THE AMERICAN LEGION

National Economics Commission

ACTIVE DUTY

Legal Rights

Guide to

The Servicemembers Civil Relief Act; Uniformed Services Employment and Reemployment Rights Act ;

and other resources.

SOLDIER'S AND SAILOR'S CIVIL RELIEF ACT

"Protect those who have been obliged to drop their own affairs to take up the burdens of the nation"

Boone v. Lightner 319 u.S. 561, 575 (1943)

CONTENTS

The Servicemembers Civil Relief Act	**2**
- Who is protected	**3**
- To what and where does SCRA apply?	**3**
- If you can't make your mortgage payment	**3**
- If you need to break a lease	**4**
- If you are being evicted for non–payment of rent	**4**
- If you can't appear in court or at administrative proceedings	**4**
- Default judgment protection	**5**
- 6% Cap on Interest Rates	**5**
- Life insurance premiums	**6**
- Health insurance	**6**
- State income taxes	**6**
Uniformed Services Employment and Reemployment Rights Act	**7**
- Reemployment Rights	**7**
Where to Find Additional Assistance	**8**
- Armed Forces legal assistance	**8**
- Operation Enduring LAMP	**8**
- Legal Aid Society	**8**
- NCESGR	**9**
- VETS	**9**

THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

SEC 2. PURPOSE.

The purposes of this act are:

(1) to provide for, strengthen and expedite the national defense through protection extended by this act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

The information in this brochure gives an overview of SCRA and is not to be considered legal advice.

It's important for you to know about the protections that Congress has granted you as you serve the nation in the global war on terror.

On Dec. 19, 2003, the president signed into law an updated Soldiers and Sailors' Civil Relief Act of 1940. This law helps ease the economic and legal burdens on military personnel called to active duty status in Operation Iraqi Freedom and Operation Enduring Freedom. SCRA provides certain legal protection for individuals called to active duty. Relief extends to actions terminating leases, evictions, foreclosures and repossessions, default judgments, lowers interest rates on credit cards and loans, and protects against lapses or termination of insurance policies.

Who is protected?

Active duty members of the Army, Navy, Marine Corps, Air Force and Coast Guard including Reserves and National Guard activated under title 10 orders and National Guard activated for training for more than 30 days under 32 USC § 502(f) and commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration.

Also covered are dependents, including spouses and children and any other person for whom the servicemember provided at least 50 percent support for 180 days prior to applying for relief under SCRA.

SCRA also protects people whom the servicemember had co-sign loans and other contracts. It also prevents courts from enforcing bail bonds if military service precludes an appearance in court.

To what and where does SCRA apply?

Any civil judicial or administrative proceeding in any and all federal, state or local courts whether or not a "court of record" and all administrative agencies, such as motor vehicle administrations, in any state, locality, territory or other political subdivision of the United States. SCRA does not cover criminal matters.

If you can't make your mortgage payment

SCRA can provide temporary relief from paying a mortgage. You must show that you:

- Obtained the mortgage before going on active duty.
- Owned the property prior to entering military service.
- Still own the property.
- have a commitment to the service that materially affects your ability to pay the mortgage.

If you need to break a lease

You may lawfully terminate a lease, including for automobiles, on entering active duty. You must have PCS orders or be activated for a minimum of 90 days (180 days for automobiles). To do this you must show:

- the lease was entered into prior to going on active duty.
- the lease was signed by you or by someone else on your behalf.
- you are currently on active duty.

If you are being evicted for non-payment of rent

SCRA does not excuse you from paying rent. If you can show that your active duty status materially affects your ability to pay rent for yourself or your dependents, a court may stay eviction proceedings, usually for three months, if:

- your landlord is attempting to evict you during a period of active duty or after receipt of orders to report.
- the rented premises is being used for housing by your spouse, children or other dependents.
- your monthly rent is less than $2,400 (figure can be adjusted annually based on cost of living and inflation increases).

If you can't appear in court or at administrative proceedings

If you have a court date or have an administrative hearing or other proceeding, and can't appear because you are on active duty, the court or administrative agency must postpone the date for a minimum of 90 days if you:

- request a delay in writing.
- explain in your request why your active duty status affects your ability to appear.
- give a date when you can appear.

- include a letter from your commanding officer stating that you are on active duty and you are not allowed to leave on the scheduled date.

You may request additional delays after the first 90-day delay and if the court denies, an attorney must be appointed to represent you.

Default judgment protection

A default judgment is where you failed to answer a civil complaint or other legal process (enter an appearance) and a court makes a decision in your absence. If you have a default judgment entered against you while you are on active duty, or for 60 days thereafter, you may request to have it set aside if you can show that you:

- were prejudiced by not being able to appear.
- have "good and legal" defenses to the claims against you.

You must ask the court to reopen your case within 90 days of release from active duty.

6 percent cap on interest rates

If you have mortgage, installment or credit card debt and you can show that your active duty materially affects you ability to make payments, you may request that your creditors lower your interest rates to 6 percent. The difference will be permanently forgiven. You must have acquired the debt prior to entering active duty. To request this reduction:

- write a letter to each creditor asking for the reduction under the SCRA.
- state that your military service materially affects to ability to make payments.
- attach a copy of your activation orders.

If the creditor refuses to lower the interest rate and the matter goes to court, the burden of proof is on the creditor to show that your active duty does not materially affect your ability to make timely payments.

Life insurance premiums

The Department of Veterans Affairs (VA) may guarantee the payment of premiums for certain commercial life insurance policies while you are on active duty and for two years thereafter. You will not be required to pay premiums during that period, and the coverage will remain in force up to $250,000, but you will be required to pay the premiums back within two years.

To learn more about this benefit, see the VA Life Insurance for Veterans and Servicemembers Handbook by visiting:

www.insurance.va.gov

Health insurance

You may have the right to reinstatement of non-employer provided health-insurance policies that lapsed while you were on active duty. The insurance must have been in effect prior to you entering active duty and have lapsed during your period of service. To apply for reinstatement under SCRA, write a letter to your insurance carrier and attach a copy of your activation orders.

State income taxes

SCRA prohibits states from taxing your military pay and personal property if your presence in the state is due solely to your active duty. The state is also prohibited from using the pay of the nonresident servicemembers to increase the state income tax of your spouse.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Re-employment rights

If you left your job for service in the armed forces, you may have rights to return to that job under a law called the Uniformed Services Employment and Reemployment Rights Act (USERRA).

USERRA provides numerous protections allowing servicemembers to retain civilian jobs upon reporting back from military service and prevents adverse employment actions by employers if the actions are motivated in part by the employee's military service.

The employment rights offer protection from discrimination on the basis of a person's prior service (veterans), current obligations (Guard and Reserve), or intent to join the service. The re-employment rights offer returning servicemembers reinstatement of pre-service civilian employment. The employer must restore an eligible servicemember's employment with the same status and seniority as if employment had been continuous. Reemployment rights extend to people who have been absent from a position of employment because of service in the uniformed services.

The U.S. Department of Labor Veterans Employment and Training Service investigates USERRA complaints.

More information on USERRA can be found at: **www.dol.gov/elaws/evets.htm.**

WHERE TO FIND ADDITIONAL ASSISTANCE

Armed Forces legal assistance

Armed Forces legal assistance eligibility is established through 10 USC § 1044 and other legal authorities and provides that legal assistance is subject to the availability of legal staff resources and may provide legal assistance in connection with personal civil legal affairs to active duty servicemembers. To search for an Armed Forces legal assistance office near you visit:

http://assistance.law.af.mil

Operation Enduring LAMP

The American Bar Association has launched Operation Enduring LAMP (Legal Assistance for Military Personnel). This service may provide free assistance to servicemembers called to active duty. To find out what services are available in your location visit:

www.abanet.org/legalservices/helpreservists/lamphrdirectory.html

© 2005 American Bar Association Used with permission.

Legal Aid Society

The Legal Services Corporation (LSC) is a federal program that funds 207 local legal aid programs dedicated to helping poor Americans gain access to the justice system. To learn more about LSC and locate services near you visit:

www.lsc.gov/fundprog.htm

NCESGR

The U.S. Department of Defense National Committee for Employer Support of the Guard and Reserve (NCESGR) provides ombudsmen who mediate re-employment issues under USERRA between military members and their civilian employers. Contact NCESGR at 800-336-4590 or by email, ncesgr@osd.pentagon.mil.

VETS

The Department of Labor Veterans Employment and Training Service (VETS) is responsible for investigating and resolving re-employment issues that arise under USERRA. Call the U.S. Department of Labor at 866-487-2365 or visit on the web at:

www.dol.gov/vets/programs/userra

The American Legion

National Economics Commission

Additional information is also available from:

The American Legion

Economic Commission
1608 K St., N.W.
Washington, DC 20006

- 202-861-2700
- www.legion.org
- Email: econ@legion.org

Or contact The American Legion post in your community (legion.org/posts).

Stock# 74-003 Artwork# 19ECON0413