

Chapter 4

Servicemembers Civil Relief Act



The Servicemembers Civil Relief Act (SCRA)¹⁴ is a federal law enacted to provide specific consumer protections to active duty servicemembers. Under the SCRA, active duty servicemembers include members of the uniformed services as well as reserves of the five main branches of the military. National Guard members are also included when they are called to active duty for more than 30 consecutive days. The SCRA provides that the United States Attorney General and private attorneys have authority to enforce certain parts of the SCRA. The following sections detail some of the benefits of the SCRA for servicemembers.

6% Interest Rate Cap

Under the SCRA, an obligation or liability bearing interest at a rate of more than 6% per year incurred by a servicemember or spouse before the servicemember enters military service shall be reduced to not more than 6%. In cases involving a mortgage, trust deed, or other security in the nature of a mortgage, this interest rate cap shall be enforceable during the period of military service and one year thereafter. For all other obligations or liabilities, the rate cap is enforceable only during the servicemember's active duty service.

Any interest rate in excess of 6% that would have otherwise been incurred is required to be forgiven by the lender under the SCRA. In order for the interest rate cap to apply, the servicemember must provide the creditor with written notice including a copy of military orders calling the servicemember to service no later than 180 days after termination or release from active duty service. A sample letter for the servicemember to send the lender can be found at the end of this section.

¹⁴ 50 U.S.C. App. §§ 501 *et seq.*

Auto Lease Termination

Under the SCRA, a servicemember has the ability to terminate an automobile lease if it was entered into prior to the servicemember's active duty status and the servicemember is called to active duty for 180 days or longer or the automobile lease was entered into while the servicemember was on active duty status and the servicemember receives orders outside of the continental United States or will deploy with a military unit for 180 days or longer. The servicemember is required to return the vehicle to the dealer 15 days after giving notice. A sample letter for a servicemember to send to a dealer can be found at the end of this section.

Residential Lease Termination

Servicemembers also have the ability to terminate lease agreements under the SCRA if they entered into the lease prior to going into active duty status or if they entered into the lease while on active duty and receive Permanent Change of Station (PCS) orders or orders to deploy for a period of longer than 90 days. Under the SCRA, servicemembers are required to provide a written notice of the termination of the lease and a copy of their orders. A sample letter for a servicemember to send to the landlord can be found at the end of this section.

Default Judgment Protection

Under the SCRA, servicemembers are granted protections from the entering of default judgments against them while they are serving on active duty. Specifically, a servicemember may reopen a default judgment entered against him or her up to 60 days after his active duty period has ended.

Stay of Civil or Administrative Proceedings

A servicemember has the right to ask for a stay of civil or administrative proceedings for a minimum of 90 days if he or she is on active duty or 90 days after release from military service. The servicemember must have notice of the action or proceeding in order to assert the right. An application for a stay must include either a letter or other communication from the servicemember's attorney setting forth facts demonstrating how military duty requirements affect his or her ability to appear and stating a date when he or she can appear, or a letter or communication from a commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized. Sample letters to be sent by the servicemember's attorney and/or commanding officer can be found at the end of this section.

Cell Phone Contracts

Under the SCRA, a servicemember may terminate a cellular phone service contract at any time after the date the servicemember receives orders to relocate for a period of 90 days or more to a location that does not support the contract. The servicemember must provide written or electronic notice of such termination and a copy of the military orders in order to receive the protections of the SCRA. A sample letter to be sent by the servicemember can be found at the end of this section.

Sample SCRA Letters

Below are sample letters that servicemembers may wish to use when contacting businesses or courts about their rights under the SCRA.

6% Interest Rate Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Institution)

Re: SCRA Interest Rate Reduction for Acct # _____

To Whom It May Concern:

I was placed on active duty with the Armed Forces of the United States effective (active duty date). I request that my monthly payments and interest on my account be reduced pursuant to my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* Military service has materially affected my ability to meet this obligation incurred prior to my active duty at the original interest rate or as it exists currently.

The SCRA (50 U.S.C. App. § 527) sets a 6% per annum ceiling on interest charges (including charges and fees) during the period of a servicemember's military service for obligations made before active duty when the active duty materially affects the ability to pay. Thus, the balance of my obligation may not have interest charged at a rate greater than 6% per annum and any interest above 6% must be forgiven and not accrued. Note that compliance with this law is mandatory for the creditor once the servicemember makes a request. Failure to comply with such a request may subject the creditor to damages.

Please amend or correct your records to reflect that my obligation has been reduced to no more than the statutory ceiling rate of 6% and that any excess charge is withdrawn. Some business entities have reduced their original interest rate to less than 6% as a good faith gesture in support of our country's military personnel and the important mission they serve. Please be further advised that you may not repossess for non-payment of an installment obligation without first complying with the provisions of the SCRA (including Section 532).

Thank you for your prompt attention to this matter. Should you have any questions, do not hesitate to contact me at the address above.

Sincerely,

(Servicemember's name)

Enclosure:

Deployment Orders

Termination of Automobile Lease Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Lessor)

Re: Return of Vehicle VIN# _____ Pursuant to the SCRA

To Whom It May Concern:

I was placed on active duty with the Armed Forces of the United States effective (active duty date). I am the lessee of (year, make, model, and VIN) and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* My deployment has materially affected both my ability to pay for and my need for the vehicle.

Section 535(b)(2) of the SCRA allows a servicemember to terminate an automobile lease if the servicemember receives deployment orders for greater than 180 days. In this case, I will be deployed to (place deployed to) for at least (number of days of ordered deployment). I have attached a copy of my orders for your file.

In compliance with 50 U.S.C. App. § 535(c), I have mailed this notice via certified mail, return receipt requested and have already left the vehicle with (lessor and contact representative). The representative with whom I have been working at (name of lessor) is (name of contact representative), and (he/she) may be reached at (phone number). Therefore, in accordance with 50 U.S.C. App. § 535(d)(2), the effective date of termination is the postmark date of this letter.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at (servicemember's phone number or the number of someone holding a power of attorney for the servicemember).

Sincerely,

(Servicemember's Name)

Enclosures:

Deployment Orders

Lease Contract

Termination of Rental Property Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Landlord)

Re: Termination of Residential Lease Pursuant to the SCRA

To Whom It May Concern:

I was placed on active duty with the Armed Forces of the United States effective (active duty date). I lease a (home/apartment) at (address of rental residence) and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* My deployment has materially affected my need for this rental property. Section 535(b)(1) of the SCRA gives a servicemember the right to terminate a residential lease if the servicemember receives deployment orders for more than 90 days. In this case, I will be deployed to (place of deployment) for at least (number of days). I have attached a copy of my orders for your file.

Pursuant to 50 U.S.C. App. § 535(c), I have mailed this notice via certified mail, return receipt requested (or hand delivery). Therefore, pursuant to 50 U.S.C. App. § 535(d)(1), the effective date of termination is 30 days after the first date on which the next rental payment is due and payable after the date on which this notice was delivered (or agreed termination date).

I will (mail or drop) off my keys when I have vacated the rental premises. All security deposits and prorated future rents paid must be returned to me within 30 days of the termination date of this lease. Please mail these monies to: (address of servicemember).

Thank you in advance for your cooperation in this matter, and please feel free to contact me at (servicemember's phone number or the number of someone holding a power of attorney for the servicemember).

Sincerely,

(Name of servicemember)

Enclosures:

Deployment Orders

Lease Contract

Stay of Proceeding Letter from an Attorney to Opposing Counsel

(Date)

(Name and Address of Attorney)

(Name and Address of Opposing Counsel)

Re: Requesting a Stay of Proceedings in (Name of proceeding)

To Whom It May Concern:

I am an attorney with (firm/agency). I am writing on behalf of (servicemember), who contacted me because he is the defendant in the case of (case caption) in which you have been hired to represent (opposing counsel's client).

(Servicemember) is on active duty and is assigned to (unit information and location). As such, (he/she) is afforded certain rights under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501 *et seq.* Section 522 of the SCRA states that a court shall, upon application by the servicemember, grant a stay in a civil action for a period of not less than 90 days.

Therefore, (servicemember) applies for protection from any further proceedings in the referenced civil action pending against him for a 12 month period. Please find attached a letter from (servicemember)'s commanding officer stating that (his/her) military service materially affects (his/her) ability to defend this action. Based on (servicemember)'s current military deployment, (he/she) will not be able to attend any proceedings scheduled in this action.

Pursuant to 50 U.S.C. App. § 522(c), an application for 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 for a lack of personal jurisdiction. This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of (servicemember). Additionally, this letter is not to serve as any form of answer to any petition, motion or complaint filed against (servicemember).

Thank you in advance for your help in affording (servicemember) an opportunity to participate in the legal process while meeting (his/her) obligations to the defense of our nation.

Sincerely,

(Attorney's signature)

Enclosure: Memorandum from Commander

cc: (Servicemember)

Stay of Proceeding Letter from an Attorney to Presiding Judge

(Date)

(Name and Address of Attorney)

(Name and Address of Presiding Judge)

Re: Requesting a Stay of Proceedings in (Name of proceeding)

Dear (Judge's name):

I am an attorney with (firm/agency). I am writing on behalf of (servicemember), who contacted me because he is the defendant in the case of (case caption) in which you are currently presiding.

(Servicemember) is on active duty and is assigned to (unit information and location). As such, (he/she) is afforded certain rights under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501 *et seq.* Section 522 of the SCRA states that a court shall, upon application by the servicemember, grant a stay in a civil action for a period of not less than 90 days.

Therefore, (servicemember) applies for protection from any further proceedings in the referenced civil action pending against him for a 12 month period. Please find attached a letter from (servicemember)'s commanding officer stating that (his/her) military service materially affects (his/her) ability to defend this action. Based on (servicemember)'s current military deployment, (he/she) will not be able to attend any proceedings scheduled in this action.

Pursuant to 50 U.S.C. App. § 522(c), an application for 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 for a lack of personal jurisdiction. This letter is not to be construed as either a submission to jurisdiction without lawful service or an appearance by or on behalf of (servicemember). Additionally, this letter is not to serve as any form of answer to any petition, motion or complaint filed against (servicemember).

Thank you in advance for your help in affording (servicemember) an opportunity to participate in the legal process while meeting (his/her) obligations to the defense of our nation.

Sincerely,

(Attorney's signature)

Enclosure: Memorandum from Commander

cc: (Servicemember)

Stay of Proceeding Letter from Military Commander

(Date)

(Name and Address of Commander and Unit)

(Name and Address of Opposing Counsel/Judge)

Re: Requesting a Stay of Proceedings in (Name of Action/Caption)

To Whom It May Concern:

I am an officer in the United States (name of branch) writing on behalf of (name of servicemember), who is a defendant in the case of (case caption). (Servicemember) is currently deployed in support of (OIF/OEF and where stationed). He is assigned to my command.

(Servicemember) will be unable to attend any hearings, present any type of defense, or effectively protect (his/her) interests in the matter in question until (estimated date of return) because of (his/her) military duties. Until this date, (servicemember) is essential to the mission of our unit as a (duty title/position). My legal officer advises me that federal law allows a stay of proceedings for servicemembers on active duty when their ability to defend themselves is materially affected by their military service (50 U.S.C. App. § 521). In this instance, (servicemember)'s critical role in the national security mission of this command precludes (his/her) participation in court proceedings until not earlier than (estimated date of return). (He/She) will be unable to present any defense at all due to (his/her) deployed status.

I understand that my letter is part of an application to provide protection from further proceedings in the civil action pending against (him/her) for a period of (length of time deployed) to properly attend to both (his/her) obligation to (his/her) unit. I will ensure that (he/she) is available upon return from deployment to appear at the next scheduled court date after (estimated date of return).

Please note I am not an attorney and am not making this request based on any attorney-client relationship between (servicemember) and me. I am not representing (servicemember) with regard to the proceedings pending. This letter should not be considered an appearance by (servicemember). 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/her) critical part in that mission.

Thank you in advance for your assistance in this matter. I request that you inform me or (servicemember), at the above address, of any action taken regarding this request.

Sincerely,

(Name of Commander and Signature Block)

Enclosure: Deployment Orders

cc: (Name of servicemember)

Termination of Cellular Phone Contract Letter

(Date)

(Name and Address of Servicemember)

(Name and Address of Institution)

Re: Termination of Cellular Phone Contract, Phone # _____

To Whom It May Concern:

I have been placed on active duty with the United States (name of branch) effective (active duty date). I currently have a cellular phone contract with your institution, Phone# _____, and I am invoking my rights under the Servicemembers Civil Relief Act, 50 U.S.C. App. § 535(a).

The Servicemembers Civil Relief Act allows a servicemember to terminate a cellular phone contract without an early termination charge if the servicemember receives orders to relocate for more than 90 days to a location that does not provide coverage under the contract. I will be relocated to (place of relocation) for at least (number of days of ordered relocation). It is my understanding that your institution does not provide coverage in this area. I have attached a copy of my orders for your file.

Thank you in advance for your cooperation in this matter, and please feel free to contact me at (servicemember's phone number or persons holding power of attorney for the servicemember).

Sincerely,

(Name of servicemember)

Enclosure:

Deployment Orders