

SERVICEMEMBERS CIVIL RELIEF ACT

Civil actions involving parties who are in military service are subject to the requirements of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq., P.L. 108-189, 117 Stat. 2835, which was enacted in 2003 to replace the Soldiers' and Sailors' Civil Relief Act of 1940.

The Act applies to members of the Army, Navy, Air Force, Marines or Coast Guard who are on active duty or lawful leave, and to members of the National Guard who have been activated for national service for more than 30 days (50 U.S.C. App. § 511). It also includes those who have been ordered to report for induction, and reservists who have received orders to report for service (§ 516).

The major provisions of the Act of interest to courts are as follows:

“Military affidavits” in civil default judgments (50 U.S.C. App. §§ 521, 525). Before a default judgment may enter in any “civil action or proceeding,” the plaintiff must file an affidavit stating “whether or not the defendant is in military service and showing necessary facts to support the affidavit” or stating “that the plaintiff is unable to determine whether or not the defendant is in military service.”

- *If it appears that the defendant is in military service*, “the court may not enter a [default] judgment until after the court appoints an attorney to represent the defendant.” The court must grant a stay of proceedings for at least 90 days sua sponte or at the request of counsel if “there may be a defense to the action [which] cannot be presented without the presence of the defendant” or if “after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.” (Such a stay may extend as long as 90 days after discharge.) During a stay, the court “may set the terms and amounts for such installment payments as is considered reasonable by the court.” With the court’s approval, during a stay the case may proceed against any codefendants who are not in military service. If the appointed attorney cannot locate the defendant, the attorney’s actions “shall not waive any defense of the servicemember or otherwise bind the servicemember.”
- *If the court cannot determine whether the defendant is in military service* from the affidavit, “the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court . . . to indemnify the defendant against any loss or damage” if the defendant is later found to be in military service and the default judgment is set aside. The court may also “issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant” under the Act.
- *If the defendant later requests that the default judgment be vacated*: If within 90 days of discharge from military service, the defendant requests that a default judgment entered during his or her military service (or within 60 days after discharge) be vacated, the court must reopen the judgment and permit the defendant to defend the action if it appears that he or she has “a meritorious or legal defense to the action or some part of it” and was “materially affected by reason of that military service in making a defense to the action.”

Any such action “shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.”

Stays in pending civil actions other than evictions (50 U.S.C. App. § 522). When any party who has received notice of a civil action other than an eviction is in military service (or has been discharged within 90 days), at any stage before final judgment “the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days” if the servicemember offers a “letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember’s ability to appear and stating a date when the servicemember will be available to appear” and a “letter or other communication from the servicemember’s commanding officer stating that the servicemember’s current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.” The servicemember may request a longer stay, or later request an extension of the original stay, for the same reasons and with the same submissions. If the court refuses an additional stay, “the court shall appoint counsel to represent the servicemember in the action.”

Stays in pending eviction actions (50 U.S.C. App. § 531). Except by court order, a landlord may not evict from residential premises servicemembers and their spouses or dependents, or their unmarried children who are under 18 or disabled or under 23 and still in school, during the period of military service, unless the rent exceeds an amount that is adjusted annually to reflect the Consumer Price Index and published in the Federal Register. (The baseline amount in the Act was \$2,400 per month for 2003.) The court “may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service [1] stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or [2] adjust the obligation under the lease to preserve the interests of all parties.” If the court grants a stay, the court may allow the landlord “such relief as equity may require.”

Stays of execution or attachment (50 U.S.C. App. § 524). “If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember [1] stay the execution of any judgment or order entered against the servicemember; and [2] vacate or stay an attachment or garnishment . . . whether before or after judgment.”

Extension of contractual obligations (50 U.S.C. App. § 701). A servicemember whose ability to comply with a pre-service contractual obligation or liability “has been materially affected by reason of military service” may seek anticipatory relief by applying to a court, after appropriate notice and hearing, to stay enforcement of the obligation, toll any payments while in military service, and extend the repayment period thereafter, “subject to other terms as may be equitable.”

Other provisions. Among the Act’s other provisions of interest to courts are the following:

- ***Mortgages and liens.*** If a servicemember’s compliance with a pre-service mortgage is materially affected by his or her military service, a court may act sua sponte and must act upon application by the servicemember either to stay the proceedings “as justice and equity require” or to “adjust the obligation to preserve the interests of all parties.”

Foreclosure of such mortgages is valid only “upon a court order . . . with a return made and approved by the court” (50 U.S.C. App. §§ 533-534). Storage and other liens may be enforced on the personal property of servicemembers only with a court order, and the court may similarly stay or adjust the obligation (50 U.S.C. App. § 537).

- *Cancellation of residential and motor vehicle leases.* Subject to certain restrictions, servicemembers may cancel pre-service residential and motor vehicle leases upon entry into military service or redeployment (50 U.S.C. App. § 535).
- *Contractual penalties.* A court may reduce or waive any contractual fine or penalty if the servicemember’s ability to perform the contractual obligation was materially affected by his or her military service. Contractual penalties may not be assessed against a servicemember during any stay period (50 U.S.C. App. § 523).
- *Interest reduction to 6%.* Any interest (including service charges and fees) on pre-service obligations that exceeds 6% is forgiven during the period of military service. A court may waive this protection if, in its opinion, the servicemember’s military service does not materially affect his or her ability to pay interest on the obligation (50 U.S.C. App. § 527).
- *Statute of limitations tolled.* Any period of military service is to be excluded when computing the statute of limitations for any action by or against a servicemember in a Federal, state or municipal court, board or agency (50 U.S.C. App. § 526).
- *Military families.* On application to a court, a servicemember’s spouse or dependent, or unmarried child under 18 or disabled or under 23 and still in school, may invoke the Act’s protections if an obligation is materially affected by the servicemember’s military service (50 U.S.C. App. § 538).
- *Sureties.* A court may extend the Act’s protections to a surety, guarantor, or other person who is secondarily liable on a servicemember’s obligation. A court may not enforce a bail bond against a surety whose principal’s military service prevents his or her attendance. (50 U.S.C. App. § 513).
- *Credit reports.* Invocation of any of the Act’s protections may not be used to affect the servicemember’s credit or insurability (50 U.S.C. § 518).
- *Waiver.* A servicemember may waive any of the Act’s protections. Waiver of some rights is valid only if done in writing during or after the period of military service (50 U.S.C. App. § 517).

FOR ADDITIONAL INFORMATION

The text of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq., P.L. 108-189, 117 Stat. 2835, is available on the internet through <http://www.gpoaccess.gov/plaws/search.html>.

The Department of Defense's Defense Manpower Data Center maintains an internet website at <https://www.dmdc.osd.mil/scra/owa/home> for determining whether an individual is currently on active duty, based on name and social security number.

A plaintiff who does not have sufficient personal information to use the DOD website may verify whether an individual is on active duty by writing to the appropriate military service headquarters, as listed at <http://www.defenselink.mil/faq/pis/PC09SLDR.html>.

The Army's Judge Advocate General Legal Center publishes a guide to the Servicemembers Civil Relief Act which is available at <https://www.jagcnet.army.mil/JAGCNETPortals/Internet/DocLibs/tjaglcsdoclib.nsf>.

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