

THE SERVICEMEMBER'S CIVIL RELIEF ACT

If you are on active duty, you probably recognize that your military service often makes it more difficult for you to meet your financial obligations and to assert many of your legal rights. Fortunately, Congress recognizes it as well. Since the Civil War, Congress has passed laws that provide certain legal protections to military members to reduce the difficulties that we encounter. The current version of the law is the Servicemembers' Civil Relief Act. President Bush signed it into effect in December 2003. This new law is an improvement on its predecessor, the Soldiers and Sailors Civil Relief Act of 1940. The Act is intended to postpone or suspend certain civil obligations of military members. The purpose is to enable the service members to devote their entire energies to the defense of our country. The Act does this by providing for the suspension of legal proceedings and transactions, which may prejudice the civil rights of military members.

The Act provides some broad protections, but it is not a solution for every legal problem facing the service member. There are many situations to which the Act does not apply.

The purpose of this paper is to describe a few of the more significant provisions of the Act, i.e., what it says and what it does not say.

WHO IS PROTECTED?

All individuals entering or called to active duty in the military service are protected. Reservists and members of the National Guard are protected while they are on active duty. Also included are individuals who are Public Health Service Officers detailed to the Army and Navy. The protection begins on the date of entering active duty and generally ends at the date of discharge.

KEY CONCEPT OF MATERIALLY AFFECTED

For certain important provisions of the Act to apply, the ability of the service member to either defend or pursue an action must be "materially affected" by the member's military service. "Materially affected" can be because of geographic prejudice, i.e., your duty location prevents personal attendance at a judicial proceeding to protect your rights. "Materially affected" can also be due to economic prejudice, i.e., you cannot meet your financial obligations due to military service. An example would be a reduction in income as a result of entering military service, which results in an inability to meet your obligations. The court compares your financial conditions prior to entering on active duty with your financial conditions after entry on active duty.

WHAT ARE SOME OF THE PROTECTIONS?

1. Leases - You may terminate a lease if you meet 2 (two) conditions

- a. You entered into the lease before you started active duty.
- b. You or your dependents occupied the leased premises.

To terminate the lease, you must deliver written notice to the landlord after you are called to active duty (i.e., you receive orders). Oral notice is NOT enough. If you think you qualify and want to use this provision to terminate your lease, come into the legal office. We can help you draft your written notice and explain the fairly complex rules on when the lease will terminate.

With residential leases, an active duty service member who has received PCS orders or who is being deployed for 90 days or more may terminate a housing lease, provided the member gives the landlord 30 days WRITTEN notice.

With AUTOMOBILE leases, an active duty service member who has received PCS orders or who is being deployed for 180 days or more may terminate an automobile lease. The member must provide WRITTEN notice of termination to the lessor and return the vehicle within 15 days of written notice. Previously, there was no right to terminate an automobile lease.

2. Rent and Eviction

Landlords cannot, except with permission from a court, evict your dependents from rental housing when the agreed rent does not exceed \$2932.31 per month. If your rent is in excess of \$2932.31 per month, come see the legal office.

3. Installment Contracts and Mortgage Foreclosing

If, prior to entering active duty, you entered into an installment contract to purchase real or personal property, the Act will protect you if your ability to pay is "materially affected" by your military service. Note that you must have paid a deposit or installment prior to active duty. If so, then the seller cannot, unless authorized by the court, rescind, terminate or repossess the property.

In addition, the Act protects you against foreclosure of mortgages as long as the following apply:

- a. It is a mortgage/trust deed/other security
- b. Your obligation originated prior to your entry on active duty.
- c. You or a family member owned the property prior to entry on active duty.
- d. You or your family member still owns the property.

e. Your ability to meet the financial obligation (pay the loan) is materially affected by your entry on active duty.

f. Additionally, motor vehicles fall within the umbrella of installment contract protections. If a military member falls behind on car payments, the lessor must obtain a court order before repossessing the car. Previously, there was no requirement for a court order for repossession.

g. Cell phone installment contract are also protected. Under the Veterans' Benefits Improvement Act, 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. Contact the Legal Assistance Office at 926-9276, if you have any questions or need help cancelling your cell phone contract.

4. Default Judgments

A default judgment is a judgment against you because you failed to respond to a lawsuit or appear at trial. The Act provides you with some protection against default judgments. Before a court can enter a default judgment against you, the person suing you must provide the court with a sworn statement that you are not in military service. If he/she does not and you are in the military, then the court will appoint an attorney to protect your interest (usually by seeking a delay in the proceedings). Notice of military status alone, will not prevent a default judgment. The court may also require the person suing you to post a bond to protect you against harm. Finally, if there is a default judgment against you, then the judgment will be reopened (you get another chance) if you (1) make a request within 90 days of returning from TDY, etc., or leaving active duty, (2) show that you were prejudiced and (3) show that you had a defense.

If you are in the military and you do not appear for you case, the Court must grant a stay of at least 90 days. Defense to the action requires your presence if your appointed counsel is unable to contact you in order to determine if there is a valid defense to your claim. Even with all of these protections, you need to be careful when there is a judgment against you. If you fail to exercise these protections or exhaust all of your protections a default judgment will stand. Even if a default judgment is overturned, this action does not impair any rights or title acquired by a bona fide purchaser for value under the default judgment. This means that if you had a default judgment against you, but property of yours was sold to an individual who had no idea of the judgment against you, this individual would get to maintain possession of your property.

5. Stay of Proceeding

The Servicemembers' Civil Relief Act provides for an automatic nondiscretionary stay of civil proceedings upon application of the servicemember. A "stay" is similar to a "postponement" or "hold status". A stay of proceedings will be granted, so long as you can show that your ability to defend or pursue the action was materially affected by your military service. The stay can last for a maximum of 90 days plus three months after your return from military service. You may even apply for an additional stay after this amount of time has passed. It would be up to the court's discretion as to whether or not to grant your request for stay. A Stay Application must

include the following: 1) A letter which shows that the military duty materially affects the servicemember's ability to appear; 2) The date that the servicemember can appear; and 3) a letter from the servicemember's commanding officer stating that the servicemember's military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter. Penalties or fines may not accrue during the period of the stay; however, the statute of limitations may not be stopped during military service.

6. Taxation

The Act provides military members with certain protections from otherwise applicable state income tax. Basically, the rule is that your state of legal domicile may tax you. But, because of the protection of the Act, your legal domicile is not changed solely by virtue of your military service. Also, the Act provides that collection of income tax may be deferred for the period of military service plus six months if your ability to pay is impaired by military service. Also, your properties cannot be sold to satisfy a tax obligation except on application to a court. The court will then determine if a stay is appropriate. Military income may only be taxed by a servicemember's homestate. If the spouse works, the government may not use military income to determine her tax rate. Real property taxes, business property taxes, and intangible personal property may be taxed by the host state. Tangible personal property may not be taxed except if located within the servicemember's residence or used in trade or business.

7. Maximum Rate of Interest

The Act provides that, if prior to entering the service, you secure a loan or obligation with an interest rate in excess of 6%, you will not be obligated to pay interest at a rate greater than 6% during any period of military service, unless the court finds that your ability to pay has not been materially affected. This includes credit cards. You have to make a request to take advantage of the provisions. See attachment 1 for a sample letter. Federal student loans are not covered by this section, but the servicemember may apply for a forbearance or deferment.

Finally, the Act only applies to loans prior to entering service. So it really is aimed at reservists. But the two largest mortgage investors Federal National Mortgage (Fannie Mae) and Federal Home Loan Mortgage Corp. (Freddie Mac) are extending the coverage to career military personnel who may be faced with hardships. Fannie Mae and Freddie Mac do not control all mortgages, but they do affect a lot of them. Other mortgage investors may follow their lead. So, if you are struggling with your mortgage, you should contact the legal office and we will help you contact your lender.

8. Stay of Execution of Judgments/Attachments

The court may stay the execution of judgments, court action, attachments, or garnishments. If you request a stay, then it must be granted unless the court finds that your ability to comply with the order or judgment was not materially affected by your military status.

9. Statute of Limitations

The Statute of Limitations is a concept in the law which says that after a certain time, you cannot sue someone. For example, if the statute of limitations for automobile negligence is three years, then after the three years from the accident you cannot sue. The Act affects the Statute of Limitations by saying that your time in service suspends (tolls) the running of the time limit. So your time in service cannot be used to compute the time limits for bringing any action by or against you. This provision does not apply to time limitations under the federal tax laws.

10. Insurance

Your private life insurance policy is protected against lapse, termination, and forfeiture for nonpayment of premiums or of any indebtedness for the period of military service plus two years. You or your beneficiary must make an application to the Veterans Administration for the protection. You are limited to \$250,000 coverage. Unpaid premiums/interest are deducted from your benefit.

11. Professional Liability Insurance Protection

Those who are engaged in providing health-care-services, or other services determined by the Secretary of Defense to be professional service, may have their professional liability insurance suspended upon written request. Such health-care personnel may have coverage reinstated upon request within thirty (30) days after release from active duty. Further, civil and/or administrative actions for damages based on professional negligence shall be stayed during active duty until liability insurance is reinstated after release. Finally, if the health-care provider dies on active duty, the professional insurance carriers shall be liable for claims suspended because of military service as if the health-care provider continued the policy in full force.

12. Lenders/Creditors/Insurers

This entity can not determine if you are unable to pay; deny or revoke credit; change terms of existing arrangement; refuse terms or limits of new arrangement; make adverse credit reports or refuse insurance. You must still make your required payments; however if the entity does not follow this Act the entity is liable under the Fair Credit Reporting Act.

13. Extension of Benefits to your Dependents

Dependents are entitled to benefits upon application to a court. That is unless the dependent's ability to comply with the terms has not been materially impaired by reason of the military service of the person upon whom the applicant depends.

Dear _____,

The President of the United States has exercised his authority under 10 U.S.C. 673(b) to order certain Reserve Component personnel to active duty. I am one of those being called to active duty by the President. Enclosed is a copy of my orders.

I am entitled to certain protections under the Servicemembers' Civil Relief Act, signed by President Bush on 19 Dec 03, as a result of my call to active military service and the material impact it will have on my financial income.

Pursuant to the Servicemembers' Civil Relief Act, please immediately reduce the amount of interest on my debt to 6 percent, effective retroactively to the date I was ordered to active duty. This 6 percent per annum ceiling on interest charges includes service charges, renewal charges and fees as well. Additionally, the difference between 6 percent and my present interest rate must be forgiven, not deferred or accrued in accordance with the Servicemembers' Civil Relief Act.

Please be further advised that you may not repossess property for nonpayment of an installment obligation without first complying with the provisions of Servicemembers' Civil Relief Act.

My account number is _____

Thank you for your time and assistance.

Sincerely,