

# The Service Members Civil Relief Act

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**O**n December 19, 2003, President Bush signed into law the “Service Members Civil Relief Act” (the “Act”). The Act serves both to amend and to rename the “Soldiers’ and Sailors’ Civil Relief Act of 1940” and provides as follows:

## Termination of a Lease

A service member may terminate an automobile (used for personal or business transportation) or real property (occupied for residential, professional, business, or agricultural purpose) lease after: (1) his/her entry into military service; or (2) the date of his/her military orders. Eligibility is predicated upon the member’s inability to pay the rent as a result of his/her military service.

### Real Property:

The lease must have been executed by or on behalf of the member entering military service or executed during military service and the member subsequently receives orders for a permanent change of station or deployment (for a period of not less than 90 days).

A lease, with monthly rent payments, may be terminated 30 days after the first date on which the next rental payment is due and payable. All other leases may be terminated on the last day of the month following the month in which the notice is delivered. Advance rent or lease payments, covering a period after the effective termination date, must be refunded by a landlord to the member.

Except by court order, a landlord may not evict the member or his/ her dependents during the period of military service if the monthly rent does not exceed \$2,400. However, if a stay of the proceedings is granted, a court may within its discretion grant such relief as equity may require.

### Automobile:

A lease may be terminated by or on behalf of a member entering military service (under orders or an extension of not less than 180 days) or if he/she receives permanent change of station orders outside of the continental United States or deployment for at least 180 days. Written notice of termination must be delivered and the automobile returned within ten days of the notice. No early termination charge may be imposed. However, taxes, summonses, title and registration fees, and other obligation(s) and liability (excess wear, use, and mileage) may be imposed pursuant to the lease terms.

## Civil Legal Matters

### Rights and Protections:

A member or individual ordered to report to military service or induction is entitled to all rights and protections from the date of his/her receipt of his/her orders.

### Future Financial Transactions:

A member’s right to a stay, postponement, or suspension of the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability will not, without other considerations, be the basis for the determination that he/she is unable to pay another obligation or liability or the denial, revocation, or modification of credit by a creditor.

### Default Judgments:

In any civil action in which the member does not appear, the court, before entering a judgment, will first require the opposing party to file an affidavit attesting to the member’s military status, facts to support the affidavit or to attest to his/her inability, in order to determine whether or not the individual is in military service. A court, within its discretion, may appoint legal counsel for the member. It is important to note that if the member cannot be located, his/her counsel’s actions will not waive any defense he/she could have presented or be binding upon him/her. Alternatively, if a judgment is entered, the court can require a plaintiff to file a bond to indemnify the member against any loss or damage he/she may suffer by reason of the court action.

### Third Party Legal Action:

A court may postpone or suspend an action (prosecution, enforcement, or performance) against a third party guarantor or individual who may be primarily or secondarily subject to the member’s obligation or liability.

### Bail Bond:

A court may discharge or elect not to enforce a bail bond against a surety (guarantor) when military service prevents the surety from obtaining the attendance of the member.

### Protection of Purchasers:

If a court vacates, sets aside, or reverses a default judgment against a member, that action will not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

### Stay of Proceedings:

During a civil legal proceeding, at any stage before final judgment, the court may, on its own motion or request by one of the parties involved, stay the proceedings for a period of not less than 90 days. This protection is available to a member while on active duty and for 90 days after termination of or release and notice of the action.

Eligibility for a stay of the proceedings is predicated upon a “communication setting forth facts stating the manner in which current military duty requirements materially affect the service member’s ability to appear and stating a date when the service member will be available to appear” or “communication from the service member’s commanding officer stating that the service member’s current military duty prevents appearance and that military leave is not authorized for the service member at the time of the letter.” The granting of the stay will be based upon a court determining that there may be a valid defense that cannot be presented without the presence of the member or the inability to determine if a meritorious defense exists.

### Statute of Limitations:

A period of military service will not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court by or against a member or his/her heirs, executors, administrators, or assigns.

### Maximum Interest Rate:

Any obligation or liability incurred (individually or jointly with a spouse), with an interest rate in excess of six percent per year,

before entrance on military service shall be reduced to six percent per year during the period of military service. Eligibility for the interest rate reduction requires written notice to the creditor and a copy of the applicable military orders. The interest portion above six percent is permanently forgiven upon termination of the military service.

A court may grant a creditor relief from this limitation if the member would not be “materially affected” by reason of his/her military service. In addition, the six percent interest rate will not be applicable to debts incurred after entrance on active duty or during mobilization.

#### Enforcement of Contracts:

The sale, foreclosure, or seizure of property (real or personal) for a breach of an obligation will not be valid if made during, or within 90 days after, a period of military service. This provision will apply if other arrangements are negotiated by the parties.

Under an installment obligation for the purchase of real property or secured by a mortgage, a court may grant a stay of the enforcement of the obligation during a period of military service and from the date of termination of or release from military service. The stay shall be: “(1) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the service member, or any part of such combined period; and, (2) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant’s military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.”

#### Enforcement of Liens:

The holder of a lien (storage, repair, or cleaning of property of a member) on the property or effects of a member may not, during his/her military service and for 90 days thereafter, foreclose or enforce said lien without a court order. In a legal proceeding to foreclose or enforce the lien, the court may, on its own motion or request by a member whose ability to comply with the obligation is materially affected by his/her military service, stay the proceeding or adjust the obligation in the interest of all parties.

#### Protection of Dependents:

A member’s dependent(s) are entitled to the protections of the Act if his/her ability to comply with the contract or obligation is “materially affected” by the member’s military service.

### Health and Life Insurance Rights and Protections

#### Health Policy:

Upon termination or release from service, the member is entitled to the immediate reinstatement of any health insurance that was in effect on the day before the military service commenced. The reinstatement will not be subject to any exclusion or a waiting period except an entitlement to participate in employer-offered insurance benefits. An application for reinstatement must be filed not later than 120 days after the date of the termination of or release from military service.

#### Life Insurance:

Provides protection to an insured (while on active duty), his/her legal representative, and beneficiary from default on a policy for

nonpayment of the premium. Increases from \$10,000 to \$250,000 the maximum policy coverage that the federal government will protect unless the Secretary of Veterans Affairs determines otherwise.

### Income Taxes

#### Deferral:

Upon notice to the Internal Revenue Service or a state taxing authority, the collection of income tax due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service. Eligibility is predicated upon a member’s inability to pay the tax as a result of his/her military service.

No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of deferred tax.

#### Statute of Limitations:

The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service and an additional period of 270 days thereafter.

#### Residence:

For tax and compensation purposes, a member’s presence in any tax jurisdiction of the United States in compliance with military orders shall not result in his/her losing a prior or acquiring a new domicile or subject him/her to additional taxation by reason of his/her absence from his/her residence. A Native American Indian, whose residence is a federal Indian reservation, will be taxed by the laws of the reservation and not the state in which it is located.

Personal property “shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the service member is serving in compliance with military orders.” This does not apply to “taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.”

#### Missing Persons:

“A service member who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a service member does not begin or end until the service member’s death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.”

#### Tax Relief:

During military service or within 180 days from termination of or release, a member may apply to a court for relief: “(1) from any obligation or liability incurred by the service member before the service member’s military service; or (2) from a tax or assessment falling due before or during the service member’s military service.”

#### Forced Sale of Property and Redemption:

With the exception of a court order or upon the determination that his/her military service does not materially affect his/her ability to pay a tax or assessment, property may not be sold to enforce the collection effort. When property is sold, during the collection process, the member may redeem or commence an action to redeem the property during his/her period of military service or within 180 days after termination of or release therefrom.

### Power of Attorney

A power of attorney, with an expiration date, will be automatically extended for the period a member is classified in “missing” status. Eligibility is predicated on his/her execution of the instrument while on military service or before entry (after receipt of an order to report). The instrument must also designate, as the attorney in fact, a spouse, parent, or other relative and expire after the date he/she entered missing status. However, the instrument may not be extended, regardless of the member’s status, if the document clearly indicates a specific expiration date.

### Professional Liability Protection

A member engaged in providing health care, legal services, or other professional services (as determined by the Secretary of Defense) with professional liability insurance shall have the policy suspended, upon written request, during his/her military service. The carrier may not require that premiums be paid on the suspended coverage.

In order for the insurance coverage to be reinstated promptly, the member must notify his/her insurance carrier, within 30 days from his/her release from active duty, and make payment of his/her premium within 30 days after receipt of a premium notice.

During the member’s military service and suspension period, any professional negligence or liability action shall be stayed until the end of the period, if the act occurred before his/her military service and the action is commenced during the suspension period. In addition, the insurance carrier will not be liable for any

claim based on professional conduct (including any failure to take any action in a professional capacity) that occurs during the suspension period.

### Voting

For voting purposes (federal, state or local office), a member will not lose his/her state of residence by virtue of his/her absence and location in another state or county. ⚓

## Tax Tip Reminder

As a Reservist, if you travel more than 100 miles away from home in connection with Naval Reserve drilling duty, you can deduct your travel as an adjustment to income on line 33 of Form 1040 rather than as a miscellaneous itemized deduction. The deduction is limited to the amount the federal government pays its employees for travel expenses. For more information about this limit, see “Per Diem and Car Allowances” in chapter 6 of *Publication 463*.

To report Reserve duty-related travel, complete Form 2106, Employee Business Expenses, or Form 2106-EZ, Unreimbursed Employee Business Expenses. Include the total on line 33 of Form 1040 from line 10 of Form 2106 or line 6 of Form 2106-EZ. Annotate “RC” and the amount of expenses in the space to the left of line 33 of Form 1040. ⚓