

## SUMMARY OF THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

• **Default Judgments.** Before entry of a default judgment, the plaintiff must file with the court an affidavit indicating whether the defendant is or is not in military service or that the plaintiff is unable to determine the defendant's military status. If the court cannot determine the defendant's military status based upon the affidavit(s), it may require the plaintiff to post a bond before entry of a default judgment. If it is later discovered that the defendant is in military service, the bond would be available to indemnify the defendant servicemember against any loss or damage suffered due to entry of a default judgment, should that default judgment be set aside.

• **Stay of Proceedings When Servicemember Has Notice.** The act provides that at any stage before final judgment is entered in a civil action in which a servicemember is a party, the court may on its own motion or shall upon application of the servicemember (including supporting documentation) stay the action for a period of not less than 90 days.

• **Stay of Execution or Vacation of Judgment, Attachment, or Garnishment.** A court may on its own motion or shall upon application stay the execution of any judgment or order entered against the servicemember and vacate or stay an attachment, garnishment of property or money, or debts in the possession of the servicemember or a third party, if it determines that the servicemember's ability to comply with a court judgment or order is materially affected by military service.

• **Statute of Limitations.** The act tolls the statute of limitations for bringing any civil action or proceeding in a court by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns during the servicemember's period of military service (excluding any statute of limitations under the Internal Revenue Code).

• **Interest Cap.** Interest on an obligation or liability, entered into by the servicemember or the servicemember and spouse jointly prior to the servicemember's entry into military service, can not bear interest in excess of six percent per year during the period of military service.

• **Evictions and Distress.** The act provides that, absent court order, a landlord may not evict a servicemember or dependants from a primary residence for which normal monthly rent does not exceed \$2,400 (subject to an annual price inflation adjustment) or subject the premises to a distress action.

• **Protection Under Installment Contracts for Purchase or Lease.** The act provides that a contract for the purchase of real or personal property (including a motor vehicle) or the lease or bailment of such property, for which the servicemember made a deposit or installment payment before entering military service, may not be rescinded or terminated for a breach of terms occurring before or during military service without court order. Likewise, the property may not be repossessed absent a court order.

• **Mortgages and Trust Deeds.** In the case of a secured debt on real or personal property owned by the servicemember, which originated before the period of military service, the court

may or shall upon application, after hearing, stay a proceeding to enforce the mortgage obligation brought during or within 90 days after the military service. Alternatively, the court may adjust the obligation to preserve the interests of all parties.

- **Termination of Residential or Motor Vehicle Leases.** A servicemember may terminate a residential or automotive lease entered into before the start of military service. Further, a servicemember, who executes a residential or automotive lease and subsequently receives military orders for a permanent change of duty station or to deploy for a period of not less than 90 days, may terminate such lease.

- **Assignment of Insurance Policies.** If, prior to entry into military service, a servicemember assigned a life insurance policy to secure payment of an obligation, the assignee may not, absent court order, exercise any right or option obtained under the assignment during the period of military service plus one year.

- **Enforcement of Storage Liens.** A party that holds a lien on the property or effects of a servicemember may not, absent court order, foreclose or otherwise enforce any liens on such property during the servicemember's military service plus 90 days. The court may on its own motion or shall on application stay the foreclosure or adjust the obligation equitably.

- **Protection of Life Insurance.** The act provides protection to the servicemember for life insurance policies up to \$250,000 in coverage and in force not less than 180 days before the date of the insured's entry into military service and at the time of application under the act. The insured, the insured's legal representative, or the insured's beneficiary may apply in writing for protection of the life insurance contract from lapse, termination, or forfeit for the nonpayment of a premium from the date of receipt of the application through the period of the insured's military service plus two years.

Unpaid premiums due under a protected life insurance policy are to be treated as a policy loan on the policy. If the policy matures during the protection period, unpaid premiums plus interest will be deducted from the insurance proceeds. Unpaid premiums due on a policy protected by the act are guaranteed by the United States. The amount paid by the United States shall be treated as a debt owed to the United States by the servicemember. The United States may collect the debt from the servicemember or offset the debt against funds owed to the servicemember. **This debt is non-dischargeable in bankruptcy (an uncodified priority unsecured debt).**

- **Taxes and Assessments.** The act addresses taxes or assessments (other than income tax) due and unpaid before or during the servicemember's period of military service. This includes taxes on personal property (*e.g.*, an automobile tax) and real property taxes. Absent a court order, the servicemember's personal or real property may not be sold to enforce collection of such tax.

- **Anticipatory Relief.** The act provides that a servicemember may, during military service or within 180 days following release from the military, apply to a court for relief from any obligation or liability incurred by the servicemember before the servicemember's military service or from a tax or assessment falling due before or during the servicemember's military

service. Subject to the act's requirements and court determination, servicemembers are able to apply for relief before a default occurs.

- **Business or Trade Obligations.** The act provides that if a servicemember's business has an obligation or liability for which the servicemember is personally liable, the servicemember's assets not held in connection with the business may not be available for satisfaction of the business' obligation or liability during the servicemember's military service.

- **Protection of Persons Secondarily Liable on Servicemember's Obligations.** The act permits a court to extend the protections granted to servicemembers to any persons secondarily liable on the servicemember's obligations.

- **Waiver of Rights by a Servicemember.** A servicemember may waive the rights and protections provided by the act.

There are other provisions of the act that are not included in this summary. Consult the full text of the act located on the court's web site at [www.wawb.uscourts.gov](http://www.wawb.uscourts.gov) in Court Information/Public Notices.