



Legal Issues

A Power of Attorney

A power of attorney is a legal document that permits you to name a person who can act on your behalf when you are not able to act yourself. You must be sure to choose someone you know very well - and trust completely!! There are three basic Powers of Attorney:

- ✓ General - this allows the individual to make any decision on any aspect of your life.
- ✓ Limited or Special - the person holding the power of attorney can only make decision in specified areas.
- ✓ Medical - given to guardians of Guard family members under the age of 18.

Wills

No one wants to talk about wills, but it is a vital part of planning and Family Readiness. A will is a legal document that tells how you want your belongings divided after your death. If you die without a will, the state decides how to divide up your property. If you have a will, you can divide your property the way you wish.

Service Member's Relief Act

The Service Members Relief Act (formally known as the Soldiers and Sailors Civil Relief Act) was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. The protection begins on the date the Guard Member entered active duty service and terminates upon release from active duty. However, some protections under the act extend for a limited time beyond discharge but are tied to the discharge date. Additionally, some of the Acts protections extend to the Guard Member's dependent family members.

Termination of Pre-Service Lease Agreements

- ◆ A service member who is leasing/renting property used for dwelling, professional, business, agricultural or similar purposes may terminate a lease that was 1) signed before the service member entered active duty and 2) the lease/rented premises have

been occupied for the above purposes by the service member or his/her dependents.

- ◆ The service member must deliver written notice of termination to the landlord after entry on active duty or receipt of orders for active duty. The termination date for a month-to-month lease/rental is 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if rent is due on the 1st of the month and notice is delivered to the landlord on August 5th, the next rent due is September 1st. Therefore, the lease/rental agreement will terminate on October 1st.
- ◆ For all other lease/rental agreements, the termination date will be the last day of the month after the month in which the notice was given. For example, if the term of the lease/rental agreement is yearly and notice was given August 5th, then the termination date will be September 30th.
- ◆ If the rent has been paid in advance, then the landlord must return any unearned portion. The landlord may not withhold the refund of a service member's security deposit for early termination of the lease/rental agreement. However, the landlord may withhold return of the security deposit for damages, repairs, and other lawful provisions of the lease/rental agreement.

Evictions from Leased Housing

A service member may seek protection from eviction under SSCRA. The rented/leased property must be occupied by the service member or his/her dependents for the purpose of housing, and the rent can not exceed \$1,200. The service member or dependent who has received notice of an eviction must submit a request to the court for protection under the SSCRA. If the court finds that the service member's military duties have materially affected his ability to pay his rent timely, the judge may order a stay, postponement, of the eviction proceeding for up to 3 months or make any other "just" order.

Reduction of Interest Rate on Pre-Service Debt

- ◆ If a service member's military obligation has affected his/her ability to pay on financial obligations such as credit cards, loans, mortgages, etc., the service member can have his/her interest rate capped at *6% for the duration of the service member's military obligation. *see attachment of form letter
- ◆ Qualifying debts
 - ➔ Debts that were incurred prior to the service member coming on active duty.
 - ➔ The service member must be on active duty at the time of the request.

- The service member's military career must have materially affected the service member's ability to pay on the debt.
- This provision does not apply to federally guaranteed student loans.

◆ How to implement the 6% Cap.

The service member should contact his/her creditor and request that his/her interest rate be reduced to 6% according to the provisions of the SSCRA; a sample letter is attached to this fact sheet on the following page. The creditor may request a copy of the service member's orders. The burden is on the creditor to seek relief in court if the creditor believes that the service member's military career does not materially affect his/her ability to pay.

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

Court Proceedings

- ◆ A service member who is either the plaintiff or the defendant in a civil lawsuit may request a stay, postponement, of a court proceeding in which he/she is a party. A service member may request a stay at any point in the proceedings. However, courts are reluctant to grant stays at the pre-trial phase of a lawsuit, such as discovery, depositions, etc. If a judgment is entered against a service member who is unavailable due to military orders, the service member may be able to have that judgment voided.

- ◆ **Criteria**
 - ❖ The service member must actually be a party to the suit.
 - ❖ The provision only applies to civil lawsuits, suits for paternity, child custody suits, and bankruptcy debtor/creditor meetings.
 - ❖ The provision does not apply to:
 - ✓ administrative hearings,
 - ✓ criminal proceedings,
 - ✓ child support determination,
 - ✓ proceedings in which the service member is merely a material witness to the lawsuit, but not an actual party, or
 - ✓ service member has leave available and has made no attempt to use his/her leave to attend the proceedings.

- ◆ **How to invoke a stay.**

A service member should have his commander write a letter to the court and the opposing party's attorney stating that the service member is unable to attend the proceedings. The soldier should not have an attorney draft such a letter to the court. A letter by an attorney could be considered an appearance by the service member and could subject the service member to the jurisdiction of the court.

Installment Contracts and Auto Leases

A service member or spouse may request protection under the SSCRA for pre-service debts incurred under installment contracts and auto leases. The service member or the spouse must prove that the service member's military obligations have materially affected his/her ability to pay on the debts. Also, at least one deposit or installment payment must have been made on the contract before entry on active duty. If the contract falls under the protection of the SSCRA, the creditor is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.

Enforcement of Obligations, Liabilities, Taxes

A service member or dependent may, at any time during his/her military Service, or within 6 months thereafter, apply to a court for relief of any obligation or liability incurred by the service member or dependent prior to active duty or in respect to any tax or assessment whether falling during or prior to the service member's active military service. The court may grant stays of enforcement during which time no fine or penalty can accrue.

To Contact Your Local JAG, Please Call:

Name _____

Telephone Number _____

Email _____

If all else fails contact the organization. If that fails, contact the Family Program's Office at 1-800-446-4645.