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Recent Federal- and State-Level Servicemembers Civil Relief Act Enforcement Re-Emphasize the Act's Importance

WRITTEN BY

Stephen C. Piepgrass | Timothy McHugh | Nicholas Ramos | Matthew J. Fay

Federal law and analogous state laws provide a broad array of generous, and often misunderstood, consumer and other protections to military servicemembers enforceable by federal and/or state authorities. Two recent enforcement actions illustrate this fact and reinforce the importance of including servicemember protection laws in any well-developed compliance program.

In late December 2021, the Washington state attorney general issued a [press release](#), highlighting his efforts to protect servicemembers' rights under the federal Servicemembers Civil Relief Act (SCRA or Act). 50 U.S.C. §§ 3901-4043.

In a separate action with coincidental timing, the U.S. Department of Justice (DOJ) and Consumer Federal Protection Bureau (CFPB) issued [two joint letters](#) to landlords and mortgage servicers, reminding them of the broad rights afforded to servicemembers and explaining how those rights work in concert with other protections enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

A Brief SCRA Primer

As explained in this helpful DOJ [overview](#), the SCRA's history dates back to the Soldiers' and Sailors' Civil Relief Act of 1940. The main purpose of the law is to "ease financial burdens on servicemembers during periods of military service," *id.*, covering a wide array of subjects, including rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance, and income tax payments. SCRA protections also extend to dependents (generally, family members) of servicemembers and occasionally to those who have co-signed a loan with a servicemember.

Specific statutory examples of these SCRA protections include:

1. A 6% cap on interest rates for financial obligations incurred prior to entering military service;
2. Protections against default judgements in any civil court proceeding where the defendant servicemember does not make an appearance;
3. A requirement for a creditor to receive a court order before foreclosing on a mortgage taken out by a

- servicemember before the servicemember began military service;
- 4. Protection from vehicle repossession without a court order;
- 5. The ability to terminate a residential lease, without penalty, if a servicemember receives orders to transfer, known as “permanent change of station” or PCS orders; and
- 6. A prohibition on the enforcement of storage liens on a servicemember’s property without a court order.

In addition to being written expansively, the U.S. Supreme Court made it clear more than 60 years ago that the Act (like all laws that benefit veterans and servicemembers) should be interpreted in a manner friendly to those covered by its provisions: “[T]he Act [SCRA] must be read with an eye friendly to those who dropped their affairs to answer their country’s call.” *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (*citing Boone v. Lightner*, 319 U.S. 561, 575 (1943)). This pro-veteran canon of construction has only taken on greater importance in subsequent years. *E.g., Brown v. Gardner*, 513 U.S. 115, 118 (1994).

State Enforcement Action

The Washington attorney general’s press release focused on the storage lien provision as his most recent effort to support his office’s Military & Veterans Initiative. The office highlighted its success in obtaining a court order, forcing a towing company to pay restitution to the servicemember, pay costs and attorney’s fees to the state of Washington, and to implement new business practices that would not violate either the SCRA or Washington’s Service Members’ Civil Relief Act, R.C.W. 38.42, in the future.

As noted in the attorney general’s press release, Washington is one of many states that either has enacted its own version of the SCRA and/or authorized its attorney general to enforce the SCRA in state court.

In [press coverage](#) of enforcement action reported by the *Kitsap Daily News*, the operations manager of the towing company noted he was unaware of the laws’ existence when the company sold the car at auction, but that “[i]gnorance [of the law] is no excuse” and that the company would check the military status of the owners of vehicles it processes in the future.

To determine an individual’s military service status and any applicable SCRA protections, the Department of Defense maintains a [database](#) operated by the Defense Manpower Data Center that can be searched for free.

Other recent enforcement actions highlighted by the Washington attorney general’s office alone include court rulings against two other towing companies in 2021 and 2020, plus settlements with two property management companies in 2019 and 2017 after the companies failed to comply with the SCRA’s residential lease provisions.

Joint DOJ and CFPB Letters

In letters to landlords and mortgage service providers, the DOJ and CFPB highlighted the fact that the SCRA works in concert with consumer protection laws of general application and other laws and regulations enacted

during the COVID-19 pandemic, including the CARES Act.

U.S. Assistant Attorney General for Civil Rights Kristen Clarke clearly explained the federal enforcement authorities' intentions in the press release when she stated: "The Department of Justice takes seriously its responsibility to safeguard the rights of servicemembers and veterans . . . While servicemembers carry the great burdens of this Nation, they should not have to worry that their sacrifices will result in economic harm to their families. Mortgage servicers and landlords must ensure that they are in full compliance with federal laws intended to protect servicemembers and their families during military service."

In their [letter to landlords](#), the DOJ and CFPB generally discussed the SCRA's early lease termination and eviction protection provisions. The DOJ and CFPB also focused on more specific applications of the SCRA's early lease termination provision by reminding landlords that the SCRA applies to state National Guard members and family members, under certain circumstances, and by explaining their interpretation of certain SCRA provisions, such as:

- 1. Concession and discount chargebacks.** According to the agencies, forcing servicemembers to repay these benefits would be considered an early termination fee that violated the SCRA;
- 2. Mileage requirements.** The letter noted the SCRA does not contain a minimum-relocation distance requirement for the early termination of a lease in conjunction with transfer orders and stated that attempts to implement them are "likely unenforceable";
- 3. Waivers of SCRA rights.** DOJ and CFPB informed landlords of their position on when SCRA waivers are permitted under the law and when such waivers would be invalid. For example, the waiver must occur during or after the military member's period of service, it must be in a separate document from the contract, and the waiver must be written in at least 12-point font;
- 4. Retirement or separation orders.** The agencies clarified that orders servicemembers receive upon departure from military service are subject to the same SCRA protections as transfer orders;
- 5. Notice of orders.** The joint letter also discussed how notice of military orders can be provided to landlords at any point as the SCRA does not impose a temporal requirement for such notice. Additionally, the notice and orders are permitted to be delivered via mail, hand delivery, email, or through a portal established by the landlord.

In their [joint letter to mortgage servicers](#), DOJ and CFPB clarified how the SCRA's provisions work concurrently with mortgage protections enacted in response to the COVID-19 pandemic. The agencies highlighted the foreclosure protections provided under the SCRA and reminded mortgage servicers of their SCRA obligations as federal and state eviction and foreclosure moratoriums and forbearances implemented under emergency COVID-19 protections begin to expire.

We're Here to Help

As the actions highlighted in this blog post indicate, state and federal authorities are seeking to protect servicemembers by aggressively enforcing the SCRA and state analogs. Rather than wait for an enforcement action to be taken, it is best to adjust compliance programs to incorporate SCRA requirements before any issue occurs. We have the experience to assist.

Matt Fay retired as the chief trial judge of the Coast Guard in 2020, following over 26 years of service as an officer and judge advocate focused on, among other things, civilian and military personnel administration, ethics, fiscal law, and litigation. Like Matt, Tim McHugh and Nicholas Ramos also are veterans who have benefited from the provisions of the SCRA. Matt, Tim, Nick, and their co-author Stephen Piepgrass, have long track records of supporting veterans and servicemembers, whether by protecting the voting rights of military members deployed in service of our nation or through other volunteer pro bono service.

Active Duty Service Members and Veterans are assisted by attorneys in multiple offices. Working with the ABA Military Pro Bono Program, the Veterans Consortium Pro Bono Program, Emory Law School's Veterans Clinic and the Georgia Bar's Military and Veterans Legal Assistance Program, our attorneys provide assistance in matters involving consumer debt, landlord/tenant and veterans' benefits. In addition, Atlanta attorneys participate in monthly on-site visits at the VA Hospital through Atlanta Legal Aid where we assist low-income cancer patients in the palliative care center with the preparation of wills, financial powers of attorney and nominations of guardians for minor children.

To learn more about how Troutman Pepper supports servicemembers and veterans, please see our website at <https://www.troutman.com/pro-bono/index.html>.

Our clients are reminded of the broad protections our servicemembers have earned through their volunteer service, and they are encouraged to seek assistance if there are questions about the applicability and implementation of these rights. Troutman Pepper's Regulatory Practice Group includes one of the oldest and most well-respected state attorneys general and federal regulatory practices in the nation. Let us help you ensure our military members are being rewarded for their valuable service to our nation.

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