

The Servicemembers Civil Relief Act Important Updates

The Servicemembers Civil Relief Act (SCRA) (50 U.S.C. app. §§501-596) remains an important federal protection that attorneys need to be aware of in daily practice. Although the number of military personnel deployed overseas has recently decreased, Americans continue to serve abroad. The Oregon National Guard as well as Oregon Marine, Army, and Air Force reservists have received notice that over 1,000 Oregonians will likely mobilize during the next 18 months. SCRA protections affect not only servicemembers, but also their spouses/partners, dependents, creditors, landlords, banks, insurance carriers, and many others with contractual, economic, and legal relationships.

SCRA protections apply to members of the Armed Forces and the Reserve Forces (National Guard and Reserves) who are called to active federal service. SCRA also applies to members of the Coast Guard as well as officers in the Public Health Services and National Oceanic and Atmospheric Administration while in support of the Armed Forces.

Servicemembers called to active federal service are afforded unique protections under SCRA in cases of foreclosures, repossessions, evictions, judicial and administrative proceedings, certain lease terminations, and default judgments. Some of the most frequently utilized provisions include the 6% cap on consumer interest rates; the stay of civil or administrative proceedings at the servicemember's request or on the court's motion; and rights relating to family law matters, including child custody and divorce cases.

Ascertaining Military Status

Given the unique protections and opportunities afforded servicemembers that touch on numerous areas of the law, as well as the procedural requirements for proceedings involving servicemembers, the safest practice – no matter what your area of the law – is to ascertain, at the outset of the representation, the military affiliation and status of not only your client but also the other party or parties. Counsel for both parties should undertake this inquiry, as the rights and responsibilities of each are affected if either party qualifies for SCRA protections.

One example where this arises frequently is with default judgments. ORCP 69C requires that a party seeking default must file an affidavit or declaration containing facts sufficient to establish whether the party against whom the order is sought is or is not a person in military service, or stating that the movant is unable to determine whether the party against whom the order is sought is in military service as required by Section 201(b)(1) of the Servicemembers Civil Relief Act, 50 U.S.C. app. §521, as amended.

The requirement to notify the court of the military status of a party is on the moving party. However, the court should ask as a matter of course whether a servicemember is involved. If the moving party does not know the answer, then the court should allow sufficient opportunity for determination. Proceeding with the case or judgment where the servicemember is unavailable due to military service will, at the least, result in a voidable judgment. At most, it may result in civil or criminal action permitted under SCRA.

DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

To find out whether a party is in the military, go to the official Servicemembers Civil Relief Act (SCRA) website maintained by the Department of Defense at <https://www.dmdc.osd.mil/appj/scra/>. Enter the party's last name and Social Security number. Further information is available in the User's Guide and FAQ sections of the website.

SCRA Foreclosure Amendment

In a nod to economic challenges, a recent update to the federal law impacts foreclosures on servicemembers' property. On August 6, 2012, President Obama signed into law the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (Pub. L. 112-154, 126 Stat. 1165 (2012)), which, in part, amended section 303 of SCRA. SCRA section 303 addresses obligations secured by a mortgage, trust deed, or other security similar to a mortgage on real or personal property owned by a servicemember.

The provision applies only to obligations that originated before the servicemember entered into active federal military service under Title 10, U.S.C., and for which the servicemember is still obligated. (For example, it applies to obligations incurred by National Guard soldiers before they were called to active federal service.) The recent amendment extended the period during which certain SCRA protections apply.

Effective February 2, 2013:

- A sale, foreclosure, or seizure of the servicemember's property based on a breach of such a secured obligation is not valid if made during the period of military service **or within one year thereafter**, unless it is made pursuant to a court order or a waiver by the servicemember; and
- A court may, on its own motion, and shall, upon application by a servicemember whose ability to comply with the obligation is materially affected by military service, stay the proceedings or adjust the obligation to preserve the interests of all parties at any time during the period of military service **or within one year thereafter**.

This extension ends December 31, 2014. Beginning January 1, 2015, there will be a period of **90 days** after the end of the servicemember's military service during which a foreclosure, sale, or seizure of the servicemember's property, based on a breach of a mortgage, trust deed, or other security, without a court order or waiver, will not be valid. During this period, a court may also stay proceedings enforcing such obligations. (Office of the Comptroller of the Currency Bulletin, November 19, 2012) (<http://www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-37.html>.)

Oregon Laws Supporting SCRA

In addition to the federal protections, Oregon has further enhanced servicemembers' rights and remedies. Oregon has also taken steps to weave SCRA requirements and protections into common practices. Notice of SCRA rights, for example, has become standard practice.

The 2009 Legislature enacted a couple of laws supporting SCRA. In May 2009, the Oregon National Guard deployed the largest unit to overseas hostilities since WWII. Effective May 8, 2009, the Oregon Legislature authorized attorney fees and minimum damage awards in addition to any other remedy payable to a servicemember for the enforcement of a right under SCRA. This benefit was intended to encourage servicemembers of modest means to seek out legal assistance as necessary and to provide an incentive for attorneys to represent servicemembers in relatively low dollar value cases.

The attorney fees and damages provision of ORS 30.138 was complimented by ORS 30.136, also enacted in 2009, which identified Oregon as the appropriate venue for SCRA enforcement. Any contract term or provision providing for a choice of forum other than Oregon in an agreement entered into by an Oregon servicemember is voidable at the election of the servicemember. These provisions apply to prosecution of servicemember rights when called into active federal service and not when called by the Governor for state emergencies.

New Oregon Protections for Servicemembers

Several new bills affecting servicemembers have already emerged from the 2013 Legislature. At the request of the OSB Military and Veterans Law Section, Senate Bill 125 was introduced relating to contested case hearings. It will require state agencies to provide notice to parties in contested case hearings of the SCRA right to stay proceedings until military service affords reasonable availability to defend. SB 125 was signed into law on June 4, 2013, and became effective September 1, 2013.

Relating to criminal proceedings, Senate Bill 124 was proposed by the OSB Military and Veterans Law Section with support of the Oregon Criminal Defense Lawyers Association. This bill creates a new mitigating factor that explicitly authorizes courts at sentencing to consider military service. It does so by creating a new ORS 137.090(2), which states: "In determining mitigation, the court may consider evidence regarding the defendant's status as a servicemember as defined in ORS 135.881." At least in felony cases, courts will need to

make a “substantial and compelling” finding in order to rely on SB 124 to impose a mitigated (downward) departure. ORS 137.671(1); OAR 213-008-0001. For guidance in meeting this requirement, defense counsel should consult established case law supporting reliance on a defendant’s military service as a reason for imposing a mitigated sentence. The bill was signed into law on June 6, 2013, and became effective immediately.

The 2013 Oregon Legislature also expanded what is unofficially known as the Oregon SCRA, located in ORS Chapter 399, to address suspension of contractual obligations of servicemembers called to active federal service or active state service by order of the Governor. House Bill 2083 was introduced at the request of Governor Kit-zauber, M.D., on behalf of the Oregon Military Department. Signed into law on June 18, 2013, with an effective date of January 1, 2014, the new law allows for suspension and reinstatement of contractual obligations without fee, penalty, loss of deposit, or additional cost. The law applies to telecommunication services, Internet services, health spa services, exercise or athletic activities offered by a health club, and certain television services. This law will provide a unique protection to servicemembers that allows for modification of long-term contracts in which the need to cancel or suspend arises as the result of call to duty.

Additional Resources

In the February 2009 issue of In Brief, the OSB Professional Liability Fund published an article drawing attention to SCRA and its application to local courts and attorneys: “YES. You DO Need to Know About SCRA.” That article and significant other resources abound to assist local practitioners with application of SCRA to their client’s situation. See also “Determining a Party’s Military Status,” In Brief, August 2007.

The ABA Standing Committee on Legal Assistance for Military Personnel (www.americanbar.org/groups/legal_assistance_military_personnel.html) is a premier resource of attorneys and experiences from around the country. The United States Army Judge Advocate General’s School also published the *Servicemembers Civil Relief Act Guide* in March 2006 (www.justice.gov/crt/military/documents/jag_article.pdf), which is a comprehensive overview of the law and application. The Service Members Law Center (www.servicemembers-lawcenter.org) stands as a premier organization that assists with SCRA enforcement across the nation. The Director of SMLC, CAPT (Ret) Sam Wright, has authored and co-authored over 500 law reviews on areas of law affecting citizen soldiers.

Locally, the Oregon State Bar has attorneys within the Military Legal Assistance Panel and the Military and Veterans Law Section who bring a depth of experience and stand ready to answer questions, provide resources, or assist as needed.

MARK A. RONNING, LTC, JA
OREGON NATIONAL GUARD
STAFF JUDGE ADVOCATE