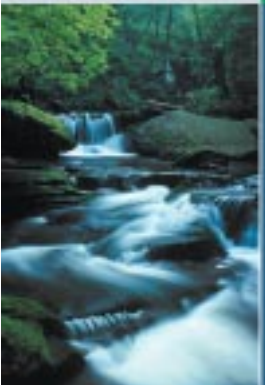


How the Soldiers' and Sailors' Civil Relief Act Can Help You

Service personnel experience financial difficulties that are unique and need special attention.

Fortunately, there are special laws to help them cope and this article discusses their rights and protections under the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. §§ 501 et seq.



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What is the Soldiers' and Sailors' Civil Relief Act?

The Act can provide temporary relief from evictions, lease terminations, mortgage foreclosures on real and personal property, installment sales contracts, repossessions, high interest rates, and suits.

The Soldiers' and Sailors' Civil Relief Act ("the Act") was passed to help tackle the unique problems that service personnel encounter trying to balance their personal financial lives and the rigors of military service. Specifically, the Act can provide a

service person temporary relief from evictions, lease terminations, mortgage foreclosures on real and personal property, installment sales contracts, repossessions, high interest rates, and suits against the service person. But the Act does have limitations: once the service person's military service no longer interferes with his ability to handle his personal obligations, the service person is no longer protected by the Act.

Who does the Act protect?

The Soldiers' and Sailors' Civil Relief Act applies to all persons in "military service." This includes people in the Army, Navy, Air Force, Marine Corps, Coast Guard and members of the Public Health Service who are detailed. Reservists and the members of the National Guard are protected when they are on active duty.

The Act covers those on "active duty," in training and those getting education preliminary to induction into military service. Service personnel who are absent from duty due to sickness are also covered by the Act.

In general, a military person's spouse and dependents are also covered under the Act, unless a court decides that they can easily continue with their obligations whether or not the service person (upon whom they are dependant) is in the military.

Which of your obligations does the Act cover?

The Act's protections do not cover all of a service person's obligations. Before relying on the Act's protections, it is important to understand the limits to the Act's coverage:

1. The Act does not protect you from criminal proceedings. If you are arrested and tried, you cannot postpone the criminal case because you are in military service. The Act only covers a service person's *civil* obligations.
2. The Act only *postpones* civil obligations; it does not permanently remove them. For example, if you default on a loan payment, you may be protected under the Act as long as

your military service interferes with your ability to pay. However, once you are out of military service, or you get a raise and can easily pay your obligation, the Act may not protect you anymore.

The Act only postpones civil obligations; it does not permanently remove them.

3. For the most part, the Act only postpones a civil obligation if the service person's ability to comply in full is "materially affected" by his or her military service. A court would look to a variety of factors to see if your ability to continue with your obligation is materially affected, such as:
 - Your geographic and economic challenges,
 - The amount of your available leave
 - Your specific duty requirements, and
 - A comparison of your pre-service income to your military income.

For example, if your relocation to Korea made it difficult, or impossible, for you to make monthly payments on your car loan, you may get temporary relief under the Act.

4. The Act only covers *written* agreements. Any oral agreement you have with a creditor will not be protected under the Act.
5. The Act only covers civil obligations under written agreement that service persons incurred before they entered military service. Any debts that military members incur during or after military service are not covered under the Act — the service person would have to pay the debt back according to the terms of the agreement. For instance, if you buy a car while you are in military service and later you can't make the car payments, you are not protected under the Act because you did not get the car loan before you entered military service.

The Act only covers civil obligations under written agreement that service persons incurred before they entered military service.

If you meet all of the above requirements, the Act will provide you with the temporary relief necessary while your military service prevents you from managing your personal affairs. You would be protected from a creditor or collection agency collecting a debt by civil suit; from a creditor who has a judgment against you enforcing that judgment by a lien on your property or wage garnishment; from foreclosure on property; from repossession; from eviction; and from termination of your lease. The Act also can reduce your interest rate on interest-bearing debts.

Even if the service person is not the primary borrower under a contract, he or she may be protected by the Act. The Act protects persons in military service who are secondarily liable under a contract, which includes sureties,

guarantors, endorsers, accommodation makers, or cosigners. For instance, let's say you co-signed a loan for your brother before you entered military service. If your brother stopped paying on the loan and filed bankruptcy, the lender would now look to you for payment. If you are still in military service and that service materially affects your ability to pay your brother's loan, you are temporarily protected under the Act.

If the service person changes the terms of a contract in writing, during or after the time he is in military service, he would no longer be protected under the Act. The new

contract with the new terms would govern. Accordingly, if you changed terms, terminated or cancelled the contract, or agreed to allow the lender to repossess or foreclose, you must follow those new terms.

How does the Act protect me?

If you are a person in military service and you are having a hard time meeting a civil obligation that you incurred before you entered military service, you may get temporary relief in many situations. Outlined below are examples of exactly how, and with what situations, the Act can protect a person in military service.

Default Judgments

Normally, if you are a defendant in a civil lawsuit and you do not appear at a scheduled court hearing, the court would enter a "default judgment." The default judgment has the same effect as if you appeared in court, stated your defense and lost. This is particularly troublesome for a person in the military who frequently relocates — it can be difficult for that person to appear at a court proceeding. Under the Act, before entering a default

judgment, the plaintiff (the person suing you) must file an affidavit with the court swearing that the defendant (you) is not in military service. If the plaintiff does not file this affidavit, any default judgment is “voidable,” or cancelable. If the plaintiff knows you are in military service but lies and says you aren’t, he has committed a crime.

If a defendant is in military service and does not appear at the court proceeding, the court will appoint an attorney to represent the defendant and protect his interests. The attorney is responsible to get a “stay” of the court proceeding (postpone the proceeding) and contact the service person. Acts of the court-appointed attorney are not binding on the service person, so if the attorney makes a mistake, the service person may not be bound by that mistake.

If it ends up that a service person gets a default judgment filed against him, he can void the default judgment and reopen the case by petitioning the court within 90 days after termination of military service. The petition must show that the service person’s ability to defend himself in court was “materially affected” by military service and that he had a defense with merit. If the court decides that military service did not prejudice the service person from making a defense, then the judgment stands. For instance, a soldier who remains in service for 20 years, or has been assigned to one post for a long time, may not have a hard time attending the proceeding and defending himself. If the court thinks this is true, the default judgment will stand.

Stay of Proceedings

When a service person’s military service prevents him from suing another party or from defending himself when sued, the Act permits a “stay” or postponement of the civil court proceedings. Once again, you would have to

show that your military service has a material effect on your ability to prepare for and attend a court proceeding. The court may stay a court proceeding while the service person is in military service or within 60 days thereafter. The stay can last as long as the person is in military service and for three months after he stops military service, but courts often grant shorter stays. Basically, the proceeding is postponed for as long as the service person’s military service prevents him from preparing for and attending court.

During the stay, the other party cannot penalize the service person for not complying with any contract.

The court may stay any stage of a court proceeding, including postponing a judgment creditor’s collection of a judgment. A court can remove or postpone a creditor’s attachment or garnishment of a debtor’s property, whether before or after judgment. For example, the court can delay a creditor from garnishing your wages to satisfy a judgment until your military service no longer interferes with you, or three months after military service, whichever is sooner.

If the person in military service is a co-defendant with others, the court may permit the plaintiff to proceed against the other defendants who are not in military service.

The Act is not a permanent shield from any action of a creditor.

It is important for you to understand that the Act is not a permanent shield from any action of a creditor. The Act just allows the service person to be represented by an attorney if the service person is not present in court, and that attorney should stay the proceedings and let the service person know about them. Once a service person’s military service does not interfere with the service person’s ability to go to court, the proceedings continue.

Statute of Limitations

The “statute of limitations” is the amount of time that someone has to sue another person. For example, if you default on loan or credit card payments, your creditor has a certain number of years from the time you defaulted, decided under your state’s laws, in which to sue you to collect the amount you owe. It can be difficult to sue someone who wronged you within the statute of limitations if you are in the military and you are on active duty, living abroad or frequently relocating.

Under the Act, the time that you are in military service does not count in the running of any statute of limitations. This means that any potential suit by the service person, or against the service person, can be brought within the statute of limitations period plus the amount of time that the service person was within military service. The extension of the statute of limitations applies to any proceeding in any court, board, bureau, commission, department or other agency of government, no matter when the reason for the suit occurred. This extension, however, does not apply to any limitation period prescribed by the IRS.

Under the Act, the extension of the statute of limitations should be automatic. In other words, it should not be a requirement that your military service materially affect your ability to bring or defend against suit. However, you should check your state laws. Some states have found that automatically extending the statute of limitations is unfair if a service person’s military service does not prevent him or her from filing or defending suit.

Housing

If a military member can’t pay rent because of his or her military service, the Act may protect the member from eviction. You may be protected from being evicted if:

- ▶ The eviction is attempted during your military service

- ▶ You, your spouse, children or other dependants occupy the premises for dwelling purposes
- ▶ Your monthly rent does not exceed \$1,200, and
- ▶ Your ability to pay is “materially affected” by your military service.

If all these requirements are met, the court may postpone eviction for up to three months.

Under the Act, new military members can also terminate a lease for a private dwelling if they entered the lease before beginning military service. Once the service person enters active duty or receives orders, he can give the landlord written notice that he is terminating the lease because of military service. The effective date of the termination will depend upon the type of lease. For month-to-month rentals, it works like this: after a landlord receives your notice of lease termination, you will still owe the next rent payment and your lease is terminated 30 days after that payment. For example, if your landlord receives your notice of termination on August 20, and your next payment is due on September 1, you would be responsible to pay the September 1 rent payment and your termination will take effect on October 1.

The effective date of termination for all other leases is the last day of the month following the month you deliver the notice of termination. For example, if you give notice of termination on any day in August, the lease will be terminated September 30.

Installment Contracts

An installment contract includes mortgages, car loans, other secured loans such as loans on large appliances or electrical goods, or lease-to-buy contracts. A service member who enters into an installment contract before entering active duty is protected under the Act if his ability to make payments is materially affected by military service. This means that if you have a hard time making payments under

a contract because of your military service, you can get temporary relief.

If you do not pay during your military service, or for three months after you stop military service, your creditor can't cancel or terminate the contract, sell, foreclose, repossess or seize your property unless (1) the court previously ordered the sale, foreclosure or seizure, or (2) during or after military service you signed a new contract with new terms.

If a lender sues a service person for not paying under a contract and the service person's ability to follow the contract is materially affected by his military service, the court may postpone the suit (see "Stay of Proceedings" above) or make "equitable disposition." If the court chooses to make equitable disposition, the court would have objective persons appraise any property under the contract. The court may then allow the creditor to foreclose on property, resume possession of property, or rescind (cancel) or terminate the contract, but only if the creditor pays the service person an amount that the court decides is fair. The court could also require that the service person pay all or part of prior installments or deposits as a condition of terminating the contract and keeping possession of property.

If a lender takes your property without a court order, he can be fined and/or imprisoned.

If a lender takes your property without a court order, he can be fined and/or imprisoned. For example, if you are unable to continue paying your car loan because you enter military service, your lender cannot repossess your car without going to court first. The court may postpone the repossession, allow repossession with some compensation to you, or allow you to keep the car after compensating the lender. If your lender repossesses your car, he can be fined or put in jail.

Courts normally compare the debtor's pre-service income to his military income to determine whether or not his financial condition changed.

Interest Rates

You have the right to reduce the interest rate of any contract you entered into before you commenced military service to 6 percent (including mortgages), unless your military service did not materially affect your ability to pay the original (presumably higher) interest rate. This reduction includes service charges, renewal charges, fees or any other charges connected to the obligation except for bona fide insurance. The debtor must give the creditor written notice that he or she has entered active duty military service and request the reduction. Any creditor who wishes to return to the original, higher interest rate must petition the court and prove that entering active duty did not materially affect the debtor's ability

to pay the original interest rate. Courts normally compare the debtor's pre-service income to his military income to determine whether or not his financial condition changed. If the debtor is making the same or more income while in active duty, the service person will probably not get the reduction in interest

rate. For example, if you are a "career soldier" and your military service does not prevent you from paying the full amount of your credit card interest, you will not be able to reduce the rate to 6 percent.

Note: This reduction in the interest rate does not extend to the dependents or spouses of service members.

Insurance

Under the Act, a service member's private life insurance policy is protected against lapse or forfeiture for nonpayment of premiums while the service person is in military service and for one year thereafter. The insured or beneficiary must apply to the Veteran's Administration for protection under the Act. Also, any health insurance in effect the day before active military service started is automatically reinstated.

State Taxes

Service personnel must pay state income taxes and personal property taxes for the state of their legal residence. Service persons who frequently relocate may wonder which state is considered their legal residence. The Act clarifies this for service members. A member does not lose legal residence solely because of a transfer pursuant to military orders. For example, if a member is a Virginia resident and is transferred to a base in California, the member will not lose Virginia residency nor be subject to California state income tax on military pay.

For state personal property taxes, the Act exempts a nonresident who is relocated to a state from personal property taxes in that state, if the personal property is titled solely in the name of the service person. If you have joint property with a non-military member, the property is taxable to the jurisdiction where it is located.

Adverse Actions

Creditors and insurers are prohibited from taking adverse actions against service members who exercise their rights under the Act. This means:

- ▶ A prospective lender cannot determine that a service person cannot pay because he took advantage of the Act.
- ▶ A current creditor cannot change terms to an existing arrangement or put a mark on the service person's credit report because the service person takes advantage of the Act.
- ▶ An insurer cannot refuse to insure because the service person invoked the Act.

The Soldiers' and Sailors' Civil Relief Act was enacted to help service personnel whose military service hinders their ability to manage their daily finances. In other words, the Act is meant for a service person who is reassigned

to another post or overseas and/or whose income drops significantly. The Act's protections should not be used to lower interest rates, avoid suit or stop paying debts if the service person's military service does not materially impair his ability to do these things. If it appears that a service person is abusing the Act, the court may enforce civil liabilities without regard to the protective provisions of the Act.

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