



# MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge Advocate  
Headquarters, Fort Carson  
*Keeping You Informed On Personal Legal Affairs*



## ***YOUR RIGHTS UNDER THE SCRA***

**INTRODUCTION:** Congress passed the Servicemember's Civil Relief Act (SCRA) to provide protection for individuals entering or called to active duty in the military service. Reservists and the members of the National Guard receive protection while on active duty. The protection begins with the date of entering active duty and generally terminates within 30 to 180 days after the date of discharge from active duty. The SCRA also applies to individuals who are entering permanent active duty status.

### **JUDICIAL STAY OF CIVIL PROCEEDINGS (50 U.S.C. § 3932)**

**Q: What is of a stay of proceedings?**

A: A stay of proceedings permits delay of civil – not criminal – court proceedings where military service prevents a plaintiff or defendant from asserting or protecting a legal right. The SCRA applies in all federal, state and territorial CIVIL courts. It does NOT apply in foreign courts. However, the period of military service does not count toward any statutes of limitation – 50 U.S.C. § 3936.

**Q: When can a request for a stay be made?**

A: Request for a stay may be made at any stage of the court action or proceeding, before a final judgment has been entered, as long as the request is made during military service or within 90 days thereafter.

**Q: How long can I request a stay of proceedings?**

A: For at least 90 days, and servicemembers can request additional stay beyond the 90 days based upon continuing material effect of military duty. A request for a stay beyond 90 days can be done when the servicemember makes their initial application for a stay.

**Q: What is the burden of proof for a stay of proceedings?**

A: The servicemember must provide a letter or communication setting forth facts stating that his/her military duty "materially affects" their ability to be present in court and state a date when the servicemember thinks they could be present. Additionally, the servicemember must provide the court with a letter or communication from his/her commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized at the time of the letter.

### **MAXIMUM INTEREST RATE (50 U.S.C. § 3937)**

**Q: What is the maximum interest rate under the SCRA?**

A: The maximum rate of interest (including service charges) on debts incurred by Soldiers prior to entering active duty is 6 percent per annum during the service of the Soldier.

**Q: What types of obligations and liabilities does the 6 percent interest cap apply to?**

A: It applies to all commercial financial obligations and liabilities, including home mortgages, credit card debts and automobile loans.

**Q: Does the servicemember need to inform the creditor about the SCRA 6 percent interest cap?**

A: Yes. Even though the 6 percent interest cap automatically applies to individuals on active duty, entering active duty, or called to active duty, the Soldier should inform his creditors he has been called to active duty by enclosing a copy of his orders with a request to reduce the interest rate to 6 percent.

**Q: Is a servicemember entitled to a refund of interest paid above 6 percent for the period of time beginning when he came on active duty and ending when the interest rate was reduced to 6 percent?**

A: You must resolve this question with the individual creditor. The argument exists that the servicemember was entitled to the reduced interest rate from the time he came on active duty.

**Q: Does the SCRA 6 percent interest cap apply to joint obligations?**

A: Yes. If family members have joint contractual liability with the servicemember, they receive the 6 percent interest rate protection. Legislative history indicates that business partners should receive protection, but this is not explicit in the Act.

**Q: Can a Soldier lose this protection after it has been granted?**

A: Yes. This protection will end if the creditor convinces the court that the Soldier's ability to pay a greater amount of interest is not materially affected by the military service.

**INSTALLMENT CONTRACTS AND MORTGAGE FORECLOSURES (50 U.S.C. § 3952-53)**

**Q: How can a creditor foreclose on or repossess property? (50 U.S.C. § 3953(c))**

A: The creditor must file a lawsuit. A foreclosure shall not be valid if made during, or within one year of the servicemember's military service except upon a court order granted before such foreclosure.

**Q: Can the servicemember petition the court to obtain relief?**

A: Yes. The court can either defer the obligations or set up a schedule or plan of payment that can be met. The court can order a stay of proceedings during the period of military service and three months afterwards. The court also may determine that the most equitable solution is to permit foreclosure or repossession of the property, but require as a condition of the repossession that the property be appraised and that its value, less the outstanding debt, be paid to the servicemember. This will avoid the common occurrence of a creditor foreclosing and purchasing the property at the foreclosure sale for far less than the property's value.

**Q: What is the criteria for relief against foreclosures of mortgages?**

A: The criteria are: (a) the relief is sought on an obligation secured by a mortgage, trust deed or other security in the nature of a mortgage on either real or personal property; (b) the obligation originated prior to entry onto active duty; (c) the property was owned by the servicemember or family member prior to entry on active duty; (d) the servicemember or family member still owns the property at the time relief is sought; and (e) military service materially affects the ability to comply with the terms of obligation, such breach occurring prior to or during the period of military service.

**TAXES (50 U.S.C. § 4001)**

**Q: Where is a servicemember's income taxed?**

A: Military pay is deemed to have been earned in the state of domicile and, therefore, is taxable only by the state of domicile. This means that when the Army details a Soldier to various duty stations around the country, they do not become subject to the state income taxes of those states. The Soldier continues to be subject only to the state income tax, if any, of his home state where their domicile continues.

**Q: Is the servicemember's tangible personal property, such as his car, subject to personal property taxes in the duty state?**

A: No. It is subject to taxation in the state of domicile. However, servicemembers must keep their vehicles currently licensed and if they do not comply with the licensing requirements of the state of domicile they will be required to license their vehicles in the duty state.

**Q: Does the SCRA affect the taxation of real property?**

A: No. Real property is taxed by the laws of the state in which it is located. Similarly, the taxation of the income and property of military dependents is not protected by the Act.

**LIFE INSURANCE (50 U.S.C. § 3971 et al.)**

**Q: May life insurance coverage be precluded if it contains a war clause?**

A: Yes. In the event of hostilities or death connected with military activity, life insurance coverage may be precluded if the policy contains a war clause.

**Q: How can a Soldier know if his commercial life insurance policy contains a war clause?**

A: DA policy and AR 210-7, paragraph 2-2 requires commercial life insurance groups selling insurance on a military installation to include the war clause on the front page of the policy.

**Q: Is it ethical to inform Soldiers which insurance companies offer policies without the war clause?**

A: Yes. A Soldier may receive a list of insurance companies which do not have war, hostility or military activity exclusion clauses.

**Q: WHAT SHOULD I DO IF I AM SUBJECT TO AN SCRA VIOLATION?**

A: Contact the Fort Carson Legal Assistance Division to arrange a consultation with a legal assistance attorney.

Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at 719-526-5572/5573 or come by the office (Building 6222) Monday-Friday from 9 a.m. to 4 p.m. Appointments are made on the last duty day of every week, you can call or walk-in to schedule an appointment.

***MOUNTAIN POST LEGAL BRIEF is one of a series of informative handouts from the Fort Carson Legal Assistance Division containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. You may schedule a legal assistance appointment by calling the Legal Assistance Division at 719-526-5572.***