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Soldiers' and Sailors' Civil Relief Act

Recent developments both at home and abroad require us to look at applicable law relating to military service. Borrowers, lessees and guarantors' financial obligations may be impacted as a result of a call to service. For your guidance, highlights of the law are outlined below.

Introduction

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) provides a wide range of protections for individuals entering or called to active duty in the military. The SSCRA is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty. The act does not apply to criminal matters. Reservists and the members of the National Guard are also protected under the SSCRA while on active duty. The protections generally begin on the date of entering active duty and terminate within 30 to 90 days after the date of discharge from active duty.

Maximum Rate of Interest

If, prior to entering active duty service, a service member incurs a loan or obligation with an interest rate in excess of 6%, the service member will, upon application to the lender, not be obligated to pay interest in excess of 6% per year. This relief applies during the period of active duty unless a court finds the service member's ability to pay has not been materially affected by military service.

Installment Contracts

A service member who enters into an installment contract prior to entering active duty is protected if the service member's ability to make payments is materially affected by military service. Here the courts will compare the service member's pre-service income and military income to determine the service member's financial condition. The creditor is prevented from exercising rights of rescission, termination or repossession without a court order.

Default Judgments

Before a court can enter a default judgment (for failure to respond to a lawsuit or appear at trial) against a service member, the person suing the service member must provide the court with an affidavit stating the defendant is not in the military. If the defendant is in the military, the court will appoint an attorney to represent the defendant's interests (usually to seek a stay of proceedings). If a default judgment is entered against a service member, the judgment may also be reopened if the service member makes application within 90 days of leaving active duty and demonstrates both prejudice and a legal defense.

Adverse Actions

Creditors and insurers are prohibited from pursuing adverse actions (i.e. notifying credit agencies, denying credit, changing terms) against service members who exercise their rights under the SSCRA.

Stay of Proceedings

Courts have the discretion to delay a civil court proceeding when the requirements of military service prevent the service member from either asserting or protecting a legal right. Usually, requests for a stay are granted if the time period requested is limited (exercise, deployment). Availability of leave (including excess leave) and duty requirements are key factors.

Rent

The SSCRA prohibits eviction, without a court order, of a service member and their dependents from rented housing where the rent does not exceed \$1,200.00 per month. The court may delay eviction proceedings for up to three months.

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Insurance

A service member's private life insurance policy is protected against lapse, termination or forfeiture for nonpayment of premiums for a period of military service plus two years. The insured or beneficiary must apply to the Veteran's Administration for protection. Also, any health insurance in effect on the day before active military service commenced is reinstated without waiting periods or physical condition restrictions.

Taxation

A service member's state of legal residence may tax military income and personal property. A service member does not lose legal residence solely because of a transfer pursuant to military orders. For example, if a member is a Virginia resident and deployed to a base in California, the service member will not lose Virginia residency nor be subject to California's state income tax on military pay.

Any questions on SSCRA should be directed to Lee J. Mendelson, Esq. or Marc L. Hamroff, Esq. at (516) 873-2000. You may also contact us at www.mhhlaw.com.