

## **SCRA. Servicemembers' Civil Relief Act**

The Servicemembers' Civil Relief Act applies in bankruptcy cases. It provides protection to members of the military against the entry of default judgments and gives the court the ability to stay proceedings against military debtors.

### **Background**

The Servicemembers' Civil Relief Act ("SCRA") is found at 50 U.S.C. app. §§ 501 et seq. The purpose of the SCRA is 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. Among other things, the SCRA allows for forbearance and reduced interest on certain obligations incurred prior to military service, and it restricts default judgments against servicemembers and rental evictions of servicemembers and all their dependents. The SCRA applies to all members of the United States military on active duty, and to U.S. citizens serving in the military of United States allies in the prosecution of a war or military action. The provisions of the SCRA generally end when a servicemember is discharged from active duty or within 90 days of discharge, or when the servicemember dies. Portions of the SCRA also apply to reservists and inductees who have received orders but not yet reported to active duty or induction into the military service.

### **General Provisions**

There are three primary areas of coverage under the SCRA: (1) protection against the entry of default judgments; (2) stay of proceedings where the servicemember has notice of the proceeding; and (3) stay or vacation of execution of judgments, attachments and garnishments. 50 U.S.C. app. §§ 521, 522 and 524.

### **Protection Against Default Judgements**

Section 521 of the SCRA establishes certain procedures that must be followed in all civil proceedings in order to protect servicemember defendants against the entry of default judgements. These procedures are outlined below:

- If a defendant is in default for failure to appear in the action filed by the plaintiff, the plaintiff must file an affidavit (1) with the court before a default judgment may be entered. The affidavit must state whether the defendant is in

the military, or that the plaintiff was unable to determine whether the defendant is in the military.

- If, based on the filed affidavits, the court cannot determine whether the defendant is in the military, it may condition entry of judgment against the defendant upon the plaintiff's filing of a bond. The bond would indemnify the defendant against any loss or damage incurred because of the judgment if the judgment is later set aside in whole or in part.
- The court may not order entry of judgment against the defendant if the defendant is in the military until after the court appoints an attorney to represent the defendant.
- If requested by counsel for a servicemember defendant, or upon the court's own motion, the court will grant a stay of proceedings for no less than 90 days if it determines that (1) there may be a defense and the defense cannot be presented without the defendant's presence; or (2) after due diligence the defendant's attorney has not been able to contact the defendant or otherwise determine if a meritorious defense exists.
- The court may, in its discretion, make further orders or enter further judgments to protect the rights of the defendant under the SCRA.
- If a judgment is entered against the defendant while he or she is in military service or within 60 days of discharge from military service, and the defendant was prejudiced in making his or her defense because of his or her military service, the judgment may, upon application by the defendant, be opened by the court and the defendant may then provide a defense. Before the judgment may be opened, however, the defendant must show that he or she has a meritorious or legal defense to some or all of the action.

### **Stay of Proceedings Where Service member Has Notice**

Outside the default context, and at any time before final judgement in a civil action, a person covered by the SCRA who has received notice of a proceeding may ask the court to stay the proceeding. 50 U.S.C. app. § 522. The court may also order a stay on its own motion. *Id.* The court will grant the servicemember's stay application and will stay the proceeding for at least 90 days if the application includes: (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the servicemember's ability to appear along with a date when the servicemember will be able to appear; and (2) a letter or other

communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents his or her appearance and that military leave is not authorized for the servicemember at the time of the letter. The court has discretion to grant additional stays upon further application.

### **Stay or Vacation of Execution of Judgements, Attachments and Garnishments**

In addition to the court's ability to regulate default judgments and stay proceedings, the court may on its own motion and must upon application: (1) stay the execution of any judgment or order entered against a servicemember; and (2) vacate or stay any attachment or garnishment of the servicemember's property or assets, whether before or after judgment if it finds that the servicemember's ability to comply with the judgment or garnishment is materially affected by military service. 50 U.S.C. app. § 524. The stay of execution may be ordered for any part of the servicemember's military service plus 90 days after discharge from the service. The court may also order the servicemember to make installment payments during any stay ordered.

### **Additional Protections**

Several additional rights are available under the SCRA. For example, when an action for compliance with a contract is stayed under the SCRA, contractual penalties do not accrue during the period of the stay. 50 U.S.C. app. § 523. The SCRA also provides in most instances that a landlord cannot evict a servicemember or dependants from a primary residence without a court order. In an eviction proceeding, the court may also adjust the lease obligations to protect the interests of the parties. 50 U.S.C. app. § 531. If the court stay the eviction proceeding, it may provide equitable relief to the landlord by ordering garnishment of a portion of the servicemember's pay. *Id.* Under the SCRA a servicemember may terminate residential and automotive leases if he or she is transferred after the lease is made. 50 U.S.C. app. § 535. A court may also extend some of the protections afforded a servicemember under the SCRA to persons co-liable or secondarily liable on the servicemember's obligation. 50 U.S.C. app. § 513.

## Applicability to Bankruptcy Proceedings

The language of the SCRA states that it is generally applicable in any action or proceeding commenced in any court. 50 U.S.C. app. §§ 521, 522 and 524. Therefore, absent contravening language with respect to bankruptcy proceedings, the SCRA applies to all actions or proceedings before a bankruptcy court.

The applicability of the SCRA in bankruptcy proceedings is also evident in the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure. For example, the advisory committee note to Federal Rule for default judgments, Fed. R. Civ. P. 55(b), states that it is directly affected by the SCRA. (2) Under Fed. R. Bankr. P. 7055 and 9014 of the Federal Rules of Bankruptcy Procedure, Fed. R. Civ. P. 55 is applicable in bankruptcy adversary proceedings and contested matters. Thus, the default judgment protections of the SCRA clearly apply in bankruptcy cases.

The bankruptcy court clerk's office is aware of the requirement that the plaintiff must provide an affidavit stating whether the defendant is in the military before default may be entered against the defendant. Bankruptcy Procedural Forms B260, B261A, and B261B, and their accompanying instructions, provide additional guidance concerning the applicability of the SCRA to default judgments and related procedural requirements.

## **NOTES**

1. The requirement for an affidavit may be satisfied by a statement, declaration, verification, or certificate in writing subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. app. § 521(4).
2. The advisory committee note to Fed. R. Civ. P. 55 comments on the applicability of the Servicemembers' Civil Relief Act (formally known as the Soldiers' and Sailors' Civil Relief Act of 1940) to default judgements as follows:
  - The operation of Rule 55(b) (Judgment) is directly affected by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix, § 501 et seq. Section 200 of the Act [50 U.S.C. Appendix, § 520] imposes specific requirements which must be fulfilled before a default judgment can be entered, e.g., *Ledwith v. Storkan*, D.Neb.1942, 6 Fed. Rules Serv. 60b.24, Case 2, 2 F.R.D. 539, and also provides for the vacation of a judgment in certain circumstances. See discussion in Commentary, Effect of Conscription Legislation on the Federal Rules, 1940, 3 Fed. Rules Serv. 725; 3 Moore's Federal Practice, 1938, Cum. Supplement § 55.02.