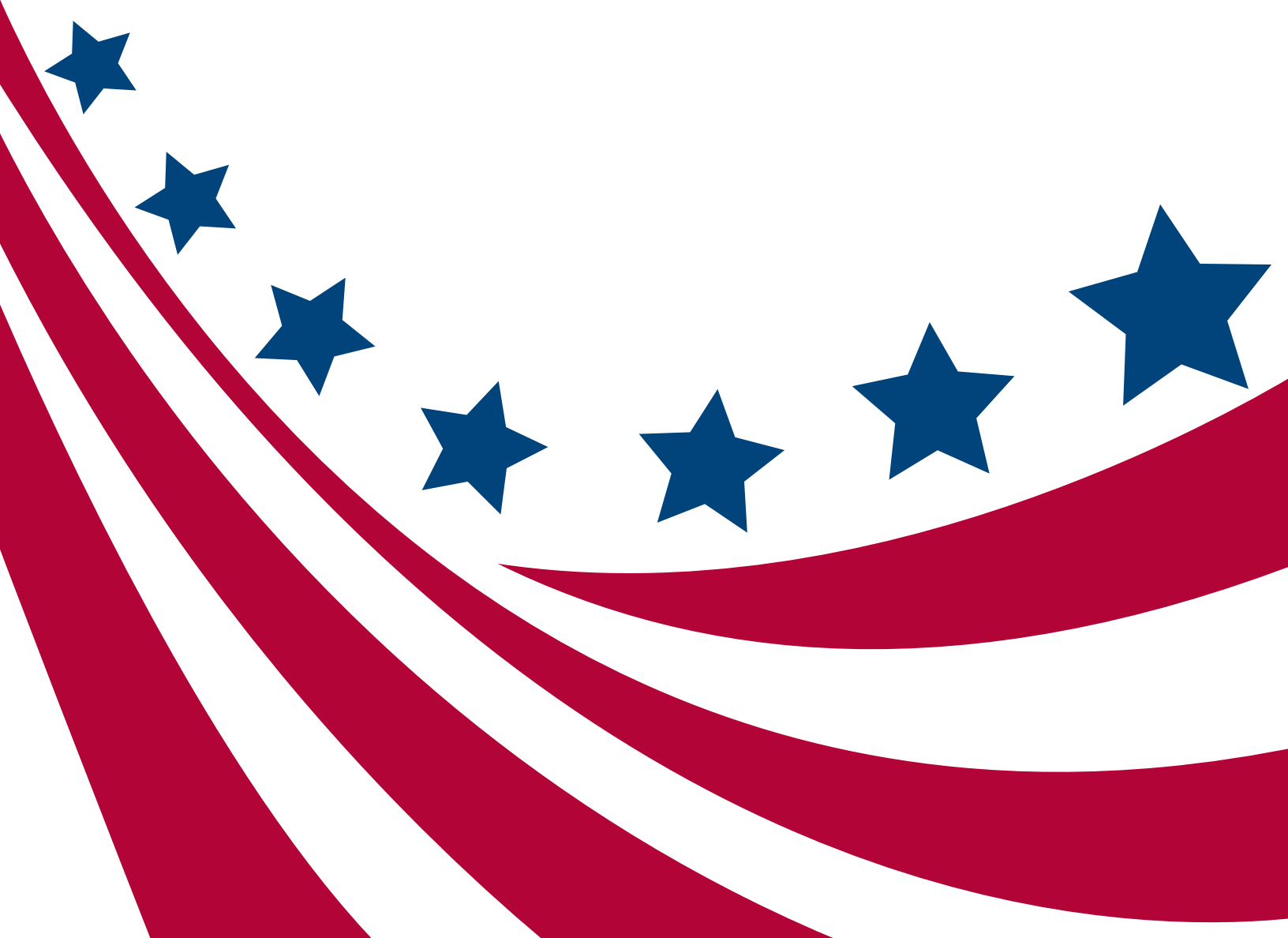




OHIO STATE BAR
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Ohio Guide to the
SERVICEMEMBERS
Civil Relief Act



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OHIO GUIDE TO SERVICEMEMBERS CIVIL RELIEF ACT

TABLE OF CONTENTS

1. INTRODUCTION 8

2. HISTORY AND PURPOSE OF THE SCRA..... 8

3. ORGANIZATION, CITATION and TERMINOLOGY 9

4. GENERAL PROVISIONS 10

 4.1 Jurisdictional Application 10

 4.2 Individuals Covered by the SCRA..... 10

 4.3 “Military Service” Defined 11

 4.3.1 Army, Navy, Air Force, Marine Corps, and Coast Guard Members..... 11

 4.3.2 National Guard Members 11

 4.3.3 Absences Due to Illness or Injury 11

 4.3.4 What is Not “Military Service” 12

 4.4 Period of Military Service..... 12

 4.4.1 Definition..... 12

 4.5 Waiver of Benefits and Protections 12

 4.5.1 Benefits and Protections Not Necessarily Automatic 12

 4.5.2 Waiver Requirements 12

 4.6 Enforcement..... 13

 4.6.1 Civil Action by the U.S. Attorney General 13

 4.6.2 Relief in Action by the U.S. Attorney General 13

 4.6.3 Criminal Prosecution by the U.S. Attorney General 13

 4.6.4 Private Right of Action..... 13

 4.6.5 Preservation of Remedies 14

5. PROCEDURAL PROTECTIONS..... 14

 5.1. Default Judgments 14

5.1.1.	Applicability	14
5.1.2.	Affidavit Requirement.....	15
5.1.3.	Military Service Certificates.....	15
5.1.4.	Appointment of Attorney	16
5.1.5.	Posting a Bond.....	16
5.1.6.	Stays in Default Proceedings	16
5.1.7.	Reopening and Vacating Default Judgments	16
5.2.	Stay of Judicial and Administrative Proceedings	18
5.2.1.	Applicability	18
5.2.2.	Stay Application Process	18
5.2.3.	Stay Extensions	19
5.2.4.	Appointment of Counsel.....	20
5.2.5.	Coordination of Stay Proceedings	20
5.3.	Staying and Vacating Judgments of Execution, Attachment, and Garnishments.....	20
5.3.1.	Applicability.....	20
5.3.2.	Actions Taken on a “Material Affect” Determination	20
5.4.	Setting Terms and Conditions of Stays and Other Orders	21
5.4.1.	Setting the Stay Period	21
5.4.2.	Setting the Terms of Installment Payments.....	21
5.4.3.	Allowing Proceedings Against Codefendants.....	21
5.4.4.	Inapplicability.....	21
5.5.	Statute of Limitations Tolling.....	22
5.5.1.	Tolling Limitations Periods.....	22
5.5.2.	Redemption of Real Property.....	22
6.	EVICCTIONS, LEASE TERMINATIONS, MORTGAGE FORECLOSURES, AND INSTALLMENT-CONTRACT RELIEF	23
6.1	Evictions and Distress.....	23
6.1.1	Court-Ordered Eviction	23

6.1.2	Distress	23
6.1.3	Stay of Eviction Proceedings.....	24
6.1.4	Lease Term Adjustments	24
6.1.5	Penalties.....	24
6.2	Residential and Automobile Lease Termination.....	25
6.2.1	Lease Terminations	25
6.2.2	Real Estate Leases	25
6.2.3	Automobile Leases	26
6.2.4	Joint Leases	27
6.2.5	Arrearages and Advance Payments	27
6.2.6	Lessor Relief.....	27
6.2.7	Penalties.....	27
6.3.	Mortgages and trust deeds	28
6.3.1	Sale, Foreclosure or Seizure	28
6.3.2	Available Mortgage Relief	28
6.3.3	Limitation on Contract Fines and Penalties.....	30
6.3.4	Penalties.....	31
6.4	Installment Contracts	31
6.4.1	Covered Obligations & Applicability.....	31
6.4.2	“Material Effect”	31
6.4.3	Available Resolutions.....	32
6.4.4	Penalties.....	32
6.5.	Termination of Contracts for Cellular Phone Service.....	33
6.5.1.	Cellular Phone Service Relief	33
6.6	Limitation on Storage Lien Enforcement	33
6.6.1	General Protection	34
6.6.2	Stay of Proceedings	34

6.6.3.	Penalties.....	34
7.	INTEREST RATE PROTECTIONS	34
7.1.	Interest Rate Cap.....	34
7.1.1.	Covered Debt Obligations	35
7.1.2.	Definition of “Interest”	35
7.1.3.	Temporal Scope of Interest Rate Reduction.....	36
7.1.4.	Forgiveness of Interest Exceeding the Limitation.....	36
7.1.5.	Activation of 6% Interest.....	36
7.1.6.	Exception to the Interest Cap	37
7.1.7.	Penalties.....	37
8.	MISCELLANEOUS PROTECTIONS	37
8.1	Tax Protections	37
8.1.1.	Residency for Tax Purposes	37
8.1.2.	Property Tax	38
8.1.3.	Limitation on Sale of Property to Enforce Tax Assessment	38
8.1.4.	Redemption.....	38
8.1.5.	Deferral of Income Tax Collection.....	38
8.2	Insurance Protections	39
8.2.1.	Health Insurance	39
8.2.2.	Life Insurance	39
8.2.3	Professional Liability Insurance	40
8.3	Anticipatory Relief.....	40
8.3.1.	Requirements	40
8.3.2	Covered Obligations	41
8.3.3	Stay of Enforcement	41
8.5	Additional Ohio Law Protections	41
8.5.1	Education.....	41

8.5.2	Utilities	42
8.5.3	Discrimination	42
8.5.4.	Miscellaneous	42
9.	CONCLUSION.....	42
APPENDIX A – Cross Reference with Public Law Sections.....		A-1
APPENDIX B – Additional Resources.....		B-1
APPENDIX C – Judge’s Checklist.....		C-1

PREFACE

This Guide provides an introduction to the Servicemembers' Civil Relief Act, including references to Ohio statutes supplementing the Act and case law interpreting it. The Guide's format and detailed descriptions of various sections of the Act is based in large measure on the *Michigan Judge's Guide to Servicemember's Civil Relief Act* published in 2009. Our thanks go to attorneys Matthew S. Disbrow and Shanto S. Anderson-Williams of the firm of Honigman Miller Schwartz & Cohn LLP, who volunteered countless hours to write the Michigan Guide. Our thanks also go to Thomas M. Cooley Law School, and in particular Heather Spielmaker, Director-Center for Ethics, Service, and Professionalism, Thomas M. Cooley Law School, who developed, sponsored, published and distributed the Michigan Guide to every judge in Michigan.

We appreciate their kind permission to build upon and borrow liberally from their efforts. We also would like to recognize four law students who made significant contributions to the Guide while interning with the Ninth Coast Guard District legal office in Cleveland, Ohio in the spring of 2011 and summer of 2012. Three of the students are from Case Western Reserve Law School: Jon-Paul McConnell, Austin Wightman, and Julia Kazmers. The fourth, Drew Ayers, is from University of Toledo School of Law.

This guide is dedicated to the late Master Sergeant Shawn Hannon, Esq., who at the time he was killed in action in Afghanistan was the Chief Legal Counsel at the Ohio Department of Veterans' Services.

1. INTRODUCTION

Congress enacted the Servicemembers' Civil Relief Act of 2003, 50 U.S.C. App. §§ 501-597 (the "SCRA" or "Act"), to protect the rights of servicemembers whose call to active service caused an interruption in their capacity to discharge their civil legal obligations. The purpose of this Guide is to provide an overview of the SCRA, and to assist the judiciary and other members of Ohio's legal community in understanding the Act and its protections for military personnel and their families.

2. HISTORY AND PURPOSE OF THE SCRA

The Servicemembers' Civil Relief Act (SCRA)¹ is a revised version of the Soldiers' and Sailors' Civil Relief Act (SSCRA) enacted in 1940.² It was renamed the SCRA in 2003 in conjunction with amendments to the SSCRA that enhanced and expanded benefits and protections for servicemembers and their dependents.³ In general, the jurisprudence that encompasses the SSCRA continues to apply to the SCRA.

The purpose of the SCRA is twofold:

(1) [T]o provide for, strengthen, and expedite the national defense through protection to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and (2) [T]o provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.⁴

As pointed out by the leading expert on the SCRA, Colonel (Ret) John S. Odom, Jr., in his recently published *A Judge's Benchbook for the Servicemembers Civil Relief Act*,⁵ the guiding principle that the SCRA will be liberally interpreted in favor of servicemembers has been invoked by courts applying the predecessor statute, the Soldiers' and Sailors' Civil Relief Act (SSCRA), and the SCRA, most notably *LeMaistre v. Leffers*⁶ and *Boone v. Lightner*.⁷ Numerous

¹ Enacted as P.L. 108-189, effective December 19, 2003.

² ACT OCT. 17, 1940, CH. 888, 54 STAT. 1178

³ *In re Adoption of W.C.*, 189 Ohio App. 3d 386, 938 N.E.2d 1052, 1055 (2010) (internal quotations omitted).

⁴ 50 U.S.C. App. § 502. See also *In re Adoption of W.C.*, 189 Ohio App. 3d 386, 938 N.E.2d 1052, 1055 (2010).

⁵ John S. Odom Jr., *A Judge's Benchbook for the Servicemembers Civil Relief Act* ABA Publishing (2011).

⁶ *LeMaistre v. Leffers*, 333 U.S. 1, 5 (1948) ("[T]he Act must be read with an eye friendly to those who dropped their affairs to answer their country's call.")

⁷ *Boone v. Lightner*, 319 U.S. 561, 575 (1943) ("The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.")

other state and federal courts have followed suit.^{8,9} There have been significant amendments to the SCRA virtually every year since 2003.¹⁰

3. ORGANIZATION, CITATION and TERMINOLOGY

The SCRA consists of two brief introductory sections, followed by eight titles:

- Title I – General Provisions
- Title II – General Relief
- Title III – Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases
- Title IV – Life Insurance
- Title V – Taxes and Public Lands
- Title VI – Administrative Remedies
- Title VII – Further Relief
- Title VIII – Civil Liability¹¹

The SCRA is codified at 50 U.S.C. App. §§ 501-597. Rather than cite to the appropriate code section (e.g., 50 U.S.C. App. §535), some commentators and courts cite to the appropriate section of the SCRA as found in Public Law (which starts with Section 1 and ends with Section 803). Thus, for example, in discussing SCRA coverage of lease terminations, one commentator might refer to Section 535 (which is the appropriate reference to the codified version of the SCRA), and another might refer to Section 305 (which is the appropriate reference to the Public Law version). To avoid confusion, this Guide will cite to the appropriate code section. A table matching sections of the codified version to the public law version is contained in the Appendix to this Guide.

As mentioned above, the Soldiers' and Sailors' Civil Relief Act (SSCRA) was significantly revised in 2003 and renamed the Servicemembers' Civil Relief Act (SCRA). The revision added an additional section at 50 U.S.C. App. § 519 (Legal representatives), which results in a

⁸ A collection of citations for other state and federal cases interpreting both the SSCRA and the SCRA in a manner to maximize the protection for the servicemember can be found in *The Servicemembers Civil Relief Act Guide* (Pub. No. JA 260, 2006) of the Judge Advocate General's Law Center and School of the U.S. Army, at page 1-3, n. 15

⁹ **Ohio Law Note.** *In re Adoption of W.C.*, 189 Ohio App. 3d 386, 938 N.E.2d 1052, 1055 (2010) (internal quotations omitted).

¹⁰ *E.g.*, the Veterans Benefits Act of 2010 (PL 111-275, 124 Stat 2864) added 50 U.S.C. App. §597 which explicitly authorizes the U.S. Attorney General to enforce provisions of the SCRA, and also authorizes any aggrieved party to bring a civil action for equitable and declaratory relief, including money damages, and attorney fees. *See* Section 4.6 of this Guide for more details.

¹¹ Title VIII was added by P.L. 111-275 effective October 13, 2010.

disjunction between the section numbering in the SSCRA and the SCRA from that point forward. Please keep this in mind when looking into issues related to these two statutes.

Additionally, please note that certain statements in the Guide are followed by two footnotes. The first footnote typically refers to the SCRA or a court (other than an Ohio state court) interpreting the SCRA. The second one typically references the Ohio code or Ohio case law, and is labeled as “Ohio Law Note.”

Finally, even though virtually all spellcheckers treat the word “servicemember” as an improper compound substitute for the term “service member”, the SCRA uses the compound version in its title and throughout the body of the Act. This Guide follows suit.

4. GENERAL PROVISIONS

4.1 Jurisdictional Application

The SCRA applies to any judicial or administrative proceeding in the United States and its territories, including both federal and state courts administrative agencies, but excluding criminal proceedings.¹²

4.2 Individuals Covered by the SCRA

Members of the Army, Navy, Air Force, Marine Corps, and Coast Guard on active duty (including reserves ordered to active duty).¹³

National Guard members called to active service under Title 32, U.S.C. for over 30 days by the President or the Secretary of Defense in response to a federally-funded national emergency, such as Hurricane Katrina.¹⁴ These call-ups are infrequent and are best evidenced by an order reflecting an Executive Order published by the President in the Federal Register. National Guard personnel ordered to active Title 32 service may not be listed in the Defense Manpower Data Center as on active duty since they are in a different duty status than active duty.

Commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration when on active service.¹⁵

In limited circumstances(e.g., evictions, lease terminations, foreclosures, and installment contract terminations), SCRA protections extend to servicemembers’ dependents, which generally include spouses, children, or any other individuals for whom the

¹² 50 U.S.C. App. § 512.

¹³ *Id.* at § 511(1); 10 U.S.C. 101(a)(4).

¹⁴ 50 U.S.C. App. § 511(2)(A)(ii).

¹⁵ 10 U.S.C. § 511(1); 10 USC 101(a)(5)(B)-(C).

servicemember provided more than one-half of the individuals' support for 180 days immediately preceding application for relief under the Act.^{16 17}

SCRA protections are often triggered by the receipt of military orders.

4.3 “Military Service” Defined

4.3.1. Army, Navy, Air Force, Marine Corps, and Coast Guard Members

For members of the above branches of the Armed Forces, military service is “active duty,” which is defined as full-time duty in the active military service of the United States.¹⁸ National Guard personnel, when ordered to active duty, leave the National Guard and enter the Army or Air Force, returning to the National Guard when released from active duty. See 32 U.S.C. § 325. When called to active duty, National Guard personnel become integrated into the active Army or Air Force, and therefore receive military orders that cite to Title 10, U.S.C.

4.3.2 National Guard Members

For members of the National Guard not ordered to active duty, covered military service includes only service under federal calls to active Title 32 service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days, in response to a national emergency declared by the President by Executive Order and supported by national funds.^{19 20} Orders to covered National Guard service should cite not only 32 U.S.C. § 502.

4.3.3 Absences Due to Illness or Injury

Covered military service includes time periods of a servicemember's absence from active duty due to sickness, wounds, leave or other lawful causes.²¹

¹⁶ 50 U.S.C. App. §§ 511-516; See also, *Balconi v. Dvascas*, 507 N.Y.S.2d 788 (N.Y. Civ. Ct. 1986) (holding that a servicemember's ex-wife was a “dependent” within the meaning of the Act because she was still financially dependant on the servicemember).

¹⁷ **Ohio Law Note.** Ohio Rev. Code Ann. § 5906.02 (West 2010) requires an employer, once per year, to grant two weeks leave to a spouse or parent of a servicemember who has received orders to deploy for longer than 30 days or who has sustained injuries while on active duty. Ohio Rev. Code Ann. 5906.03 (West 2010) prohibits employers from retaliating against employees who take or intend to take leave under section 5906.02.

¹⁸ 50 U.S.C. App. § 511(2)(a)(1) (2006); 10 U.S.C. 101(d)(1) (2006); See also, *Fifth Third Bank of Nw Ohio, N.A. v. Kuney*, 669 N.E.2d 271, 272 (Ohio Ct. App. 6th Dist. 1995). (“[P]rovides protection for those persons engaged in active military service”).

¹⁹ 50 U.S.C. App. § 511(2)(a)(ii).

²⁰ **Ohio Law Note.** Ohio Rev. Code Ann. § 5919.29 (West 2010) guarantees the protection of the SCRA to members of the Ohio National Guard when the servicemember is on active duty.

²¹ 50 U.S.C. App. § 511(2)(C).

4.3.4 What is Not “Military Service”

Covered military service does not include absences from active duty while incarcerated in a military prison or while absent without leave (AWOL).²² Courts usually do not suspend the SCRA for minor infractions of military rules and regulations.²³

4.4 Period of Military Service

4.4.1 Definition

The period beginning on the date that a servicemember begins military service, and ending on the date of a servicemember’s release from military service or death while in military service.²⁴

4.5 Waiver of Benefits and Protections

4.5.1 Benefits and Protections Not Necessarily Automatic

Many SCRA protections are not necessarily automatic. Instead they require the servicemember or dependent to assert the protections in a timely manner to prevent a waiver of such protections.²⁵

4.5.2 Waiver Requirements

Certain SCRA rights and protections may be waived only by a separately-signed written agreement that meets the Act’s specific waiver requirements.²⁶ For example, written waivers are required regarding:

- (a) The modification, termination, or cancellation of: (i) a contract, lease, or bailment; or (ii) an obligation secured by a mortgage, trust, deed, lien or other security in the nature of a mortgage; or
- (b) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that: (i) is security for an obligation; or (ii) was purchased or received under a contract, lease or bailment.

²² See, *Mantz v. Mantz*, 69 N.E.2d 637, 639 (Ohio Ct. Com. Pl. 1946) (A servicemember is not on active duty when he or she is court-martialed for a serious crime, and his or her pay has stopped.).

²³ *Id.* (“I do not mean to infer that commitment for any violation of the army’s rules and regulations would divest the soldier of his rights under the Soldiers’ and Sailors’ Relief Act”).

²⁴ 50 U.S.C. App. § 511(3).

²⁵ *Id.* at §517(a). *E.g.*, see 50 U.S.C. App. §538 which requires a military dependent to petition a court for protection under §§531-537 of the SCRA.

²⁶ *Id.* at § 517(b).

4.6 Enforcement

4.6.1 Civil Action by the U.S. Attorney General

The U.S. Attorney General may bring a civil action in federal district court against a person engaged in a pattern or practice of violating the Act or whose violations raise an issue of significant public importance.^{27 28}

Any such action is at the discretion of the Office of the United States Attorney.

4.6.2 Relief in Action by the U.S. Attorney General

The court may award appropriate equitable or declaratory relief, including monetary damages, and assess civil penalties not to exceed \$55,000 for the first offense, or \$110,000 for subsequent violations.²⁹

4.6.3 Criminal Prosecution by the U.S. Attorney General

The U.S. Attorney General has the implied power to prosecute certain violations of the following sections 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
- Section 566 – Perfection or defense of rights

4.6.4 Private Right of Action

A servicemember or any other person protected by the SCRA, such as a military dependent, may privately pursue a civil action for violations of the Act.³⁰ The court may award equitable or declaratory relief and other “appropriate” relief,

²⁷ *Id.* at § 597(a).

²⁸ **Ohio Law Note.** Ohio law authorizes the Ohio Attorney General to expedite cases brought on behalf of a servicemember for violations of any Ohio laws that grant servicemembers any special rights. Ohio Rev. Code Ann. § 1349.04(B) (West 2007).

²⁹ 50 U.S.C. App. § 597(b)(2)-(3).

³⁰ *Id.* at § 597a(a).

including monetary damages, court costs and attorney fees.³¹

4.6.5 Preservation of Remedies

While the Attorney General and aggrieved persons, such as a servicemember or dependent, may pursue civil actions under this act, this does not preclude the pursuit of other remedies for violations of the SCRA, including consequential and punitive damages.³²

5. PROCEDURAL PROTECTIONS

5.1. Default Judgments

A critical area of concern for many servicemembers is the inability to attend to important legal matters during military service. To help alleviate such concerns, the SCRA provides certain protections from default judgments. Those protections are embodied in 50 U.S.C. App. § 521. These statutory rights do not preclude the assertion of rights under the Ohio Civil Rules.

5.1.1. Applicability

Section 521 applies to all civil actions or proceedings, including child custody proceedings in which the servicemember does not make an appearance.^{33, 34} This includes proceedings in all federal and state courts and administrative

³¹ *Id.* at § 597a(a)-(b).

³² *Id.* at § 597b.

³³ The phrase “including any child custody proceeding” was added by P.L. 110-181, effective January 28, 2008.

³⁴ **Ohio Law Note.** Concerning child custody matters, Ohio Rev. Code Ann. § 3109.04(I) (West 2001, as amended 2011) further provides that the court shall not modify a prior decree allocating parental rights and responsibilities unless the court determines that there has been a change in circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that modification is necessary to serve the best interest of the child. The court may not consider past, present or future active military service in the uniformed services in determining whether a change in circumstances exists under this section and shall make specific written findings of fact to support any modification under this division. After allowing for remote, electronic testimony by the servicemember parent, the court may enter temporary orders modifying parental rights and responsibilities for the duration of a period of active military service, specifying whether active military service is the basis for the order and providing for the termination of the temporary order within 10 days after notice of the end of the active military service unless the other parent demonstrates that resumption of the prior order is not in the child's best interest. .

Additionally, Ohio Rev. Code Ann. § 3109.051(M) (West 2001, as amended 2011) allows a parent receiving orders for active military service who is subject to a parenting time order to, for the period of that active military service, ask the court to delegate that parenting time to a relative or other person having a close and substantial relationship to the child and requiring the other parent to make the child reasonably available to the absent parent when home on leave or via telephonic/electronic contact.

agencies.^{35,36}

5.1.2. Affidavit Requirement

Before any default judgment may be entered, the plaintiff must file an affidavit stating: (i) whether or not the defendant is in military service with supporting facts); or (ii) whether the plaintiff is unable to determine if the Defendant is in military service. See Military Service Certificates (para. 5.1.3) below.

5.1.2.1. *Form of Affidavit*

The affidavit requirement may be satisfied by a signed, written statement certified to be true under penalty of perjury.³⁷ See also 28 U.S.C. 1746, Unsworn Declarations Under Penalty of Perjury; and perhaps Ohio Rev. Code Ann. § 2921.13 (West 2004, as amended 2011).

5.1.2.2. *Penalty for False Affidavits*

Any person who makes or uses a false affidavit may be fined, imprisoned for up to a year, or both.³⁸

5.1.3. Military Service Certificates

Because it is the court's duty to determine the status of a defendant's military service before entering a default judgment, the SCRA permits the court or the parties to apply for a certificate from the Department of Defense ("DoD") concerning a party's military service.³⁹ The DOD office to contact for such inquiries is the Defense Manpower Data Center. Additionally, the DOD provides a website for SCRA inquiries, at

<https://www.dmdc.osd.mil/appj/scra/scraHome.do>

Usually, the court should accept a representation by affidavit that the party is NOT in the military only if the creditor lacks information sufficient to obtain a certificate from the SCRA website.

³⁵ 50 U.S.C. App. §§ 511(5), 521(a)

³⁶ **Ohio Law Note.** SCRA provides protection for those persons engaged in active military service only from having default judgments entered against them without their knowledge. Moreover, even if a person is on active duty, the Act does not prevent the entry of judgment when there has been notice of the pendency of the action and there is adequate time and opportunity to appear and defend such action. See *Fifth Third Bank of Nw Ohio, N.A. v. Kuney*, 669 N.E.2d 271 (Ohio Ct. App. 6th Dist. 1995).

³⁷ 50 U.S.C. App. § 521(b)(4)

³⁸ *Id.* at § 521(c).

³⁹ *Id.* at § 582.

5.1.4. Appointment of Attorney

Where it appears the defendant is in military service, and has not entered an appearance, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the appointed attorney cannot locate the servicemember, actions by the attorney in the case will not waive any defense or otherwise bind the servicemember.⁴⁰ The court may by rule or on an individual basis, make a determination in each case as to the amount and source of compensation of any counsel appointed to represent the servicemember. Factors include but are not limited to: the merits of the case, the servicemember's ability to pay, and/or whether the costs should be shifted to the plaintiff.

5.1.5. Posting a Bond

If the court cannot determine whether the defendant is in military service before entering judgment, it may require the plaintiff to post a bond in an amount approved by the court to indemnify a servicemember against any loss or damage he/she may suffer by reason of the judgment, should that judgment later be set aside, in whole or in part. Such bond will remain in effect until the expiration of the time for setting aside the judgment and for the applicable appeal period.⁴¹

5.1.6. Stays in Default Proceedings

In any proceeding where a defendant is in military service and fails to make an appearance, the court must grant a stay of such proceedings for a minimum of 90 days upon application of counsel, or on the court's own motion, if the court determines that: (i) there may be a defense to the action and a defense cannot be presented without the presence of the defendant;⁴² or (ii) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.⁴³ Such stays are separate and distinct from stays in cases where the servicemember receives actual notice of the action.⁴⁴ Where the servicemember receives actual notice of the proceedings, stays are controlled by 50 U.S.C. App. § 522.

5.1.7. Reopening and Vacating Default Judgments

⁴⁰ *Id.* at 521(b)(2).

⁴¹ *Id.* at § 521(b)(3).

⁴² **Practitioner's Note:** The stay of proceedings under SCRA is not a matter of absolute right, but is within the court's discretion to grant or deny. See *Olsen v Olsen*, 621 N.E.2d 830, 832 (1993). In addition, although a servicemember's absence is considered *prima facie* prejudicial, such a presumption is rebuttable. *Id.*

⁴³ 50 U.S.C. App. § 521(d).

⁴⁴ *Id.* at § 521(e)-(f).

Default judgments entered in violation of the SCRA are voidable and may be vacated.⁴⁵

5.1.7.1. Procedures for Vacating Default Judgments

Default judgments may be reopened and vacated under the following conditions:

(a) The default judgment must have been entered during the servicemember's period of military service or within 60 days after termination of or release from military service,⁴⁶ and where it appears the defendant has not entered an appearance;

(b) The servicemember must file an application with the court or tribunal that issued the default judgment, and affirmatively seek to vacate the default judgment and reopen the case for purposes of defending against the action. Such an application must be filed no later than 90 days after the termination of or release from military service;⁴⁷ and

(c) The servicemember must establish that, at the time the judgment was entered, the servicemember: (i) was "materially affected"⁴⁸ by his or her military service in making a defense; and (ii) has a meritorious or legal defense to the action, in whole or in part.^{49 50}

(d) Servicemembers may ask to vacate a default judgment under Civil Rule 60 even after their 60 day period under the SCRA has run.

5.1.7.2. Protections for Bona Fide Purchasers

Even where a court or tribunal vacates a default judgment against a servicemember pursuant to a provision of the SCRA, such an action will not impair a right or title acquired by a bona

⁴⁵ *Id.* at § 521(g).

⁴⁶ *Id.*

⁴⁷ *Id.* at § 521(g)(2).

⁴⁸ The phrase "material affect" (and variations of that phrase) is a term of art located in the Act. Although the phrase is grammatically incorrect, it is incorporated in this Guide for consistency with its use in the Act.

⁴⁹ *Id.* at § 521(g)(1)(A)-(B).

⁵⁰ **Practitioners' Note:** Any application to vacate a judgment should of course comply with Ohio R. Civ. P. 60.

fide purchaser for value under the default judgment.⁵¹

5.2. Stay of Judicial and Administrative Proceedings

Under 50 U.S.C. App. § 522, the SCRA provides for stays in judicial and other proceedings where the servicemember receives notice of the action or proceedings.

5.2.1. Applicability

Subject to the minor limitations discussed in Section 5.2.5, Section 522 contains the SCRA's general stay provisions. Section 522 applies to all civil actions or proceedings, including child custody proceedings, in which, at the time of filing an application under Section 522, the plaintiff or defendant:

(a) Is in military service, or was terminated or released from military service within 90 days or less from the filing of the application; and (b) Has **received notice** of the action or proceeding.

5.2.2. Stay Application Process

At any stage before final judgment in a proceeding in which Section 522 applies, a servicemember may file an application for or otherwise request a stay of proceedings.⁵²

5.2.2.1. Initial 90-Day Stay

Where a stay application is made, the court or tribunal must stay the proceeding for no less than 90 days – subject to the conditions discussed below.⁵³

5.2.2.2. Conditions for Stay

The servicemember's stay application must include:

(a) A statement that: (i) explains how the servicemember's current military duties "materially affect" his/her ability to appear; and (ii) states a date when he/she will be available to appear; and (b) A statement from the servicemember's commanding officer stating that: (i) the servicemember's

⁵¹ 50 U.S.C. App. § 521(h).

⁵² *Id.* at § 522(b)(1). In addition, the court may grant a stay on its own motion. *Id.*

⁵³ *Id.*

current military duties prevent appearance; and (ii) military leave is not available at the time of the letter.^{54,55}

Since commanding officers are usually not attorneys, the court may consider contacting the commanding officer to remediate any shortcomings in the commander's statement.

5.2.2.3. *Application Not a Waiver of Defenses*

A stay application does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).⁵⁶

5.2.3. Stay Extensions

A servicemember may apply for an extension of the mandatory 90-day stay based on the continuing "material affect" of military duties on his/her ability to appear.⁵⁷ Such an application may be made as part of the initial stay application or thereafter where it appears the servicemember will remain unavailable to prosecute or defend the action. The same conditions for the initial 90-day stay apply to applications for stay extensions (see Section 5.2.2.2, above).^{58,59}

While servicemembers accrue 2.5 days of leave per month, they must receive permission from their commander to use leave. Commanders frequently cannot

⁵⁴ *Id.* at § 522(b)(2).

⁵⁵ **Practitioners' Note:** The 90-day stay set forth in Section 522 is mandatory, but only if the servicemember satisfies the conditions identified in 50 U.S.C. App. 522(b)(2). See, e.g., *In re Marriage of Bradley*, 137 P.3d 1030 (Kan. 2006) (holding, in a divorce proceeding, that the servicemember failed to meet the conditions for a mandatory stay by neglecting to state when he would be available to appear and not providing the court with a statement from his commanding officer); *City of Pendergrass v Skelton*, 628 S.E.2d 136 (Ga. Ct. App. 2006) (determining that a National Guard member's stay application was insufficient where he failed to provide the necessary specific information in support of the application). The determination of whether the servicemember has met the required conditions for a stay is within the sound discretion of the trial court. *Boone v. Lightner*, 319 US 561 (1943).

⁵⁶ 50 U.S.C. App. § 522(c).

⁵⁷ *Id.* at § 522(d)(1).

⁵⁸ *Id.*

⁵⁹ **Ohio Law Note.** The servicemember must establish that military service "materially affects" the ability to appear in the action. See, e.g., *Fifth Third Bank of Nw Ohio, N.A. v. Kuney*, 669 N.E.2d 271, 272 (Ohio Ct. App. 6th Dist. 1995). (determining, in a bank's action against servicemember to recover on unpaid loans after servicemember failed to appear, that the servicemember was entitled to relief from default judgment under the SCRA). In addition, because [t]he applicable provisions of the SCRA are there to protect servicemembers whose obligations prevent them from making an appearance and defending actions, the Act's protections are available only for default judgments and not cognovits judgments. *Id.*

or will not permit servicemembers to take leave except on a rotating basis which may not coincide with the court's docket.

5.2.4. Appointment of Counsel

If a court or tribunal refuses to extend a stay beyond 90 days, it must appoint counsel to represent the servicemember.⁶⁰

5.2.5. Coordination of Stay Proceedings

A servicemember who is denied a stay under Section 522 may not seek a stay in default-judgment proceedings under Section 521.⁶¹ Further, Section 522 protections do not apply to Section 531, which governs eviction and distress proceedings, as Section 531 contains its own stay procedures.⁶²

5.3. Staying and Vacating Judgments of Execution, Attachment, and Garnishments

50 USC App § 524 provides protections to servicemembers whose ability to comply with a court order or judgment is “materially affected” by military service.

5.3.1. Applicability

Section 524 applies to any action or proceeding covered by the SCRA commenced in court against a servicemember before or during the period of military service or within 90 days after such service terminates.⁶³

5.3.2. Actions Taken on a “Material Affect” Determination

Where a court determines, in its opinion, that a servicemember's military service “materially affects” his or her ability to comply with a court order or judgment, it may on its own motion, and must on an application by the servicemember:

- (a) Stay the execution of any judgment or order entered against the servicemember; and
- (b) Vacate or stay any attachments or garnishments of property, money, or debts in the possession of the servicemember, or a third party, whether before or after judgment.⁶⁴

⁶⁰ 50 U.S.C. App. § 522(d)(2).

⁶¹ *Id.* at § 522(e).

⁶² *Id.* at § 522(f).

⁶³ *Id.* at § 524(b).

⁶⁴ *Id.* at § 524(a)(2).

In fashioning relief, Courts should consider whether the servicemember had previously provided the creditor with adequate proof of ‘material effect.’ If the creditor ignored such evidence and brought suit against the servicemember, it is within the discretion of the Court to impose sanctions on the creditor.

5.4. Setting Terms and Conditions of Stays and Other Orders

While some of the SCRA’s stay provisions are mandatory (see, e.g., Section 522 discussed in subsection 5.2.2.1 of the Guide above), 50 U.S.C. App. § 525, provides some discretion in setting the terms and conditions of stays granted under the SCRA.

5.4.1. Setting the Stay Period

A stay of an action, proceeding, attachment, or execution may be ordered for the period of military service and 90 days thereafter, or for any part of that period.⁶⁵

5.4.2. Setting the Terms of Installment Payments

The court may set the terms and amounts for installment payments ordered under the Act (see, e.g., Section 6.4.3.3, below), as it considers reasonable.⁶⁶

5.4.3. Allowing Proceedings Against Codefendants

In most cases, where the servicemember is a codefendant with others who are not in military service, and who are not otherwise entitled to the SCRA’s protections, the court may permit a plaintiff to proceed with an action against such non-servicemember codefendants.⁶⁷ In cases however where a servicemember has terminated a lease of real property where there were other, non-serving co-tenants, there is no lease to enforce against the co-tenants, assuming they vacate the premises or don’t sign a new lease. The SCRA doesn’t provide for termination of a lease in part, but rather in whole.

5.4.4. Inapplicability

Section 525 does not apply to stay proceedings brought under 50 U.S.C. App. § 522 (stay when servicemember has notice) or to anticipatory relief sought under 50 U.S.C. App. § 591.⁶⁸

⁶⁵ *Id.* at § 525(a).

⁶⁶ *Id.*

⁶⁷ 50 U.S.C. App. § 525(b).

⁶⁸ *Id.* at § 525(c).

5.5. Statute of Limitations Tolling

50 U.S.C. App. § 526 tolls the applicable statute of limitations for claims brought against servicemembers during their period of military service. The express language of the SCRA makes certain that the tolling of a statute of limitations pursuant to Section 526(a) is “unconditional.”⁶⁹ Courts have liberally construed Section 526(a) to allow for the tolling of statutory time periods that are not specifically designated as statutes of limitation under state law.⁷⁰ The SCRA’s tolling provisions are mandatory, and there is no requirement to show that military service prejudiced the servicemember’s ability to defend or prosecute a claim.⁷¹

5.5.1. Tolling Limitations Periods

A servicemember's military service may not be included in computing any limitations period established by law, regulation, or order, for bringing an action or other proceeding in any state or federal court or agency by or against the servicemember or the servicemember's heirs, executors, administrators or assigns.^{72,73} Section 526’s tolling requirements do not apply, however, to periods of limitations established by the United States internal revenue laws.⁷⁴

5.5.2. Redemption of Real Property

Section 526 further provides that a period of military service may not be included in computing any period provided by law for redeeming real property sold or forfeited to enforce an obligation, tax, or assessment.⁷⁵

⁶⁹ See *Bickford v. United States*, 656 F.2d 636, 638 (Ct. Cl. 1981).

⁷⁰ See *In re Adoption of W.C.*, 189 Ohio App. 3d 386, 938 N.E.2d 1052, 1055 (2010) (holding, in an adoption proceeding, that the only critical factor in determining tolling of statute of limitations is military service, and once that circumstance is shown, the period of limitation is automatically tolled for the duration of the servicemember’s service).

⁷¹ *Conroy v Aniskoff*, 507 U.S. 511 (1993).

⁷² 50 U.S.C. App. § 526(c)

⁷³ **Ohio Law Note.** Because the tolling provision of the SCRA is mandatory, a servicemember may raise the issue of statute of limitations tolling for the first time on appeal. See *In re Adoption of W.C.*, 189 Ohio App. 3d 386, 938 N.E.2d 1052, 1055 (2010) (holding, in an adoption proceeding, that the natural father’s failure to raise issue below did not result in waiver on appeal of his claim that tolling provision of SCRA applied to statutory one year time period during which father’s failure to have more than de minimis contact with child would support nonconsensual adoption, since the tolling provision of SCRA was mandatory).

⁷⁴ 50 U.S.C. App. § 526(c)

⁷⁵ *Id.* at § 526(b).

6. EVICTIONS, LEASE TERMINATIONS, MORTGAGE FORECLOSURES, AND INSTALLMENT-CONTRACT RELIEF

Title III of the SCRA governs evictions, leases, installment-contracts, and mortgage relief. Title III protections are applicable not only to servicemembers, but also to their dependents—where it is proven that the servicemember’s military service “materially affects: the dependent’s ability to fulfill the obligation in question.”⁷⁶ The Act specifically states that protections afforded a dependent are contingent upon “application to a court”, whereas those afforded a servicemember are in effect without judicial action.⁷⁷

6.1 Evictions and Distress

6.1.1 Court-Ordered Eviction

Landlords may not evict⁷⁸ a servicemember or dependents during military service, without a court order.⁷⁹ Servicemembers and dependents are eligible for this protection if: (i) the property is occupied, or intended to be occupied as residence,⁸⁰ and (ii) the monthly rent does not exceed the statutorily set amount.⁸¹ The need to obtain a court order before eviction is consistent with Ohio law.⁸²

6.1.2 Distress

If premises are occupied or intended to be occupied primarily as a residence, the SCRA prohibits a landlord from subjecting the premises to a distress during active

⁷⁶ *Id.* at § 538.

⁷⁷ *Id.*

⁷⁸ See, *Arkless v. Kilsten* 61 F. Supp. 886 (E.D. Pa., 1944) (holding that the Act’s meaning of “eviction[“] is a dispossession of a tenant by a landlord).

⁷⁹ 50 U.S.C. App. § 531(a)(1)(A); See, *Krobusek v. Warwick Realty Co.*, 10 Ohio Supp. 11, 1942 WL 3131, *1 (Ohio Ct. Com.Pl. 1942).

⁸⁰ *Id.* at § 531(a)(1)(A)(i).

⁸¹ *Id.* at § 531(a)(1)(A)(ii). The statutorily set amount was 2,400 dollars in 2003. It is modified every year by the housing price inflation adjustment. The housing price inflation adjustment is the percentage of inflation listed in the Consumer Price Index that is calculated by the Bureau of Labor Statistics. In 2012, the set amount was \$3047.45 per month. 77 FR 8837, 2/15/2012. The updated figure is reported each year in the Federal Register under the term “Housing Price Inflation Adjustment under 50 U.S.C. App. Section 531.” Although often not reported until February or March of a particular calendar year, the Federal Register entry states that the adjusted amount is effective retroactive to January 1 of the year of publication.

⁸² **Ohio Law Note.** “No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, [except in instances that require a court order] . . .” Ohio Rev. Code Ann. § 5321.15 (West 1974).

military service.⁸³ Distress is a common-law right that allows a landlord to engage in self-help by going on the demised premises and seizing personal property as security for rent arrearages.⁸⁴ Under Ohio law, a landlord is not permitted to seize the tenant's property as security for rent arrearages without a court order.⁸⁵

6.1.3 Stay of Eviction Proceedings

A court may, on its own motion, stay eviction proceedings for a period of 90 days or adjust the servicemember's obligation under the lease to preserve each party's interest, and must do so if a request is filed by a servicemember whose ability to pay the agreed rent is "materially affected" by military service.^{86 87}

6.1.4 Lease Term Adjustments

As an alternative remedy to the stay of proceedings, the court may adjust the lease obligations to preserve the interest of all parties.^{88 89} Furthermore, if a stay is granted, the Act permits the court to provide such relief as equity may require.⁹⁰
⁹¹

6.1.5 Penalties

⁸³ 50 U.S.C. App. § 531(a)(1)(B).

⁸⁴ 49 Am. Jur. 2d Landlord and Tenant § 813 (2006).

⁸⁵ **Ohio Law Note.** The Ohio Rev. Code states, "No landlord of residential premises shall seize the furnishings or possessions of a tenant, or of a tenant whose right to possession has terminated, for the purpose of recovering rent payments, other than in accordance with an order issued by a court of competent jurisdiction." Ohio Rev. Code Ann. § 5321.15 (West 1974).

⁸⁶ 50 U.S.C. App. § 531(b)(1)(A)-(B).

⁸⁷ **Ohio Law Note.** The Ohio Revised Code declares, "In an action under this chapter for possession of residential premises of a tenant or manufactured home park resident who is deployed on active duty or of any member of the tenant's or resident's immediate family, if the tenant or resident entered into the rental agreement on or after the effective date of this section, the court may, on its own motion, and shall, upon motion made by or on behalf of the tenant or resident, do either of the following if the tenant's or resident's ability to pay the agreed rent is materially affected by the deployment on active duty: (1) Stay the proceedings for a period of ninety days, unless, in the opinion of the court, justice and equity require a longer or shorter period of time" Ohio Rev. Code Ann. § 1923.062(A)(1) (West 2004).

⁸⁸ 50 U.S.C. App. § 531(b)(1)(B).

⁸⁹ **Ohio Law Note.** Ohio Rev. Code also declares that a court may "adjust the obligation under the rental agreement to preserve the interest of all parties to it." Ohio Rev. Code Ann. § 1923.062(A)(2) (West 2004).

⁹⁰ 50 U.S.C. App. § 531(b)(1)(3).

⁹¹ **Ohio Law Note.** Ohio Rev. Code also guarantees the landlord relief, if required by equity. Ohio Rev. Code Ann. § 1923.062(B) (West 2004).

A person who knowingly evicts or attempts to evict a servicemember or the servicemember's dependents during active duty or otherwise covered duty may be fined under 18 U.S.C. § 3571, imprisoned for not more than one year, or both.⁹² Servicemembers also may pursue other available legal remedies, such as wrongful conversion (or wrongful eviction) and recovery of punitive and consequential damages.⁹³

6.2 Residential and Automobile Lease Termination

6.2.1 Lease Terminations

Servicemembers and their dependents may terminate residential or motor vehicle leases at any time after entering military service or after the date of receipt of military orders, so long as certain conditions discussed in subsections 6.2.1 and 6.2.2 below are met.⁹⁴ They are not required to demonstrate that their ability to perform under the lease agreement is "materially affected" by military service. Notice of lease terminations must be provided to the lessor in writing, accompanied by a copy of the servicemember's military orders.⁹⁵

6.2.2 Real Estate Leases

Servicemembers and their dependents may terminate, without penalty, leases for premises that are occupied or intended to be occupied, including those leased for residential, professional, business or agricultural purposes.⁹⁶ To qualify for such relief, the lease must have either been (a) entered into prior to active military service,⁹⁷ or for those already serving on active duty, the servicemember must have received permanent change of station (PCS) orders or deployment orders for 90 days or more.⁹⁸ Note that orders can include any notification, certification, or verification from the servicemember's commanding officer, with respect to the current or future military duty status of the servicemember.⁹⁹

⁹² 50 U.S.C. App. § 531(c).

⁹³ *Id.* at § 531(c)(2). Ohio Rev. Code also provides civil liability with attorney's fees to landlords who use self-help to evict a tenant, or take the tenant's possessions. Ohio Rev. Code Ann. § 5321.15 (West 1974).

⁹⁴ 50 U.S.C. App. § 535(a).

⁹⁵ *Id.* at § 535(c)(1)(A).

⁹⁶ *Id.* at § 535(a).

⁹⁷ *Id.* at § 535(c)(1)(A).

⁹⁸ *Id.* at § 535(b)(1)(B).

⁹⁹ *Id.* at § 535(i)(1).

Termination is effective 30 days after the date on which the next rental payment is due for month-to-month leases.¹⁰⁰ For all other leases, termination is effective on the last day of the month following the month of written notice.¹⁰¹ Even if there are non-servicemember co-tenants, the statute confers upon the servicemember the right to terminate the lease in whole and not in part. Thus the co-tenants are not liable for the servicemember's share of the rent under the terminated lease.

6.2.3 Automobile Leases

Leases for motor vehicles that are used or intended for personal or business transportation by servicemembers or their dependents may be terminated under any one of the following conditions:

- (a) The lease is entered into by someone not on active duty who thereafter receives an order or call to duty of 180 days or more;¹⁰² or
- (b) The lease is entered into by a servicemember while on active duty who then receives orders for a permanent change of station (PCS) from a location in the continental United States (CONUS) to a location outside the continental United States (OCONUS), or from a State outside the continental United States (Alaska or Hawaii) to any other State in the United States;¹⁰³ or
- (c) The lease is entered into by a servicemember while on active duty who then receives deployment orders in support of military operations for a period of at least 180 days.^{104 105}

Termination is effective upon return of the motor vehicle to the lessor within 15 days after the required written notice of termination (including a copy of military orders).^{106 107}

¹⁰⁰ *Id.* at § 535(d)(1).

¹⁰¹ *Id.* at § 535(d)(1).

¹⁰² *Id.* at § 535(b)(2)(A).

¹⁰³ *Id.* at § 535(b)(2)(B)(i).

¹⁰⁴ *Id.* at § 535(b)(2)(B)(ii).

¹⁰⁵ **Ohio Law Note.** Similarly, Ohio law only permits termination of a lease if the servicemember, or the spouse of a 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).

¹⁰⁶ 50 U.S.C. App. § 535(c)(B).

¹⁰⁷ **Ohio Law Note.** Ohio law requires written notice, a copy of military order, and the return of the vehicle, in order to terminate the agreement. Ohio Rev. Code Ann. § 1349.02 (1), (2) (West 2004).

6.2.4 Joint Leases

A dependent co-lessee's responsibility to perform under a lease agreement is terminated once the servicemember's obligation is terminated.¹⁰⁸

6.2.5 Arrearages and Advance Payments

Rent or lease amounts unpaid for the period before the effective termination date shall be paid on a prorated basis.¹⁰⁹ Any amount paid in advance for a period after the effective termination date must be refunded within 30 days of the effective termination date.^{110 111}

6.2.6 Lessor Relief

In very limited circumstances, a lessor may request relief from the court before the lease termination date as justice and equity may require. The court may then modify the relief granted to a servicemember.^{112 113} Equitable remedies are not limited to the servicemember's monthly rental obligations and security deposit.¹¹⁴

6.2.7 Penalties

A person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or his/her dependents after lawful lease termination, or who knowingly interferes with the removal of personal property from premises covered by such lease, may be fined under 18 U.S.C. § 3571, imprisoned for not more than one year, or both.¹¹⁵ Servicemembers also

¹⁰⁸ 50 U.S.C. App. § 535(a)(2).

¹⁰⁹ *Id.* at § 535(e).

¹¹⁰ *Id.* at § 535(f).

¹¹¹ **Ohio Law Note.** Ohio law also requires that the lessor refund all of the servicemember's advanced payments for automobile leases, but does not impose a deadline for payment of the refund. Ohio Rev. Code Ann. § 1349.02 (1)-(2) (West 2004).

¹¹² 50 U.S.C. App. § 535(g).

¹¹³ **Ohio Law Note.** Ohio law also permits a court to adjust the servicemember's remedy according to equity for the lessor. Ohio Rev. Code Ann. § 1349.02 (1)-(2) (West 2004).

¹¹⁴ See, *Omega Indus. v. Raffaele*, 894 F. Supp. 1425, 1430 (D. Nev. 1995) (establishing that a lessor may be awarded additional remedies, including induced tenant improvements, realty commissions and attorney fees and costs, while also holding that such equitable remedies must be exercised with extreme caution given the purpose of the Act).

¹¹⁵ 50 U.S.C. App. § 535(h).

may pursue other available legal remedies, such as wrongful conversion and recovery of punitive and consequential damages.¹¹⁶

6.3. Mortgages and trust deeds^{117 118}

Section 533 provides certain forms of mortgage relief to servicemembers on active duty and for a limited period of time after the servicemember leaves active duty. For such relief, real or personal mortgaged property must be owned by a servicemember or his/her dependents before active duty,¹¹⁹ and the foreclosure, sale, or seizure action must have been filed during, or within nine months after, active military service.¹²⁰

6.3.1 Sale, Foreclosure or Seizure

Under Section 533, a sale, foreclosure, or seizure of servicemembers' or their dependents' property for breach of mortgage or trust-deed obligations during the prescribed period is invalid, unless made pursuant to a court order or a servicemember's written waiver.¹²¹

6.3.2 Available Mortgage Relief

6.3.2.1 *Stay of Mortgage Enforcement Proceedings*

In mortgage enforcement actions filed during, or within 9 months after a servicemember's military service, the court may stay the proceedings as long as justice and equity require, or equitably adjust the mortgage obligation after a hearing and on its own motion.¹²² It must do so when a servicemember applies

¹¹⁶ *Id.*

¹¹⁷ **Ohio Law Note.** Ohio Rev. Code Ann. § 4112.01 (A)(11) (West 2000, as amended 2009) Prohibits restrictive covenants in real estate contracts based on military status. Further, Ohio Rev. Code Ann. § 176.06 (West 2000) requires that each municipal corporation, county and township keep track of mortgagors and mortgage applicants by a variety of census categories, including military status. This information is to be made available to the public and reported annually to the president of the senate and speaker of the house for Ohio.

¹¹⁸ **Ohio Law Note.** Ohio does not employ deeds of trust. Each written agency agreement that grants a real estate agent the right to represent another individual must contain a provision saying that it is illegal under the fair housing act to discriminate based on military status. See Ohio Rev. Code Ann. §4735.55(A) (West 2000, as amended 2011).

¹¹⁹ 50 U.S.C. App. § 533(a)(1).

¹²⁰ *Id.* at § 533(b).

¹²¹ *Id.* at § 533(c), 517(b). The phrase "or within 9 months" was added by P.L. 110-289, effective July 30, 2008. The "sunset" of the additional 9 month period of protection was extended to December 31, 2012, by S. 4508 which passed on December 22, 2010.

¹²² 50 U.S.C. App. § 533(b).

for such relief and proves that his/her *ability to comply* is “*materially affected*” by military service.¹²³

The Act does not specify which party must prove “material effect.” Some courts have held that the servicemember must prove material effect,¹²⁴ while others have held that the party bringing an action against a servicemember must prove lack of “material effect.”¹²⁵

6.3.2.2 *Settlement of Stays Relating to Personal Property*

If a stay is granted in a foreclosure, repossession, or rescission/termination of a purchase contract proceeding related to personal property, the court may appoint three disinterested parties to appraise the personal property.¹²⁶ If the servicemember’s dependents will not face undue hardship because of the foreclosure, repossession, or contract rescission/termination, the court may order that the servicemember’s equity on the appraised amount be paid to the servicemember or his/her dependents.¹²⁷

6.3.2.3 *Reopening or Setting Aside Foreclosure Default Judgments*

If a default judgment in a foreclosure proceeding is entered during a servicemember’s active duty, or within 9 months of release from active duty, the court must reopen or set aside the judgment to allow the servicemember or his/her counsel to assert the servicemember’s rights under the Act.¹²⁸ The court, however, must do so only if the servicemember was unable to defend the action due to his/her military service, and he/she has a meritorious or legal defense.¹²⁹ The servicemember must move to reopen such a default judgment no later than 90 days after the end of active duty.¹³⁰

¹²³ *Id.* at § 533(b). See also, *Hunt v. Jacobson*, 33 N.Y.S.2d 661 (N.Y. Sup. Ct. 1942) (recognizing that the criteria for a servicemember’s mortgage debt relief under the former Act are whether (1) his inability to comply is because of military service, and (2) such military service has “materially affected” the ability to comply).

¹²⁴ See, e.g., *Queens County Sav. Bank v. Thaler*, 44 N.Y.S.2d 4 (N.Y. Sup. Ct. 1943) (denying servicemember’s motion to stay foreclosure proceedings because he failed to show that his ability to pay was “materially affected” by his military service).

¹²⁵ See, e.g., *Meyers v. Schmidt*, 46 N.Y.S.2d 420 (N.Y. Co. Ct. 1944) (holding that the burden is on the plaintiff to show that military service does not “materially affect” the servicemember’s ability to meet the debt obligation).

¹²⁶ 50 U.S.C. App. § 534(a).

¹²⁷ *Id.* at § 534(b).

¹²⁸ *Id.* at § 521(g).

¹²⁹ *Id.*

¹³⁰ *Id.* at § 521(g). See also, *Flagg v. Sun Inv. & Loan Corp.*, 373 P.2d 226 (Okla. 1962).

6.3.2.4 *Statutory Redemption Period Tolled*

Where real property is sold or forfeited to enforce an obligation tax, or assessment, a servicemember may invoke the statutory redemption period, with additional time equal to the period of active military service.¹³¹ It is not necessary for servicemembers to show that military service adversely affects their ability to redeem title to the property before qualifying for the tolling provision.¹³²

6.3.2.5 *Conditional Stay*

To “preserve the interest of all parties,”¹³³ the court may grant the servicemember conditional relief. Typically, this type of relief involves a stay of foreclosure proceedings conditioned upon the servicemember making regular, partial payments on the outstanding debt.¹³⁴

6.3.2.6 *Subsequent Good Faith Purchasers*

Servicemembers may not be able to recover property sold to a good faith purchaser. The Act protects the rights of subsequent good faith purchasers by stating that vacating setting aside, or reversing any default judgment under the Act will not impair any right or title acquired by a *bona fide* purchaser for value.¹³⁵

6.3.3 Limitation on Contract Fines and Penalties

Where an action to enforce a contract has been stayed, it is impermissible for the contract holder to assess fines or penalties for a servicemember’s failure to comply with the contract during the period of the stay.¹³⁶ The reviewing court also has discretion to reduce or waive penalties or fines resulting from a servicemember’s non performance under a contract where:

- (a) the servicemember was in military service at the time the penalty or fine was assessed; and

¹³¹ 50 U.S.C. App. § 526(b).

¹³² *Conroy v. Aniskoff*, 507 U.S. 511, 517 (1993) (holding that a servicemember need not show that his military service prejudiced his ability to redeem title to property before qualifying for the suspension of time under the Act).

¹³³ 50 U.S.C. App. § 533(b)(2).

¹³⁴ See, e.g., *Fed Nat’l Mortgage Ass’n v. Deziel*, 136 F. Supp. 859 (E.D. Mich. 1956) (granting a stay of foreclosure proceedings conditioned upon the servicemember making a payment of \$100 each month for one year). See also, *Nassau Sav. & Loan Ass’n v. Ormond*, 39 N.Y.S.2d 92 (N.Y. Sup. Ct. 1942) (granting a stay of mortgage foreclosure proceedings on the condition that servicemember’s dependent pay a monthly sum to plaintiff).

¹³⁵ 50 U.S.C. App. § 521(h).

¹³⁶ *Id.* at § 523(a).

(b) the servicemember’s ability to perform under the contract was “materially affected” by military service.¹³⁷

6.3.4 Penalties

A person who knowingly makes or causes a sale, foreclosure, or seizure of property that is prohibited under the Act, or knowingly attempts to do so, shall be fined under 18 U.S.C. §3571, imprisoned for not more than one year, or both.¹³⁸

6.4 Installment Contracts

50 U.S.C. App. §532 protects servicemembers and their dependents who entered into installment contracts for real or personal property (including motor vehicles), or who leased or bailed such property before active military service. If a servicemember or any dependent subsequently breaches the contract terms, the property may not be rescinded, terminated or repossessed unless ordered by the court pursuant to its authority under 50 U.S.C. App. §532(a).

6.4.1 Covered Obligations & Applicability

(a) Installment-contract protections only apply to contracts where the servicemember has made a deposit or installment payment before entering military service.¹³⁹

(b) Obligations entered into during active duty generally are not protected.¹⁴⁰

(c) Protection extends to installment contracts breached before or during active duty.¹⁴¹

6.4.2 “Material Effect”

A servicemember only is required to establish “material effect” under Section 302 when the court considers staying the matter pending final resolution. In that

¹³⁷ *Id.* at § 523(b).

¹³⁸ *Id.* at § 533(d)(1).

¹³⁹ *Id.* at § 532(a)(2).

¹⁴⁰ *Jim’s Trailer Sales, Inc v. Shutok*, 153 F. Supp. 274 (W.D. Pa. 1957) (holding that the servicemember was not protected by the SSCRA because he purchased the house trailer at issue after entering military service).

¹⁴¹ *Hampton v. Commercial Credit Corp.*, 176 P.2d 270 (Mont. 1946) (holding that the servicemember’s automobile was wrongfully seized, possessed and sold, although he breached the installment contract shortly before active military service).

situation, the court can compare a servicemember's financial situation before and during active duty.¹⁴²

6.4.3 Available Resolutions

6.4.3.1 *Reimbursement*

A court may order complete or partial repayments of deposits or installments made by a servicemember as a prerequisite to cancellation of the contract and the creditor regaining possession of the property.¹⁴³

6.4.3.2 *Stay of Proceedings*

Upon the petition of the servicemember, the court must stay the proceedings for a period of time, as justice and equity may require, if the court finds that the "servicemember's ability to comply with the contract is 'materially affected' by military service."¹⁴⁴ The court may also stay proceedings on its own motion.¹⁴⁵

6.4.3.3 *Equitable Resolution*

The Act empowers the court to make any other disposition that is equitable "to preserve the interest of all parties."¹⁴⁶ Courts have stressed that the interest of both the servicemember and creditor must be weighed equally, and that protections under this provision of the Act in no way provide "complete immunity" from contract obligations.¹⁴⁷

6.4.4 Penalties

A person who knowingly resumes possession of property in violation of Section 532, or attempts to do so, shall be fined under 18 U.S.C. § 3571, or imprisoned for not more than one year, or both.¹⁴⁸ Servicemembers also may pursue other

¹⁴² See, e.g., *Harvey v. Home Owners' Loan Corp.*, 67 N.Y.S.2d 586 (N.Y. Sup. Ct. 1946) (holding that servicemember did not establish "material effect" where he was able to pay the monthly amount before military service, and his income during military service was equal to or greater than his income before military service).

¹⁴³ 50 U.S.C. App. § 532(c)(1).

¹⁴⁴ *Id.* at § 532(c)(2).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at § 532(c)(3).

¹⁴⁷ *Nassau Sav. & Loan Ass'n v. Ormond*, 39 N.Y.S.2d 92, 94 (N.Y. Sup. Ct. 1942.)

¹⁴⁸ 50 U.S.C. App. § 532(b).

available legal remedies, including wrongful conversion¹⁴⁹ and recovery of punitive and consequential damages.¹⁵⁰

6.5. Termination of Contracts for Cellular Phone Service

Servicemembers who receive orders to relocate for more than 90 days to a location that does not support their cell phone may terminate the contract and pay no early termination penalty.¹⁵¹ ¹⁵² Termination must be made in writing or by electronic notice, and accompanied by a copy of the servicemember's orders.¹⁵³

6.5.1. Cellular Phone Service Relief

Upon request by the servicemember, the cellular phone provider must terminate the service without an early termination fee,¹⁵⁴ and return any advance payments.¹⁵⁵ The servicemember is also allowed to retain his or her phone number even if the cellular phone contract is terminated, so long as the period of relocation is three years or less.¹⁵⁶ The right to terminate extends to family plans that encompass those who accompany the servicemember.¹⁵⁷

6.6 Limitation on Storage Lien Enforcement

¹⁴⁹ *Id.* See also, *Luke v. Mercantile Acceptance Corp. of Cal.*, 244 P.2d 764 (Cal. Dist. Ct. App. 1952) (holding that a creditor that involuntarily repossesses a servicemember's chattel without a court order is guilty of conversion).

¹⁵⁰ 50 U.S.C. App. § 532(b).

¹⁵¹ *Id.* at § 535a(a). This section was initially added by P.L. 110-389. It was substantially amended by P.L. 111-275, effective October 13, 2010.

¹⁵² **Ohio Law Note.** Ohio Rev. Code contains a similar provision, "Any person, or spouse of a person, who is deployed on active duty may terminate, without penalty, a cellular phone contract that meets both of the following requirements: (1) It is entered into on or after the effective date of this section. (2) It is executed by or on behalf of the person who is deployed on active duty." Ohio Rev. Code Ann. § 1349.03(B) (West 2004). Moreover, Ohio Rev. Code specifies that "Termination of the cellular phone contract shall not be effective until: (1) Thirty days after the person who is deployed on active duty or the person's spouse gives notice by certified mail, return receipt requested, of the intention to terminate the cellular phone contract; and (2) Unless the person who is deployed on active duty owns the cellular phone, the cellular phone is returned to the custody or control of the cellular telephone company, or the person who is deployed on active duty or the person's spouse agrees in writing to return the cellular phone as soon as practicable after the deployment is completed." Ohio Rev. Code Ann. § 1349.03(C) (West 2004). The Ohio law does not require the servicemember to be materially affected by the deployment on active duty. Furthermore, the Ohio law does not require a copy of the servicemember's orders.

¹⁵³ 50 U.S.C. App. § 535a(a).

¹⁵⁴ *Id.* at § 535a(e).

¹⁵⁵ *Id.* at § 535a(f).

¹⁵⁶ *Id.* at § 535a(c).

¹⁵⁷ *Id.* at § 535a(d).

6.6.1 General Protection

Foreclosure of liens¹⁵⁸ for storage of a servicemember's household goods or other personal property is prohibited during the period of military service and for 90 days after military service, without a court order.¹⁵⁹

6.6.2 Stay of Proceedings

The court must stay lien foreclosure or enforcement proceedings or adjust the lien obligation in the interest of all parties, if a servicemember applies for such relief and shows that his/her ability to comply with the lien obligation is "materially affected" by military service.¹⁶⁰ The court may also do so on its own motion.¹⁶¹

6.6.3 Penalties

A person who knowingly forecloses or enforces any lien on the property or effects of a servicemember, or attempts to do so, in violation of the Act shall be fined under 18 U.S.C. § 3571, imprisoned for not more than one year, or both.¹⁶² Servicemembers may pursue other remedies available under law, including punitive and consequential damages.¹⁶³

7. INTEREST RATE PROTECTIONS

7.1. Interest Rate Cap

To help ease financial burdens created by active military service, Section 527 of the SCRA provides servicemembers with a 6% interest cap on all debts incurred prior to active duty, including federally insured guaranteed student loans.¹⁶⁴ Note that Ohio extends the 6% interest cap on all debts, not just those incurred prior to active duty.¹⁶⁵

¹⁵⁸ The Act's definition of a "lien" includes liens for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any reason. See, 50 U.S.C. App. § 537(a)(2).

¹⁵⁹ 50 U.S.C. App. § 537(a)(1).

¹⁶⁰ *Id.* at § 537(b).

¹⁶¹ *Id.*

¹⁶² *Id.* at §537(c)(1).

¹⁶³ *Id.* at §537(c)(2).

¹⁶⁴ Extension of 50 U.S.C. App. §527 to federally insured guaranteed loans was accomplished by the Higher Education Opportunity Act of 2008 (P.L. 110-315).

¹⁶⁵ **Ohio Law Note.** The Ohio Rev. Code states, "no creditor in connection with an obligation entered into on or after the effective date of this section shall charge or collect from a person, or spouse of a person, who is deployed on active duty interest or finance charges exceeding six per cent per annum during the period that the person is deployed on active duty." Ohio Rev. Code Ann. § 1343.031 (West 2004). The Ohio Law does not provide a 6% interest rate cap on closely held businesses.

7.1.1. Covered Debt Obligations

The 6% interest cap applies to all obligations and liabilities incurred by a servicemember, individually, jointly with a spouse,¹⁶⁶ or in the name of a closely held business entity.¹⁶⁷ In addition, courts have held that the cap applies to Chapter 13 repayment plans¹⁶⁸ and foreign judgments.¹⁶⁹

In contrast, some state courts held that the interest protections do not cover debts incurred by servicemembers during or after active duty ends.¹⁷⁰ Moreover, debts incurred solely by a servicemember's spouse are not eligible for the 6% interest cap under the SCRA, but may be under the Ohio Revised Code.^{171 172}

7.1.2. Definition of "Interest"

The interest cap provision of the SCRA defines interest¹⁷³ to include "service charges, renewal charges, fees, or any other charges (except *bona fide* insurance)" resulting from a debt or obligation.^{174, 175} At least one court has held that a

¹⁶⁶ *Rodriguez v. American Express*, No.CVF03-5949, 2006WL908613 (E.D. Cal. April 7, 2006).

¹⁶⁷ *Linscott v. Vector Aerospace*, No 05-CV-682-HU, 2007 WL 2220357 (D. Or. July 27, 2007) (analyzing the SCRA protections in a case involving a servicemember's closely-held corporation). See also, *Cathey v. First Rep. Bank*, 2001 US Dist. Lexis 13150 (W.D. La. August 14, 2001) (stating that a corporation's debts are provided protection under the Act if the servicemember owner personally guarantees the debt and the corporation depends on his presence for profitability).

¹⁶⁸ *In re Watson*, 292 B.R. 441 (Bankr. S.D. Ga. 2003).

¹⁶⁹ *Linscott v. Vector Aerospace*, No 05-CV-682-HU, 2007 WL 2220357, at *1 (D. Or. July 27, 2007).

¹⁷⁰ *Shield v. Hall*, 207 S.W.2d 997 (Tex. Civ. App. 1948).

¹⁷¹ *Rodriguez v. Valley First Credit Union*, 2006 WL 908613 at *9 (E.D. Cal. April 7, 2006) (holding that the 6% interest rate cap only applies to servicemembers' spouses for debts that servicemembers and their spouses jointly incur).

¹⁷² **Ohio Law Note.** Ohio prohibits a creditor from charging or collecting finance charges exceeding six per cent per annum from a person, or the spouse of a person, deployed on active duty. Ohio Rev. Code Ann. § 1343.031(B) (West 2004).

¹⁷³ **Ohio Law Note.** Ohio Law uses the terms "interest" and "finance charges," but Ohio law does not define the terms.

¹⁷⁴ 50 U.S.C. App. § 527 (a)(1)(A). The definition of "interest" was added by §2203 of P.L. 111-289, effective July 30, 2008.

¹⁷⁵ **Ohio Law Note.** The term "obligation" is defined as, "any retail installment sales contract, other contract for the purchase of goods or services, or bond, bill, note, or other instrument of writing for the payment of money arising out of a contract or other transaction for the purchase of goods or services." Ohio Rev. Code Ann. § 1343.031(A)(2) (West 2004).

creditor violated the SCRA's 6% interest cap protections by charging late fees that had the effect of raising the applicable interest rate above 6% limit.¹⁷⁶

7.1.3. Temporal Scope of Interest Rate Reduction

The 6% interest cap on mortgages and mortgage equivalents applies during active service and for one year after active service ends.¹⁷⁷ But the interest cap reduction on all non-mortgage debts and obligations is limited to the duration of active service.^{178, 179}

7.1.4. Forgiveness of Interest Exceeding the Limitation

Any interest incurred during active military service in excess of the SCRA's mandated 6% cap shall be forgiven, and the servicemember does not owe any deficiency resulting from the interest reduction.^{180, 181} Nor should a creditor issue an IRS Form 1099 reflecting "income" to the servicemember from the forgiveness of interest or cancellation of the debt.

7.1.5. Activation of 6% Interest

The 6% interest cap is neither self-executing nor automatic. To receive this protection, servicemembers must provide a creditor with written notice claiming material effect with a copy of military orders detailing active duty, within 180 days from the end of active military duty.^{182, 183} Once notice is provided, the creditor is obligated to retroactively implement the 6% interest rate beginning on the date active duty was commenced, not the date that notice is received.¹⁸⁴

¹⁷⁶ *Koenig v. Waukesha State Bank*, No 05-C-255, 2006 WL2334841 at *1 (E.D. Wis. Aug 10, 2006).

¹⁷⁷ 50 U.S.C. App. § 527(a)(1)(A).

¹⁷⁸ 50 U.S.C. App. § 527(a)(1)(B). The definition of an obligation as either a mortgage debt or "any other obligation" was added by §2203 of P.L. 111-289, effective July 30, 2008.

¹⁷⁹ **Ohio Law Note.** Ohio law limits the application of the 6% interest cap to servicemembers "deployed on active duty." Ohio Rev. Code Ann. § 1343.031(D) (West 2004).

¹⁸⁰ 50 U.S.C. App. § 527(b)(2).

¹⁸¹ **Ohio Law Note.** Ohio law provides, "interest or finance charges in excess of 6% per annum that otherwise would be incurred but for the prohibition in division (B) of this section are forgiven." Ohio Rev. Code Ann. § 1343.031(C) (West 2004).

¹⁸² 50 U.S.C. App. § 527(b)(1).

¹⁸³ **Ohio Law Note.** Ohio law also requires the servicemember to submit a copy of his or her orders to the creditor. Furthermore, Ohio law also requires that the servicemember submit the orders within 180 days from the end of active military duty. Ohio Rev. Code Ann. § 1343.031(E) (West 2004).

¹⁸⁴ 50 U.S.C. App. § 527(b)(2).

Deploying servicemembers are generally furnished with sample letters requesting interest relief.

7.1.6. Exception to the Interest Cap

The court may order that a creditor need not reduce a servicemember's interest rate to 6% if the creditor can establish that the servicemember's ability to pay the contracted rate of interest was not "materially affected" by entering active duty.^{185,186}

7.1.7. Penalties

A person or entity who knowingly charges a servicemember interest above 6% in violation the Act shall be fined under 18 U.S.C. § 3571, imprisoned for not more than one year, or both.¹⁸⁷ Servicemembers also may pursue other remedies available under law, including punitive and consequential damages.¹⁸⁸

8. MISCELLANEOUS PROTECTIONS

8.1 Tax Protections

8.1.1. Residency for Tax Purposes

A servicemember does not lose or acquire state residency for tax purposes because of relocation due to military orders.¹⁸⁹ Furthermore, military compensation is not "income" for state tax purposes in any state where the servicemember is a non-resident.¹⁹⁰ Similarly, for tax purposes, a servicemember's personal property is not deemed to be located in a state where the servicemember is a non-resident.¹⁹¹ The same protections extend to a servicemember's spouse, and subjects the spouse's income to taxation by the

¹⁸⁵ 50 U.S.C. App. § 527(c).

¹⁸⁶ **Ohio Law Note.** Ohio law also permits a creditor to establish that the servicemember was not materially affected by entering active duty. Ohio law provides, "A court may grant a creditor relief from the interest and finance charges limitation of this section, if, in the opinion of the court, the ability of the person, or spouse of the person, deployed on active duty to pay interest or finance charges with respect to the obligation at a rate in excess of 6% per annum is not materially affected by reason of the person's deployment on active duty." Ohio Rev. Code Ann. § 1343.031(G) (West 2004). Ohio does not tax the military pay of residents of Ohio stationed outside of the state. Ohio Rev. Code Ann. § 5747.01(A)(26) (West 2004).

¹⁸⁷ 50 U.S.C. App. § 527(e).

¹⁸⁸ *Id.* at § 527(f).

¹⁸⁹ *Id.* at § 571(a).

¹⁹⁰ *Id.* at § 571(b).

¹⁹¹ *Id.* at § 571(c); *Dameron v. Brodhead*, 345 U.S. 322 (1953) (holding that an Army officer's personal property could not be taxed by Colorado for the time he was in the state while assigned to military duty, because he was domiciled in Louisiana).

spouse's state of residence, rather than the state where the income is earned (unless the state of residence and the state where income is earned are identical).¹⁹² So, for example, the income of a military spouse whose legal residence is Florida is subject to taxation by the state of Florida, even if the military spouse lives and works in Ohio. In such a case, the military spouse with Florida residency will pay no income tax to Ohio.¹⁹³

8.1.2. Property Tax

The Act provides relief to servicemembers from tax assessments that fall due and remain unpaid before or during military service.¹⁹⁴ This protection applies to taxes for personal property and real property acquired for dwelling, professional, business or agricultural purposes by a servicemember or the servicemember's dependents or employees.¹⁹⁵ It further prevents assessment of any additional penalties or interest above 6% for the nonpayment.¹⁹⁶

8.1.3. Limitation on Sale of Property to Enforce Tax Assessment

Qualifying property cannot be sold to enforce the collection of a tax assessment, unless by court order and after the court's determination that military service does not "materially affect" the servicemember's ability to pay the outstanding tax or assessment.¹⁹⁷

8.1.4. Redemption

In cases involving a court-ordered sale of property to satisfy taxes or assessments, the Act provides servicemembers with a right to redeem the property during military service or within 180 days after the end of active military service.¹⁹⁸

8.1.5. Deferral of Income Tax Collection¹⁹⁹

¹⁹² This section was amended by the Military Spouses Residency Relief Act, P.L. 111-97, effective November 11, 2009, by adding subsections (a)(2), (c) and (d) which result in the inclusion of the spouses of servicemembers within the protections of this section.

¹⁹³ For guidance from the Ohio Department of Taxation see: <http://tax.ohio.gov/faqs/Income/military.stm#A3>

¹⁹⁴ 50 U.S.C. App. § 561(a).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at § 561(d).

¹⁹⁷ *Id.* at § 561(b)(1).

¹⁹⁸ *Id.* at § 561(c).

¹⁹⁹ **Ohio Law Note.** Ohio Rev. Code Ann. § 5747.026 (West 2003) provides that members of the armed forces, including a reserve component, called to active duty may be eligible for an extension to file income taxes. This statute mirrors the Federal Internal Revenue Code.

When a servicemember's state or federal income taxes are due before or during military service, payment shall be deferred at the servicemember's request for not more than 180 days after the termination of active duty, if the servicemember's ability to pay is "materially affected" by military service.²⁰⁰ The Act, however, neither grants relief from filing tax returns nor suspends statutes of limitations prescribed under the U.S. Internal Revenue Code.²⁰¹

8.2 Insurance Protections

The Act prevents a servicemember's loss of health, life, or professional liability insurance coverage if the servicemember is called to active duty.²⁰²

8.2.1. Health Insurance

Servicemembers may have health insurance policies immediately reinstated upon return from active duty.²⁰³ They must apply for reinstatement within 120 days after release from active military duty.²⁰⁴ Furthermore, there can be no exclusions for health conditions that arose before or during military service, as long as the condition would not have been excluded had the servicemember remained covered, and if the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty.^{205, 206}

8.2.2. Life Insurance

The SCRA prevents life insurers from decreasing coverage or requiring additional premiums (except for age-based increases in term policies) for servicemembers during active duty.^{207, 208} The life insurance policy, however, must have been in

²⁰⁰ 50 U.S.C. App. § 570(a). See also, *Paulson v. Mo. Dept. of Revenue*, 961 S.W.2d 63 (Mo. Ct. App. 1998) (denying deferral of a servicemember's income tax payment where he did not prove that active duty impaired his ability to pay the taxes).

²⁰¹ See, Judge Advocate General's Legal Center and School, U.S. Army JA 260, *Servicemembers Civil Relief Act*, p. 5-11, (March 2006).

²⁰² 50 U.S.C. App. §§ 544, 593, 594.

²⁰³ *Id.* at §§ 594(a), 594(b)(1).

²⁰⁴ *Id.* at § 594(d).

²⁰⁵ *Id.* at § 594(b)(3).

²⁰⁶ **Ohio Law Note.** Health insurance companies may not discriminate based on military status. Ohio Rev. Code Ann. § 1751.18 (A)(2) (West 1997, as amended 2009). Health insurance company cannot refuse to enter into a contract with a physician because of the physician's military status. Ohio Rev. Code Ann. §124.93 (West 2000). Further, when charging fees, an insurance agent may not discriminate based on military status (Ohio Rev. Code Ann. §3905.55 (West 2001)).

²⁰⁷ 50 U.S.C. App. § 541(1)(A).

place not less than 180 days before military service.²⁰⁹ Also, a servicemember's life insurance policy is protected from lapse, termination, and forfeiture for nonpayment of premiums during active duty, plus two years.²¹⁰ For this protection, the insured servicemember or his/her beneficiary must apply with the Veterans Administration.²¹¹

8.2.3 Professional Liability Insurance

Servicemembers who engage in health care, legal services, or other professions declared by the Secretary of Defense may suspend their professional liability insurance policies upon written request to the insurance carrier.²¹²

8.3 Anticipatory Relief

Though rarely invoked, the SCRA's anticipatory relief protections allow a servicemember to apply to a court for relief from any obligation incurred before military service when the servicemember anticipates a breach or default will occur because of military service.²¹³ Under this section, a servicemember can initiate a declaratory action to prevent a breach or default during military service, and up to 180 days after leaving active duty.²¹⁴ The court has discretion to grant such relief.²¹⁵

8.3.1. Requirements

To receive anticipatory relief, the servicemember must:

- (a) prove that the obligation arose before active duty;
- (b) petition for relief during active military service or within 180 days following the end of such service; and

²⁰⁸ **Ohio Law Note.** Insurance carriers are prohibited from dropping a military reservists from a life insurance policy because the reservist was placed on active duty, so long as the policy was in place for at least 180 days. The Ohio Rev. Code states, "An individual life insurance . . . shall not lapse or be forfeited for the nonpayment of premiums during a reservist's period of military service or during the two-year period subsequent to the end of the reservist's period of military service." Ohio Rev. Code Ann. § 3915.053(A)(1)(a) & (B) (West 2004). The Ohio Rev. Code provision does not affect any clauses in the insurance coverage that relate to military or naval service. Ohio Rev. Code Ann. § 3915.053(C) (West 2004).

²⁰⁹ 50 U.S.C. App. § 541(B).

²¹⁰ 50 U.S.C. App. § 544(b)-(c).

²¹¹ *Id.* at § 543.

²¹² *Id.* at § 593(b)(2).

²¹³ *Id.* at § 591(a).

²¹⁴ See, *Kindy v. Koenke*, 216 F. 2d 907 (8th Cir. 1954).

²¹⁵ *Carroll v. Homecomings Fin. Network*, 294 F. App'x 945 (5th Cir. 2008).

- (c) show that military service “materially affected” the ability to discharge the obligation.²¹⁶

Servicemembers are entitled to one hearing to establish “material effect.”²¹⁷

8.3.2 Covered Obligations

Because the anticipatory relief provision specifically protects any obligations incurred before active duty, such protection includes, but is not limited to: contracts, mortgages, taxes or assessments, and child support cases.²¹⁸

8.3.3 Stay of Enforcement

Courts are authorized to issue stays of the enforcement of obligations and issue equitable repayment plans.²¹⁹ Any stay granted under this section should begin at the time of application and continue for a period equal to the time of active military service.²²⁰

For stays involving real estate contracts, a servicemember can make equal periodic payments to cover the principal and interest accrued during the stay, for the life of the contract.²²¹ For stays involving any other debt, the period of time allotted for back payment cannot be longer than the servicemember’s total time of active military service.²²²

8.5 Additional Ohio Law Protections

8.5.1 Education

Under Ohio law, an institution of higher education is required to grant a member of the “national guard or other reserve component of the armed forces of the United States, or a member of those armed forces in a retired status,” a leave of absence if the servicemember is recalled to active duty.²²³ The academic

²¹⁶ See also, 50 U.S.C. App. § 591(a)-(b).

²¹⁷ *Carroll*, 294 F. App’x at 946.

²¹⁸ 50 U.S.C. App. § 591(a).

²¹⁹ *Id.* at §§591(b)(1)(B), 591(b)(2)(B).

²²⁰ *Id.*

²²¹ *Id.* at §591(b)(1)(B).

²²² *Id.* at §591(b)(2)(B).

²²³ Ohio Rev. Code Ann. § 1713.60(A) (West 2004).

institution must also give the servicemember a year's absence after he or she returns from active duty.²²⁴ The academic institution cannot apply an academic penalty to the servicemember for his or her absence.²²⁵ Furthermore, the servicemember can choose to receive a refund for the term of withdrawal, or apply the amount to another term.^{226,227}

8.5.2 Utilities

Ohio law prohibits utility companies from stopping services to active duty servicemembers. The Ohio Rev. Code provides: “[n]o company shall stop gas from entering the residential premises of any residential consumer who is deployed on active duty for nonpayment for gas supplied to the residential premises.”²²⁸ Furthermore, Ohio law declares, “No company shall cease to provide electricity to the residential premises of any residential consumer who is deployed on active duty for nonpayment for electricity provided to the residential premises.”²²⁹

8.5.3 Discrimination

Ohio law has added “military status” to the list of anti-discrimination legislation.²³⁰ It is illegal for employers to discriminate based on military status.

8.5.4. Miscellaneous

The registrar of motor vehicles and deputy registrars must inquire about an individual's veteran status, and, if given permission, forward the veteran's personal information to the director of veterans services.²³¹

9. CONCLUSION

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Ohio Rev. Code Ann. §§ 1713.60(B)(1)-(B)(2) (West 2004).

²²⁷ **Ohio Law Note.** Ohio Rev. Code Ann. §§ 3301.60, 3301.61, 3301.62, 3301.63, 3301.64 (West 2009) ratify the Interstate Compact on Educational Opportunity for Military Children and establish the State Council on Educational Opportunity for Military Children and other offices to implement the state's participation in the compact. The compact includes simplification of records transfers for students of military members who are forced to relocate as a result of the military service and it attempts to ensure on-time high school graduation of these students.

²²⁸ Ohio Rev. Code Ann. § 4933.12(F) (West 2004).

²²⁹ Ohio Rev. Code Ann. § 4933.121(E) (West 2004).

²³⁰ **Ohio Law Note.** Ohio Rev. Code Ann. § 4112.02(E)(4) (West 2001).

²³¹ Ohio Rev. Code Ann. § 4501.026 (West 2009).

This Guide provides a brief overview of the most significant aspects of the SCRA that might arise in an Ohio courtroom. For additional information on SCRA protections and related issues, please refer to Appendix B of this Guide.

APPENDIX A

Servicemembers Civil Relief Act

Cross-reference of Code Sections with Public Law Sections

USCSECTION	NAME	PUBLIC LAW SECTION
§501	Short Title	Sec.1
§502	Purpose	Sec. 2
§511	Definitions	Sec. 101
§512	Jurisdiction and applicability of Act	Sec. 102
§513	Protection of persons secondarily liable	Sec. 103
§514	Extension of Protections to citizens serving with allied forces	Sec. 104
§515	Notification of Benefits	Sec. 105
§515a	Information for member of the Armed Forces and their dependents on rights and protections of the SCRA	Sec. 105a
§516	Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction	Sec. 106
§517	Waiver of rights pursuant to written agreement	Sec. 107
§518	Exercise of rights under Act not to affect certain financial transactions	Sec. 108
§519	Legal representatives	Sec. 109
§521	Protection of servicemembers against default judgments	Sec. 201
§522	Stay of proceedings when servicemember has notice	Sec. 202
§523	Fines and penalties under contracts	Sec. 203
§524	Stay or vacation of execution of judgments, attachments, and garnishments	Sec. 204

USC SECTION	NAME	PUBLIC LAW SECTION
§525	Duration and term of stays; codefendants not in service	Sec. 205
§526	Statute of limitations	Sec. 206
§527	Maximum rate of interest on debts incurred before military service	Sec. 207
§531	Evictions and distress	Sec. 301
§532	Protection under installment contracts for purchase or lease	Sec. 302
§533	Mortgages and trust deeds	Sec. 303
§534	Settlement of stayed cases relating to personal property	Sec. 304
§535	Termination of residential or motor vehicle leases	Sec. 305
§535a	Termination of telephone service contracts	Sec. 305A
§536	Protection of life insurance policy	Sec. 306
§537	Enforcement of storage liens	Sec. 306
§538	Extension of protections to dependents	Sec. 308
§541	Definitions	Sec. 401
§542	Insurance rights and protections	Sec. 402
§543	Application for insurance protection	Sec. 403
§544	Policies entitled to protection and lapse of policies	Sec. 404
§545	Policy Restrictions	Sec. 405
§546	Deduction of unpaid premiums	Sec. 406
§547	Premiums and interest guaranteed by the United States	Sec. 407

USC SECTION	NAME	PUBLIC LAW SECTION
§548	Regulations	Sec. 408
§549	Review of findings of fact and conclusions of law	Sec. 409
§561	Taxes respecting personal property, money, credits, and real property	Sec. 501
§562	Rights in public lands	Sec. 502
§563	Desert-land entries	Sec. 503
§564	Mining claims	Sec. 504
§565	Mineral permits and leases	Sec. 505
§566	Perfection or defense of rights	Sec. 506
§567	Distribution of information concerning benefits of title	Sec. 507
§568	Land rights of servicemembers	Sec. 508
§569	Regulations	Sec. 509
§570	Income taxes	Sec. 510
§571	Residence for tax purposes	Sec. 511
§581	Inappropriate use of Act	Sec. 601
§582	Certificates of service; persons reported missing	Sec. 602
§583	Interlocutory orders	Sec. 603
§591	Anticipatory relief	Sec. 701
§592	Power of attorney	Sec. 702
§593	Professional liability protection	Sec. 703
§594	Health insurance restatement	Sec. 704

USC SECTION	NAME	PUBLIC LAW SECTION
§595	Guarantee of residency for military personnel and spouses of military personnel	Sec. 705
§596	Business or trade obligations	Sec. 706
§597	Enforcement by the Attorney General	Sec. 801
§597a	Private right of action	Sec. 802
§597b	Preservation of remedies	Sec. 803

APPENDIX B

ADDITIONAL RESOURCES

1. 53A Am. Jur. 2d *Military and Civil Defense*, §§ 327-372, pp 189-238.
2. 6 C.J.S. *Armed Services*, §§ 168-187, pp 514-530.
3. Brennan, *Servicemembers Civil Relief Act: A Primer for Creditors*, Maryland Bar Journal, Nov-Dec 2007, p 32, 34-35.
4. Crawford, *Servicemembers Civil Relief Act: Procedural Overview*, Journal of Virginia Trial Lawyers Association, Volume 20 Number 2, 2008.
5. Huckabee, *The Servicemembers Civil Relief Act: The Practitioner's Guide*, www.usd.edu/~ghuckabe/scra_website_files/civilpractitionersguide.htm, (accessed March 28, 2011).
6. Johnston, Annotation, *Tolling Provision of Soldiers' and Sailors' Civil Relief Act (50 USCS Appx § 525)*, 36 A.L.R. Fed. 420 (1978).
7. Odom, *A Judge's Benchbook for the Servicemembers Civil Relief Act*, ABA Publishing (2011)
8. Palmer, *The Servicemembers Civil Relief Act: A Law for Mobilized Soldiers*, Michigan Bar Journal, Oct 2008, p 34.
9. Pottorff, *Contemporary Applications of the Soldiers' and Sailors' Civil Relief Act*, 132 Mil. L. Rev. 116 (1991).
10. Sullivan, *A Judge's Guide to the Servicemembers Civil Relief Act*, www.abanet.org/family/military/scrajudgesguidecklist.pdf (accessed March 28, 2011).
11. Sullivan, *The Military Divorce Handbook: A Practical Guide to Representing Military Personnel and Their Families*, ABA Publishing (2nd ed., 2011).
12. The Judge Advocate General's Legal Center & School (TJAGLCS), US Army, JA 260, *The Servicemembers Civil Relief Act Guide* (March 2006). See also, coverage of the SCRA on the Army TJAGLCS legal assistance web site at: www.jagcnet.army.mil/legal
13. www.statesidelegal.org – Web site devoted to providing legal help, including guidance on the SCRA, to military members, veterans and their families.

APPENDIX C

OHIO JUDGES' SCRA CHECKLIST¹

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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