

Mortgage Difficulties and the Servicemembers Civil Relief Act (SCRA)

Overview

Information about the Servicemembers Civil Relief Act (SCRA).

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The Servicemembers Civil Relief Act (SCRA) provides a wide range of protections for servicemembers. It is intended to postpone or suspend certain civil obligations to allow servicemembers to devote full attention to duty and relieve stress on themselves and their families.

Some of these protections could help servicemembers who face difficulties meeting their mortgage payments. Whether these protections are available generally depends on when the servicemember bought the property in question. That is, did the servicemember become obligated under the mortgage before or after entering active duty?

Many SCRA protections only apply when active duty military service has had a "material effect" on the servicemember's ability to pay. "Material effect" generally means the servicemembers are less well off financially because of active duty. That could be because they make less money or have more expenses.

Servicemembers who are having any financial difficulties with their mortgages -- or are having any legal problems -- are strongly encouraged to seek free legal assistance at a military installation right away. A locator service can be reached at this Web site: legalassistance.law.af.mil/content/locator.php.

IMPORTANT WARNING: If you attempt to get relief from a mortgage creditor to make a reduced payment or other variation in your monthly obligation under the mortgage, it is vital that you get something in writing from the creditor approving a reduced or temporarily suspended payment plan. **DO NOT RELY ON SOME UNIDENTIFIED VOICE ON THE TELEPHONE TO RELIEVE YOU OF THE OBLIGATION OF PAYING YOUR MORTGAGE IN THE FULL AMOUNT ON TIME.** Mortgage creditors may work with you to give you some relief, but if such an agreement is reached, **YOU MUST GET IT IN WRITING.** Otherwise, in the event of later problems, it will be a "he said - she said" case and you will likely lose, leading to possible foreclosure and damage to your credit rating (which is extremely important when considering security clearances).

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Protections for all servicemembers in any civil law suit

The following limited protections could generally help when servicemembers are involved in any civil litigation, including foreclosures involving real estate:

- Courts must grant delays of at least 90 days in civil proceedings against servicemembers who submit appropriate documentation that their service keeps them from attending the legal proceeding. The servicemember's commanding officer must certify that no leave can be granted at the time the delay request is submitted.

- Courts may be prevented from imposing default judgments against servicemembers who are not present in court unless the court has appointed an attorney to represent the servicemember's interest and that attorney has been given at least 90 days to contact the servicemember.

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General protections concerning obligations created before entering active duty

Certain protections under the SCRA are particularly well-suited for those who have recently come on active duty when that duty materially affects their ability to meet their current, pre-service financial commitments.

- A lender cannot foreclose on a servicemember's property for obligations incurred before the period of active duty service unless the lender has first obtained a valid court order. This protection extends for 9 months after leaving active duty service.
- Interest rates for obligations incurred before the period of active duty service may be capped at 6 percent during periods of active duty if the military duty has materially affected the servicemember's ability to pay the debt at the original interest rate. If relief is granted, the amounts above 6 percent must be forgiven and payments lessened.

The 6 percent cap extends for one year after the period of military service for such obligations consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

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Anticipatory Relief under the SCRA

Instead of waiting for their creditors to act, if servicemembers anticipate that they may not be able to make their mortgage payments or meet other financial obligation (on obligations incurred BEFORE they entered active duty), they may go into court to ask for anticipatory relief under section 591 of the SCRA.

If a court finds that the servicemembers' ability to pay their mortgages or meet other financial obligations (on obligations incurred BEFORE they entered active duty) has been "materially affected by reason of military service," the court can:

- Stop or greatly reduce payments and foreclosure or collection efforts on real estate mortgages while the servicemembers are on active duty. Once they are separated from active duty, the relief can continue for an additional period of time equal to the amount of time they were on active duty if the obligation is secured by a mortgage on real estate.
- Stop or greatly modify enforcement of other obligations, liabilities, or taxes while the servicemembers are on active duty.

If a court grants relief under section 591, no fine or penalty can be charged. However, the debt is NOT forgiven. The amount of all deferred payments must be paid during the remaining life of the obligation after the deferral period has ended. Separated servicemembers have only six months after release from active duty to apply to a court for relief. The court may set up a schedule to repay the pre-service debts the servicemembers are unable to handle due to their military service. A servicemember MUST apply to a civilian court to obtain the relief under section 591 of the SCRA and will generally need an attorney to do so.

Some of these protections may also apply to obligations created by certain family members. Servicemembers or their families should seek help immediately from their command and from their local legal assistance attorneys if they have legal problems. They should seek help as soon as they think they may not be able to make a mortgage payment.

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Protections from evictions

Some servicemembers who are renting their homes or apartments are being forced to move when their landlords are themselves forced into foreclosure. The SCRA offers some protections under these circumstances. Under section 531, anyone seeking to evict servicemembers who are on active duty (or dependents of such servicemembers) from a primary residence that rents for less than \$2958.53, must have a valid court order. When such a court order is sought, the servicemember (or his or her dependents) can seek relief from the court, which might include completely stopping the eviction while the servicemember is on active duty, or reducing the monthly rent.

As of 30 July 2008, servicemembers or dependents who are forced to relocate from leased or rental housing because their landlords are themselves forced into foreclosure may have the government pay for a local move. See your local legal assistance office or transportation office for more information.

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Where to get help

Servicemembers may call Military OneSource 24/7 at 1-800-342-9647 for referral help.

Additional information on the SCRA can be located at the Armed Forces Legal Assistance Web site at legalassistance.law.af.mil/index.php.

NOTE: The article above is intended to provide general information only. To find out how the law applies to your individual situation, or how to provide notice in the appropriate way, it is important to contact your legal assistance office and speak with qualified legal counsel.

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