

SERVICEMEMBERS CIVIL RELIEF ACT



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INTRODUCTION

The Servicemembers Civil Relief Act of 2003 (the “Act”) affords special rights to Active Duty members and Reservists and Guardsman called to active duty. The Act works to *postpone* certain civil obligations when the military member’s ability to represent himself or herself is materially affected by their service. The Act applies to numerous specific areas with varying requirements for each. However, in many situations the member must request the Act’s protections; they are not automatic. Thus, be sure to consult an attorney regarding individual situations.

CIVIL LAWSUITS

Default Judgments: A default judgment is like a forfeit in a lawsuit; if you are sued but fail to appear, you may lose by default. If you are sued while on active duty, you have certain protections against losing by default. These protections include:

- The court **must** appoint an attorney to represent a defendant if the judge determines the defendant is in the military and has not made an appearance. The attorney is responsible for obtaining a stay and making contact with the defendant. Acts of the court-appointed attorney are not binding on the military defendant.
- If a default judgment is entered against a military defendant, the defendant may petition the court to reopen the case. To

reopen a case, the defendant must show:
1) they were materially affected in presenting a defense; 2) they have a meritorious defense to the lawsuit; and 3) they have not appeared in the case.

Stay of Proceedings: Where military service prevents a plaintiff or defendant from asserting or protecting a legal right, the Act permits a delay of **civil** court proceedings. The Act affords no protection in criminal matters. Consider the following factors:

- The stay request may be made at any stage of the court proceeding, as long as it is made during military service or within 90 days thereafter.
- The stay request must include a letter from your commander, stating that your military duty prevents appearance and stating that military leave is not authorized.
- The key requirement to obtaining a stay is showing the military service has a *material effect* on your ability to prepare for and attend court. Factors used to determine material effect include geographic and economic challenges, amount of available leave, and specific duty requirements.

Statutes of Limitations: Normally, once the statute of limitations runs on a civil action, a once-potential plaintiff can no longer sue, and the intended defendant can no longer be sued. However, if military service

prevents filing or defending suit, the statute of limitations is stayed during periods of active duty.

LANDLORD/TENANT and AUTO LEASES

Eviction: If a military member is **unable** to pay rent due to military service, the Act may protect the member from eviction. The Act requires a landlord to obtain a court order for eviction, even if state law does not require a court order. The following requirements must be met for protection under the Act:

- The eviction must be attempted during military service.
- The premises must be used for housing.
- The monthly rent must not exceed \$4,089.62 (as of 2021).
- The ability to pay must be materially affected by military service.

If all of the above requirements are met, the court may stay the eviction for up to three months and provide other “just” relief, provided the member requests such action.

Terminating Leases: The Act permits a new military member to terminate a lease for a private dwelling if it was entered into before entering military service. Additionally, the Act permits service members to terminate leases entered during military service upon PCS or deployment of 90 days or more. Certain auto leases can also be terminated. An active duty member can terminate an automobile lease if they deploy for 180 days or have received PCS orders from CONUS to OCONUS or from a state OCONUS to any other state. The

same protection extends to cell phone plans. Members may cancel or suspend the plan if a PCS or deployment takes them outside the service area.

INTEREST RATES

If you had interest-bearing debts before entering active duty, such as a mortgage, you may be able to reduce the interest rate to six percent. A pre-military creditor is required to reduce your interest rate to six percent upon receipt of written notice that the debtor has entered active duty military service. To return to the previous higher interest rate, the creditor must petition the court and prove that entering active duty did not materially affect the debtor. Courts normally compare the debtor’s pre-service and service income to determine material effect in this instance. If the debtor is making equal or more money after entering active duty, the reduction to six percent interest may not apply.

WHAT ELSE?

The Act has too many applications to include on this fact sheet, including provisions regarding child custody protection, life insurance protection, state taxation, and health insurance reinstatement. If you feel your military service prevents you from enforcing or defending yourself in a civil matter, contact an attorney to determine whether the Act can help you.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

For additional information on this and other legal topics, see the Air Force Legal Assistance Website: <https://aflegalassistance.law.af.mil>