

SERVICEMEMBER'S CIVIL RELIEF ACT (SCRA)

In 2003, the Soldiers and Sailors Civil Relief Act (SSCRA) was completely re-written, and re-named the Servicemembers Civil Relief Act (SCRA). The bill was signed into law by President Bush on December 19, 2003. This is the law that now governs legal protections for members of the United States Military.

Reservists and members of the National Guard (when in active federal service) are also protected under the SCRA. SCRA (for all) begins on the first day of active duty, which means when the person ships out to basic training (Basic Training, and job-school are considered active duty for Guard and Reserve personnel, as well as active duty personnel). Some protections under the act extend for a limited time beyond active duty discharge or release but are tied to the discharge/release date. Additionally, some of the Act's protections extend to the members' dependents.

National Guard members recalled for State duty are also protected by the Servicemember's Civil Relief Act in certain circumstances. National Guard members are entitled to SCRA protection when called to state active duty under Title 32, if the duty is because of a federal emergency, the request for active duty is made by the President or Secretary of Defense, and the member is activated for longer than 30 days. An example of this would be the National Guard members who were activated by the states, at the request of the President, to provide security for airports after 9-11.

Here is a partial list of the rights the SCRA provides for persons in the military services.

Major Legal Protections

Termination of Residential Leases: The SCRA allows individuals to break a lease when they go onto active duty, if the lease was entered into before going onto active duty. Additionally, the act allows a servicemember to terminate a residential lease entered into while in the military, if the member receives permanent change of station (PCS) orders, or orders to deploy for a period of not less than 90 days.

This protection covers "lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose."

To break a lease under these provisions, the servicemember must make the request in writing, and must include a copy of their orders (orders placing them on active duty, PCS orders, or deployment orders). The member may deliver the notification by hand, by commercial carrier, or by mail (return receipt requested).

The termination date for a lease that requires monthly rent, the earliest termination date is 30 days after the first date on which the next payment is due, following proper notification of termination of lease. For example, if Sgt John pays his rent on the first of every month, and he notifies his landlord (and gives the landlord a copy of his orders), on the 18th of June, that he wishes to terminate the lease under the provisions of the SCRA, the earliest termination date 1 August (the next rent is due 1 July, and 30 days later is 1 August). If it's some other arrangement, other than monthly rent, the earliest termination of the lease is the last day of the month, following the month in which the notice is given. So, if notice is given on 20 June, the earliest termination date would be 31 July.

I'm often asked, "What if there are other people on the lease? Who has to make up the rent?" Not the landlord, that's for sure. Also, not the servicemember. The SCRA is silent in this area. In most states, the burden would likely fall on the remaining roommates. They would either have to make up the military member's share of the rent, or find another roommate. The SCRA gives the military member the right to terminate his/her own portion of the lease early, but the law does not require the landlord to decrease the amount of total rent for the property, nor does the law protect remaining non-military roommates (unless, of course, they are the member's legal dependents).

Automobile Leases: Military members may also terminate automobile leases in certain circumstances. Just like with residential leases, if a member enters into an automobile lease before going on active duty, the member may request termination of the lease when he/she goes onto active duty. However, for this to apply, the active duty must be for at least 180 continuous days. So, if a person joined the Reserves, and had orders for basic training and technical school, the total of which was only 120 days, he/she could not terminate the automobile lease under this act.

Additionally, military members making a permanent change of station (PCS) move, or who deploy for 180 days or longer may terminate such leases. The act specifically covers " lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation."

To terminate the lease, the member must make the request in writing, along with a copy of orders. The member may deliver the notification by hand, by commercial carrier, or by mail (return receipt requested). Additionally, the member must then return the vehicle to the lessor within 15 days of delivery of the termination notice.

The lessor is prohibited from charging an early lease termination fee. However, any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

Evictions from leased housing: Service member may seek protection from eviction under SCRA. The rented/leased property must be occupied by the service member or his/her dependents for the purpose of housing, and the rent can not exceed \$2,400 (for 2004 -- the actual amount is automatically adjusted each year, by the inflation rate). The servicemember or dependent who has received notice of an eviction must submit a request to the court for protection under the SCRA. If the court finds that the service member's military duties have materially affected his ability to pay his rent timely, the judge may order a stay, postponement, of the eviction proceeding for up to 3 months or make any other "just" order.

Installment Contracts: The SCRA gives certain protections against repossessions for installment contracts (including automobile leases). If the contract was entered into before going on active duty and at least one payment was made before that time, the creditor cannot repossess the property, while the member is on active duty, nor can they terminate the contract for breach, without a court order.

6% Interest Rate: If a service member's military obligation has affected his/her ability to pay on financial obligations such as credit cards, loans, mortgages, etc., the service member can have his/her interest rate capped at 6% for the duration of the service member's military obligation. Qualifying debts are debts that were incurred by the service member, or the servicemember and their spouse, jointly, before coming on active duty. Debts entered into after going on active duty are not so protected.

Notice that this particular provision of the act only applies if a servicemember's military service affects their ability to pay. However, the burden is on the creditor to seek relief in court if the creditor believes that the service member's military career does not materially affect his/her ability to pay. The creditor must comply, unless he/she gets a court-order stating otherwise. In order for an obligation or liability of a servicemember to be subject to the interest rate limitation, the servicemember must provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

Upon receipt of notice, the creditor must reduce the interest rate to a maximum of 6 percent, effective the first day of active duty (even if the servicemember makes the request at a later time). The law unambiguously states that no interest above 6 percent can accrue for credit obligations while on active duty (for debts incurred before going onto active duty), nor can that excess interest become due once the servicemember leaves active duty (that was a "trick" some creditors tried under the old law) -- instead that portion above 6 percent is permanently forgiven. Furthermore, the monthly payment must be reduced by the amount of interest saved during the covered period.

Court Proceedings: If a servicemember is a defendant in a civil court proceeding, the court may (note the word "may"), on its own motion, grant a 90-day stay (delay) in the proceedings. If the servicemember asks for a stay, the court must grant a minimum 90 day stay, if:

The servicemember submits a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear; and

The servicemember submits a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

The provision applies to civil lawsuits, suits for paternity, child custody suits, and bankruptcy debtor/creditor meetings, and administrative proceedings.

The new act specifically states that a servicemember communicating with the court requesting a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction). Under the old act, some courts held that merely communicating with the court (i.e., requesting a stay, implied that the member agreed to jurisdiction of the court). A servicemember who is granted a stay may request an additional stay, if he/she can show that military requirements affect his/her ability to appear (commander's letter is also needed). However, the court is not obligated to grant the additional stay. If the court refuses to grant an additional stay of proceedings, the court must appoint counsel to represent the servicemember in the action or proceeding.

If a default judgment is entered in a civil action against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment must, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that --

the servicemember was materially affected by reason of that military service in making a defense to the action; and the servicemember has a meritorious or legal defense to the action or some part of it.

Enforcement of Obligations, Liabilities, Taxes: A service member or dependent may, at any time during his/her military service, or within 6 months 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. The court may grant stays of enforcement during which time no fine or penalty can accrue.

Additionally, the act prevents servicemembers from a form of double taxation that can occur when they have a spouse who works and is taxed in a state other than the state in which they maintain their permanent legal residence. The law prevents states from using the income earned by a servicemember in determining the spouse's tax rate when they do not maintain their permanent legal residence in that state.

Reemployment Rights: Contrary to what many people believe, there are no provisions for Reemployment Rights as part of the SCRA. Reemployment rights are a completely separate legislation: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

MAIL ORDER SALES

The U.S. Postal Service and the Federal Trade Commission (FTC) regulate mail order sales. The laws enforced by these agencies are designed to protect consumers from unwanted merchandise, misleading advertising and fraudulent business practices.

THE FTC MAIL ORDER RULE

A mail order company must ship goods within the time promised. If no time is promised, the goods must be shipped within 30 days. If there is a delay, the seller must notify you of the new delivery date. You may accept the new date or cancel the contract.

When the seller sends out a notice of delay, he must include an appropriate cancellation form. If the delay is for more than 30 days, you must agree to the delay in writing. If the delay is for less than 30 days, you agree to the delay unless you specifically cancel.

Once a seller receives a valid cancellation, he must refund your money within seven working days. If you pay with a credit card, the seller has one billing cycle to notify the card issuer to credit your account.

Purchases made by telephone are not covered by the Mail Order Rule.

UNORDERED MERCHANDISE

If you receive unordered merchandise, the shipper cannot attempt to pressure you into paying for it or returning it. As long as the merchandise was neither mistakenly delivered, nor actually ordered, you may keep it without charge.

FRAUD, MISLEADING ADVERTISING, OR UNSATISFACTORY PRODUCTS

The U.S. Postal Service has broad powers to investigate and punish unfair business practices conducted through the mail. If you believe you are a victim of misleading or fraudulent advertising through the mail, you should contact the U.S. Postal Service.

To protect yourself in mail order transactions, you should:

- Never pay by cash. Use a money order, check, or charge card;
- Keep copies of all order forms and correspondence;
- Read advertisements carefully. Be suspicious of incredible claims and once-in-a-lifetime bargains; and
- Attempt to work out any problems by contacting the seller. If that fails, contact your local Postmaster or Legal Assistance.

WARRANTIES

A warranty can be described as a guarantee. A warranty "guarantees" that a product will perform or that it will be replaced or repaired or that some other remedy is available. There are "implied" warranties and "express" warranties.

IMPLIED WARRANTIES

There are two major types of implied warranties. An implied warranty does not have to be in writing. Every product has implied warranties except when the implied warranties are specifically excluded. While an implied warranty makes a promise about the condition of a product at the time it is sold, such warranties do not cover problems caused by abuse, misuse, wear, failure to follow instructions, improper maintenance, or other factors relating to the product's condition at time of sale.

Merchantability

An implied warranty of merchantability is a promise that the product is in proper condition for sale and will work as it is supposed to. For example, ovens are intended to cook food at certain controlled temperatures. If the oven won't heat, or heats uncontrollably, it is not merchantable, and there would be a breach or violation of the warranty.

Fitness for a Particular Purpose

This type of warranty arises when a customer relies on the seller's advice that the product can be used for a particular purpose. For example, when a customer tells a retailer that a pair of shoes will be used for mountain climbing, and the retailer states that a certain model he sells is good for mountain climbing, then the retailer has made a warranty of fitness for a particular purpose, and the warranty will be breached if the shoes turn out to be unfit for mountain climbing.

EXPRESS WARRANTIES

An oral promise by a salesman, an advertising claim and a written guarantee are all examples of an express warranty. The most common is the written warranty, of which there are two types:

Full Warranty

A defective product will be repaired or replaced for free, including removal and reinstallation when necessary;

The product will be repaired within a reasonable time period after the customer has complained;

The customer will not have to do anything unreasonable to get warranty service such as return a heavy product to the store;

The warranty is good for anyone who owns the product during the warranty period; and

If the product has not been repaired after a reasonable number of attempts, a customer can get a replacement or refund. (This is commonly known as the "lemon" provision).

Limited Warranty

A limited warranty means the warranty gives the customer less than full warranty protection. Common examples are where there is a charge for handling or where the parts are warranted but the customer must pay for labor.

SERVICE CONTRACTS

A service contract is an optional agreement to service a product that a customer buys as additional protection during a warranty period, or as protection after the warranty has expired. Service contracts are not warranties. Your protection under a service contract depends upon the terms and conditions stated in the contract.

AS IS

A product bought "as is" comes with no warranty at all. If the product is worthless or breaks down on the way home, the seller will normally not be responsible.

"AS IS" (USED CARS)

The Federal Trade Commission requires used car dealers to place a "Buyer Guide" in the window of every used car they sell and make the Buyer's Guide available to you after you purchase the vehicle. The Buyer's Guide will include the following:

Whether the vehicle comes with a warranty and, if so, what specific warranty protection the dealer will provide;

Implied warranties provided by California State Statute (warranties provided under "Lemon Law");

That you should ask to have the car inspected by your own mechanic before you buy;

That you should get all promises in writing; and

What major problems may occur in any car.

Take the Buyer's Guide to heart. Discuss the warranties listed on the Buyer's Guide with the dealer. Always have the car inspected before you buy and always get all oral promises put in writing. Remember, most used cars will be sold "as is", and your purchase will come under the rule in Section E of this Chapter. Also, if your car does not come with a Buyer's Guide, the dealer is violating Federal Law, and you should contact Legal Assistance immediately.

California car warranties

Vehicles:

<https://www.dca.ca.gov/>

Other internet resources:

<https://www.consumerlaw.com/home/>