

## **SOLDIERS' AND SAILORS' CIVIL RELIEF ACT**

The Soldiers and Sailors Relief Act of 1940 ("Act") was enacted to enable our members of the military to devote their entire time and energy to the defense needs of the nation. The Act, however, puts significant restrictions on creditors who may have pending civil litigation against a member of the military services. These restrictions have been highlighted in recent years as Operation Desert Shield/Desert Storm have found the military calling up its reserve forces for active duty.

Generally, a plaintiff may obtain a default judgment against a defendant who fails to file a response to a Complaint after being duly served. Article II of the Act, however, protects service members from having a default judgment obtained against them. Section 520 of the Act states that an Affidavit must be filed with Motions for default judgments indicating whether or not the Defendant is an active member of the military service. If the Defendant is in the military, no judgment shall be entered until the Court appoints an attorney to represent the military member and protect his or her interests.

The U.S. legislature made clear the purpose of the Act, stating:

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 made to suspend the 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...  
50 App., Section 510

If for some reason a judgment is rendered in an action or proceeding governed by the Act against any person in the military service during the period that he or she was in such service or within 30 days thereafter, the military member will have grounds to vacate, set aside or reverse the default judgment and may do so upon proper application. The service member has 90 days after the termination of his or her military service to make such an application to the Court.

The creditor may move forward by making a Motion to the Court for appointment of an attorney to represent the military member's interests. The Court-appointed attorney, however, may not waive the rights or bind the service member by his or her acts.

Section 523 of the Act further protects any military member against whom judgment was obtained by allowing him or her to seek counsel after judgment has been entered and to move to vacate judgment. This action may be taken at any time during the military service or for 60 days

thereafter. This Code Section gives the military service member an opportunity to relitigate issues that may have been adversely decided in his or her absence.

Section 525 of the Act stays statutes of limitations for causes of action by or against members of the military service. As a result, if a creditor is unable to obtain judgment against a member of the military service while the person is in the service, the Act extends the period of time in which the creditor can pursue the military member. The creditor should note, however, that the statute does not apply to spouses of a military service member or other co-obligors unless they are members of the military service as well.

The Act can and does place a burden on creditors seeking judgment against members of the military service who have defaulted on their credit obligations. The purpose of the Act, to protect those who enter the military service from having judgment obtained against them while they are in the process of defending their country, is viewed by Congress as sufficient justification. □

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