

TAKE - 1

THE SERVICEMEMBERS CIVIL RELIEF ACT AND MILITARY RECRUITS

1. Q. What is the Servicemember Civil Relief Act? (SCRA)

A. The SCRA is a federal law that provides a wide variety of legal protections to servicemembers and their families. It is designed to ensure that you are not harmed in the conduct of your personal business by reason of your military service. Some SCRA protections are especially important to those who are about to enlist and often apply to such new recruits. The SCRA is found in the Appendix to Title 50 of the United States Code, and begins at Section 501.

2. Q. Which SCRA provisions are most likely to apply to new recruits?

A. The SCRA has provisions that allow you to terminate a residential lease, to reduce interest rates, to avoid certain kinds of repossession or foreclosure, and to delay civil suits.

3. Q. I will be leaving my rental residence due to my orders to active duty. How can the SCRA help me?

A. Ordinarily, you would have to pay monthly rent until the end of the lease term, or until your landlord found another renter to take your place, whichever comes first. Additionally, your state's law may impose other penalties or costs upon those who breach, or violate, the lease. The SCRA changes all that. Section 535 allows you to terminate your pre-service lease and your obligation to pay rent along with it.

4. Q. Can my spouse also get out of the lease?

A. Yes. If you signed a pre-service lease and your spouse was a co-signer, your spouse's contractual obligations also cease when you terminate under the SCRA. The SCRA specifically applies to joint leases signed by a servicemember and spouse. However, if you and your spouse lived in separate residences and had separate leases, your lease termination has no effect on your spouse's separate lease.

5. Q. What do I have to do to terminate my lease?

A. To terminate your lease under the SCRA, you must provide *written* notice to the landlord of your intent to terminate. There is no special form that is required; however, Appendix I provides a sample that you may use as a guide.

6. Q. Is there anything else I need to do to terminate my lease under the SCRA?

A. Yes. In addition to the written notice of intent to terminate the lease, you must provide the landlord with a copy of your orders to active duty. Alternatively, instead of providing a copy of such orders, you may provide a letter from your commanding officer advising the landlord that you have such orders. There is no required format for such a letter; however, there is a sample that you may use as a guide at Appendix II.

7. Q. My landlord already knows about my intent to leave early and says "No Problem!" Do I still have to provide written notice?

A. Yes. The SCRA requires written notice. If you don't, the landlord may successfully sue you for unpaid rent through the remainder of the lease. Your landlord may be smiling and saying everything is fine now, but he can change his mind and sue you later for unpaid rent through the end of the lease. Protect yourself from this by providing the written notice.

8. Q. Once I provide the required documents to the landlord, when does my lease end?

A. If you pay your rent monthly, your lease ends 30 days after the next rental payment is due. For example, if the rent is due on the 5th of each month, and you provide written notice on April 1, then your lease ends, and the obligation to pay rent ends, 30 days after April 5th.

9. Q. What if the law in my state says something else about early lease termination for military servicemembers?

A. Some states, like North Carolina, have their own laws about when and under what conditions servicemembers can terminate a residential lease. However, while the state law can give you additional protections, it cannot diminish the protections provided by federal law. Thus, whichever law gives the greater protection is the one that applies.

10. Q. Before entering active duty, I took out some high interest loans. Can the SCRA do anything about that?

A. It depends. Section 527 of the SCRA says that, on request of the debtor, creditors must reduce the interest rate on pre-service financial obligations, such as personal loans, auto loans, home mortgage, and credit card obligations, to six percent (6%), but only if the debtor's military service materially affects the ability to pay. There is no legally required format for such requests; however, Appendix III provides a sample that you may use as a guide.

11. Q. What does "material effect" mean?

A. There is no specific legal definition of this term. Basically, what it means is that your joining the armed forces has a negative impact on your ability to pay. For example, such an adverse impact would be present if your income significantly decreased as a result of your enlistment.

12. Q. How do I prove material effect?

A. You aren't required to. The law requires the creditor either to reduce the interest rate or to prove that your military service does NOT have a material effect on your ability to pay.

13. Q. Does the SCRA require interest-rate reduction on government guaranteed student loans, too?

A. No, it does not. A different law exempts government-guaranteed loans from the SCRA. However, if your military service materially affects your ability to pay government guaranteed pre-service student loans, consider telling your creditors. They may be willing to work with you on this matter.

14. Q. When is the 6% interest rate supposed to go into effect?

A. The 6% interest rate takes effect as of the date that you came on active duty. Thus, your notice to the creditor should provide proof of active duty service as well as the date such service began.

15. Q. I heard that I don't have to make car payments or meet other monthly financial obligations while I am at recruit training. Is that true?

A. Absolutely NOT! You are required to honor your just financial obligations. If, for example, you ignore monthly payments on a car, you are likely to be sued. Further, your car may be repossessed and your credit history will be badly damaged, making it very difficult for you to obtain a loan in the future.

16. Q. Doesn't the SCRA prevent creditors from repossessing my car?

A. No, it does not, but Section 532 of the SCRA makes repossession more difficult in some cases. If you obtained a loan to purchase your car, the loan probably says that the lender has a security interest in the vehicle. This generally means that, if you miss a payment or otherwise violate the terms of the loan contract, the lender can take your car, as long as he does it without a breach of the peace. So, for example, he'd be okay if he towed away your car away in the middle of the night while you were sleeping. However, after commencement of the debtor's active duty service, the lender must get a court order to enforce pre-service loans through repossession. Failure to do so not only exposes the lender to civil liability, it is also a criminal offense punishable by up to a year in jail.

17. Q. Doesn't the SCRA prevent creditors from foreclosing on my house?

A. Not really. However, SCRA Section 533 allows servicemembers to delay foreclosure proceedings in certain circumstances and also prevents non-judicial foreclosure on pre-service mortgages.

18. Q. When can foreclosure proceedings be delayed under the SCRA?

A. If civil proceedings are initiated during or within nine months after the debtor's military service, the servicemember can apply to the court to delay the proceedings. If the debtor's military service materially impacts his ability to pay, the court can stay the proceedings (that is, delay them) for as long as justice requires. If the judge determines that military service materially impacts the debtor's ability to pay, then the judge is supposed to delay the proceedings for as long as is necessary in the interest of justice. The judge determines whether there will be a delay, and if so, how long the delay will last. Consult a civilian lawyer or a military legal assistance attorney if you want to stay foreclosure proceedings.

19. Q. What is a non-judicial foreclosure, and what does the SCRA say about it?

A. Most foreclosure actions are heard by court clerks, not judges; that's why they are called "non-judicial" foreclosures. Sometimes they are called foreclosure by "Power of Sale," referring to the language in the mortgage that authorizes them. These hearings before the court clerk are quick and the issues that the clerk reviews are very limited. So are the clerk's powers to stop, delay, or change the foreclosure in any way. The SCRA absolutely prohibits non-judicial foreclosure during the servicemember's military service (and for up to nine months thereafter) if the mortgage was initiated prior to military service. Violation of this section can result not only in civil damages, but also criminal charges leading to a fine or imprisonment.

20. Q. How do I prevent a non-judicial foreclosure?

A. You will probably need to consult either a civilian lawyer or a military legal assistance attorney, who can explain the law to the lender and to the clerk and demand that the proceeding be terminated. If that doesn't work, the next step should be contacting the SCRA enforcement section of the United States Department of Justice. The Department of Justice can intervene in the proceeding and get it stopped. Usually a phone call from the Department of Justice, threatening civil suit against the violator and possible criminal action, is enough. As in all things legal, don't wait until the last minute; the more lead time you give to people fighting on your behalf, the more likely you will get good results.

21. Q. I'm getting sued, but my military duties make it difficult for me to appear in court and defend myself. How can the SCRA help?

A. Section 522 of the SCRA says that you can request that the court stay (that is to say, *delay*) the hearing if your military service materially affects your ability to defend the action. Your request must state how your military duties affect your ability to appear in court. In addition, a proper request for a delay must indicate a date when you will be able to appear. Further, the written request for delay must be accompanied by a letter from your commanding officer confirming that your military duties prevent your appearance in court and that, at the time of the letter, leave is not authorized for your court appearance. You will need the assistance of a civilian lawyer or military legal assistance attorney to make and file a proper stay request.

22. Q. How long does the case get delayed?

A. The law says that the judge shall stay the case for at least 90 days in response to a proper stay request. Any additional delay is up to the judge, who decides if military duties continue to have a material and adverse impact on your ability to defend the action.

23. Q. What kinds of actions does this delay apply to?

A. Section 522 of the SCRA applies to "any civil action or proceeding, including any child custody proceeding." Thus, it applies to any civil case in which you are being sued about something: non payment of rent, failure to make installment payments on consumer goods, claim for money damages resulting from an automobile accident, a suit to establish or modify child support, or to establish or modify custody or visitation. Whether the judge will follow the law, and what happens if s/he does not, is a discussion you should have with your attorney.

24. Q. I received a traffic ticket that says I need to appear in court. Can I use the SCRA to delay that hearing?

A. No. The SCRA only applies to civil cases. Traffic tickets are issued for criminal violations.

25. Q. I won't be able to drive my car while at recruit training. Do I still have to pay insurance?

A. Probably. There are three important reasons you need to pay auto insurance. First, it's the law; every state says that every driver needs to be insured. Failure to maintain insurance is a crime. If the insurance company doesn't get paid, it will probably report you to the state Department of Motor Vehicles. Second, the loan you got to buy the car probably says you need to maintain insurance. Violation of this provision of the contract can result in the lender buying insurance for you at unreasonably high rates, demanding immediate payment in full of the entire loan amount, or repossession of the vehicle. Third, you need to obtain and maintain vehicle insurance to drive your car on the military installation. Unless you have somehow gotten a waiver from the DMV, your lender, and the installation commander, you need to maintain your auto insurance.

26. Q. Where will my military salary go during recruit training?

A. You will be paid twice a month during recruit training. The funds will be deposited directly into your account at a bank or credit union. At some point, you will have the opportunity to choose which financial institution will receive your paychecks. However, in order to initiate the direct deposit into your current bank or credit union, or to some other financial institution of your choice, you will need information about that financial institution. You will need to provide your drill instructor with the name of the institution and its bank routing number, a special code that identifies the institution. You can get this number from the institution before you go to recruit training. You may also need other information, such as the institution's address and phone number, as well as your account number.

27. Q. What happens if I don't have all that information about my chosen financial institution?

A. If, while at recruit training, you do not have all the information necessary to start direct deposit of your military pay into your chosen financial institution, you will be provided with instructions on how to start direct deposit into a bank or credit union that the armed forces chooses for you.

28. Q. Where can I get more information on these topics?

A. There are various internet sites that provide information concerning the SCRA. These include the website of the American Bar Association's Standing Committee on Legal Assistance for Military Personnel (ABA LAMP) found at <http://www.abanet.org/legalservices/lamp/>. Look in the "resources" section of that site. The LAMP Committee of the North Carolina State Bar has also posted a wealth of information on their website at <http://www.nclamp.gov>. Much of the information is quite detailed and is designed to help other attorneys. However, the articles in the "TAKE-1" section are designed to help people who are not attorneys as well.

You are also encouraged to consult a civilian lawyer or (if you are on active duty, a retiree or a dependent of an active-duty member or retiree), a military legal assistance attorney. If you are undergoing training when you learn of a legal concern, seek assistance from your chain of command, which may help you to schedule an appointment with a military lawyer.

The TAKE-1 series of client handouts is a project of the North Carolina State Bar's Standing Committee on Legal Assistance for Military Personnel. For comments or corrections, contact Committee member Mark E. Sullivan at: mark.sullivan@ncfamilylaw.com or at 2626 Glenwood Avenue, Suite 195, Raleigh, NC 27608 [919-832-8507]

(Rev. 12/6/10)

APPENDIX I: SAMPLE LEASE TERMINATION LETTER, PRE-SERVICE LEASE

LANDLORD
ADDRESS
CITY, STATE 00000

Date _____

Dear _____:

In accordance with the provisions of United States Code, Title 50 Appendix, Section 535 of the Servicemembers Civil Relief Act (hereinafter SCRA), you are hereby provided this written notice of my intent to terminate my lease for premises at [*provide address of leased premises here*].

This section of the SCRA covers residential leases entered into prior to military service if the tenant receives orders to active duty military service. It also applies to leases commenced after military service if the servicemember receives permanent change of station orders OR orders for deployment of ninety (90) days or more. I have received orders to active duty service (or if already on active duty, orders to deploy or execute a permanent change of station) and such orders or a letter from my commanding officer confirming such orders is attached hereto.

In the case of a lease wherein rent payments are due monthly and early termination is made under the SCRA, lease termination is effective thirty (30) days after the date on which the next rental payment is due. **Accordingly, this lease is terminated, effective on** [*provide the date on which the lease is terminated here. The lease terminates 30 days after the next rental payment is due. For example, if the rent is due on the 5th of the month, and you provide notice on April 1st, the lease terminates 30 days after April 5th*].

I understand that some states may have enacted statutes that address early lease termination by military personnel. However, while such state law may provide servicemembers with additional rights, they can not diminish rights already provided by Federal law under the SCRA.

I understand that any security deposit must be returned to the tenant within thirty (30) days after termination of the tenancy. Portions of the deposit may be withheld for damage to the premises caused by the tenant, but not for any condition due to normal wear and tear. Portions of the deposit may also be withheld for loss of rent, but only up through the aforementioned date of termination, and then only if the premises were vacant and actual loss of rent occurred. If a portion of the security deposit is withheld, the landlord should provide an itemized list of the reasons/costs therefore. After I vacate the leased premises, you may provide me with the security deposit refund/itemized list of costs at the following address: [*Provide your new mailing address here.*]

Thank you for your assistance and cooperation in my efforts to help defend our nation through my military service.

_____/Tenant

Encl: Military orders to active duty, to deploy, or to execute a permanent change of station (or confirmatory letter for commander)

APPENDIX II: SAMPLE COMMANDER VERIFICATION OF ORDERS FOR TERMINATION OF PRE-SERVICE LEASE

COMMAND LETTERHEAD



IN REPLY REFER TO

5800

Date

**LANDLORD
ADDRESS
CITY, STATE 00000**

Re: Orders to active duty for (SNM) _____

Dear LANDLORD:

I am writing on behalf of _____, who is, or soon will be, a member of my command. I confirm that this person has orders to active duty military service, commencing _____.

Pursuant to 50 U.S.C. § 535 of the Servicemembers Civil Relief Act (SCRA), this tenant's lease should be terminated not more than 30 days from the date the next monthly rental payment is due.

Please contact _____ at the following phone number _____ if you have any questions regarding the above named servicemember's orders to active duty service.

Sincerely,

G. S. PATTON
Col USMC
COMMANDING

APPENDIX III: SAMPLE REQUEST TO CREDITOR FOR REDUCTION OF PRE-SERVICE OBLIGATIONS TO SIX PERCENT INTEREST

YOUR NAME HERE
YOUR ADDRESS HERE
Date_____

CREDITOR NAME HERE
CREDITOR ADDRESS HERE

Subject: INTEREST RATE REDUCTION UNDER SERVICEMEMBERS CIVIL RELIEF ACT

Debtor name:_____

Account #_____

To Whom It May Concern:

Pursuant to the interest rate reduction provisions of the Servicemembers Civil Relief Act, Title 50, U.S. Code Appendix, Section 527 (hereinafter referred to as the SCRA) I hereby request that the interest on the above mentioned debt be reduced to 6% as of the date that I entered active military service.

I incurred this civil debt prior to the date that I entered active duty military service. I began active duty on _____, as reflected on the attached document, _
[Identify the document you are attaching that proves active duty military service inception date]

I am currently assigned to *[Unit name here]*, located at *[location of unit, for example, Camp Lejeune, North Carolina.]* I have also included copies of the following documents that prove current military service: *[List here document(s) you will include showing that you are on active duty: e.g., photocopy of armed forces ID, military orders, enlistment contract]*

My entry into the armed forces has materially effected my ability to meet this obligation at the original interest rate. *[If desired and appropriate, state here the manner in which military service effects ability to pay; e.g., by noting the specific decrease in pay resulting from military service]*

The SCRA sets a 6% per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of military service for obligations made prior to the date of entry onto active duty. Interest above 6% must be **forgiven** and not accrued. Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn.

Note that, in addition to civil remedies, the 2008 amendment to the SCRA makes the knowing violation of this section a crime punishable by a fine and up to one year in prison.

I.M. MARINE
Corporal
U.S. Marine Corps