

Congress Provides Regulatory Relief for Military Personnel who are deployed



THE SOLDIERS AND SAILORS CIVIL RELIEF ACT OF 1990 (SSCRA)

EXECUTIVE SUMMARY

Congress recognized that soldiers and sailors should not be worrying about finances, lawsuits, evictions, and similar difficulties when individuals are called into active service. The Soldiers and Sailors' Civil Relief Act of 1940 (SSCRA) provides protection for those military personnel and their families from evictions, foreclosures, repossessions and debt collections while a person is unable to meet their expenses because they are deployed.

The Act does not protect those debts incurred after an individual is released from active duty or debts incurred while a person is in active services, and it does not excuse individuals from debts. It merely delays the collection process for those debts until a person is finished with active duty.

The protection begins on the date of entry on active duty and generally ends within 30 to 90 days (and in certain cases for up to six months) after a person is released from active duty. The U.S. Supreme Court has stated that the statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call."

Under the Act the following applies:

- Reduced interest rate on mortgage payments
- Reduced interest rate on credit card debt
- Protection from eviction if rent is \$1,200 or less
- Delay of all civil court actions, such as bankruptcy, foreclosure or divorce proceedings

Obligations incurred by military members prior to entry into military service shall be limited to an interest rate not to exceed six percent annually, unless a Court determines that the military members' ability to pay did not change in any significant manner due to the activation. If a financial institution can show to a Court that a military member is making about the same pay they received as a civilian when the debt was incurred, the military member can expect to pay the higher rate on the obligation.

Foreclosures of mortgages and trust deed are prohibited, unless a Court determines that the member's ability to pay is not materially affected by military service. There are similar provisions for real or personal property purchase contracts to prevent sellers from declaring a default or exercising an option to terminate the agreement for nonpayment resulting from military service.

Legal proceedings are generally held in abeyance while the military member is unable to appear by reason of military service. It should be noted that a member's mere unwillingness to take leave in order to take care of legal proceedings does not mean the same thing as inability to appear due to military service. Mission requirements that prevent a member from taking leave do constitute an inability. Judges are given wide discretion to make determinations on whether or not a person's military service did in fact impact various areas covered under the Act.

Q1. What is a "Material Effect"?

A1. There is no one definition of "material effect." The Court should make a finding of "material effect" when a military member's ability to prosecute or defend a civil suit is impaired by military duties which prevent the member from appearing in court at the designated time and place, or from assisting in the preparation or presentation of the case. An adverse material effect might also be found when military service impairs substantially the member's ability to pay financial obligations.

Q2. Can a default judgment be entered against a military member?

A2. There are restrictions under the Act when the plaintiff applies for a default judgment or when the moving party attempts to have a hearing in the absence of the defendant. It requires the plaintiff to sign and file an affidavit with the court stating that the other party is in the military, is not in the military, or the plaintiff does not know, before a decree or judgment can be obtained by default. If the affidavit indicates the other party is in the military or the plaintiff does not know, before a decree or judgment

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can be obtained by default. If the affidavit indicates the other party is in the military or the plaintiff does not know, the Act indicates the court should appoint an attorney to represent the other party. These provisions do not apply unless the member failed to appear at all. If, for example, the member has counsel of record, or has filed pleadings in the case, this provision does not apply.

Q3. What are the provisions for reopening a default judgment?

A3. When a default has already been entered, a member has the right to have it reopened upon certain conditions. If the default is granted during the period of military service or within 30 days thereafter, the member can apply to have it set aside, provided that the member requests reopening the decree within 90 days after the end of military service, and that no appearance has been entered, either pro se or through an attorney. The member's application to set the decree aside should be granted if the member can show that he or she has a good and legal defense to the claim, and can show prejudice resulting from not being able to appear in person to defend or prosecute.

Q4. Are there provisions for staying the execution of a judgment?

A4. As to any case filed against a member, the Court may grant a stay of the execution of a judgment or order entered against the member, and vacate or stay an attachment or garnishment on its own motion. When this is upon motion by the member or someone on the member's behalf the Court must grant the above relief unless the Court determines that the member's ability to comply with the judgment or order is not materially affected by reason of military service.

Q5. What are the statutes of limitation for the Act?

A5. The period of military service shall not be included in computing any limitation period for filing suit, either by or against any person in military service. This also includes suit by or against the heirs, executors, administrators, or assigns or the member, when the claim accrues before or during the period of service. Thus this Act section "tolls" statutes of limitations during the military service of any military plaintiff or defendant. The statute does not, however, affect time periods within a suit, such as time periods to avoid motions to dismiss for failure to prosecute an action. Once military service

is shown, the period of limitations is automatically tolled for the duration of the service.

Q6. How does the Act apply to loan obligations?

A6. Military members who signed an installment contract for the purchase of real or personal property before active duty will be protected if their ability to make the payments is "materially affected" because of active duty service.

Q7. What is covered under the interest rate requirements?

A7. When an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The term's "interest" includes service charges.

Q8. What are the protections against mortgage foreclosures?

A8. The Act protects members against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

1. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property
2. The obligation originated prior to entry upon active duty
3. The property was owned by the member and/or dependent before entry on active duty status
4. The property is still owned by the member or dependent at the time relief is sought
5. The ability to meet the financial obligation is "materially affected" by the member's active duty obligation

Courts can stay proceedings until members are available to answer, extend the mortgage maturity date to allow reduced monthly payments, grant foreclosure subject to being reopened if challenged by a member, and extend the period of redemption by a period equal to the member's military service.