

The SCRA & Summary Ejectment

Purpose of the SCRA:

The purpose of the SCRA is to strengthen and expedite national defense by giving servicemembers certain protections in civil actions. By providing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect servicemembers during their military service, the SCRA enables servicemembers to focus their energy on the defense of the United States.

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The SCRA is very clear: if you're in harm's way in our nation's military, you can devote your whole energy to our nation's service without worrying what's happening in a courthouse back home. The law was enacted to protect active duty military personnel from unfair punishment as a result of their service. If a credit rating is damaged by a foreclosure, it can impact national security clearances. The kind of stress and enormous toll on military families caused by an illegal foreclosure or threat of eviction can be devastating to a servicemember's military readiness.

Statement by U.S. Rep. Brad Miller, <http://bradmiller.house.gov>

The Affidavit Requirement:

- Applies to any civil action or proceeding in which defendant does not make appearance.
- Court “shall require the plaintiff to file with the court an affidavit” “before entering judgment for the plaintiff.”
- Affidavit must state “whether or not Δ is in military service” and show necessary facts in support, or
- State inability to determine whether Δ is in military service.

If Δ is in military service and has not appeared, judgment may not be entered until attorney is appointed to represent defendant.

If court cannot determine whether Δ is in military service, court may require π to post bond.

Affidavit is a written statement declared to be true under penalty of perjury.

An individual with a Power of Attorney is an authorized legal representative of the SM.

The Stay Requirement

After attorney is appointed under this section, court must stay proceedings for at least 90 days if (1) there may be a defense to the action which cannot be presented in Δ 's absence, or (2) attorney has been unable to contact Δ or determine existence of meritorious defense.

NOTE: A different section of the SCRA governs stays requested by SM.

Judgment entered not in compliance with requirements is voidable if challenged by SM.

Eviction

The SCRA extends special protection to SMs or their dependents residing in rental property with monthly rent not exceeding \$3451.20.

Self-help eviction and/or unlawful interference with tenants' property is a misdemeanor under federal law, punishable by fine or up to 1 yr. in prison.

“This section protects SMs and their dependents from eviction for nonpayment of rent. It does not preclude eviction, but it does set up the process through which that remedy must pass. . . . Upon the SM’s or family member’s request [and upon evidence that ability to pay rent is ‘materially affected’ by military service], the court must stay the proceeding for roughly ninety days.” *The SCRA*

Guide, <http://www.americanbar.org/content/dam/aba/migrated/legalservices/lamp/downloads/SCRAGuide.authcheckdam.pdf>. In addition, the SCRA authorizes the court to “adjust the obligation under the lease to preserve the interests of all parties” and to “grant the landlord . . . such relief as equity may require.”

Note protection extends to dependents, broadly construed.

Waiver requirements: (1) in writing, in separate document; (2) executed during period of service; (3) making specific reference to lease; (4) signed by SM.

Early Termination of Lease

	GS 42-45	SCRA
Grounds	PCOS 50 mi.+; early or invol. discharge; 90+ deployment	Lease prior to active duty; PCOS; 90+ deployment
Lease ends . . .	In case of deployment, shorter of: (1) Notice + rent due date + 30 days OR (2) notice + 45 days. For other grounds, 30 days after notice.	Notice + rent due date + 30 days
Liquidated damages for early termination	Yes, if less than 9 months of term; < 6 mos./1 mo. rent; 6-9 mos./half mo. rent	None
Waiver	Not permitted	See above
Applies to spouse who co-signs?	Unclear	Yes
Notice	Written & orders or letter from CO	Written & orders or letter from CO