Military and Veterans Law
Lunch and Learn Program:
Servicemembers Civil Relief Act

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QUESTIONS?

• Send your questions to Jason Vail at jason.vail@americanbar.org

• The code to receive your CLE credit for this session will be provided at the end.
SCRA – AN INCREDIBLE CONSUMER LAW!!!

• Alters conventional contracts – NO SELF HELP ENFORCEMENT!!!!
• Prevents default judgment except in accordance with its provisions
• Allows for cancellation of premises leases and auto/truck leases
• Reduces interest rates on some pre-service obligations to 6%
• Gives consumers anticipatory relief option without filing bankruptcy
WHO IS PROTECTED?

– All active duty military members
  • Approximately 1,450,000
– All Reserve and National Guard members – about 800,000
PURPOSE OF THE SCRA

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to 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.
“Protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”

Boone v. Lightner 319 U.S. 561, 575 (1943)
“The Act should be read with an eye friendly to those who dropped their affairs to answer their country's call.”

LeMaistre v. Leffers, 333 U.S. 1, 6 (1948)
• New Title VIII to SCRA
  – Enforcement by the Attorney General authorized (new Section 801 – 50 USC App §597)
  – Private cause of action to recover damages and attorneys fees recognized (new Section 802 – 50 USC App §597a)
  – Preservation of other remedies (including punitive damages) (new Section 803 – 50 USC App §597b)
ORGANIZATION OF SCRA

- Found beginning at 50 USC App. § 501 (cites herein are to 50 U.S.C. App. §___)
- Title I - General Provisions
  - Persons protected and jurisdiction
  - Non-discrimination provision
- Title II - General Relief
  - Default judgments and stays --§§521, 522, 524, 525
  - Fines & Penalties in contracts - §523
  - Statutes of Limitation --§526
  - Maximum rate of interest - §527
ORGANIZATION (con’t.)

• Title III (§§531-538)
  – Major substantive protections against evictions, termination of installment contracts, foreclosure on mortgages and termination of leases by lessees, protection to dependents

• Title IV - Life Insurance (§§541-549)

• Title V - Taxes and Public Lands
  – §571 - Residence for tax purposes
ORGANIZATION (con’t.)

• Title VI - Administrative Remedies
  – Inappropriate use of act - §581
• Title VII - Further Relief
  – Anticipatory relief - §591
  – Malpractice insurance - §593
  – Self-funded medical insurance coverage reinstatement - §594
  – Voting residency - §595
  – Non-availability of non-business assets for business or trade obligations - §596
ORGANIZATION (con’t.)

• Title VIII
  – Section 597 – enforcement by Attorney General
  – Section 597a – private cause of action, damages and attorneys fees
  – Section 597b – preservation of other remedies
DEFINITIONS -- §511

• Servicemember
  – Active Duty Military of 5 services -
    • includes Reserves and Guard under Title 10
  – National Guard under 32 U.S.C. §502(f)
  – Public Health Service Officers
  – National Oceanic & Atmospheric Officers

• Dependents
  – Servicemember’s spouse or child
  – Person that servicemember provided more than 1/2 support for 180 days preceding application for relief under act
DEFINITIONS -- §511

• Court includes
  – All Courts -- including bankruptcy
  – All Administrative Agencies
  – Whether or not of record

Adding Administrative Agencies is a huge expansion of coverage under the SCRA

Child support, zoning, tax appeals, professional disciplinary actions

Mandatory arbitrations are NOT covered by SCRA.
DEFINITIONS (con’t)

• “Judgment” – defined for the first time
  – “Any judgment, decree, order or ruling, final or temporary.”

  – Potential pitfall for domestic practitioners for temporary child custody and support orders
JURISDICTION -- §512

- SCRA applies to **all** courts & administrative agencies – federal, state and local
  -- **ALL MEANS ALL**
  – If you thought it was hard before, think of all those ALJs who’ve never heard of SCRA.
- SCRA applies to **civil** cases only
- May apply to **ANY** court which would otherwise have jurisdiction
PERSONS SECONDARILY LIABLE -- §513

• If court grants relief (stay, postponement, suspension of obligation) to servicemember, the relief may also be granted to persons primarily or secondarily liable with the servicemember
  – Surety, guarantor, endorser
  – Accommodation maker, co-maker (added by SCRA)
  – Other person who may be primarily or secondarily subject to the obligation or liability
RESERVES ORDERED TO DUTY -- §516

• Members of Reserve component entitled to protection of SCRA from receipt of mobilization orders
  — Allows for time to put affairs in order
WAIVER OF RIGHTS -- §517

• Member may waive protections

• Waiver must be in a separate writing
  • Contract, lease or bailment
  • Mortgage, trust, deed, lien, other security
  • Repossession, retention, foreclosure, sale, forfeiture, taking possession of property

• Must be made during or after period of service
LEGAL REPRESENTATIVES
§519

• SCRA adds a provision recognizing a legal representative of the servicemember:
  – An attorney acting on the behalf of a servicemember; or
  – An individual possessing a power of attorney

• Legal representative can take the same actions as a servicemember
EXTENSION OF PROTECTION

§§514 and 538

• §514 - Citizens of the U.S. serving with allied forces if service similar to “military service”

• §538 - Dependents of servicemember if dependent’s ability to comply is materially affected by servicemember’s military service they may apply for the protections found in Title III
DEFAULT JUDGMENTS -- §521

• Applies only if defendant has not appeared
• Plaintiff’s Affidavit
  – Whether or not defendant is in military; or
  – If unable to determine status - court may require plaintiff to post bond
• If defendant is a military member, court cannot enter default judgment until attorney is appointed to represent military member
NEW STAY PROVISION OF §521

• If defendant is in military, court **SHALL** stay proceedings
  – Minimum 90 days on application of counsel or court’s own motion
• Court must determine that there
  – may be a defense that cannot be presented without presence of defendant; or
  – after due diligence counsel has been unable to contact defendant or otherwise determine if a meritorious defense exists
SETTING ASIDE DEFAULT JUDGMENTS

• Court *SHALL* reopen a default judgment entered while servicemember on active duty or within 60 days thereafter, when
  – Servicemember applies while on active duty or within 90 days thereafter, and shows
    – Material affect, plus
    – Meritorious defense
✓ *BONA FIDE* purchasers protected
DATE OF OBLIGATION IMMATERIAL

- Section 521 applies regardless of when the obligation was incurred
- Especially important in mortgage foreclosures
  - Banks and courts do not understand that even if there is judicial foreclosure on a mortgage, must comply with Section 521
**STAY PROVISIONS (Servicemember Has Notice of Lawsuit) -- §522**

- **Temporary** delay in civil actions until servicemember can appear
  - During period of service plus 90 days
  - Servicemember has received notice of proceeding
- **Automatic** 90 day stay if:
  - Servicemember shows military duty materially affects ability to appear, and date when can appear
  - Commanding officer writes letter stating duty prevents appearance and leave not authorized
CLARIFICATION OF “APPEARANCE”

• Application for a stay under §522 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)

• Legislative removal of legal conundrum
EXTENSION OF STAY

• Servicemember may apply for additional stay based on continuing material affect of military duty on servicemember’s ability to participate in the litigation

• If Court does not grant additional stay, it shall appoint counsel to represent servicemember
FINES & PENALTIES -- §523

• **NO** penalties under a contract if performance *stayed by Court*, and if no stay --

• Court may reduce or waive fine or penalty if
  – Servicemember was in military service at time of fine/penalty
  – Performance materially affected by military service

• MUST APPLY TO COURT FOR RELIEF

• Pre-payment penalty in mortgage would qualify
STAY OR VACATION OF JUDGMENTS -- §524

• If military service materially affects compliance with judgment or order:
  • Court **SHALL** on application of servicemember
    – Stay execution; **and**
    – Vacate or stay attachment or garnishment
  • Court may also act on its own motion
DURATION OF STAYS
§525

• May be for the period of service plus 90 days, or any part thereof

• Court may set the terms and amounts of any installment payments

• Plaintiff may proceed against any codefendants not in military service with court approval
STATUTE OF LIMITATIONS
§526

• Period of Military Service *NOT* included:
  – In any period limited by law, regulation or order to bring any action or proceeding (including redemption of real property)
  – By or against servicemember or heirs or assigns

• Does not apply to IRS

• *Material affect* *NOT required*
  – *Conroy v. Aniskoff*
MAXIMUM RATE OF INTEREST
§527

- **PRE-SERVICE** loans incurred by servicemember, or servicemember and spouse jointly
  - Now includes guaranteed student loans under (20 USC §1078(d))

- Cap of 6% per annum; all excess **FORGIVEN**
- Have to recompute payments at 6% rate
- Cap rescinded if creditor shows no material effect
- Servicemember must give written notice w/copy of orders
- Private right of action to enforce or seek damages -- §597a
2008 AMENDMENTS TO §527

• Two kinds of obligations or liabilities now defined:
  – Obligations secured by a mortgage, trust deed or other security in the nature of a mortgage
  – All other obligations

• For obligations secured by a mortgage, the duration of the 6% cap is now extended to one year after release from active duty.

• For all other obligations, the 6% cap ends at release from active duty.
Absolute rule in Title III of SCRA

NO

SELF

HELP
INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE --§532

• In event of breach of pre-service contract, no termination or repossession of property by creditor without court order – no self-help.

• Purchase or lease of real or personal property – Payment or deposit made prior to service

• After hearing, a court may order repayment to Servicemember to terminate contract, or

• SHALL stay the proceeding if servicemember’s ability to comply is materially affected and servicemember applies– length of stay determined by Court
SECTION 533 – FORECLOSURE PROTECTION

• NO NONJUDICIAL FORECLOSURES ON PROPERTY MORTGAGED PRIOR TO ENTERING SERVICE WITHOUT A VALID COURT ORDER
  – No self-help foreclosures – EVER!!!!

• 2008 Amendment extends the protection against non-judicial foreclosures until one year after release from active duty.

• Federal misdemeanor for violation

• Bona fide third party purchasers are protected if property seized in violation of SCRA is sold to them.
CONGRESSIONAL INTEREST -- HIGH

- *Rowles v. JPMorgan Chase* case in South Carolina – hearings before HVAC in Feb 2011
- Proposed amendments to cover all mortgages – not just pre-service mortgages
- Considering how to protect servicemembers from foreclosure in both judicial and nonjudicial states
- Problems with attorneys appointed in Section 521 cases not doing their jobs or being in cahoots with the creditors’ attorneys
TAXES RESPECTING PERSONAL & REAL PROPERTY -- §561

• Tax or assessment falls due and is unpaid
• Which arose *before or during* military service on
  – Personal Property, including vehicles; or
  – Real Property occupied by servicemember, dependents, or employees
    • Before entry into military service, and
    • During period of service tax remains unpaid
• Court can order sale only if no material affect
• Court may stay for period of service plus 180 days
• servicemember has right to redeem for service plus 180 days
CERTIFICATES OF SERVICE
§582

• A Certificate of the Service Secretary shall be *prima facie* evidence as to all aspects of a person’s military service, or non-service.

• Such a certificate shall be furnished upon application (to each service) – use Defense Manpower Data Center website


• A servicemember missing in action is presumed to continue in service until accounted for.
Single Record Request

Use this page to request a Certificate verifying Active Duty Status for an individual on a specified date.

* Indicates a required field

* SSN
* Repeat SSN
* Birth Date
  MM/DD/YYYY (e.g., 09/16/2012)

SSN
OR
Birth Date Required

* Last Name
First Name
Middle Name
* Active Duty Status Date
  MM/DD/YYYY (Default will be today’s date
  e.g., 06/25/2014)

Tips & Notes

- Without a Social Security Number, DMDC cannot authoritatively assert that this is the same individual that your query refers to. Name and date of birth alone do not uniquely identify an individual.
- Check your data entry before submitting it.
- Response may take up to 15 seconds after clicking “Submit”.

Resources

Download Adobe Reader
Unexpected results?
IMPROVEMENTS TO DMDC WEBSITE

• DMDC Website will also supply information for LAST DATE OF ACTIVE DUTY
  – Important due to amendments to Sections 527 (interest rate protection) and 533 (mortgage foreclosures)
ANTICIPATORY RELIEF

§591

• Anticipatory relief available for:
  – Pre-service obligations, taxes or assessments arising during period of service

• Contract for purchase of real property or secured by mortgage
  • Court can stay enforcement of obligation during military service plus period equal to period of military service over remaining period of obligation
ANTICIPATORY RELIEF (con’t)

• Any other obligation, tax, or assessment
  • Court can stay *enforcement of obligation* for a period of time equal to period of military service
ANTICIPATORY RELIEF (con’t)

• Deferred payments must be paid over “extension period” plus new payments as they accrue
• Must show material affect
• Must apply (file suit) during period of service or within 180 days after
• No penalties may be imposed for claiming protections of SCRA
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