

MILITARY

What is the Servicemembers Civil Relief Act?

The Servicemembers Civil Relief Act of 2003 (SCRA) formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 is a federal law that gives all military members some important rights as they enter active duty. The SCRA allows military members to postpone or suspend some civil obligations so that the service member can devote his or her full attention to military duties.

Who does it protect?

The SCRA protects active duty military members and reservists or members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents (spouses or children) of military members (e.g., in the case of certain eviction actions). Training or education periods preliminary to induction are also covered. The SCRA also protects National Guard members in active state service if in response to a national emergency.

What kind of relief can it provide?

The SCRA can provide many forms of relief to military members. Below are benefits provided to tenants, but there are other benefits offered as well. If you think that you have rights under the SCRA, you should discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible. You can obtain a listing of military legal assistance offices at <http://www.jagcnet.army.mil/legal>.

1. Lease Termination

A service member who is renting a property for dwelling, professional, business, agricultural, or similar purposes may terminate the lease if:

- The lease was signed before the service member entered military service; or the service member while in active duty signs a lease and then receives military orders for a permanent change of station (PCS) or deployment for a period of 90 days or more; and
- The premises were occupied or intended to be occupied by the service member or his/her dependents.

To terminate your lease, the SCRA requires that you deliver a written notice of termination to the landlord along with a copy of your military orders. In your notice state that you are terminating your lease for one of the above reasons, indicate when you plan to move out, include a forwarding address where your landlord can send your security deposit and attach a copy of your military orders. Be sure to keep a copy of the notice for your records. You can deliver the notice in the following ways:

- By hand delivery;
- By private business carrier; or
- By mailing the written notice in an envelope with sufficient postage and with return receipt requested.

If you have a lease that requires a monthly payment of rent:

- Termination will be effective thirty 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 1st of the month and notice is delivered to the landlord on August 5th, the next rent due date is September 1st. Therefore, the lease will terminate on October 1st.

All other lease agreements:

- Termination will be effective on the last day of the month following the month in which such notice is delivered.

Additional provisions:

- You will not owe rent after the termination date. *However*, if you have co-tenants who signed the lease with you who are not dependents (spouses or children) or have not been called into active duty, they may be liable for *all* of the rent due under the lease (including your portion). Co-tenants are *not* entitled to



terminate their lease.

- Rent paid in advance (such as last month's rent) must be refunded to the tenant.
- The tenant is entitled to the return of the security deposit within 30 days after the termination is effective.
- If the landlord attempts to seize your personal possessions, the landlord may be fined and/or imprisoned for up to one year.
- Any Guarantors, co-signors, or dependents of the military member will also be relieved of any liability for rent once the termination is effective.

2. Eviction

Although the SCRA does not excuse service members from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some protection from eviction under the SCRA. A service member may seek protection from eviction under the Act if:

- The landlord is attempting to evict the service member or his/her dependents during a period in which the service member is in military service or after receipt of orders to report to duty;
- The rented premises is used primarily as a residence by the service member, spouse, children, or other dependents of the service member;
- The monthly rent does not exceed \$2,400 per month. The \$2,400 ceiling is adjusted annually for inflation and as of 2004 the ceiling is \$2,465.00; and
- The service member's ability to pay rent is materially affected by military service.

Once you receive notice of the eviction action, you must submit a request to the court for protection. The court may, in its discretion, stay the proceedings for up to 90 days, or make any other orders as may be just.

3. Miscellaneous Protections

Although the Act does not erase the financial or legal obligations of military members, it provides a variety of protections that generally allow the military member additional time to resolve the obligations. For example:

A. 6% Interest Cap

Interest on obligations such as credit cards, loans, mortgages, etc. can be capped at 6% for the duration of the military member's obligation if the debts were incurred prior to active duty and the service member's military obligation has materially affected his/her ability to pay. This provision does not apply to federally guaranteed student loans.

B. Stay of Proceedings

The SCRA allows active duty service members who are unable to appear in a court or administrative proceeding due to their military duties to postpone the proceeding for a mandatory minimum of ninety days upon the service member's request. To obtain a stay you must submit a written request to the court for protection. The written request should contain the following:

- Explain why the current military duty materially affects your ability to appear;
- Provide a date when the you can appear; and
- Include a letter from your commander stating that your military duties preclude your appearance and that you are not authorized leave at the time of the hearing.

This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the service member.

C. Installment Contracts and Auto Leases

A service member or spouse may request protection under the SCRA for pre-service debts incurred under installment contracts and auto leases. The service member or the spouse must prove that the service member's military obligations have materially affected his/her ability to pay on the debts and at least one deposit or installment payment must have been made on the contract before entry on active duty.

D. Mortgages

If military service materially affects the service member's ability to comply with the terms of the mortgage, the court may grant relief to the service member or dependent family member. The obligation must have been entered into before entry into military service, and the property must still be owned by the service member or dependent at the time relief is sought.

E. Taxes

A service member or dependent may, at any time during his/her military service, or within 180 days thereafter, apply to a court for relief of any obligation or liability incurred by the service member or dependent prior to active duty or in respect to any tax or assessment whether falling during or prior to the service member's active military service.

4. Additional Resources

<http://www.jagcnet.army.mil/legal>

www.hud.gov/offices/cpd/about/hudvet/library/scra.cfm

<http://defenseink.mil>

THIS INFORMATIONAL PACKET ONLY REFERS TO OHIO LAW AND DOES NOT CONSTITUTE LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, YOU MUST CONTACT AN ATTORNEY. THE LAW MAY HAVE CHANGED SINCE THE DATE OF THIS PUBLICATION. 11/07