



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Q: What is the SCRA? The SCRA of 2003 is a federal law that provides military members certain rights such as: (1) the ability to stay civil court and administrative hearings for 90 days if military service materially affects the Servicemembers' ability to defend their interests; (2) the ability to reduce interest rates on pre-service loans to 6%; (3) requiring landlords to obtain prior court authorization before evicting Servicemembers' families for nonpayment of rent if the monthly rent is \$2,400 or less; (4) the ability to terminate pre-service residential and automobile leases; and (5) permitting Servicemembers to maintain their state of residence for tax purposes. Certain provisions under the SCRA require the Servicemember to demonstrate how military service has "materially affected" a particular legal or financial matter. In many instances, protections are not automatic but require the Servicemember to take action to invoke the act.

Q: When does the SCRA begin to protect me? Most protections begin on the effective date of orders to active duty. Be prepared to present a copy of your orders to whomever you ask for relief under SCRA.

Q: What is the six percent (6%) rule and how do I invoke this protection? You may be able to reduce pre-service consumer debt and mortgage interest to 6% if: (1) you took out the debt during a time when you were not on active duty; (2) the interest rate is currently above 6%; (3) your military service materially affects your ability to pay the debt at the original pre-service interest rate (this requirement generally requires you to earn less in the military than as a civilian); and (4) you request reduction from the lender in writing along with a copy of your orders. Interest in excess of 6% must be forgiven, not merely deferred.

Q: Can I terminate the lease on my house or apartment? Servicemembers (active, reserve or guard) may terminate a residential lease for themselves (or their dependents) upon entry into military service, after receipt of orders to deploy for no less than 90 days, or after receipt of Permanent Change of Station (PCS) orders.

Written notice and a copy of orders must be provided to the landlord, and termination will be effective 30 days after the first date on which the next rental payment is due if your lease requires monthly payments. Therefore, once you give written notice, the landlord can still charge you rent for 30 days after the date your next rent is due. For example, if you give notice to your landlord on 15 Dec and rent is due on 1 Jan, the landlord may collect rent through 31 Jan. The effective date for leases not requiring monthly payments of rent is the last day of the month following the month in which the notice is delivered. For example, assuming Sgt. Jane provides proper notice of termination to her landlord under the SCRA on the 5th of December, then the effective date of termination is the 31st of January. Thus, it is crucial to give the landlord written notice and orders as soon as possible. Landlords have the right to apply to court for relief from this provision of the SCRA. Therefore, it is advisable to still include a military termination clause in the lease agreement.

Q: Can I terminate the lease on my automobile? Servicemembers may terminate pre-service automobile leases for themselves (or their dependents) if they receive active duty orders for 180 days or more. Automobile leases entered into while on active duty may be terminated if they receive PCS orders to an overseas location or deployment orders for 180 days or more. As with termination of real property leases, the Servicemember must deliver a written notice of termination to the lessor, along with a copy of military orders. The Servicemember

must then return the motor vehicle to the lessor within 15 days of the date of delivery of the termination notice. The lease is terminated once a proper termination notice is delivered and the motor vehicle is returned within the proper timeframe.

Q: Can I terminate or suspend my cell phone contract? Servicemembers, deployed overseas for 90 days or longer or who receive permanent change of station orders, may cancel or suspend cell phone contracts without penalties or extra fees if their ability to satisfy the contracts or to utilize the service will be materially affected by such deployment or permanent change of station. Additionally, Servicemembers deployed overseas for more than 90 days may suspend their contracts at no charge until the end of their deployments without being required to extend the length of the original contract term. In order to exercise this right, Servicemembers must provide their cellular telephone service contractors with copies of their military orders. Upon receiving the request for termination or suspension of service, the telephone service contractors shall grant the requested relief without imposition of an early termination fee for termination of the contracts or a reactivation fee for suspension of the contracts.

Q: Can I get a court or administrative hearing delayed? If you are being sued in a civil (not criminal) case, including a child custody proceeding, or have been notified to appear in an administrative hearing, an initial 90-day delay must be granted upon your request. Your request must explain how your military duties materially affect your ability to appear and the date you will be available to appear. In addition, your commander must provide a letter detailing how your military duty prevents you from appearing. Stays beyond the initial 90 days can be granted at the discretion of the judge or hearing official. If an additional stay is denied, the court or administrative body must appoint counsel to represent your interests.

Q: What if a default judgment has already been entered against me? If you already have a default judgment entered against you, due to your failure to appear in court, you may be able to open the judgment by showing how your military duty materially affected your ability to appear in court and present your defense. You must be able to show that you have a meritorious defense to present to the court.

Q: May I waive my rights under the SCRA? Servicemembers may waive, in a separate writing, any of their SCRA rights and protections.

Q: Will I have to pay state income taxes on my military pay while I am on active duty? It depends on your state of residency. Servicemembers remain residents of their “home” state regardless of where they are assigned. Some states tax military pay regardless of place of assignment, some states tax military pay if the Servicemember is stationed in their home state, some states do not tax military pay so long as the member is not stationed in the home state and does not maintain a place of abode in the home state, and some states have no income tax at all. The state in which you are assigned, pursuant to military orders, may not tax your military pay. However, any off-duty employment income may be taxed. A non-military working spouse’s income may be taxed by the state in which he or she works. Your military pay should not be added to the spouse’s income for purposes of determining the applicable tax bracket and tax rate.

Q: Will I still be covered under my civilian health care plan when I am released from active duty? While you are on active duty, you and your dependents are eligible to receive medical care at military medical facilities. Therefore, you may decide to suspend your civilian health care plan. The civilian medical insurance company must reinstate your coverage when you are released from active duty and may not refuse to cover “pre-existing conditions.”

Q: Is a statute of limitations tolled during the period of my military service? The period of a military member’s service may not be included in computing any period limited by law or regulation for the bringing of a cause of action by or against the Servicemember.