# The Servicemembers Civil Relief Act

- The Servicemembers Civil Relief Act (SCRA) (50 U.S.C. App. §§ 501-596), which replaced the Soldiers' and Sailors' Civil Relief Act in December 2003, is a federal law that gives all military members some important protections as they enter active duty and other protections while they are on active duty. The SCRA protects members of the regular force and members of the National Guard and other Reserve components called to active duty (starting on the date active duty orders are received) and, in limited situations, their dependents.

- Major Provisions:

  - Six Percent Maximum Interest Rate: The SCRA provides that no obligation or liability incurred by a service member prior to entry onto active duty shall bear interest at an annual rate in excess of six percent. This provision does not apply to any debt incurred after entry onto active duty or to any guaranteed student loan. A lender may only get relief from the six percent cap by going to court and showing that the service member's ability to pay the contract interest rate is not materially affected by reason of military service. Upon such a showing, the court may make any order it deems just.

  - Delay of Court and Administrative Proceedings: The SCRA permits service members who are unable to appear in a court or administrative proceeding due to their military duties to postpone the proceeding for a mandatory minimum of ninety days upon the service member's request. The request must be in writing and (1) explain why the current military duty materially effects the service members ability to appear, (2) provide a date when the service member can appear, and (3) include a letter from the commander stating that the service member's duties preclude his or her appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the service member.

  - Termination of Leases: The SCRA permits termination of residential leases by active duty service members who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also permits the termination of leases for motor vehicles leased for personal or business use by service members and their dependents. A pre-service motor vehicle lease may be cancelled if the service member receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the service member is on active duty may be terminated if the service member receives PCS orders to a (1) location outside the continental United States or (2) deployment orders for a period of one hundred and eighty days or more.

  - Eviction for Nonpayment of Rent: The SCRA affords military members and their dependents some protection from eviction, requiring the landlord to obtain a court order before an eviction. The court must find the member's failure to pay is not materially

affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court *may* stay the eviction (three months unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it. There is no requirement that the lease be entered into before entry on active duty, and the court could make any other "just" order under. The requirements of this section are: (1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty; (2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and (3) The agreed rent does not exceed $2,465 per month in 2004. This amount will increase each year with inflation.

- Default Judgment Protection: If a default judgment is entered against a service member during his or her active duty service, or within 60 days thereafter, the SCRA allows the service member to reopen that default judgment and set it aside. In order to set aside a default judgment, the service member must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/her. The service member must apply to the court for relief within 90 days of the termination or release from military service.

- Residency for Tax Purposes: The SCRA provides that a nonresident service member's military income and personal property are not subject to state taxation if the service member is present in the state only due to military orders. The state is also prohibited from using the military pay of these nonresident service members to increase the state income tax of the spouse.

Date: _____

Creditor's Name: _____

Creditor's Address: _____

_____

Account Number: _____

Account/Soldier's Name: _____

Soldier's Duty Address: _____

_____

Soldier's Home Address: _____

_____

Dear Sir or Ma'am:

Please be advised that the above named soldier has by order of the President been ordered to active duty with the United States Army as of _____. A copy of orders is attached.

Under the Soldiers and Sailors Civil Relief Act, (50 Appendix U. S.C. 526 and following), I am entitled to have the interest rate on the account mentioned above reduced to six percent (6%) per annum.

Accordingly, I request reduction of the interest rate on the above account to six percent (6%) as of _____.

You may write me or my family at the above address. As I will be changing over to military pay, please be advised that it will take sixty (60) to ninety (90) days before I learn about the amount and regularity of my pay. I ask for your patience if I am late with my payments during this transition. I ask for a reduction in my payment during the time I am on active duty. I will write your office again as soon as I have a better understanding of my pay and personal financial situation.

_____

Soldier or Dependent