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Taking Care of our Military Servicemembers

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We all recognize and appreciate the sacrifices made by military servicemembers when they leave their families and homes for active duty. The US Congress' appreciation for active duty military servicemembers is embodied in the Servicemembers' Civil Relief Act ("SCRA"), which was signed into law in 2003. The SCRA includes the following protections:

Tolling provision. This provision stops or "tolls" a claim during the period of time the servicemember is on active duty for the reason that the military service materially affects the servicemember's ability to effectively participate in litigation.

Interest rate cap. There is a cap of 6% on all liabilities of servicemembers and their spouses as of the date the servicemember begins active duty. The cap applies to mortgages during the time the servicemember is in active military service plus one (1) year thereafter. It also applies to credit card interest in certain circumstances, service charges, renewal charges, fees and other charges, except for bona fide insurance.

Protection from foreclosure proceedings. If a creditor of a servicemember goes to court regarding foreclosure, the court may stay the proceedings, lower the payments, extend the redemption period by the amount of time equal to that of the servicemember's military service, or set aside a foreclosure judgment already entered to allow the servicemember to assert a valid defense.

Protection from eviction. Active duty servicemembers may not be evicted from their primary residence while on active military service.

Lease termination. A mobilized servicemember may terminate a residential, business or agricultural real estate lease by serving the lessor a Notice of Termination and a copy of his or her military mobilization orders.

Protection against entry of default judgments. Until the Court has opportunity to appoint an attorney to represent a servicemember, he or she is protected against entry of a default judgment. Typically, Courts will stay or "freeze" the pending litigation while the servicemember is mobilized.

Stay execution of judgment. If military duty materially affects a servicemember's ability to comply with a judgment, the Court may stay execution of the judgment or vacate any attachment or garnishment.

Indeed, the SCRA is intended to protect servicemembers who have no control over where they live, what they do, and how they are paid. The Servicemembers' Civil Relief Act is appropriate protection for those who are devoting their full attention to military duty.

Don't hesitate to contact me if you have any questions on how the SCRA may affect you or a family member who is on active duty.