

Defend the Defenders And Boot The Rest



The *Servicemembers Civil Relief Act*

Congress enacted the *Servicemembers' Civil Relief Act of 2003*, 50 U.S.C. App §§ 501-597 (the "SCRA" or "Act") for two express purposes: (1) to provide for, strengthen, and expedite the national defense through protection to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. One function of the *SCRA* is to protect those in the military from having default judgments entered against them without their knowledge and without a chance to defend themselves.

The guiding principle for courts is that the *SCRA* will be liberally interpreted in favor of service members.



The basic protections of the *SCRA* affecting Landlords include:

- Postponement of civil court and administrative hearings when military duties materially affected the ability of a servicemember to prepare for or be present for civil litigation;
- Reducing the interest rate to 6% on pre-service loans and obligations;
- Barring eviction of a servicemember's family for nonpayment of rent without a court order for monthly rent of \$3,217.81 or less;
- Termination of a pre-service residential lease or leases entered into by active duty servicemembers who subsequently receive orders for a 'permanent change of station' (*PCS*) or deployment for a period of 90 days or more.

Presented by

~ **Brian Cox** ~

Managing Attorney
142 West 8th Avenue
Eugene, Oregon 97401

☎ (541) 683-7151 Fax (541) 485-7742

✉ bcox@coxassociates.info

Is My Tenant In the Military - How to Know?

The easiest way to obtain this information is by going to the DMDC website for *SCRA* inquiries:

https://www.dmdc.osd.mil/appj/scra/single_record.xhtml and enter the last name and Social Security number of the individual. These are mandatory entries; the form on the main page also asks for a first name, middle initial and date of birth (DOB), which will help with the search. Further information is available on the "Help" section of the above website. To execute a report, click on the "LookUp" button, which will open up a second window holding the report generated by DMDC. If the individual is on active duty, the report will show his or her branch of service and beginning date of active duty status. If DMDC does not have information as to whether the individual is on active duty, the generated report will only list the supplied last name, first name and middle initial (if supplied), with the text: "Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty." The report is signed by the DMDC Director. If the Social Security number is unavailable, the requester may request by mail a manual search, using the DOB of the individual instead of the SSN, to the Department of Defense (DOD), which must issue a statement as to military service. You must send a stamped, self-addressed envelope with your mail request. To apply for information, contact:

Defense Manpower Data Center
Attn: Military Verification
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593
Telephone (703) 696-6762
Facsimile (703) 696-4156



[Expect 2/4/6 month response time for written inquiries]

You may also inform a court or administrative agency that your tenant is not in the military based on your personal knowledge (but not "on information and belief"). See *Practice Tips* at the end for more information and suggestions on this.

A person who knowingly resumes possession of property in violation of § 302, or attempts to do so, shall be fined under 18 USC § 3571, imprisoned for not more than one year, or both. Servicemembers also may pursue other available legal remedies, including wrongful conversion and recovery of punitive and consequential damages\$\$\$\$\$\$\$\$



Evicting a Servicemember (And Dependents):

The *SCRA* provides that, absent a court order, a landlord may not evict a servicemember or the dependents of a servicemember from a residential lease for non-payment of rent when the monthly rent is \$3,217.81 or less (2014 index). In practice, this typically means it will take *at least* three months to evict.

Servicemember Non-Appearance:

A default judgment may not be lawfully entered against a servicemember in his/her absence unless the court follows the procedures set out in the SCRA. If the court cannot determine whether the defendant is in military service, then the court may require the moving party to post a bond as a condition of entry of a default judgment. Should the non-movant later be found to be a servicemember, the bond may be used to indemnify the defendant against any loss or damage which s/he may incur due to the default judgment (if it should be later set aside).

In a case where the servicemember tenant has not made an appearance in the proceedings, the *SCRA* **requires** a court or administrative agency to automatically grant a stay (or continuance) of **at least 90 days** when the defendant is in military service *and*:

The court or agency decides that there may be a defense to the action, and such defense cannot be presented in the defendant's absence

or

With the exercise of due diligence, counsel has been unable to contact the defendant (or otherwise determine if a meritorious defense exists).

Servicemember Appears:

In a situation where the military member has notice of the proceeding, a similar mandatory 90-day stay (minimum) of proceedings applies upon the request of the servicemember, so long as the application for a stay includes two things. The first is a letter or other communication that (a) states the manner in which current military duty requirements materially affect the servicemember's ability to appear, and (b) gives a date when the servicemember will be available to appear. The second is a letter or other communication from the servicemember's commanding officer stating that (a) the servicemember's current military duty prevents appearance, and (2) that military leave is not now authorized for the servicemember. Of course, these two communications may be consolidated into one if it is from the servicemember's commander.

There is no single definition of “*material effect*.” The court may find “*material effect*” when a servicemember’s ability to prosecute or defend is impaired by military duties which prevent the member from appearing or from assisting in the preparation or presentation of the case. An adverse material effect might also be found when military service impairs substantially the servicemember’s ability to pay financial obligations.

An application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense as to lack of personal jurisdiction).



Additional Stay of Proceedings:

An application for an additional stay may be made at the time of the original request or later. If the court refuses to grant an additional stay, then the court must appoint counsel to represent the servicemember in the action or proceeding. The role of the appointed attorney is to “represent the defendant.” The statute does not say what



Note: There is no provision for compensation of court-appointed counsel in the *SCRA*.

tasks are to be undertaken by the appointed attorney, but the probable duties are to protect the interests of the absent member, much as a guardian ad litem protects the interests of a minor or incompetent party. This would include contacting the servicemember to advise that a default is about to be entered and to ask whether that party wants to request a stay of proceedings (and will often lead to further delays). If the court fails to appoint an attorney then the judgment or decree is voidable.

Setting Aside Default Judgments:

If a default judgment enters against a servicemember - *whether the judge complies with the terms of the SCRA or not* - the Act provides additional protection. The SCRA allows a member who has not received notice of the proceeding to move to reopen a default judgment. To do so, the servicemember must apply to the trial court that rendered the original judgment of order. In addition, the default judgment must have been entered when the member was on active duty in the military service or within 60 days thereafter, and the servicemember must apply for reopening the judgment while on active duty or within 90 days thereafter. Reopening or vacating the judgment does not impair right or title acquired by a bona fide purchaser for value under the default judgment. Should the non-movant later be found to be a servicemember, the bond may be used to indemnify the defendant against any loss or damage which s/he may incur due to the default judgment.

To prevail in a motion to reopen the default decree, the servicemember must prove that, at the time the judgment was rendered, s/he was prejudiced in his/her ability to defend him/herself due to military service. In addition, s/he must show that there is a meritorious or legal defense to the initial claim. Default judgments will not be set aside when a litigant's position lacks merit. Such a requirement avoids a waste of judicial effort and resources in opening default judgments in cases where servicemembers have no defense to assert.

Lease Termination:

A court may order complete or partial repayments of deposits or installments made by a servicemember as a prerequisite of cancellation of the contract and the landlord regaining possession of the property.

Practice Tips:

Avoid the Madness - Plan for this by adopting one or more of the following strategies.

1. *Rental Application/Tenant Data Sheets:* Ask if any tenant is currently serving in any branch of the military and/or National Guard.
 - A. If yes, follow up to determine if the servicemember is currently on active duty or subject to call-up.
2. *Include a term in rental or lease agreement* requiring your tenants to notify you in writing within ten days of entering the military or the National Guard, and further requiring your tenants to notify you within ten days of receiving orders for a 'permanent change of station' (PCS) or deployment for a period of 90 days or more.
3. *Get to know your tenants.* If you *know* from your personal communications and/or observations that the soon-to-be-defaulted tenant is definitely *NOT* in the military or

National Guard, you can obtain a default by submitting a sworn non-military affidavit that expresses this information as your personal knowledge.

4. *Seek a waiver from your tenant.* A waiver of SCRA rights is **only effective if it is made during the period of military service**. In addition, certain waivers must be made in writing. Where a servicemember agrees to waive his/her right to request a stay so that the matter may proceed with a clear record that the servicemember has knowingly and voluntarily waived his/her SCRA rights, this form should suffice:

<p>WAIVER OF RIGHT TO REQUEST STAY OF PROCEEDINGS</p> <p>I acknowledge that I have the right to request a stay of proceedings in this case under the Servicemembers Civil Relief Act. The stay of proceedings, or continuance, would postpone a hearing in this matter if it were granted. I hereby waive and give up the right to a stay of proceedings. I want to proceed with this matter.</p> <p>_____ Date: _____</p> <p>(signature)</p> <p>_____</p> <p>Printed Name</p> <p style="text-align: center;">[print acknowledgment and notarization here if required]</p>
--

5. *Call the tenant's commander* for more information and/or to verify duty status.
6. *Consider/pursue alternative strategies for settlement.* Cases involving servicemembers take time, typically no less than three months, before any form of action may be taken by courts.
7. If/when it gets too complicated - seek experienced, qualified legal assistance.

Notes: _____

Oregonians in the Military

As of today, approximately 2,600 Oregonians are currently deployed to serve their country, with approximately 1,500 men and women from Oregon currently on active duty in the US military (there are no military bases in Oregon), and approximately 1,100 of the more than 8,000 men and women serving in National Guard Units throughout Oregon currently deployed overseas. [Note: over 31,000 veterans currently live in Lane County (slightly less than 10% of the population)].

The National Guard is found in both the United States and Oregon Constitutions, and is charged with responding to state and national emergencies, military conflicts and natural disasters, as well as conducting search and rescue operations.

The **Oregon Army National Guard** consists of the following major units:

The 162nd Infantry Regiment is a regiment of the Oregon Army National Guard with headquarters in **Springfield, Oregon**. In January 2006, the 1st Battalion, 162nd Infantry Regiment was inactivated. Many members continue to serve with the 2nd Battalion and other units within the 41st Infantry Brigade Combat Team (various locations in Oregon).

1st Squadron 82nd Cavalry Regiment currently serves with the 41st Brigade Combat Team of the Oregon Army National Guard, headquartered in **Bend, Oregon**. The unit consists of the HHT and FSC (both of **Bend**), Alpha Troop (of **Lebanon**), Bravo Troop (of **Redmond**) and Charlie Troop (of **Klamath Falls**).

The 186th Infantry Regiment was constituted on 7 December 1921, as a separate Battalion in the Oregon Army National Guard. By 31 March 1922, it was re-designated the 1st Battalion, 186th Infantry, and was made up of companies **from Gresham, Portland, Hood River, Cottage Grove & Medford**

The 41st Infantry Brigade Combat Team ("Sunset"[1]) is an element in the Oregon Army

National Guard, headquartered at Camp Withycombe, **Clackamas, Oregon**.

The **Oregon Air National Guard** consists of the following major units:

142d Fighter Wing - Established 18 April 1941 (as: 123d Observation Squadron); operates: F-15C/D Eagle Stationed at: Portland Air National Guard Base, **Portland**. Gained by: Air Combat Command The Wing consists of over 1,000 officers and airmen, the "Redhawks" guard the Pacific Northwest airspace and coastal waters from northern California to the Canadian border with F-15 Eagles on 24-hour Air Sovereignty alert. Both operational and training missions take 142d Fighter Wing units around the globe in support of homeland defense missions, drug interdiction, Air Expeditionary Force missions, and contingency operations.

173rd Fighter Wing - Established 1 January 1983 (as: 8123d Fighter-Interceptor Training Squadron); operates: F-15C/D Eagle. Stationed at: Kingsley Field Air National Guard Base, **Klamath Falls**. Gained by: Air Education and Training Command. Originally an interceptor pilot training squadron, today the wing is an advanced training organization responsible for all USAF F-15 pilot specialization training.

Combat Operations Group - Colonel Mark A. Crosby, USAF, Commander. Composed of units not directly in the chain of command for either of the fighter wings. 116th Air Control Squadron Camp Rilea Armed Forces Training Center, **Warrenton**.

123d Weather Flight, Portland Air National Guard Base.

125th Special Tactics Squadron, Portland Air National Guard Base.

270th Air Traffic Control Squadron, Kingsley Field Air National Guard Base, Klamath Falls.

Recruiters stationed in **Eugene & Springfield**.