

OHIO JUDGES' CHECKLIST¹

SERVICEMEMBERS CIVIL RELIEF ACT

The Servicemembers Civil Relief Act (SCRA) is located at 50 U.S.C. App. § 501 *et seq.* In using this checklist, keep in mind the purpose of the Act: to enable servicemembers (SMs) to devote their entire energy to the defense of the nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of SMs during their military service. 50 U.S.C. App. § 502. Some of the sections of the Ohio Revised Code that supplement the SCRA are included in this checklist.

Anticipatory relief (50 U.S.C. App. § 591)

- Grant relief from obligation or liability incurred by SM before his/her military service
- Also for tax or assessment falling due before or during the SM's military service

Cell Phone Contracts – Early Termination (50 U.S.C. App. § 535a)

- Allow SM to terminate cell phone plan upon receipt of military orders to relocate for at least 90 days to a location where cell phone plan is not supported.
- **Ohio** law allows SMs and spouses to terminate cell phone contract if SM is “deployed on active duty.” Ohio Rev. Code Ann. § 1349.03 (West 2004)

Coverage (50 U.S.C. App. § 511) Those covered include:

- Members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty under 10 U.S.C. 101(d)(1)
- Members of the Reserve Components of the United States Armed Forces when serving on orders
- National Guard members called to active duty by President or Secretary of Defense for over 30 days under 32 U.S.C. 502(f) (national emergency declared by the President and supported by federal funds)
- Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration
- Dependents of those listed above under certain circumstances

Criminal Prosecution - Violations of the following sections of the SCRA may be prosecuted as criminal misdemeanors:

- Section 521 – Protection of servicemembers against default judgments
- Section 527 – Maximum rate of interest on debts incurred before military service
- Section 531 - Evictions and distress
- Section 532 - Protection under installment contracts for purchase or lease
- Section 533 – Mortgages and trust deeds
- Section 535 – Termination of residential and motor vehicle leases
- Section 536 – Protection of life insurance policy
- Section 537 – Enforcement of storage liens

Defaults - Reopen judgment (50 U.S.C. App. § 521(g))

- Must reopen order, judgment against SM if –
 - SM was materially affected due to military service in asserting defense, and
 - He/she has meritorious defense

¹ This checklist is based on one prepared by Colonel (ret) Mark Sullivan, U.S. Army (ret) which can be found at <http://apps.americanbar.org/family/military/scrajudgesguidecklist.pdf> .

Defaults – No Appearance by SM – (50 U.S.C. App. § 521). The court must

- Require affidavit of military status by moving party (who may check on whether missing party is in military service by requesting check of records by DoD²)
- Appoint an attorney before entry of judgment if the non-moving party is in military
- Grant a stay of proceedings for at least 90 days when non-moving party is in military if -
 - there may be a defense, and presence of SM is needed to make it, OR
 - with due diligence, appointed attorney can't contact client or otherwise determine whether defense exists

Defaults - Use of bond? (50 U.S.C. App. § 521(b)(3))

- As condition of entry of default judgment, require bond if you cannot determine whether defendant is in military service.
- Bond may be used to indemnify non-moving party against loss/damage from default judgment (if later set aside) should he/she later be found to be in the military.

Evictions and Distress (50 U.S.C. App. § 531)

- Landlord may not evict or subject premises to distress during period of military service, without court order, so long as the rent does not exceed the amount set annually by DoD.
- Court may adjust obligation under the lease.
- In 2012, the set amount was \$3047.45 per month. See 77 FR 8837, 2/15/2012

Foreclosure - Protect against mortgage foreclosure (50 U.S.C. App. § 533)

- Court may stay foreclosure proceedings until SM can answer, extend mortgage maturity date to allow reduced monthly payments, grant foreclosure subject to being reopened if challenged by SM, or extend the period of redemption by period equal to SM's military service.
- Conditions for above: if
 1. Relief is sought on security interest in real/personal property
 2. Obligation originated before active duty
 3. Property owned by SM or dependent before active duty
 4. Property still owned by SM or dependent
 5. Ability to meet financial obligation is materially affected by SM's military service
 6. Action is filed during (or within 9 months after) SM's military service. (50 U.S.C. App. § 533)

Legal Representative - Legal representative of SM can assert SCRA protections on behalf of SM (50 U.S.C. App. § 519). Legal representative is defined as:

- An attorney acting on behalf of SM
- An individual possessing a power of attorney

Loans – Interest Rate Reduction (50 U.S.C. App. § 527)

- Maximum rate of interest on debts incurred before military service is 6% retroactive to date of entry on active duty, so long as military service has “material impact” on ability of SM to repay pre-service loan.

² Upon application by either side or the court, the military service must issue a statement as to military service. 50 U.S.C. App. § 582. Contact: Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Attn: Military Verification, Arlington, VA 22209-2593, [telephone 703-696-6762 or -5790/fax 703-696-4156]. DOD provides a website for SCRA inquiries, at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>

- **Ohio** law limits interest and finance charges to 6% for SMs and spouses where SM is deployed for at least 180 days. **Ohio** law does not limit coverage to only pre-service loans. It allows creditors to request a showing of “material impact” by SM. Ohio Rev. Code Ann. § 1343.031 (West 2004)

Mortgages (50 U.S.C. App. § 533)

- In addition to interest rate cap (described under “Loans” above), SCRA prohibits sale, foreclosure or seizure of property for breach of a mortgage except upon a court order or properly executed waiver of SCRA protection in accordance with 50 U.S.C. App. § 517.
- Applies to mortgages that originated before period of military service

Private Right of Action (50 U.S.C. App. § 597a)

- SM or “any party aggrieved by violation of this Act” can pursue a civil action to obtain appropriate equitable or declaratory relief, and recover appropriate relief, including monetary damages.
- Court may award court costs and reasonable attorney fees.

Residential Lease – Early Termination (50 U.S.C. App. § 531-532, 535)

- Allow SM to terminate leases upon entry on active duty or receipt of military orders for deployment (not less than 90 days) or transfer to another base.
- Grant a stay of eviction upon application by SM-tenant who shows that ability to pay rent is materially affected by military service. (50 U.S.C. App. § 531(b))
- If the rent is paid in advance, require landlord to refund unearned portion. The servicemember is required to pay rent only for those months before the lease is terminated. (50 U.S.C. App. § 535(f))
- It is a misdemeanor for a landlord to seize, hold or detain the security deposit or personal property of a SM or dependent when there is a lawful lease termination under the SCRA, or to knowingly interfere with the removal of said property because of a claim for rent after the termination date. A security deposit must be refunded to the SM upon termination of the lease. 50 U.S.C. App. § 535(h)(1).

Statute of limitations (50 U.S.C. App. § 526)

- Period of military service may not be included in computing any limitation period for filing suit, either by or against SM.

Stay of Proceedings – Request by SM or attorney for suspension of case – 90 days (50 U.S.C. App. § 522)

Grant stay of proceedings (discretionary on court’s own motion, mandatory on SM’s motion) for at least 90 days if motion includes-

- Statement as to how the SM’s current military duties materially affect his ability to appear, and stating a date when the SM will be available to appear, and
- Statement from the SM’s commanding officer that SM’s current military duty prevents his appearance, and military leave is not authorized for the SM at the time of the statement

Stay of Proceedings- Additional stay beyond initial 90 days? (50 U.S.C. App. § 522)

- Yes, if continuing material effect of military duty on SM’s ability to appear.

Stay of Proceedings – Denial of additional stay beyond 90 days? (50 U.S.C. App. § 522)

- Only if you appoint attorney to represent the SM in the action or proceeding (50 U.S.C. App. § 522(d)(2)).
- Expect attorney to renew stay request since he/she cannot prepare, present case without assistance from the unavailable SM.

Stay of Proceedings - Unsure whether to grant /deny additional stay? (50 U.S.C. App. § 522)

- Ask for a copy of the SM's current LES (Leave and Earnings Statement), issued twice a month, to see how much leave SM has accrued, used in the past few months.
- Propound questions from the court to SM's commanding officer as to duty hours, days for the SM, his or her availability to attend court or to participate by telephone, Internet or video-teleconference.

Stay of Proceedings - Don't penalize SM in stay request. (50 U.S.C. App. § 522(c))

- Request for stay does not constitute appearance for jurisdictional purposes
- Also doesn't constitute waiver of any defense, substantive or procedural

Stay of Execution of Judgment, Attachment and Garnishments (50 U.S.C. App. § 524)

- Must stay execution of any judgment or order entered against SM if the SM shows military duties materially affect his/her ability to comply with court decree
- Also vacate or stay any attachment or garnishment of property, money or debts in possession of the SM or third party

Vacation of Execution of Judgment, Attachment and Garnishment (50 U.S.C. App. § 524)

- Must vacate or stay any attachment or garnishment of property, money or debts in possession of the SM or third party if the SM shows military duties materially affect his/her ability to comply with court decree
- Must stay execution of any judgment or order entered against SM if the SM shows military duties materially affect his/her ability to comply with court decree

Vehicle Lease – Early Termination (50 U.S.C. App. § 532, 535)

- Allow SM to terminate leases upon entry on active duty, receipt of military orders for deployment (not less than 180 days), transfer from the Continental U.S (CONUS) to a location outside CONUS, or transfer from Hawaii or Alaska to any other location.
- **Ohio** law permits termination of a vehicle lease if servicemember is deployed for 180 days or more. Ohio law does not require that the deployment be outside of the continental United States. Ohio Rev. Code Ann. § 1349.02 (West 2004)

Waivers of SCRA protections (50 U.S.C. App. § 517)

- Only effective if made during period of military service.
- Usually must be in writing (and, in most cases, in 12-point font or larger).



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