

OHIO JUDGES' CHECKLIST¹

SERVICEMEMBERS CIVIL RELIEF ACT

The [Servicemembers Civil Relief Act](#) (SCRA) is located at 50 U.S.C. § 3901 et seq. In using this checklist, keep in mind the purpose of the Act: to enable servicemembers to devote their entire energy to the defense of the nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during military service. 50 U.S.C. § 3902 Some of the sections of the Ohio Revised Code that supplement the SCRA are included in this checklist.

Anticipatory relief (50 U.S.C. § 4021)

- Grant relief from obligation or liability incurred by servicemember before military service
- Grant relief for tax or assessment falling due before or during the servicemember's military service

Cell Phone Contracts – Early Termination (50 U.S.C. § 3956)

- Allow servicemember to terminate cell phone plan upon receipt of military orders to relocate for at least 90 days to a location where cell phone plan is not supported.
- Ohio law allows servicemembers and spouses to terminate cell phone contract if servicemember is “deployed on active duty.” [O.R.C. § 1349.03](#)

Coverage (50 U.S.C. § 3911) Those covered include:

- Members of the Army, Navy, Air Force, Marine Corps, Space Force and Coast Guard on active duty under 10 U.S.C. 101(d)(1)
- Members of the Reserve Components of the United States Armed Forces, when serving on orders
- National Guard members called to active duty by the President or Secretary of Defense for over 30 days under 32 U.S.C. 502(f) (national emergency declared by the President and supported by federal funds)
- Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration
- Dependents of those listed above, under certain circumstances

Criminal Prosecution - Violations of the following sections of the SCRA may be prosecuted as criminal misdemeanors:

Section 3931 – Protection of servicemembers against default judgments

Section 3937 – Maximum rate of interest on debts incurred before military service

Section 3951 - Evictions and distress

Section 3952 - Protection under installment contracts for purchase or lease

Section 3953– Mortgages and trust deeds

¹ https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/servicemembers_civil_relief_act/

Section 3955– Termination of residential and motor vehicle leases

Section 3957 – Protection of life insurance policy

Section 5378 – Enforcement of storage liens

Defaults - Reopen judgment (50 U.S.C. §3931(g))

- Must reopen order, judgment against servicemember if –
 - Servicemember was materially affected due to military service in asserting defense, and
 - Has a meritorious defense

Defaults – No Appearance by servicemember – (50 U.S.C. § 3931). The court must

- Require affidavit of military status by moving party (who may check on whether missing party is in military service by requesting check of records by Defense Department²)
- Appoint an attorney before entry of judgment if the non-moving party is in the military
- Grant a stay of proceedings for at least 90 days when non-moving party is in the military if -
 - there may be a defense, and the presence of servicemember is needed to make it, or
 - with due diligence, the appointed attorney can't contact the client or otherwise determine whether a defense exists

Defaults - Use of bond? (50 U.S.C. § 3931(b)(3))

- As a condition of entry of default judgment, require bond if it cannot be determined whether defendant is in military service.
- Bond may be used to indemnify non-moving party against loss/damage from default judgment (if later set aside) should military service be confirmed.

Evictions and Distress (50 U.S.C. § 3951)

- Landlord may not evict or subject premises to distress during period of military service, without court order, so long as the rent does not exceed the amount set annually by the Defense Department.
- Court may adjust obligation under the lease.
- In 2023, the set amount was \$9,106.46 per month. See 88 FR 6241, 1/31/2023³

Foreclosure - Protect against mortgage foreclosure (50 U.S.C. § 3953)

- Court may stay foreclosure proceedings until servicemember can answer, extend mortgage maturity date to allow reduced monthly payments, grant foreclosure subject to being reopened if challenged by servicemember, or extend the period of redemption by a period equal to servicemember's military service.
- Conditions for above: if
 1. Relief is sought on security interest in real/personal property
 2. Obligation originated before active duty
 3. Property owned by servicemember or dependent before active duty

² Upon application by either side or the court, the military service must issue a statement as to military service. 50 U.S.C. App. § 4012. DOD provides a website for SCRA inquiries, at <https://scra.dmdc.osd.mil/scra/#/home>

³ <https://www.federalregister.gov/d/2023-01992>

4. Property still owned by servicemember or dependent
5. Ability to meet financial obligations is materially affected by servicemember's military service
6. Action is filed during (or within 9 months after) servicemember's military service. (50 U.S.C. § 3953)

Legal Representative - Legal representative of a servicemember can assert SCRA protections on behalf of servicemember (50 U.S.C. § 3920). Legal representative is defined as:

- An attorney acting on behalf of a servicemember
- An individual possessing a power of attorney

Loans – Interest Rate Reduction (50 U.S.C. § 3937)

- Maximum rate of interest on debts incurred before military service is 6% retroactive to date of entry on active duty, so long as military service has “material impact” on ability of SM to repay pre-service loan.
- **Ohio** law limits interest and finance charges to 6% for servicemembers and spouses where servicemember is deployed for at least 180 days. **Ohio** law does not limit coverage to only pre-service loans. It allows creditors to request a showing of “material impact” by servicemember. [O.R.C. § 1343.031](#)

Mortgages (50 U.S.C. § 3953)

- In addition to the interest rate cap (described under “Loans” above), SCRA prohibits sale, foreclosure or seizure of property for breach of a mortgage except upon a court order or properly executed waiver of SCRA protection in accordance with 50 U.S.C. § 3918.
- Applies to mortgages that originated before period of military service

Private Right of Action (50 U.S.C. §4042)

- Servicemember or “any party aggrieved by violation of this Act” can pursue a civil action to obtain appropriate equitable or declaratory relief, and recover appropriate relief, including monetary damages.
- Court may award court costs and reasonable attorney fees.

Residential Lease – Early Termination (50 U.S.C. § 3951-3952, 3955)

- Allow servicemember to terminate leases upon entry on active duty or receipt of military orders for deployment (not less than 90 days), or transfer to another base.
- Grant a stay of eviction upon application by servicemember-tenant who shows that ability to pay rent is materially affected by military service. (50 U.S.C. § 3951(b))
- If rent is paid in advance, require the landlord to refund unearned portion. The servicemember is required to pay rent only for those months before the lease is terminated. (50 U.S.C. § 3955(f))
- It is a misdemeanor for a landlord to seize, hold or detain the security deposit or personal property of a servicemember or dependent when there is a lawful lease termination under the SCRA, or to knowingly interfere with the removal of said property because of a claim for rent after the termination date. A security deposit must be refunded to the servicemember upon termination of the lease. 50 U.S.C. App. § 3955(h).

Statute of limitations (50 U.S.C. § 3936)

- Period of military service may not be included in computing any limitation period for filing suit, either by or against servicemember.

Stay of Proceedings – Request by SM or attorney for suspension of case – 90 days (50 U.S.C. § 3932)

Grant stay of proceedings (discretionary on court’s own motion, mandatory on servicemember’s motion) for at least 90 days if motion includes:

- A statement as to how the servicemember’s current military duties materially affect the ability to appear, along with a date when available to appear, and
- A statement from the servicemember’s commanding officer that current military duty prevents appearance, and military leave is not authorized at the time of the statement

Stay of Proceedings - Additional stay beyond initial 90 days? (50 U.S.C. § 3932)

- Yes, if continuing material effect of military duty on servicemember’s ability to appear.

Stay of Proceedings – Denial of additional stay beyond 90 days? (50 U.S.C. § 3932)

- Only if attorney is appointed to represent the servicemember in the action or proceeding (50 U.S.C. § 3932(d)(2)).
- Expect attorney to renew the stay request since the case cannot be prepared or presented without assistance from the unavailable servicemember.

Stay of Proceedings - Unsure whether to grant /deny additional stay? (50 U.S.C. § 3932)

- Ask for a copy of the servicemembers’s current Leave and Earnings Statement, issued twice a month, to see how much leave the servicemember has accrued or used in the past few months.
- Convey questions from the court to the servicemember’s commanding officer as to duty hours, days for the servicemember, and availability to either attend court or to participate remotely.

Stay of Proceedings - Don’t penalize servicemember in stay request. (50 U.S.C. § 3932(b))

- Request for stay does not constitute appearance for jurisdictional purposes
- Also doesn’t constitute waiver of any defense, substantive or procedural

Stay of Execution of Judgment, Attachment and Garnishments (50 U.S.C. § 3934)

- Must stay execution of any judgment or order entered against servicemember if the servicemember shows military duties materially affect ability to comply with court decree
- Also vacate or stay any attachment or garnishment of property, money or debts in possession of the servicemember or a third party

Vacation of Execution of Judgment, Attachment and Garnishment (50 U.S.C. § 3934)

- Must vacate or stay any attachment or garnishment of property, money or debts in possession of the servicemember or a third party if the servicemember shows military duties materially affect ability to comply with a court decree
- Must stay execution of any judgment or order entered against servicemember if the servicemember shows military duties materially affect ability to comply with a court decree

Vehicle Lease – Early Termination (50 U.S.C. § 3952, 3955)

- Allows servicemember to terminate leases upon entry on active duty, receipt of military orders for deployment (not less than 180 days), transfer from the continental U.S. to a location outside the continental U.S., or transfer from Hawaii or Alaska to any other location.
- Ohio law permits termination of a vehicle lease if servicemember is deployed for 180 days or more. Ohio law does not require that the deployment be outside of the continental United States.
[O.R.C. § 1349.02](#)

Waivers of SCRA protections (50 U.S.C. § 3918)

- Only effective if made during period of military service.
- Usually must be in writing (and, in most cases, in 12-point font or larger).

See also [The Judge's Guide to the Servicemembers Civil Relief Act](#)



This checklist is distributed as a service to Ohio judges by the

Ohio Judicial Conference
65 South Front Street, 4th Floor, Columbus, Ohio 43215-3431 614-387-9750

1-800-282-1510
www.ohiojudges.org