



CONSUMER PROTECTION FOR MILITARY SERVICE MEMBERS

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UNCLASSIFIED

Servicemember's
Civil Relief Act

SCRA

Liberal
Construction

“The Act should be read with an eye friendly to those who dropped their affairs to answer their country's call.”

LeMaistre v. Leffers, 333 U.S. 1, 6
(1948)

SCRA – AN Incredible Consumer law!!

- Alters conventional contracts – NO SELF HELP ENFORCEMENT!!!!
- Prevents default judgment except in accordance with its provisions
- Allows for cancellation of premises leases and auto/truck leases
- Reduces interest rates on some pre-service obligations to 6%
- Gives consumers anticipatory relief option without filing bankruptcy

SCRA JURISDICTION

50 USC § 3911

Court includes:

- All Courts -- ALL MEANS ALL!
 - SCRA applies to civil cases only
 - Includes Bankruptcy & family courts
- Administrative agencies – federal, state and local -- ALL
- May apply to ANY court that would otherwise have jurisdiction
- Whether or not of record
- Mandatory arbitrations are NOT covered by SCRA.

Adding Administrative Agencies is a huge expansion of coverage under the SCRA

SCRA PERSONS
SECONDARILY
LIABLE

- If court grants relief (stay, postponement, suspension of obligation) to Servicemember, the relief may also be granted to persons primarily or secondarily liable with the SM
 - Surety, guarantor, endorser
 - Accommodation maker, *co-maker*
 - Other person who may be primarily or secondarily subject to the obligation or liability

Reserves ordered to duty

Members of Reserve component entitled to protection of SCRA from receipt of mobilization orders

Allows for time to put affairs in order

SCRA WAIVER OF RIGHTS §3918

- Member may waive protections
- Must be made during or after period of service
- Must be in separate writing not less than 12-point type (2004 amendment)
 - ◆ Contract, lease, or bailment
 - ◆ Mortgage, trust, deed, lien, other security
 - ◆ Repossession, retention, foreclosure, sale, forfeiture, taking possession of property

CMVC/SCRA

Loans/Debts

SCRA MAXIMUM
RATE OF INTEREST

- **PRE-SERVICE** obligation consisting of mortgage, trust deed, or other mortgage-type obligation
 - 6% Interest Cap extends for *one year after* military service
 - Only during the period of military service for any other obligation or liability.
 - Effective 30 Jul 08
 - Definition of “military service” is broad.

MAXIMUM RATE OF INTEREST §3937

- PRE-SERVICE loans incurred by SM, or SM and spouse jointly
 - Now includes guaranteed student loans under(20 USC §1078(d))
- Cap of 6% per annum; all excess FORGIVEN
- Have to re-compute payments at 6% rate
- Cap rescinded if creditor shows no material effect
- SM must give written notice w/copy of orders
- Private right of action to enforce or seek damages -- §4042

§3937,
(cont'd)

- Two kinds of obligations or liabilities now defined:
 - Obligations secured by a mortgage, trust deed or other security in the nature of a mortgage
 - All other obligations
- For obligations secured by a mortgage, the duration of the 6% cap is now extended to *one year after REFRAD*.
- For all other obligations, the 6% cap ends at REFRAD.

CMVC Interest Rates

CMVC §405

No obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a service member before that person's entry into service **shall, during any part of the period of military service, bear interest at a rate in excess of 6 percent per year...**

Requirement if Lender disagrees

...unless, in the opinion of the court, **upon application thereto by the obligee**, the ability of the service member to pay interest upon that obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of that service...

Federal
Equivalent under
SCRA

(c) **A court may grant a creditor relief** from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6% per year is not materially affected by reason of the servicemember's military service.

Deferments

CMVC Deferment
of Loan
Obligations

CMVC §800

- (a) ...a reservist who is called to active duty on and after January 1, 2014, may defer payments on any of the following obligations while serving on active duty:...

CMVC Deferment of Loan Obligations

- (1) An obligation secured by a mortgage or deed of trust.
- (2) Credit card as defined in §1747.02 of the Civil Code.
- (3) Retail installment contract as defined in Section 1802.6 of the Civil Code.
- (4) Retail installment account, installment account, or revolving account as defined in §1802.7 of the Civil Code.
- (5) Up to two vehicle loans. For the purpose of this chapter, “vehicle” means a vehicle as defined in §670 of the Vehicle Code.
- (6) Any payment of property tax or special assessment of in-lieu property tax imposed on real property which is assessed on residential property owned by the reservist and by as reservist’s primary place of residence on the date the reservist was ordered to active duty.

CMVC Prohibitions during deferred period

- No penalty shall be imposed on the non payment of principal and interest
- No interest shall be charged or accumulated on the principal or interest on which the payment was delayed
- No foreclosure or repossession of property on which payment has been deferred shall take place during the period specified in §800.

When amounts deferred pursuant to CMVC §800 are due

CMVC §800

(e) ... the lender shall extend the term of the obligation by the amount of months the obligation was deferred.

Loan is then either repaid during the extended period or spread out over the entire loan plus extended period.

Deferment of Loan Obligations CMVC §409.3

§409.3. (a) A service member may, at any time during his or her period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by the service member prior to his or her period of military service...

There are official California Court Forms to
Request a deferment.

Deferment Of Obligations For All Calls to Active Duty & For Entire Active Duty Period CMVC §409.3

- 1) Not Limited to Type or Place of Military Service .
- 2) Debt must be incurred prior to orders.
- 3) Requires a Court hearing and Order.
- 4) Must show that Order to Active Duty has materially affected the Servicemember's ability to meet his or her obligation.
- 5) Can apply to any type of obligation.
- 6) Not limited to a reduction in Servicemember's income as required under CMVC §§800-811.

Length of Deferment Pursuant to CMVC §409.3

1

Not just 6 months

2

For the entire period of
military service
(deployment)

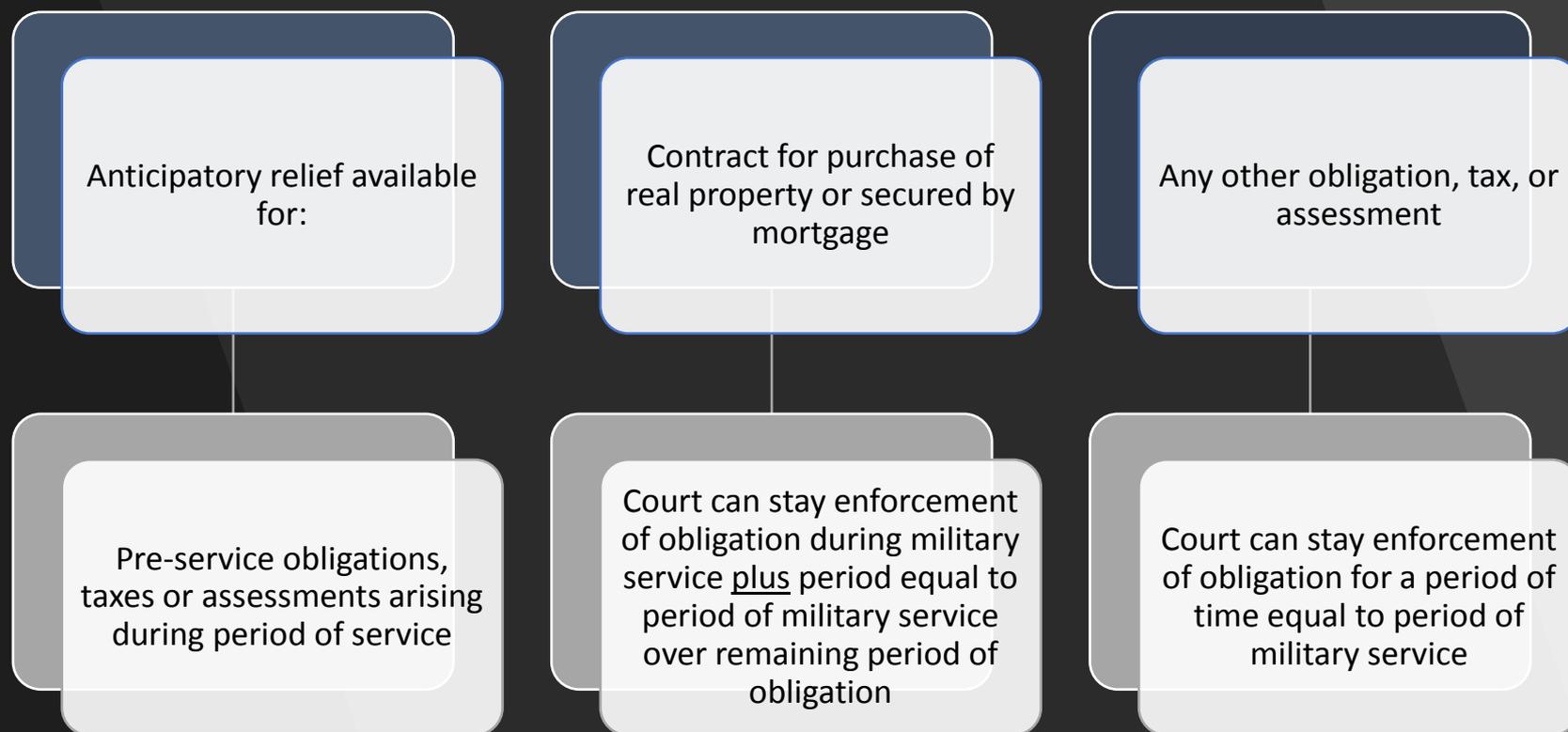
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If request made after
servicemember returns,
for a period equal to the
period of military service
(deployment)

Note

Remember that the request can be made retroactive. If servicemember does not make request prior to deployment, it can be made during deployment or at any time up to 6 months coming off of the deployment orders.

SCRA ANTICIPATORY Relief §4021



Deferred payments
must be paid over
“extension period” plus
new payments as they
accrue

Must show material
effect

Must apply (file suit)
during period of service
or within 180 days after

No penalties may be
imposed for claiming
protections of SCRA

Anticipatory relief (cont.)

CMVC Procedure

§409.3. (b) **The court shall set a hearing on the petition within 25 days from the date the petition is filed**, unless the court shows good cause for extending the date of the hearing. The petition shall be served at least 10 days before the hearing. The respondent shall file and serve a response to the petition at least five days before the hearing. (c) **The court shall not charge a filing fee or court costs** for a petition filed pursuant to this section.

CAR LEASES

Special Considerations for Leased Vehicles

- Pursuant to SCRA
- Servicemember may terminate a vehicle lease
- Pursuant to CMVC §808, servicemember may simply extend lease for the **180** day period provided by §800/808

SCRA TERMINATION OF VEHICLE LEASES

§3955

- Pre-service vehicle leases
 - If SM is called up or enters service for 180 days or more; or
- Vehicle lease executed after service commences if SM receives orders :
 - For permanent change of station outside continental US, or
 - For deployment for 180 days or more
- Notice of termination must be in writing, delivered to lessor (or lessor's agent or grantee) along with copy of military orders (by hand, mail or FedEx)

CMVC §808

(a) During the period specified in §800, the reserivist may defer payments for leased vehicles without breach of the lease or the foreclosure or repossession of the vehicle. If a lender defers payments pursuant to this section, the lender shall extend the term of the lease by the amount of months the lease was deferred.

(b) For the purposes of this chapter, "vehicle" means a vehicle as defined in §670 of the Vehicle Code.

CMVC §826

- §826. On or after the effective date of the act adding this chapter, any service member who terminates a motor vehicle lease pursuant to the federal Servicemembers Civil Relief Act shall be allowed by the lessor to make payment of any arrearages and other obligations that are due and unpaid at the time of termination of the lease in equal installments over a period equal to at least the period of military service.



STAY OF ACTIONS / JUDGMENTS

Stay of Actions
CMVC §403(a)

- At any time during the servicemember's period of military service or within **60** days thereafter
- The court may stay any action on its own motion or at the request of the servicemember or someone on the servicemember's behalf

Stay of
Judgments
CMVC §403(c)

- At any time during the Servicemember's period of military service or within **60** days thereafter
- The court may stay the execution of any judgment on its own motion or at the request of the servicemember or someone on the Servicemember's behalf
- Vacate any attachment or garnishment



Stay provision of §3932

If defendant is in military, court SHALL stay proceedings

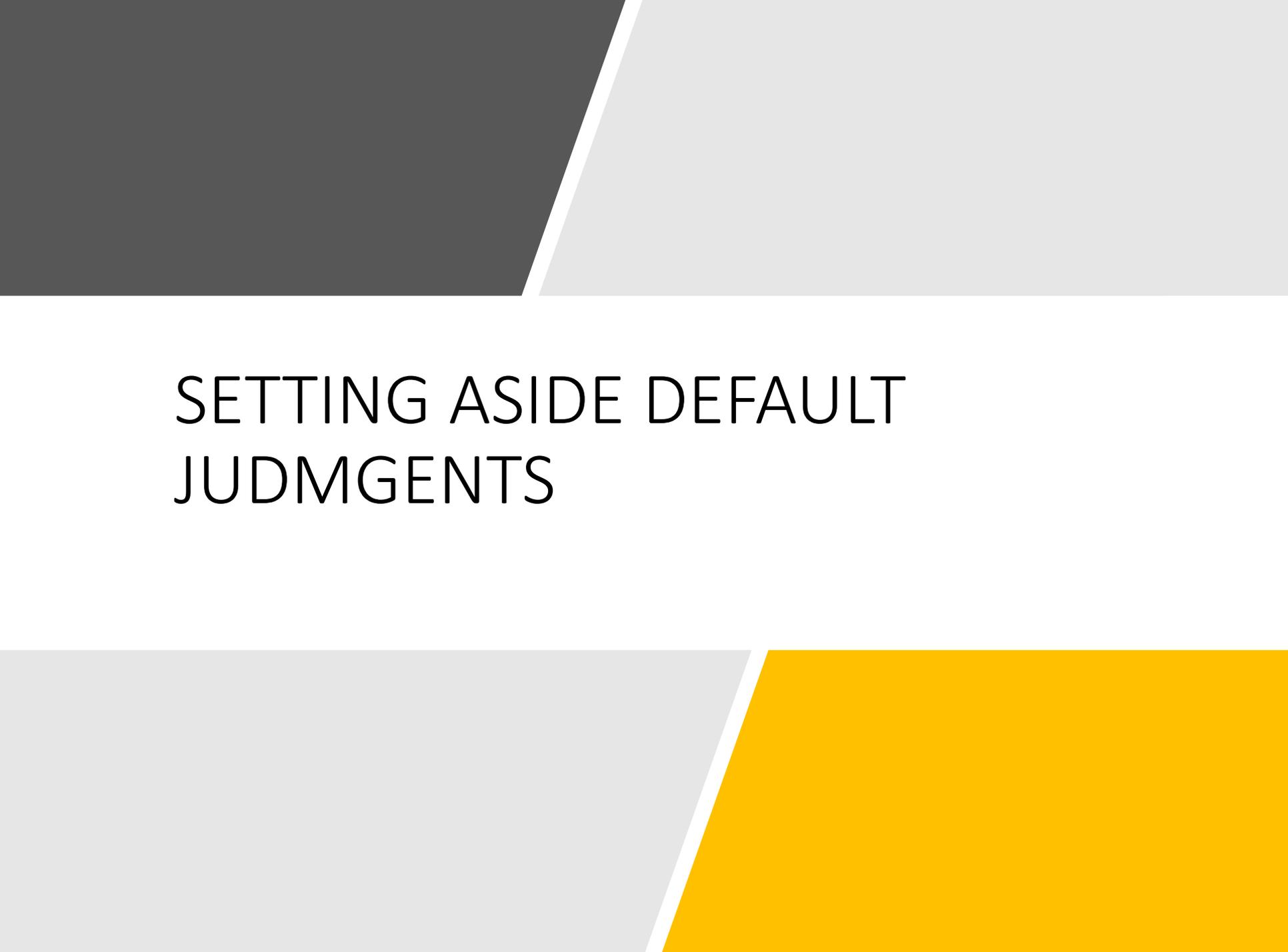
- Minimum 90 days on application of counsel or court's own motion

Court must determine that

- There may be a defense that cannot be presented without presence of defendant; or
- after due diligence counsel has been unable to contact defendant or otherwise determine if a meritorious defense exists

50 USC § 3951 -
evictions

- Provided monthly rental does not exceed approx. \$3,584.99 (less in earlier years):
 - **NO EVICTION WITHOUT COURT ORDER**
 - COURT CAN STAY EVICTION FOR 90 DAYS; OR
 - ADJUST THE OBLIGATION TO PRESERVE INTERESTS OF ALL PARTIES



SETTING ASIDE DEFAULT JUDGMENTS

Setting Aside
Default
Judgments
CMVC
§402(d)

- Any default judgment rendered against a Servicemember during the period of military service or within **30** days thereafter may be set aside by the court.
- Application must be made no later than **90** days after termination of service
- Servicemember must show prejudice in not being able to render a defense
- Any person taking a default improperly is not only subject to a misdemeanor but actual damages, attorneys fees and costs.

DEFAULT JUDGEMENTS - §3931

- Applies only if defendant has not appeared
- Plaintiff's Affidavit
 - Whether or not defendant is in military; or
 - If unable to determine status - court may require plaintiff to post bond
- If defendant is a military member, court cannot enter default judgment until attorney is appointed to represent military member

Setting aside default judgements

Court SHALL reopen a default judgment entered while SM on active duty or within 60 days thereafter, when:

- SM applies while on active duty or within 90 days thereafter, and shows
 - Material affect, plus
 - Meritorious defense
-
- *BONA FIDE* purchasers protected

Date of Obligation Immaterial

1

Applies regardless of when the obligation was incurred

2

Especially important in mortgage foreclosures

- Banks and courts do not understand that even if there is judicial foreclosure on a mortgage, must comply with §3931

How to challenge default judgement

Must file motion to set aside or vacate judgment within 90 days of REFRAD

Must show “material effect” and meritorious defense

Courts and counsel don't have a clue what this is all about

Stay provisions (SM has notice of lawsuit – §3932)

- Temporary delay in civil actions until servicemember can appear
 - During period of service plus 90 days
 - Servicemember has received notice of proceeding
- Automatic 90 day stay if:
 - SM shows military duty materially affects ability to appear, and date when can appear
 - Commanding officer writes letter stating duty prevents appearance and leave not authorized

Application for a stay under §3932 does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction)

Legislative
removal of legal
conundrum

“Clarification of appearance”

Extension of stay

SM may apply for additional stay based on continuing material affect of military duty on SM's ability to participate in the litigation

If Court does not grant additional stay, it shall appoint counsel to represent SM

Critical to do the written application for a stay as required by SCRA

- Military duties prevent appearance
- State a date when available in the future
- Commanding officer concurs that leave not available

Write the letter
for the client
and
commanding
officer

Stay application

Fines & penalties

- NO penalties under a contract if performance *stayed by Court*, and if no stay --
- Court may reduce or waive fine or penalty if
 - SM was in military service at time of fine/penalty
 - Performance materially affected by military service
- MUST APPLY TO COURT FOR RELIEF
- Pre-payment penalty in mortgage would qualify

SCRA STAY OR VACATION OF JUDGMENTS §3934

- If military service materially affects compliance with judgment or order:
- Court SHALL on application of SM
 - Stay execution; and
 - Vacate or stay attachment or garnishment
- Court may also act on its own motion

SCRA DURATION OF STAYS



1

May be for the period of service plus 90 days, or any part thereof

2

Court may set the terms and amounts of any installment payments

3

Plaintiff may proceed against any codefendants not in military service with court approval



Lien enforcement

SCRA ENFORCEMENT OF LIENS §3958

ONLY Court
ordered
enforcement;
no foreclosure
or enforcement
of lien (no
sales,
repossession of
property) w/o
court order

- Liens include: storage, repair, or cleaning property of SM
- Doesn't matter if pre-service obligation or not
- Protections extend during any period of military service and for 90 days thereafter

Stay of
proceedings

- Court SHALL stay or adjust the obligations of all parties if SM applies and ability to comply is materially affected
- Court may do same on own motion

Storage Liens

No foreclosure or sale of a SM's property to enforce a storage lien *without a court order during period + 90 days*

Compliance with state laws immaterial



FORECLOSURES

foreclosure
protection §3953

- No foreclosure or sale of a SM's property to enforce a storage lien *without a court order*
- Compliance with state laws immaterial
 - California Power of Sale is of NO Effect
- Big problem with outsourcing

Powers of a court under §3953

Restructure

Court can restructure the mortgage

Halt

Court can order the foreclosure halted –
for how long only the court can say

Adjust

Court can order creditor to accept
lowered payment – “adjust the
obligation”

CMVC
Foreclosure
Protection

- With respect to real property, no person may rescind or terminate a contract prior or during the period of military service, except by action in a court of competent jurisdiction
- Any person violating this section shall be liable for actual damages, reasonable attorneys fees, and costs CMVC §407

NO PENALTY FOR
EXERCISING
RIGHTS

No Penalty for Exercising Rights

- Any exercise of rights or benefits, or the mere request for such shall not result in any type of penalty
 - Determination by lender of inability to pay
 - Reduction in credit
 - Denial or revocation of credit
 - Change of terms of credit
 - Refusal to grant credit
 - Adverse reports
 - Refusal to insure
- Any violation is subject to misdemeanor, attorneys fees, costs and damages.

Military Leave from Schools

Military leave of absence from school CMVC §824(a)

§824. (a) If requested by a student granted an academic leave of absence for military service, not later than one year after the student's release from military service, other than a dishonorable release, the institution in which the student is enrolled shall do one of the following, as elected by the student:

(1) The institution shall make arrangements to reasonably accommodate and assist the student so that he or she is able to meet any and all coursework requirements that he or she may have missed due to military service.

(2) The institution shall refund the tuition and fees paid by the student for the academic term in which the student is required to report for military service regardless of whether the student was called to military service before the academic term had commenced or after the academic term had commenced. The refund shall equal **100** percent of the tuition and fee charges the student paid the institution for the applicable academic term.



QUESTIONS

STATE MILITARY RESERVE