

## **THE RIGHTS OF MILITARY MEMBERS AND SPOUSES**

### **(The Servicemembers Civil Relief Act & the Military Spouses Residency Relief Act)**



#### **ANDREWS LAW CENTER 2011**

The Servicemembers Civil Relief Act (SCRA) provides protection to active duty military members in civil court and administration actions, as well as for issues involving taxation, house/apartment leases, car leases, interest rates, and insurance. The Military Spouses Residency Relief Act (MSRRA) amends the SCRA to extend some of the protections involving taxation to spouses of military members.

#### **WHO IS PROTECTED BY THE SCRA?**

The SCRA applies to all active duty military members. 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 military members. The SCRA is applicable in all 50 states and U.S. territories.

#### **JUDICIAL AND ADMINISTRATIVE PROCEEDINGS**

In cases where a military member is unable to appear in court on the date required, the SCRA provides for an automatic stay of at least 90 days upon a proper request from the member. Any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate, or hearing officer. This protection does not apply to criminal court cases or criminal administrative proceedings. You should consult with a legal assistance attorney for the strict statutory requirements before requesting a stay.

## **DEFAULT JUDGMENTS**

A military member may request the court to re-open a matter and set-aside a default judgment if the judgment was entered against the military member while he or she was on active duty, or within 60 days after the military member's release from active duty. The military member must timely request such relief, 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 military 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 military member.

## **REDUCED INTEREST**

A military member may reduce interest rates the member pays for any financial obligation (i.e. credit card, loan, mortgage) individually or jointly entered into before active service to 6% if active service materially affects the military member's ability to repay the financial obligation. In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and forgives (as opposed to 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 duty. 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 military 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 (1) receive military orders for a permanent change of station either from the continental U.S. (CONUS) to outside CONUS or from a state outside CONUS to any location outside that state; OR (2) deploy for 180 days or more.

## **TERMINATION OF REAL ESTATE LEASES**

A military 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 military member meets certain conditions. Generally, the military 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 termination also terminates any obligation of the member's dependents under the lease.

## **EVICCTIONS**

The SCRA requires landlords to obtain a court order to evict a military member or the member's dependents during the period of the member's active duty service. If the military 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 as it deems appropriate. The SCRA creates criminal offenses for landlords who violate this SCRA protection.

## **FORECLOSURES AND REPOSSESSIONS**

If a military member breaches the terms of a purchase contract for real property or an automobile because of active duty service, the property may not be foreclosed or repossessed without a court order. The military 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 military member must submit a written request to the Department of Veteran Affairs.

## **DOMICILE (LEGAL RESIDENCE)**

A military member can remain domiciled in the state the member resided before entering active duty. A military member does not lose his or her domicile in a state when absence from that state is due to military

orders. A military member, however, can change his or her domicile if the member meets certain requirements. Domicile should not be confused with residence. A person can have as many residences as he or she can afford, but can have only one domicile. The military member's domicile is considered to be the state entered in the member's pay records. A military member is domiciled in a state where the member resided at some point in time and formed the intent while residing there to return and remain indefinitely after his or her military service ends.

## **TAXATION**

A military member does not acquire a new domicile for income tax purposes when the member's presence in the state is solely due to military orders. Furthermore, the SCRA prohibits states (where the military 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 military member's domicile state, if the domicile state has an income tax.

MSRRA amends the SCRA to provide that the spouse of a military member does not acquire a new domicile for income tax purposes if the spouse's presence in the state is solely due to the member's military orders and the domicile is the same for both the member and spouse.