

PREVENTIVE LAW

SERIES

Legal Assistance Program

TOPIC:

Service Members Civil Relief Act (SCRA)

October 2014

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of this pamphlet, please contact the
Legal Assistance Office**

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**Legal Assistance Office
Phone: 226-4022**

**Office of the
Staff Judge Advocate
Misawa AB, Japan**

THE SERVICEMEMBER'S CIVIL RELIEF ACT

What the SCRA Does: The Servicemembers Civil Relief Act of 2003 (SCRA), 50 USC App §§501-596, signed into law on December 19, 2003 and amended December 10, 2004, completely rewrote and replaced the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940. The SCRA (and previously the SCCRA) protects those persons who serve on active duty for the nation's defense, from adverse consequences to their legal rights that may result because of such service, so that such persons may devote their full attention and all their energies to the nation's defense. The SCRA strengthens the protections originally granted by the SSCRA, extends certain protection for dependents of the member on active duty, and creates new protections for members. The SCRA provides protection for members in civil court and administrative actions. It also provides protections for issues involving taxation, house/apartment leases, car leases, interest rates and insurance.

Who Does it Apply to: The SCRA applies to all military members on federal active duty. This includes the regular forces, the reserve forces, and the guard forces in Title 10 active duty. The SCRA also applies to the Coast Guard and officers in the Public Health Service and National Oceanic and Atmospheric Administration in support of the Armed Forces. In limited circumstances (i.e., evictions, joint leases), the SCRA may apply to dependents of the military member. In November 2009, President Obama signed into law the Military Spouses Residency Relief Act (MSRRA) which amends the SCRA to provide additional protections to spouses of servicemembers relating to residency, taxes, and voting rights. The SCRA applies to all 50 states of the United States and to all territories (i.e., Puerto Rico, U.S. Virgin Islands, Guam and the Marianas Islands) subject to U.S. jurisdiction.

When Does it Apply: SCRA protections generally begin the first date of the active duty period, and may extend from 30 days up to 180 days after the member is released from active duty.

Invoking the SCRA Protections: Many SCRA protections are not automatic and require the member to request the protection in a timely manner. For certain SCRA protections (i.e., interest rates), the member also may have to show that the active military service materially affects the member's ability to pay.

Waiving SCRA Protections: A member may waive any SCRA right and protection. Waiver of certain SCRA rights or protections requires a written waiver that meets the applicable requirements of the SCRA (e.g.: waiver must be separate document, waiver text in 12 point type). Prior to waiving SCRA protections, it is advisable to consult with a legal assistance attorney.

SIGNIFICANT SCRA PROTECTIONS

Court and Administrative Proceedings. The SCRA provides for an automatic stay of at least 90 days upon a proper request from the member in civil administrative and civil matters. The member who is unable to appear in court on the date required because of active military service must request this SCRA protection in writing and include certain information with the request. After receiving the written request, the judge, magistrate or hearing officer must grant a minimum 90-day delay. Unlike the SSCRA, under the SCRA, this delay is mandatory, and the member's letter requesting postponement is not an appearance or waiver of any defense by the member. Any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate or hearing officer. You should know that this protection does not apply to criminal court or criminal administrative proceedings. You should consult with a legal assistance attorney for the strict statutory requirements before requesting a stay.

Default Judgments. A member may request the court to re-open a matter and set-aside a default judgment if the judgment was entered against the member during the member's active duty period, or within 60 days after the member's release from active military duty. The member must timely request such relief (i.e., within 90 days from release from active duty), show the active service materially affected the member's ability to defend against the action, and show that he or she has a good defense. You should consult with a legal assistance attorney to obtain information on possible relief available to you.

Credit Agency Information: A credit agency may not identify a member's status as guard or reserve because such identification may cause a lender to deny or revoke credit, change credit terms or view the credit report negatively against the member.

Reduced Interest: A member may reduce the higher interest rates the member pays for any financial obligation (credit card, loan, mortgage) individually or jointly entered into before active service to six percent (6%) if active service materially affects the member's ability to repay the financial obligation. In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and forgives (vs. defers) the excess interest payments that would have been due under the higher interest rate so that the member is not liable for the excess after he or she is released from active service. This reduced interest rate is effective only during the period of active military duty for most obligations; however, for a mortgage obligation, the reduced interest rate continues for 1 year following release from military service. Finally, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service, or to federal guaranteed student loans.

Termination of Automobile Leases: The SCRA creates a new protection to allow a member to terminate an automobile lease that the member signed either before or during active duty if the member meets certain conditions. Generally, a reserve or guard member must, after entering the lease, be called to active duty service for at least 180 days or more. An active duty member must, after entering the lease, EITHER (a) receive military orders for a permanent change of station either i) from the continental United States

(CONUS) to outside CONUS or (ii) from a state outside CONUS to any location outside that state OR (b) deploy for 180 days or more. Terminating the lease requires written notice to the lessor with a copy of military orders.

Termination of Real Estate Leases: A member may terminate, without penalty, leases and rental agreements entered into before or during active military service for real estate properties (i.e., residences, businesses) if the member meets certain conditions. Previously, the SSCRA did not permit such terminations if the lease or rental agreement was entered into during active service. Generally, the member must be called to active duty service for at least 90 days, or receive military orders for a permanent change of station or orders to deploy for at least 90 days. Such terminations also terminate any obligation of the member's dependents under the lease. Terminating the lease requires written notice to the lessor with a copy of military orders.

Termination of Cell Phone Contracts: Cell phone installment contracts are also protected. These contracts may be cancelled or suspended if the servicemember is deployed overseas for 90 days or longer or if he makes a permanent change-of-station (PCS) move. The servicemember may cancel or suspend the cell phone contract without penalties or extra fees as long as the deployment or PCS materially affects the servicemember's ability to satisfy the contract or utilize the service.

Evictions. Some states require a court order for a landlord to evict and other states do not require such a court order. The SCRA makes it a requirement for all states that landlords obtain a court order to evict a military member or the member's dependents during the period of the member's active duty service. The monthly rental amount for the leased residence cannot exceed \$2,958.53 (as of 1 Jan 10) for the protections to apply. If the member or the member's dependents meet certain qualifications, the member or the member's dependent may request a stay of an eviction action. The court will grant relief it deems appropriate. The SCRA creates criminal offenses for landlords who violate this SCRA protection.

Foreclosures and Repossessions: If because of active military service, a member breaches the terms of a purchase contract for real property or an automobile, the property may not be foreclosed or repossessed without a court order. The member, under certain circumstances, may request a stay of the proceedings.

Insurance. The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist. The SCRA also provides protection against termination of policy or forfeiture of premiums to members who have individual life insurance policies. For SCRA protection for life insurance policies, the member must submit a written request to the Department of Veteran Affairs.

Domicile (Legal Residence) & Taxation: The SCRA continues the protection the SSCRA granted for domicile and residence. A member can maintain the domicile or legal

residence in the state the member resided before entering active duty. A member does not lose the domicile (legal residence) in a state when absence from that state is due to military orders. Members, however, can change his or her domicile if the member meets the conditions for changing legal residence. Legal residence (domicile) should not be confused with residence. A person can have as many residences as he/she can afford, but can have only one legal residence (domicile). Generally, the domicile is considered to be the state entered in the member's pay records. The domicile is the state where the member resided at some point in time and while residing there formed the intent to return to the state after his or her military service ends and remain there indefinitely.

A member does not acquire a new domicile or legal residence for purposes of income tax when the member's presence in the state is solely due to military orders. Furthermore, the SCRA prohibits states (where the member is located merely because of military orders) from including military income of a nonresident member to increase the tax liability imposed on nonmilitary income earned by the nonresident member or spouse subject to tax by the state. The military income is taxable only by the member's domicile state, if the domicile state has an income tax.

The Military Spouses Residency Relief Act (MSRRA) and Taxation: In November 2009, the MSRRA became law and amended the SCRA. This new law changes some basic rules of taxation that could affect servicemembers and their spouses. Under the new law, a military spouse who is present with a service member (SM) in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile (permanent home). However, the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. Some States, of course, don't have State income taxes.

The MSRRA does not allow a spouse to pick or chose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to "inherit" or assume the SM's domicile upon marriage without the necessary contacts with the State.

The law is complicated, and because its effect will depend on the interpretations of each State, SMs and their spouses are encouraged to seek free, confidential advice from a military legal assistance office.

THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE MISAWA AIR BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LEGAL ASSISTANCE ATTORNEY.

Request for Stay of Proceedings from Servicemember

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John D. Doe
Address
City, State 00000

Honorable Judge's Name
Address
City, State 00000

Date

RE: Request for Stay of Proceedings
Docket/Case #: **XXXXXXXXXX**

Dear Honorable Judge's Name:

Please accept this letter as my formal written request for a stay of proceedings, in the case above, as provided in the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. Section 522. I am an active duty servicemember currently stationed overseas at **Name of Installation**.

I am unable to attend the scheduled proceeding because **[briefly explain the situation]**. I will return to the states on **date** and will be prepared to proceed shortly thereafter on **date**. If you will not stay the proceedings until that date, I request that you appoint counsel to represent me after the initial 90-day stay according to the SCRA, 50 U.S.C. App. Section 522.

Please find the attached letter from my unit commander.

If you have any questions or require any additional information, you may contact me, in writing, at the address listed above.

Sincerely,

John D. Doe

Attachment:
Commander's Letter (see next page)

Request for Stay of Proceedings from Commander

(NOTE: This letter should be prepared for the signature of the client's commander. At least one court has construed a letter directly from a legal assistance attorney to be an appearance causing the client to lose valuable rights!)

[LETTERHEAD]

[Date]

Commander

[CLERK OF COURT ADDRESS]

Dear [Sir or Madam]:

I am an officer in the U.S. [SERVICE] writing on behalf of [CLIENT], who is a party in a civil action now pending before your court, [CASE ID NUMBER]. [CLIENT] is currently serving in the active military service of the nation at [INSTALLATION]. He/she is assigned to my command.

[CLIENT] will be unable to attend any hearings, present any case, or effectively protect his interests in the matter in question until [DATE] because of his/her military duties. Until this date, [CLIENT] is needed by this unit to/because [REASONS].

Note - Clearly outline the duties to which the member must attend and demonstrate why he/she cannot take leave to participate in the civil proceeding. While the SCRA provisions on stays read as more mandatory in nature than was the case with the SSCRA, a judge will want to see the justification. The requirements for the application are clear and must be met. The need to treat each case individually and, based on its unique facts and circumstances, make a strong demonstration of how military duties have materially affected the ability to appear and participate in the proceeding cannot be overemphasized. Be specific regarding the duties and their necessity and importance to the unit's or installation's current operations, without breaching operational security.

I understand federal law, specifically the Servicemembers Civil Relief Act, allows a stay of proceedings for service members on active duty when their ability to participate and protect their interests is materially affected by their military service (50 U.S.C. App. § 522). In this instance, [CLIENT's] critical role in the national security mission of this command precludes his/her participation in court proceedings until [DATE]. He will be unable to participate in this case at all due to his/her duties.

I respectfully request that you grant a stay in the proceedings until [DATE] to allow [CLIENT] to properly attend to both his/her military responsibilities and obligations in the matter

before your court. I will personally ensure that he/she is placed on leave immediately following the completion of the duties described above, so that he/she may appear at the next scheduled court date after [DATE]. I should note that I am not an attorney and am not making this request based on any attorney-client relationship between myself and [CLIENT]. I am not representing [CLIENT] with regard to the proceedings pending in your court. This letter should not be considered an appearance by [CLIENT]. Rather, it is a request in my capacity as a commander, charged with a mission supporting the national security of this nation, that you delay the proceedings to allow this soldier to perform his critical part in that mission.

Thank you in advance for your assistance and consideration in this matter. I ask that you inform myself or [CLIENT], at the above address, of any action taken regarding this request.

Sincerely,

[COMMANDER NAME], [RANK], USAF
Commander

Request for 6% Interest Rate Cap

Date

Servicemember's Name

Street Address

City, State Zip

NAME OF CREDITOR

ADDRESS

CITY, STATE, ZIP

RE: YOUR NAME AS IT APPEARS ON YOUR STATEMENT, ACCOUNT NO.

Dear Sir or Madam:

This letter is to advise you that I have been ordered to active duty service with the United States Armed Forces. As a result of my military service, I have lost my civilian employment income. I incurred the above referenced debt prior to entry on active duty. My entry into military service has materially affected my ability to make the payments that I agreed to make while a civilian.

I entered active duty on _____ (date), and am presently on active duty assigned to _____ (unit). The Servicemembers' Civil Relief Act of 2003, 50 U.S.C. Appendix, Section 527, sets a six percent (6%) per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a servicemember's military service for obligations made prior to the date of entry onto active duty when the active duty materially affects the ability to pay.

Since entering active duty, I have experienced a decrease in salary, adversely affecting my ability to pay. Thus, I am requesting an adjustment of this account to reflect the statutory six percent (6%) rate. This rate became effective upon my entry to active duty on _____ (date). Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn. The interest over 6% must be forgiven, not just deferred and my monthly payments must be reduced by the reduction in the interest rate.

Please contact me at _____ (phone or address) with a revised payment schedule. Thank you for your understanding and support in this matter.

Sincerely,

John Doe, Rank, USAF

**** ENCLOSE A COPY OF YOUR CURRENT LEAVE AND EARNINGS STATEMENT (LES) AND A COPY OF YOUR ORDERS THAT BROUGHT YOU ON ACTIVE DUTY.**

Termination of 6% Cap - Active Duty Ended

Date

Servicemember's Name

Street Address

City, State Zip

Creditor's Name

Street Address

City, State Zip

Ref: [Account #]

Dear [*Insert Point of Contact at Creditor*] or Sir/Ma'am or To Whom It May Concern,

I am writing concerning my [cite the type of account - vehicle loan, credit card (VISA, American Express, MasterCard, Diners Club, etc), mortgage, personal loan, etc] with your organization. Pursuant to my request, made under the authority of the Servicemembers Civil Relief Act (SCRA), you reduced my interest rate to 6% per year due to my entry into active military service. My active duty military service ended effective [insert date of separation from or termination of active duty]. My eligibility under the SCRA for the reduction of interest to 6% ended when I left active duty service.

Please take appropriate steps so that I may resume making payments in accordance with my credit agreement under the contract. Under the SCRA, the difference between the contract interest rate and 6% rate for the period of my active duty military service is forgiven on my debt; it is not deferred or accrued on the balance of this account/debt. Accordingly, please refund any interest payments in excess of six percent that I made between [insert date of entry onto active duty] when I entered active service and [insert date of separation from or termination of] when that service ended.

[Not provided in the SCRA, but servicemember may want to add, if appropriate: *The reduced income I received during my military service has adversely affected my financial situation. I anticipate the situation will improve as I return to my civilian job. In the meantime, any assistance you could provide to reduce the monthly obligation on the currently outstanding balance would be greatly appreciated. If at all possible, I would like to make monthly payments of _____, since that is all I can realistically afford at this time.*]

NOTE: This optional paragraph highlights for the creditor an adverse financial situation affecting the servicemember in the aftermath of his or her military service. A client facing financial difficulties resulting from reduced income during an extended period of active duty may want to ask the creditor for assistance before a problem develops in meeting monthly obligations. Creditors may extend loans, reduce the minimum monthly payment amount, refinance, or take other actions aimed at keeping the obligation current

and avoiding the cost of collection efforts. Discuss this potential course of action carefully with clients before including this paragraph.

If you have any questions regarding this request, please call me at [*insert telephone number*].

I wish to thank you for your cooperation in applying this protection during my active duty military service.

Sincerely,

(Signature Block: Full Name, Rank and Branch of Service)

Termination of Premises Lease

Date

Servicemember's Name

Street Address

City, State Zip

Landlord's Name or Landlord's Agent

Street Address

City, State Zip

Ref: Lease of *[Insert Address of Premises]*

Dear *[Insert Name of Landlord or Landlord's Agent]* or Sir/Ma'am or To Whom It May Concern

I am writing to terminate the lease of the above-referenced premises due to my [entry into active military service] or [reassignment under permanent change of station orders] or [permanent change of station orders for separation or retirement from active military service] or [deployment with a military unit for 90 days or more] under the authority of Section 535 of the Servicemembers Civil Relief Act.

If reason is entry into active military service: On *[insert date you began active duty]*, I was called to active duty in the *[branch of military service]*. I have been continually on active duty since that date.

If reason is reassignment under PCS orders: On *[insert date of military orders]*, I received permanent change of station (PCS) orders to *[state location]*.

If reason is PCS move for separation or retirement: On *[insert date of military orders]*, I received permanent change of station (PCS) orders effecting my final move on separation or retirement from active military to *[state location]*.

If reason is deployment for 90 days or more: On *[insert date of military orders]*, I received military orders to deploy with a military unit for a period of *[insert number of days months]*.

Section 535 of the Servicemembers' Civil Relief Act (SCRA) (50 U.S.C. App. Section 535) allows termination of a lease for [residential] or [business] premises due to *[insert reason: call to active military service or permanent change of station move or deployment with a military unit for 90 days or more]*. Under the statute, the termination of the lease takes effect not earlier than [30 days after the due date on which the next rental payment (*for leases calling for monthly payment of rent*)] or [on the last day of next month (*for any other type of lease*)]. **If client wishes a specific termination date, add:** I request termination take effect on *(insert date, which must*

be on or after the effective date of termination per SCRA Section 535(d), unless the parties agree otherwise).

This termination notice covers me, my spouse (if applicable), and all of my dependents that have resided in or used the premises.

As required by SCRA Section 535(c)(1), I have enclosed a copy of my active duty orders for your reference.

If you have any questions regarding this notice, please call me at [*insert telephone number*].

Thank you for your understanding and cooperation.

Sincerely,

(Signature Block consisting of full name, military rank, and service)

Enclosure: Military Orders

NOTICE OF CANCELLATION OF MOTOR VEHICLE LEASE
PURSUANT TO SECTION 305 OF THE
SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. App. §535)

TO: [Lessor name and address]

FROM: [Lessee name and address]

I, _____, as Lessee ("I"), notify you, Lessor ("You"), pursuant to Section 305 of the Servicemembers' Civil Relief Act (SCRA) of my intent to terminate the lease of the following described motor vehicle:

_____ Year	_____ Make	_____ Model	_____ VIN #	_____ Lease or Account #
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I understand that You may provide more specific instructions related to my lease agreement and your procedures for implementing this lease termination.

[Check applicable status]

_____ Since leasing the vehicle described above, I certify that I have entered military service under a call or order specifying a period of not less than 180 days of duty (or have previously entered military service under a call or order specifying a period of 180 days or less of duty, but, without a break in service, I have received orders extending my period of military service to a period of not less than 180 days); OR

_____ After leasing the vehicle described above, I certify that I have received military orders for a permanent change of station outside of the continental United States or have been ordered to deploy with a military unit for a period of not less than 180 days.

I understand that in order to terminate the lease, I am required to do the following:

- 1) Deliver this notice and a copy of my military orders to You by hand delivery, recognized courier service or by mail, addressed to You at the above address, return receipt requested, or by any means approved by You; and
- 2) Return the leased motor vehicle to any reasonable location specified by You (or someone You designate) within 15 days after delivery of this notice.

Federal Odometer Statement:

I understand that Federal law requires me to provide You with a signed statement, such as the one attached to this notice, showing the vehicle's mileage at the termination of the lease.

Termination Date:

The lease is terminated effective on the date the motor vehicle is surrendered to the designated location and my notice and military orders have been provided to You.

Liability by Law:

Although I do not have to pay an early termination charge, I understand that I remain liable for any monthly payments, taxes, summonses and title and registration fees, charges for excess wear and use and excess mileage, and any other amounts owed under the lease, that have become due and are unpaid at termination in accordance with the terms of my lease.

Date

Signature of Servicemember or Designated Agent

Print Name, Rank and Branch of Service

Military Unit & Duty phone number

**ODOMETER DISCLOSURE STATEMENT
(Leased Vehicle)**

FAX TO _____

(Request Fax Number from Lessor)

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you, the lessee/customer, disclose the mileage to the lessor in connection with the transfer of ownership. **Failure to complete or making a false statement may result in fines and/or imprisonment.**

Complete disclosure form below and return to lessor.

I, _____ state that the odometer now reads _____
(Print name of person making disclosure) (no tenths)

miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the statements is checked.

(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING - ODOMETER DISCREPANCY

Make _____ Model _____ Body Type _____ Color _____

Vehicle Identification Number _____ Year _____

Account Number _____ Dealer _____

LESSEE / CUSTOMER INFORMATION:

Lessee Name (printed) _____ Date _____

Lessee Electronic Identification Code (if applicable) _____

Lessee Signature _____

Lessee Address _____
(Street)

(City) (State) (Zip)

LESSOR INFORMATION:

Lessor Signature _____ Lessee _____

Date of Statement _____ Date Received by Lessor _____