

/\* Here's the full text of the Soldiers' and Sailors' Civil Relief Act; this act gives persons in the military service protection from certain mortgage foreclosures and lawsuits. It is also important for anyone consider suing someone in the military to be aware of its limitations.\*/

#### 501. Short title

This Act [50 USC Appx. 501 et seq.] may be cited as the Soldiers' and Sailors' Civil Relief Act of 1940.

### ARTICLE I. GENERAL PROVISIONS

#### 510. Purpose; suspension of enforcement of civil liabilities

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act [50 USCS Appx. 501 et seq.] remains in force.

#### 511. Definitions

(1) The term "person in military service", the terms "persons in military service", and the term "persons in the military service of the United States", as used in this Act [50 USC Appx. 501 et seq.], shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act [50 USC Appx. 501 et seq.], shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [50 USC Appx. 501 et seq.], shall include the time between the following dates: For persons in active service at the date of the approval of this Act [enacted Oct. 17, 1940] it shall begin with the date of approval of this Act, for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service,

but in no case later than the date when this act [50 USC Appx. 501 et seq.] ceases to be in force.

(3) The term "person", when used in this Act [50 USC Appx. 501 et seq.], with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [50 USC Appx. 501 et seq.], shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

#### 512. Territorial application; jurisdiction of courts; form of procedure

(1) The provisions of this Act [50 USC Appx. 501 et seq.] shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act [50 USC Appx. 501 et seq.] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court.

#### 513. Protection of persons secondarily liable

(1) Whenever pursuant to any of the provisions of this Act [50 USC Appx. 501 et seq.] the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act [50 USC Appx. 501 et seq.], the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation the court shall not enforce the

provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act [50 USC Appx. 501 et seq.] shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [enacted Oct. 6, 1942] no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106 [50 USC Appx. 516].

514. Extension of benefits to citizens serving with forces of war allies

Persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act [50 USC Appx. 501 et seq.] remains in force and who immediately prior to such service were citizens of the United States shall, except in those cases provided for in section 512 [50 USC Appx. 572], be entitled to the relief and benefits afforded by this Act [50 USC Appx. 501 et seq.] if such service is similar to military service as defined in this Act [50 USC Appx. 501 et seq.], unless they are dishonorably discharged therefrom, or it appears that they do not intend to resume United States citizenship.

515. Notice of benefits to persons in and persons entering military service

The Secretary of War and the Secretary of the Navy shall make provision, in such manner as each may deem appropriate for his respective Department, to insure the giving of notice of the benefits accorded by this Act [50 USC Appx. 501 et seq.] to persons in and to persons entering military service. The Director of Selective Service shall cooperate with the Secretary of War and the Secretary of the Navy in carrying out the provisions of this section.

/\* Now it's the Secretary of Defense's Job \*/

516. Extension of benefits to persons ordered to report for induction or military service

Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military

service under article I, II, and III of this Act [50 USC Appx. 510 et seq., 520 et seq., 530 et seq.] during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service.

517. Effect on rights, remedies, etc., pursuant to written agreements entered after commencement of military service

Nothing contained in this Act [50 USC Appx. 501 et seq.] shall prevent --

(a) the modification, termination, or cancellation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage or

(b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment,

pursuant to a written agreement of the parties thereto (including the person in military service concerned, or the person to whom section 106 [50 USC Appx. 516] is applicable, whether or not such person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106 [50 USC Appx. 516].

/\* The essence of the Soldier's and Sailor's Civil Relief Act is that as to obligations entered into PRIOR to going into military service, the military personnel and those contingently or jointly liable on a debt or in a suit MAY be protected until the military personnel are no longer in the service. Thus, it is necessary to be aware if you are suing a member of the military that you are subject to the act. Likewise, if you are a member of the military you have the protections described in the act. But the act does not apply as to debts incurred once someone is in the military service. \*/

## ARTICLE II. GENERAL RELIEF

520. Default judgments; affidavits; bonds; attorneys for persons in service

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not

able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act [50 USC Appx. 501 et seq.].

Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subdivision that facts be established by affidavit.

/\* Some Courts are very serious about enforcing this regulation, others are not. In any event in order to avoid a collateral attack on a lawsuit you might be forced to bring, be sure that you are not suing someone protected by the act, and do provide an affidavit of non-military service.\*/

(2) Any person who shall make or use an affidavit required under this section, or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subdivision (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act [50 USC Appx. 501 et seq.] to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the

termination of such service, to be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act [50 USC Appx. 501 et seq.] shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

/\* This means that once out of the military a serviceperson has 30 days (or while they are in the service) to invoke the act and attempt to set aside a judgment, decree or order. \*/

521. Stay of proceedings where military service affects conduct thereof

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [50 USC Appx. 501 et seq.], unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

522. Fines and penalties on contracts, etc.

When an action for compliance with the terms of any contract is stayed pursuant to this Act [50 USC Appx. 501 et seq.] no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired.

523. Stay or vacation of execution of judgments, attachments, etc.

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service --

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act [50 USC Appx.

501 et seq.]; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act.

#### 524. Duration and term of stays; codefendants not in service

Any stay of any action, proceedings, attachment, or execution, ordered by any court under the provisions of this Act [50 USC Appx. 501 et seq.] may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise.

Where the person in military service as a codefendant with others the plaintiff may nevertheless by leave of court proceed against the others.

#### 525. Statutes of limitations as affected by period of service

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [enacted Oct. 6, 1942] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.