil Relief Act"
  - <http://www.abanet.org/legalservices/helpreservists/lamphrquick.html>

## **OVERVIEW**

- **History and Background**
- **Organization of the Act**
- **Persons Protected**
- **Substantive Protections**
- **Improvements since the Gulf War**
- **Practice under the Act**

## **The Ghost of Dean Wigmore**

- Civil War versions of Civil Relief Acts
  - Federal troops protected during conflict
  - Confederate laws passed in response
- World War I
  - Professor John Wigmore called to duty
  - Authored original SSCRA of 1918
  - Terminated after World War I

## **The Winds of War Return**

- World War II re-enactment of SSCRA
  - SSCRA of 1940
  - Hearings of 1942 and major overhaul
    - Enactment of Section 526 interest rate cap
- 1990-91 Gulf War
  - First major conflict with substantial Guard/Reserve involvement
  - Some modernization (but not enough)

### **ORGANIZATION**

- 50 U.S.C. App. Sections 501-593
- Article I – General Provisions
  - Persons protected and jurisdiction
- Article II – General Relief
  - Default judgments and stays – Sec. 520, 521
  - Statutes of Limitation – Sec. 525
  - Maximum rate of interest – Sec. 526

### **ORGANIZATION (con't.)**

- Article III (Sections 530-536)
  - Major substantive protections against evictions, termination of installment contracts, foreclosure on mortgages and termination of leases by lessees
- Article IV – Life Insurance
- Article V – Taxes and Public Lands
  - Section 574 – Residence for tax purposes

### **ORGANIZATION (con't)**

- Article VI – Administrative Remedies
  - Transfers to take advantage of Act – Sec. 580
  - Certificates of service – Sec. 581
  - Termination of SSCRA – Sec. 584
- Article VII – Further Relief
  - Section 590 stay orders
  - Malpractice insurance – Sec. 592
  - Self-funded medical insurance coverage – Sec. 593

### **PERSONS PROTECTED**

- All persons on Federal active duty
  - Army, Navy, Air Force, Marine Corps, Coast Guard
  - Reserve forces **while on active duty**
  - National Guard and Air National Guard in federal status (Title 10 orders)
  - Inductees into the services
  - Public Health Service officers detailed for service with Army or Navy and NOAA officers

## **ADDITIONAL BENEFICIARIES**

- Dependents receive protections of Article III provisions (Sec. 536)
  - Eviction, mortgage foreclosure, termination of leases
- Persons secondarily liable on service members' obligations (Sec. 513)

## **THE CHALLENGE**

- The Act applies to all courts
  - State, federal, city, county
  - Big and small
  - All means all
  - What about "all" don't you understand?
  - No kidding, **THE SSCRA APPLIES TO ALL COURTS**
- "Education" is the key

## **DEFAULT JUDGMENTS**

- Default judgments (Sec. 520)
  - Theoretically, cannot obtain a default judgment without either an affidavit of non-military service or an attorney appointed
  - Theory vs. practice
  - Reopening default judgments
    - May be re-opened any time up to 90 days after release from active duty
    - Must show prejudice and meritorious defense

## **STAYS OF PROCEEDINGS**

- Section 521 Stay of proceedings
  - Not dependent on nature of claim
  - Must show material effect
  - Can be granted *sua sponte*
  - Must be granted on application if material effect is shown
    - No specific standard for material effect
    - Advocacy is the key

→ Duration – period of service plus 3 months

## **CLASH OF THE TITANS**

- Re-opening of default judgments
- Section 521 stays
- Mutually exclusive
  - If knew of pending action, should have requested a stay
  - If request stay and it is not granted (not materially affected), must have made an appearance and therefore no Section 520 re-opening

## **STATUTES OF LIMITATION**

- Section 525
  - Statutes of limitation do not run during the period of service
    - For or against the service member
- No requirement that material effect be shown
- Does not apply to IRS time limitations (Sec. 527)

## **MAXIMUM RATE OF INTEREST**

- Section 526
- Added in 1942
- “No obligation or liability bearing interest at a rate in excess of 6%”
- Pre-service debts only
- Must show material effect
- Applies to almost all kinds of obligations and debts that bear interest

## **USING SECTION 526**

- Material effect
  - All pay and allowances vs. civilian pay
- Notice to creditors
- Service of copy of orders
- Obligation on creditor who disagrees to go to court for relief
- Does not apply to Federal student loans (but see policy)

relief currently in effect)

## **QUESTIONS AND PROBLEMS**

- Interest in excess of 6% “vanishes”
- Payments themselves must be re-amortized and lowered
- Does not apply to debts incurred during active duty
  - Huge problems in communication
- Guarantors also entitled to the reduction (Sec. 513)

## **EVICTIONS – Sec. 530**

- Self-help evictions prohibited
  - Must have court order to evict
  - Applies if rent is \$1,200 or less per month
- Court can stay eviction for 3 months (or enter such other order as may be just) if service materially affects ability to pay rent
- Criminal sanctions for violation

## **INSTALLMENT CONTRACTS – Sec. 531**

- Pre-service installment purchase contracts or leases with a view to purchase for either movable or immovable property
- Must have made a payment or deposit
- No termination or repossession without court order
- Court may/shall stay proceedings

## **MORTGAGE FORECLOSURES – Sec. 532**

- Property owned pre-service and at commencement of foreclosure action
- Real and personal property
- Court may/shall stay unless no material effect shown
- No valid foreclosures/seizures without court order during service + 90 days
- Criminal sanctions possible

## **TERMINATION OF LEASES – Sec. 534**

- Applies to all leases of PREMISES executed prior to

service

- Does not apply to leases of movable
- Use of premises not a factor
  - Dwellings, agricultural lands, business premises
- Written notice to landlord after commencement of service

## **SECTION 590 STAYS**

- May be the most important general provision in the SSCRA
  - It means whatever you can convince a court it means; like Chapter 11 plan orders
- Applies during period of service + 6 months – anticipatory action by member
- Relief may be granted in a variety of ways, much like a Chapter 11 plan

## **OPTIONS IN A 590 STAY**

- Contract for purchase of real property
  - Court can stay enforcement of obligation during military service plus period equal to period of military service plus remaining period of obligation
- Any other obligation
  - Court can stay enforcement of obligation during military service plus period equal to period of service
- Deferred payments must be paid over the “extension period”, plus new payments as they accrue

## **CANCELLATION OF LEASES OF MOVABLES?**

- Section 590 stay applications
- Notice to creditors of problems
- Application to court for stay
  - Notice and hearing
  - Must show material effect
- Duration of stays under Section 590

## **ADDITIONS FROM 1991**

- Malpractice insurance protections for health care providers

- and attorneys (Section 592)
  - Claims made policies
  - Suspends policy; no premiums owed during suspension
- Self-sponsored health insurance plans

## **NON-DISCRIMINATION REQUIREMENT**

- Section 518
- Claiming SSCRA rights cannot be the basis for certain adverse credit reporting actions
- Enforcement is under FCRA
  - 15 U.S.C. 1681n. – willful noncompliance
  - 15 U.S.C. 1681o. – negligent noncompliance

## **SSCRA IN PRACTICE**

- *Cathey v. BancorpSouth Bank*
  - Private right of action affirmed
  - Sec. 526 applies to corporate debt if the service member is personally liable
  - Summary judgment granted; damage trial pending
- Navy E-7 corpsman
  - Success story based on *Cathey*

## **CITATIONS**

- *Cathey v. First Republic Bank*, 2001 U.S. Dist. LEXIS 13150
- [www.bankersonline.com/lending/catheycase.html](http://www.bankersonline.com/lending/catheycase.html)
- [www.roa.org/callup/cathey.pdf](http://www.roa.org/callup/cathey.pdf)
- [www.jagcnet.army.mil/TJAGSA](http://www.jagcnet.army.mil/TJAGSA)
  - click on “Publications”
  - scroll down to “Legal Assistance” and click on JA 260

## **SUMMARY**

- SSCRA provides protections for citizens called to military duty
- Provides for suspension of certain civil liabilities during the period of service
- SSCRA requires education for bench and bar – it really means what it says
- SSCRA designed to protect military members and their

dependents