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COLLECTION OF DEBTS INCURRED BY MILITARY PERSONNEL: THE CREDITOR'S VIEW

Thomas W. Goldman*

INTRODUCTION

Collection of debts incurred by military persons is often delayed or considered futile because of the failure of creditors to understand the position of the military regarding the payment of private debts by its personnel. If the creditor requests the military commander to pressure the debtor for payment, he may be rebuffed by the statement that "This is not a collection agency." Similarly, if the debtor is confronted, his reply may be that "I'm protected by the Soldiers' and Sailors' Civil Relief Act." Where do you turn from here?

In answering the question, the policy and procedure of the Department of the Army will be explored as a specific example¹ and then an examination of the protections given the creditor and debtor under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended,² will follow.

I. DEPARTMENT OF THE ARMY REGULATIONS

A. POLICY

Army regulations explicitly state that personnel are "expected to

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1. Each branch of the service has a policy and procedure relating to the payment of private debts of military personnel. Further, service regulations which are in effect world wide may be supplemented at lower levels as long as inconsistencies do not result. The regulations mentioned herein refer to Army regulations as supplemented by the 5th Army (5A Supplement). For a related article reflecting the view of the debtor see Butler, Stuart, Wolen and Herron, *Indebtedness and the Serviceman*, 10 AF JAG L. REV. 25 (1968).

2. 54 Stat. 1178 (1940) as amended, 50 U.S.C. App. §§ 501-48, 560-90 (1970). [Hereinafter referred to as "the Act." The sections relate to 50 U.S.C. App.]

pay . . . just financial obligations in a proper and timely manner."³ This policy is recurrent in the regulations and reveals a strong desire to avoid conflicts with local merchants over past due bills. This obviously works to the advantage of the creditors. For example, a regulation states, "Commanding officers will not tolerate action of irresponsibility, gross carelessness, neglect, dishonesty, or evasiveness in the private indebtedness and financial obligations of their personnel."⁴

B. PROCEDURE

There is no question that with or without a service policy promoting the payment of debts, collection is a civil matter and therefore a matter for civil authorities.⁵ However, that policy does provide a creditor the means of avoiding a law suit through a system of counseling services provided by the Army to the debtor⁶ and "debt processing assistance" for the creditor.⁷

While it is true that the commanders will not act as collection agencies, they are responsible for insuring that legal assistance is made available to individuals who have current legal problems resulting from poor financial management.⁸ That in itself is a benefit to the creditor because it is a preventive program in the sense that arrangements might be made for payment before the account becomes past due to the extent it must be referred to a collection agency or an attorney. The Army cannot force the individual to pay the creditor and cannot divert part of his pay to his creditors without his consent.⁹ On the other hand, real pressure can be applied by the commander through debt processing assistance. Assistance will be given only to those creditors who have met the Standards of Fairness and have subsequently been issued a Certificate of Compliance.¹⁰ The standards which must be complied with before the indebtedness is incurred require: (1) that the finance charge be lawful; (2) that the attorney's fee for collection not exceed certain limits; (3) that the debtor have the right to remove security

3. Para. 1-3(a), AR 600-15, 11 Feb. 70. These regulations do not apply to claims for support of dependents nor claims by the federal, state and local governments.

4. Para. 3-1(b), AR 600-15, 11 Feb. 70; Para. 1-3(a), AR 600-15, 11 Feb. 70.

5. Para. 1-3(b), AR 600-15, 11 Feb. 70.

6. AR 600-14, 30 Sept. 65.

7. Para. 2-2(d), AR 600-15, 11 Feb. 70.

8. Para. 4(4), AR 600-14, 30 Sept. 65.

9. *Supra* note 5. The creditor exercises leverage not only through debt processing assistance, but also through the threat of disciplinary action that might be initiated against the debtor. While the creditor has no part in the disciplinary process and is not notified of any such action, complaints of unpaid bills can lead to this result. *See* Para. 3-1(b), AR 600-15, 11 Feb. 70.

10. *Supra* note 7.

for the obligation out of the state if notice is given the creditor; (4) that late charges not exceed a certain amount; (5) that there be no prepayment penalty; (6) that "balloon payments" not be used, and (7) that repossession and resale be subject to certain conditions.¹¹ Therefore creditors who expect to have commercial dealings with military personnel should obtain the Standards of Fairness from the local military base and determine whether they qualify, or even want to qualify, for debt assistance.

Once a Certificate of Compliance is issued, then the procedure to be followed by the creditor is this:

- (1) Make a bona fide effort to collect the debt directly from the military member *before* contacting the military.¹²
- (2) Request debt processing assistance in a letter addressed to the individual's commander, and attach an executed copy of the Certificate of Compliance, a copy of the general disclosure required under the Truth in Lending Act, and a copy of the specific disclosure required under the Consumer Credit Protection Act.¹³

At that point, the action taken by the commander will be the following:

- (1) The facts surrounding the transaction are gathered.
- (2) The debtor is advised that he should comply with the policy of the Army and that he is expected to pay his just financial obligations in a proper and timely manner. Advice is also given concerning the counseling available under a Legal Assistance Program.
- (3) The creditor is notified that the military person intends to make payment, if the debt is admitted. If the obligation is disputed or denied, and the commanding officer believes that the matter justifiably is controversial, then the creditor is advised that the matter is one for the civil courts.¹⁴

It is apparent that even though a Certificate of Compliance is is-

11. AR 600-15, (App. A), 11 Feb. 70.

12. Para. 1-3(c), AR 600-15, 11 Feb. 70.

13. Para. 1-2(d), AR 600-15, 11 Feb. 70 states:

Creditors desiring to contact a military member concerning his indebtedness will be advised that the member's current address may be obtained by writing to The Adjutant General, ATTN: AGPF, Department of the Army, Washington, D.C. 20315, for officers and warrant officers and to the Commanding Officer, U.S. Army Personnel Services Support Center, Fort Benjamin Harrison, Ind. 46249, for enlisted personnel, and enclosing \$1.50 or a fee for the service.

5A Supp. 1, AR 600-15, 18 Feb. 72; Para. 2-2(c), (d), AR 600-15, 11 Feb. 70.

14. Para. 3-1(c)(1-4), AR 600-15, 11 Feb. 70.

sued and the proper procedure is followed, the commander has the discretion to render assistance, or to simply deny that service. A decision has to be made on his part that the debt is a "just financial obligation" or that the matter "justifiably is controversial." A guideline for the commander for making this determination is the definition contained within the regulations: "A 'just financial obligation' means one acknowledged by the military member in which there is no reasonable dispute as to the facts or the law, or one reduced to judgment which conforms to the Soldiers' and Sailors' Civil Relief Act, if applicable."¹⁵ The commander will naturally want to protect his personnel from unscrupulous creditors, but he has to balance a duty to protect the debtor from high pressure credit sales, excessive finance charges, and harassment with a two-fold duty to eliminate military administrative difficulties caused when private obligations are allowed to become past due, and to maintain good public relations with the community.¹⁶

The unscrupulous creditor is not a problem in the vast majority of cases, and commanders generally act within good faith principles and Army regulations. However, if, in the opinion of the creditor the commander either has acted arbitrarily or has simply made a wrong decision in the exercise of his discretion, then pressure can be applied to that particular commander by contacting his commanding officer, or the creditor's congressman, or a group such as the Chamber of Commerce or Better Business Bureau. The civic organizations can be used in an indirect or informal manner. Just as the commander has the responsibility of maintaining good public relations with the community through these organizations and others, the local businessmen have a direct financial interest in maintaining good relations with the military. It would not be likely that the Chamber of Commerce would approach the base commander with a formal complaint on behalf of the creditor. But, it is likely that a leader of the Chamber would mention the creditor's complaint informally to a member of the military, knowing that while the complaint would be registered, the relationship would not be harmed. All three of these, the commanding officer of the commander, the Congressman, and the civic organizations should be approached with specific allegations that the commander has: (1) failed to follow the policy of the Department of the Army requiring personnel to pay all just financial obligations, (2) failed to maintain good public relations in the community, (3) conveyed the impression that Army

15. Para. 1-3(a), AR 600-15, 11 Feb. 70.

16. 5A Supp. 1(h), AR 600-15, 18 Feb. 72.

personnel are generally a poor credit risk, and (4) reflected poor judgment through his actions.

Although this type of pressure is available, obviously better long-range results can be obtained through a pattern of cooperation with military personnel in charge of the debt assistance program. The action employed depends to some extent on the nature of the debt, the amount of money involved, and whether this is probably an isolated case, or whether on the other hand, assistance will likely be needed in a number of cases.

Let's turn now to the statement, "I'm protected by the Soldiers' and Sailors' Civil Relief Act."

II. THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940, AS AMENDED

The Act provides for the suspension of enforcement in certain cases of civil liabilities of persons in the military service "in order to enable such persons to devote their entire energy to the defense needs of the nation"¹⁷ It was intended that this would terminate on May 15, 1945, unless the United States was then engaged in a war.¹⁸ However, the Act was extended until repealed or otherwise terminated by subsequent Act of Congress,¹⁹ and is therefore still in effect today.²⁰

The enactment of this legislation evidences a recognition of the financial problems that arise when people leave their homes and places of employment in order to serve in the military. Its purpose is to assist those serving by assuring them that certain property relationships will be unimpaired.²¹ Assistance could have been granted by direct payments to the servicemen but this simply was not feasible²² due not only to the amounts of indebtedness involved but to their diversity as well. Instead, Congress turned to moratory legislation as it had in the past.²³

17. 50 U.S.C. App. § 510 (1970).

18. *Id.* at § 584. The Act also provides:

[W]herever under any section or provision of this Act . . . a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this Act . . . , such section or provision shall be deemed to continue in full force and effect so long as necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting or other transaction.

19. 64 Stat. 1074, 50 U.S.C. App. § 464 (1950).

20. *See* Waites v. Waites, 233 Miss. 496, 102 So. 2d 436 (1958).

21. Skilton, *The Soldiers' and Sailors' Civil Relief Act of 1940 and the Amendments of 1942*, 91 U. PA. L. REV. 177 (1942).

22. *Id.*

23. *Id.* at 178.

It might be thought that such legislation was comparatively new in concept. Yet devices for saving the credit structure have been used for over 1400 years by western civilization,²⁴ the first general moratorium being decreed by Justinian in 555 A.D. following the invasion of Italy and Sicily by the Franks.²⁵ Similar methods were used during the Thirty Years War, the War of the Spanish Succession, the Napoleonic Wars, the Civil War and World War I.²⁶ In fact, the Soldiers' and Sailors' Civil Relief Act of 1940 was virtually a reenactment of the Act passed in 1918.²⁷ Even though there were some important advancements made in 1940, criticism of the Act led to the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942²⁸ which did much to clarify and strengthen the original Act.²⁹

An examination of the present law is useful. It is important in terms of how it affects persons stationed throughout the United States and overseas who incur debts with civilians at home or in nearby cities before and during military service. Questions continue to arise concerning servicemen's financial situations and property rights. A typical case might be that of a young serviceman who entered the service leaving a family with a mortgaged home, a financed automobile and normal debts and monthly expenditures such as life insurance. If upon return he discovers that the mortgage has been foreclosed, the car repossessed, his life insurance policies cancelled and that there is a judgment against him on one or more of these, what exactly are his rights, if any, under the Soldiers' and Sailors' Civil Relief Act of 1940? Many problems can arise concerning leases, installment contracts, rent, the rights of dependents, taxes, interest in public lands, domestic relations, etc. Furthermore, there are military men listed as missing in action and they are entitled to protection under the Act. In order to determine the property interests and legal liabilities of all servicemen, including those

24. Feller, *Moratory Legislation: A Comparative Study*, 46 HARV. L. REV. 1061 (1933).

25. *Id.* at 1062.

26. *Id.* at 1064.

27. Skilton *supra* note 21, at 179. Also see Reed, *Soldiers' and Sailors' Civil Relief Act of 1940*, 28 IOWA L. REV. 14, 15 (1942); Kuhns, *The Soldiers' and Sailors Civil Relief Act of 1940*, 20 NEB. L. REV. 357, 358 (1941); Bendetson, *A Discussion of the Soldiers' and Sailors' Civil Relief Act of 1940*, 2 WASH. & LEE L. REV. 1 (1940).

28. Skilton, *supra* note 21, at 182, citing Pub. Law No. 77-732 (Oct. 6, 1942).

29. *Id.* at 182. Also see Connor, *Section 303 of the Soldiers' and Sailors' Civil Relief Act*, 17 IND. L.J. 285 (1942); Twinem, *Extent of Debt Relief For Persons In Military Service*, 20 NEB. L. REV. 221 (1941); Kuhns, *supra* note 27; Jensen, *Civil Relief for Soldiers and Sailors: A Critical Analysis*, 36 ILL. L. REV. 325 (1941).

stationed overseas or missing in action, a thorough understanding of this Act is absolutely essential.

A. THE RELATIONSHIP OF FEDERAL AND STATE CIVIL RELIEF LEGISLATION

There has been not only federal moratory legislation, but also state legislation such as the law now in existence in the state of New York.³⁰ Under federal legislation both federal and state courts have authority to administer the Soldiers' and Sailors' Civil Relief Act whether or not they are courts of record.³¹ This includes small claims courts such as a justice of the peace court.³²

In the event there is a conflict between federal and state civil relief law, the federal law supersedes state law and is binding on a state court regardless of whether there is a similar provision in the state law.³³

B. APPLICABILITY OF THE ACT

One of the first questions that must be answered is: Who is afforded protection under the Act? The statute specifies that the phrases "person in the military service," "persons in military service," and "persons in the military service of the United States," mean members of the Army, Navy, Marine Corps, Coast Guard, and officers of the Public Health Service "detailed by proper authority for duty either with the Army or the Navy." The term "military service" is defined as including federal service on active duty with any branch of service referred to or mentioned in the Act, as well as training and education under the supervision of the United States preliminary to induction into the military service.³⁴ Further provision is made for persons who serve

30. N.Y. MIL. LAW § 300 *et seq.* (McKinney 1953). For a list of moratory laws in the United States applying to persons in the military service, see Feller, *supra* note 9, at 1085.

31. 50 U.S.C. App. § 511(4); Taintor and Butts, *Soldiers' and Sailors' Relief Act of 1940*, 13 Miss. L.J. 470 (1941). Also see Bagley, *The Soldiers' and Sailors' Civil Relief Act—A Survey*, 45 MIL. L. REV. 4 (1969); Nash, *The Rights of Debtors and Creditors Under the Soldiers' and Sailors' Civil Relief Act of 1940*, 37 N.Y.U.L. REV. 1129 (1962).

32. Taintor and Butts, *supra* note 31, at 470.

33. *Kelley v. Kelley*, 38 N.Y.S.2d 344 (1943); *Hempstead Bank v. Gould*, 28 N.Y.S.2d 602, 54 Misc. 2d 410 (1967). For authority that when state wartime moratory legislation conflicts with federal legislation it is unconstitutional, see Taintor and Butts, *supra* note 31, at 471, citing *Konkel v. State*, 168 Wis. 335, 170 N.W. 715 (1919) and *Vierrard v. Hoch*, 97 Ore. 71, 191 P. 328 (1920). See also Rogers, *Civil Relief to Persons in the Military Service of the United States*, 9 AM. L. SCH. REV. 1085 (1940).

34. 50 U.S.C. APP. § 511 (1970). Those who received orders to report for induc-

with another nation which is an ally of the United States in the prosecution of any war if they were citizens of this country immediately prior to service, they are not discharged dishonorably from service and they intend to resume citizenship in the United States.³⁵

While the Act affords benefits primarily to the individual on active duty, protection is sometimes extended to a civilian whose liability is connected with the serviceman's obligation, such as an accommodation maker or guarantor or a co-defendant in a suit.³⁶ To be entitled to relief under the Act, the serviceman must be a member of a branch of service listed by the Act, and he must be on active duty or engaged in "training or education under supervision of the United States preliminary to induction into military service."³⁷ "Active duty" is defined as full-time duty in the service of the United States.³⁸ It includes full-time and annual training duty while in the active military service at a "school designated as a service school by law or by the Secretary of the military department concerned."³⁹

If they are entitled to pay for the duty performed, members of the Army and Air National Guard are entitled to protection under the Act while performing full-time duty.⁴⁰ Members of reserve components not on active duty and retired military personnel are not covered by the Act.⁴¹ "Active duty" includes time when absent from duty because of sickness, wounds, leave or other lawful cause.⁴² It has been held that a deserter loses the protection of the Act while a person absent without leave may still be entitled to relief under the Act depending upon the facts of each case.⁴³

tion were also covered. 50 U.S.C. APP. § 516 (1970). See Anderson, *The Soldiers' and Sailors' Civil Relief Act*, 6 U. DET. L.J. 164 (1943).

35. 50 U.S.C. APP. §§ 514, 572.

36. *Id.* § 513; Bagley, *supra* note 31, at 2. See also *Hempstead Bank v. Gould*, 282 N.Y.S.2d 602, 54 Misc. 2d 410 (1967) where co-maker was held to be entitled to a stay based on military service of another co-maker. Compare *Security Nat'l Bank of Long Island v. DeJoy*, 34 App. Div. 2d 839, 312 N.Y.S.2d 525 (1970).

37. Bagley, *supra* note 31, at 2.

38. *Id.*

39. *Id.*

40. *Id.* at 3.

41. *Id.* at 2.

42. 50 U.S.C. APP. § 511(1).

43. Bagley, *supra* note 31, at 2; *Shayne v. Burke*, 158 Fla. 61, 21 So. 2d 751 (1946). Others that have been found not to be within the scope of the Act are civilian employees of the armed forces, merchant seamen subject to the Uniform Code of Military Justice, civilian parties in an action where an absent serviceman is an essential witness, but not a necessary party. Callaway, *The Federal Soldiers' and Sailors' Civil Relief Act*, 17 ARK. L. REV. 16 (1962), and corporations whose officers are in the service. Nash, *supra* note 31, at 1129. See also Anderson, *supra* note 34, at 165.

The courts have also considered what constitutes absence for "lawful cause" in determining whether a particular serviceman is engaged in active duty. In one case, as a result of a general court martial, a soldier was sentenced to confinement for five years and was to be dishonorably discharged at the termination of his sentence. The court held that the soldier could not claim protection under the Act because he had removed himself from active duty.⁴⁴ This would not be the result in every case involving a convicted serviceman serving his sentence, for in each case the court should consider the gravity of the offense and the sentence given.⁴⁵

Limited protection is provided for dependents of servicemen if they apply for coverage and the court finds that the ability of the dependent to comply with the terms of the obligation for which relief is sought is materially impaired by reason of the military service of the person upon whom the applicant is dependent.⁴⁶ Such a situation might arise where a son gives his mother a monthly sum for her support which she uses to make monthly payments on her home mortgage. Upon entry into the military the son is no longer able to make the contributions due to a decrease in his income. In that case the dependent may be given the same benefits as the serviceman would receive if he were liable on the obligation.⁴⁷

While some provisions of the Act, such as the tolling of the statutes of limitations in section 525, apply just by virtue of military service, most relief is conditioned upon military service materially affecting the serviceman's ability to perform his obligations.⁴⁸ This was made a requirement because otherwise creditors would be reluctant to extend credit to servicemen, especially to potential inductees, if the Act allowed a complete suspension of creditors' rights. Further, an unnecessary and undue hardship would be placed on creditors if servicemen who were financially able to meet their obligations were able to avoid doing so simply because of their military status.⁴⁹

The date on which the obligation was incurred is important in determining coverage under certain sections of the Act, and normally the question is related to whether military service materially affects the

44. *Mantz v. Mantz*, 69 N.E.2d 637 (Ohio Ct. App. 1946).

45. *Bagley*, *supra* note 31, at 3.

46. *Id.* at 3, 4.

47. *Id.* at 4; 50 U.S.C. APP. §§ 531, 532 (1970).

48. *Callaway*, *supra* note 43, at 16.

49. *Nash*, *supra* note 31, at 1130.

debtor's ability to pay. If a creditor is seeking to enforce an obligation incurred before the debtor entered the service, factors to be considered are: (1) whether the serviceman's ability to comply with the terms of the obligation has been affected materially,⁵⁰ (2) the amount of the indebtedness, (3) earnings of the debtor before and during military service, (4) property holdings and savings of the debtor, (5) difficulty of enforcing the obligation in view of the debtor's absence, and (6) the time of default on the debt.⁵¹ If the judicial proceedings are pursuant to the creditor's initial cause of action, the court should also consider legal defenses available to the serviceman, his time and opportunity to prepare for trial, and the necessity of his presence for trial.⁵² If the proceedings are pursuant to a judgment, a court may consider whether the debtor is able to comply with the judgment⁵³ and basically the same factors are considered as when the creditor is seeking to enforce a claim as mentioned above.⁵⁴

In court proceedings the circumstances of each case determine which party has the burden of proof, this not being determined by statute.⁵⁵ Doubts as to the applicability of the Act should normally be resolved in the serviceman's favor since the Act generally seeks to provide relief for those in the military.⁵⁶

C. GENERAL RELIEF PROVISIONS

Default Judgments

In any action in any court wherein there is a default in appearance the statute requires that an affidavit be filed showing that the defendant is not in the military service.⁵⁷ If for any reason the plaintiff is unable to file such an affidavit, another affidavit should be filed either stating that the defendant is in the military service or that he has not been able to determine that fact.⁵⁸ If a default judgment is to be entered in the absence of an affidavit that the defendant is not in the military, there must first be an order of the court directing such entry.⁵⁹

50. *Id.* at 1130, 1131 (referring to U.S.C. APP. §§ 531, 532, and 590 (1970)).

51. *Id.*

52. *Id.* at 1131.

53. 50 U.S.C. APP. § 523 (1970).

54. Nash, *supra* note 31, at 1132.

55. *Id.* at 1133.

56. *Id.* at 1132, n.44, *citing* Meyers v. Schmidt, 46 N.Y.S.2d 420, 181 Misc. 589 (1944).

57. 50 U.S.C. APP. § 520(1) (1970).

58. *Id.*

59. *Id.*; *see* Snapp v. Scott, 196 Okla. 658, 167 P.2d 870 (1946).

Prior to such an order the court should appoint an attorney to represent the defaulting defendant.⁶⁰ Failure to file an affidavit is not a jurisdictional defect which results in a void judgment but it renders the judgment subject to attack by the serviceman.⁶¹ Of course, a non-military person may not object to non-compliance with the Act.⁶²

In the event a person in the military is served with process in a civil suit, he might elect to ignore the process and fail to appear. But if he does so, there is no way to be sure that the proper affidavit will be filed, if any is filed at all.⁶³ If he is unable to appear, he should notify the plaintiff by letter that he is in the military. Once this is done an attorney may be appointed by the court and the proper affidavit filed.⁶⁴ The attorney cannot waive any of the rights of the serviceman.⁶⁵ He should exhaust every reasonable means to establish contact with the serviceman before trial and should take any other action necessary to protect the serviceman, such as attacking the sufficiency of the plaintiff's pleadings or moving to quash summons for failure of proper service.⁶⁶

In the case where the serviceman retains counsel, he has, for the purposes of the Act, made an appearance and is not entitled to any

60. *Id.*

61. *Reed*, *supra* note 27, at 21; *Hynds v. City of Ada ex rel. Mitchell*, 195 Okla. 465, 158 P.2d 907 (1945); *Davidson v. General Finance Corp.*, 295 F. Supp. 878 (N.D. Ga. 1968); *People v. Vogel*, 46 Cal. Rptr. 2d 798, 299 P.2d 850 (1956); *Becknell v. D'Angelo*, 506 S.W.2d 688 (Tex. Civ. App. 1974); *see Courtney v. Warner*, 290 So. 2d 101, 103, 104 (Fla. App. 1974) wherein plaintiff's wife sought modification of child support payments contained within a divorce decree. The defendant husband was on active duty in New Mexico and although served with process, made no appearance. Further, plaintiff did not file an affidavit indicating whether or not the defendant was in the armed services. It was found that the judgment was voidable and could be set aside upon proof that the serviceman was prejudiced by reason of his military service in making his defense, and that the defendant had a meritorious or legal defense to the action.

62. *Callaway*, *supra* note 43, at 19.

63. Compliance with section 520 seems dependent upon the particular jurisdiction. While the filing of affidavits is standard procedure in New York, that is not the case in all other jurisdictions.

64. *Kerig, The Absent Defendant And The Federal Soldiers' And Sailors' Civil Relief Act*, 33 N.Y.U.L. REV. 979 (1958). No provision is made for payment of the attorney but some courts have awarded reasonable compensation. *See Callaway*, *supra* note 43, at 20, and *In re Cool's Estate*, 19 N.J. Misc. 236, 18 A.2d 600 (1941); *Weynberg v. Downey*, 25 N.Y.S.2d 600, 176 Misc. 196 (1941) (allowance of taxable costs to attorney appointed not in time of war as an expense in the action; court indicated if there was a state of war at time of appointment, any services should be considered patriotic duty regardless of compensation). Note the distinction in section 520(1) where a court must appoint an attorney where an order is to be entered on default, while section 520(3) allows the court to use its discretion in other cases.

65. *Bagley*, *supra* note 31, at 16.

66. *Kerig*, *supra* note 64, at 980.

relief whatsoever.⁶⁷ Whether an appearance has been made is a key to the operation of this section of the Act. Once there is an appearance, even specially,⁶⁸ and a default, none of the requirements of the statute need be met prior to entering a default judgment, and the procedures for vacating a judgment, as discussed hereinafter, are not available.⁶⁹ Once the appearance is made the serviceman should be prepared to defend the suit or move for continuance without aid of this legislation.

The courts are also granted discretion to appoint an attorney where the affidavit discloses that the plaintiff has been unable to determine whether the defendant is in the military,⁷⁰ and protection may be given to defendants where their status is unknown.⁷¹

Where a judgment is rendered against a person in the military during the time of service or within 30 days after termination thereof and he was prejudiced in his defense by virtue of his military service, the judgment may be opened by the court that rendered the judgment if application is made by the serviceman or his legal representative not later than 90 days after termination of service. The application must show that the defendant has a meritorious or legal defense to the action or some part thereof.⁷² All three requirements of this section must be met even if an affidavit was properly filed and an attorney was appointed by the court to represent the serviceman.⁷³ Even though the serviceman may have no knowledge of the judgment, the courts strictly apply the rule that application to open the judgment must be made within ninety days of the date service is terminated.⁷⁴

Provision is made for the protection of bona fide purchasers for value in that an action by the court to vacate, set aside, or reverse a judgment will not impair any right of title acquired by any such pur-

67. *Id.* at 982; see *Grimes v. State*, 377 P.2d 847 (Okla. Crim. App. 1963).

68. Callaway, *supra* note 43, at 22.

69. Bagley, *supra* note 31, at 17; see *Title Guarantee & Trust Co. v. Duffy*, 46 N.Y.S.2d 441, 267 App. Div. 444 (1944).

70. Kerig, *supra* note 64, at 976.

71. Reed, *supra* note 27, at 21.

72. 50 U.S.C. App. § 520(4) (1970); *Unsatisfied Claim and Judgment Fund Board v. Forney*, 285 A.2d 641 (Md. Ct. App. 1972).

73. Callaway, *supra* note 43, at 20; Kerig, *supra* note 64, at 976.

74. Kerig, *supra* note 64, at 984. Where a person in the military service is fully informed of an action pending against him and has the time and opportunity to appear and defend the suit or otherwise protect his rights, the provision for opening a judgment is not intended to prevent default judgment. *Burgess v. Burgess*, 234 N.Y.S.2d 87 (1962).

chaser.⁷⁵ However, if the purchaser had or is charged with having notice of non-compliance with the Act, the judgment can be vacated and the title acquired by such purchaser voided.⁷⁶ Provision is also made for punishment by fine and/or imprisonment for the filing of a false affidavit⁷⁷ and discretion is granted the court in requiring a bond to be filed by plaintiff to indemnify the defendant.⁷⁸

Section 521 and Section 523 Stays

The major power granted the courts by the Soldiers' and Sailors' Civil Relief Act is the authority to grant stays. Article II of the General Relief provisions describes two situations where this might arise. Where there is a proceeding filed and the military person is either plaintiff or defendant, the court has the discretion at any stage of the proceeding to grant a stay under section 521 if the action has been filed during the time of service or within 60 days thereafter and if the serviceman's ability to proceed in the action is materially affected by reason of service.⁷⁹ A court may also stay the execution of any judgment or order entered against a serviceman, or may vacate or stay any attachment or garnishment of property under section 523, whether before or after judgment, where the action was commenced before or during the period of military service or 60 days thereafter. The court may so act on application by the serviceman or some person in his behalf or on its own motion. Before relief is granted, the court must find that the ability of the defendant to comply with the judgment or order is materially affected due to military service.⁸⁰ A stay can remain in effect for the entire period of military service plus three months afterwards or

75. 50 U.S.C. APP. § 520(4) (1970).

76. Reed, *supra* note 27, at 26; *See Flagg v. Sun Inv. & Loan Corp.*, 373 P.2d 226 (Okla. 1962).

77. 50 U.S.C. APP. § 520(2) (1970).

78. 50 U.S.C. APP. § 520(1) (1970); *see Childers v. Nicolopoulos*, 296 F. Supp. 547 (W.D. Okla. 1969) directing defendant to post bond when stay of action against him granted pursuant to section 501 *et seq.* is within the discretion of the court. *See generally, The Soldiers' and Sailors Civil Relief Act Amendments of 1942*, 12 *FORDHAM L. REV.* 153 (1943) and *Tibbs, Soldiers' and Sailors' Civil Relief Act in 1942: Operation, Need for Clarification, Future Significance*, 27 *MARQ. L. REV.* 59 (1943); *Bridewell, The Soldiers' and Sailors' Civil Relief Act Amendments of 1942*, 28 *A.B.A.J.* 797 (1942).

79. *McCoy v. McSorley*, 119 Ga. App. 603, 168 S.E.2d 202 (1969); *Norris v. Superior Court of Mohave County*, 14 Ariz. App. 183, 481 P.2d 553 (1971). *See also Mathis v. Mathis*, 236 So. 2d 755 (Miss. 1970) where the court held a paternity suit against a member of the service is of such a personal and intimate nature that it is implicit that his absence from trial materially affects his defense unless there is a specific finding to the contrary.

80. 50 U.S.C. APP. § 523 (1970).

any part of that time, subject to such terms as may be just in the opinion of the court.⁸¹

Statutes of Limitations

It can be fairly assumed that upon obtaining a factual picture from a client, most attorneys make a determination of whether the claim is barred by the applicable federal or state general statute of limitations without inquiry into the military status of the parties. It is critical, however, that the attorney make additional inquiry concerning the military service of the parties because the Act provides that the period of such service shall not be included in calculating the running of the period of limitation.⁸² The particular statute that would normally bar an action is tolled by the Act by virtue of military service alone, without regard to whether the military service has materially affected compliance with an order or ability to meet the terms of certain obligations and regardless of whether the cause of action accrued prior to or during the period of service.⁸³

Maximum Rate of Interest

As additional relief for the serviceman, the Act provides for a maximum annual interest rate of six per cent during the period of service on obligations incurred prior to the serviceman's entry into the military

81. 50 U.S.C. APP. § 524 (1970); see *Kindy v. Koenke*, 216 F.2d 907 (8th Cir. 1954) saying that section 524 is intended to apply particularly, but not exclusively, to actions brought by others than servicemen and in which the serviceman is made a party, whereas section 590, discussed hereinafter, applies specifically to actions instituted by servicemen under section 501 *et seq.*; see *Huckaby v. Oklahoma Office Bldg. Co.*, 201 Okla. 141, 202 P.2d 996 (1949).

82. 50 U.S.C. APP. § 525 (1970); *Callaway*, *supra* note 43, at 25; see *Roberts v. Schuh*, 287 N.Y.S.2d 609, 55 Misc. 2d 996 (1968) where state civil relief act (Mil. Law § 308) could be utilized by plaintiff in an action against a person in the military. See also *Peters v. Unsatisfied Claim and Judgment Board*, 316 A.2d 803 (Md. 1974).

83. *Callaway*, *supra* note 43, at 25. Section 525 does not apply to any period of limitation prescribed in the internal revenue laws of the U.S. See section 527 and *Bagley*, *supra* note 31, at 18. A recent case has held that the period of the defendant's military service is to be excluded in computing the statute of limitations, even though the plaintiff could have obtained service of process through the Secretary of State. *Henderson v. Miller*, 477 S.W.2d 197 (Tenn. 1972); *Gannelles v. Seaboard Airline R.R. Co.*, 204 S.E.2d 324 (Ga. App. 1974). See also *Wanner v. Glen Ellen Corp.*, 373 F. Supp. 983, 985, 986 (D. Vt. 1974) where a negligence action was brought, after the one year statute of limitations had run, by a lieutenant commander in the United States Public Health Service, assigned to duty with the Coast Guard at the time of the action. After finding that the plaintiff was protected by section 511 of the Act it held that the tolling provision of section 525 suspended the running of the statute of limitations as to the plaintiff, but not as to the wife's claim for damages she claimed to suffer as a result of her husband's injuries.

even though the agreement between the parties provides for a higher rate of interest. However, the creditor can collect interest at the contract rate if he can show that the ability of the serviceman to pay over six per cent is not materially affected by reason of his service.⁸⁴ Interest is inclusive of service charges, renewal charges, fees or any other charges in respect of the obligation except bona fide insurance.⁸⁵ This provision is self-executing and automatically limits the interest charges.⁸⁶

D. PROVISIONS CONCERNING RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS AND LEASES

The various sections of Article III of the Act have certain common features. A court proceeding or order is required before certain rights may be exercised against a serviceman; criminal sanctions are specified for violation of the particular sections; coverage of the Act generally is for the period of military service; and most sections authorize a stay of proceedings once the case comes before a court. Due to the variations from section to section, however, it is necessary to consider each section separately.

Section 530 (Eviction or Distress)

Section 530 is concerned with eviction or distress and requires that leave of court must be granted before eviction or distress shall be made while the defendant is in the military service for situations where the rent for the premises does not exceed \$150 per month and is occupied for dwelling purposes by the wife, children or other dependents of the serviceman.⁸⁷ It is immaterial whether the house or apartment was rented before or after entry into military service.⁸⁸ If the ability of the tenant to pay the rent is materially affected by reason of military service, the court may stay the proceedings up to three months, or make any other "order as may be just."⁸⁹ Where a stay is granted, the owner of the premises is entitled to relief in respect of such premises as provided for in sections 531, 532 and 560, which are discussed below. Further relief for the owner lies in the provision that the Secretary of

84. 50 U.S.C. APP. § 526 (1970).

85. *Id.*

86. Bagley, *supra* note 30, at 18.

87. 50 U.S.C. APP. § 530(1) (1970).

88. Callaway, *supra* note 43, at 28.

89. 50 U.S.C. APP. § 530(2) (1970); *see* Academy St. Corp. v. Calderon, 238 N.Y.S.2d 853, 38 Misc. 2d 873 (1963) for an example of relief given in the state of New York.

the Army, Secretary of the Navy, and Secretary of the Treasury, with respect to the Coast Guard, are empowered to "order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person."⁹⁰ If the creditor, on the other hand, knowingly takes part in the eviction or distress of a person under the protection of the Act, or even attempts to do so without following the prescribed procedures of this section, he is subject to punishment by imprisonment up to one year or by fine of \$1,000, or both.⁹¹

Section 531 (Installment Contracts)

A section 531 stay relates to installment contracts for the purchase of property. If a seller receives a deposit on the purchase price of real or personal property and thereafter the purchaser enters the military, the seller is prohibited from exercising any right or option under the contract to rescind or terminate it or to resume possession of the property for nonpayment or other breach except by action in a court.⁹² If an action is filed the court may order repayment of the deposit or part of it as a condition of termination, or may order a stay if the ability of the serviceman to comply with the contract has been materially affected by military service. The court has discretion to dispose of the case in any equitable manner which will conserve the interests of all the parties.⁹³

It should be noted that a section 531 stay applies only to contracts made prior to service pursuant to which a deposit or installment has been paid, while a section 521 stay may be granted regardless of when the obligation was created.⁹⁴ While the section is designed to protect against forfeiture those servicemen who have purchased real or personal property on an installment plan, it does not cover the case of breach of contract for nonpayment occurring after termination of military service.⁹⁵

90. 50 U.S.C. App. § 530(4) (1970).

91. 50 U.S.C. App. § 530(3) (1970); see *In re Holstein*, 43 App. Div. 2d 9, 349 N.Y.S.2d 596 (1973) where landlord-tenant proceedings were declared void because false affidavits of nonmilitary service were filed by a city marshal.

92. 50 U.S.C. App. § 531(1) (1970).

93. 50 U.S.C. App. § 531(3) (1970).

94. 50 U.S.C. App. §§ 521, 531 (1970); Callaway, *supra* note 43, at 30.

95. Comment, *Soldiers' and Sailors' Civil Relief Act of 1940: Application to Decedents' Estates, Secured Obligations, Installment Contracts, Insurance, Taxes and Assessments*, 42 MICH. L. REV. 480 (1943).

When an application for a stay is made, it is recommended that the creditor be prepared to show: (1) that his security would be impaired by a stay, (2) that he would suffer a loss of profit, (3) that the serviceman was in default prior to the time he entered the service, (4) any conduct by the serviceman negating good faith, and (5) that the serviceman's ability to pay has not been impaired.⁹⁶

Section 532 (Mortgages, Trust Deeds, etc.)

For the situation where a serviceman owned real or personal property at the commencement of military service, on which there was a mortgage, trust deed, or other similar security instrument, the court may stay a proceeding commenced during military service to enforce the obligation if its terms are breached prior to or during the period of military service.⁹⁷ No sale, foreclosure, or seizure of property for nonpayment or other breach of terms shall be valid during military service or within three months thereafter, unless made pursuant to a written agreement executed during service as provided for specifically in section 517 or unless an order is previously granted by the court and a return is made and approved by the court.⁹⁸

Careful note should be made of the time factors involved in section 532. The property must be owned at the commencement of service, and still owned, and a proceeding to be stayed must be commenced during service while the breach must occur prior to or during the period of service.⁹⁹ Also it should be noted that foreclosure in violation of section 532 is not only invalid, but is also a crime.¹⁰⁰ And further, a court order is specifically required for foreclosure under this section whereas there is at least room for question whether one is required under section 531.¹⁰¹

Upon default on a mortgage, voluntary arrangements between the

96. Callaway, *supra* note 43, at 31, 32.

97. 50 U.S.C. APP. § 532(1), (2)(a) (1970); *Brown v. Gerber*, 495 P.2d 1160 (Colo. App. 1972) (foreclosure of trust deed not barred by Act where encumbered property had been acquired after purchaser had commenced military service).

98. 50 U.S.C. APP. § 532(3) (1970).

99. 50 U.S.C. APP. § 532(1), (2) (1970).

100. Callaway, *supra* note 43, at 32. But a bona fide purchaser for value may under some circumstances obtain good title, at least where the serviceman's interest is unrecorded and the purchaser has satisfied his duty to ascertain whether any of the mortgages are in military service.

101. Callaway, *supra* note 43, at 32; Carnahan, *Soldiers' and Sailors' Civil Relief Act of 1940—Effect on Certainty of Land Titles*, 24 Mo. L. REV. 101 (1959).

mortgagor and mortgagee may be made under authority of the Act,¹⁰² but otherwise the mortgagee will have no choice but to initiate foreclosure and let the court decide the "materially affected" issue. In most instances, personal residences will be involved but if the property is income-producing, the mortgagee has the right to use the income from the property as required for payment of taxes, mortgage interest, insurance premiums, and essential repairs.¹⁰³

Section 590 (Obligations, Liabilities, Taxes, etc.)

Possibly the most important stay provision is section 590, listed under Article VII.¹⁰⁴ During the period of military service, or within six months thereafter, application may be made to a court for relief in relation to obligations or liabilities incurred or taxes or assessments falling due prior to or during service.¹⁰⁵ Subsequent to notice and hearing, and a finding that military service materially affected the ability of the applicant to comply with his obligations, the court is authorized to grant relief on the basis of the nature of the obligation.¹⁰⁶ In the case of an indebtedness under a contract for the purchase of real estate, or a mortgage on real estate, a stay can be given not only for a period of time equal to the time of military service, but thereafter for the remaining life of the contract or other instrument, subject to payment

of the balance of principle and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due and subject to such other terms as may be just.¹⁰⁷

For other obligations, liabilities, taxes and assessments, the stay may last for the duration of the period of service and from termination of service or from the date of application when made after service,

for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of

102. 50 U.S.C. APP. § 517 (1970).

103. Corbin, *Effect of Civil Relief Act On Existing Mortgages*, 66 N.J.L.J. 83 (1943).

104. Nash, *supra* note 31, at 1136.

105. 50 U.S.C. APP. § 590(1) (1970).

106. *Id.*

107. 50 U.S.C. APP. § 590(1)(a) (1970).

military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.¹⁰⁸

During the time a section 590 stay is operative, no fine or penalty can accrue for failure to comply with the debt.¹⁰⁹

A stay under this section differs from other sections in that: (1) it applies only to obligations arising prior to entrance into the military; (2) the court has no discretion to grant relief on its own motion; (3) the statute allows only the serviceman to apply for relief; (4) application may be made even in the absence of a pending judicial proceeding; (5) the burden of proof concerning whether the serviceman's ability to comply has been materially affected is shifted to the serviceman; (6) the relief may extend for some time after the term of service and is therefore the most effective relief provided by the Act from the standpoint of the debtor.¹¹⁰

Section 590 is specifically aimed at assisting the serviceman to make a financial adjustment after he has taken advantage of the privileges of the Act and there is an arrearage on termination of service that cannot be paid immediately. Additional time is provided so that an orderly liquidation of debts may be made.¹¹¹ Extension for both realty obligations and other obligations may run for a period of time equal to the time the debtor spent in the military, but while the non-realty debt can never exceed the time the debtor has spent in the service, obligations secured by realty may be subject to further extension equal to the time yet to run on the obligation at the date of the debtor's discharge.¹¹²

An example of the operation of section 590 is the situation where upon entry into the military the serviceman has a mortgage on his home for twenty years and a conditional sales contract for the purchase of an automobile with a term of three years. A stay can be granted for both obligations during the term of military service, which is four years for our purposes. During this time he pays nothing on the obligations. The court has authority to postpone payment of accrued interest and principal on the home mortgage for twenty years, calculated by adding

108. 50 U.S.C. APP. § 590(1)(b) (1970).

109. 50 U.S.C. APP. § 590(2) (1970).

110. Taintor and Butts, *supra* note 31, at 467; Nash, *supra* note 31, at 1136, 1137.

111. Nash, *supra* note 31, at 1137.

112. *Id.* at 1137, 1138.

sixteen years remaining on the obligation to the four years of service. On the automobile, the extension is limited to the time equal to military service, or four years, after end of service. So in this case the difference between the real and personal property would not matter. The automobile would be paid off before expiration of the maximum period of the stay. However, if the personal property were more expensive and required a security instrument of twenty years, or a term equal to the real property mortgage, the extension would still be only the four years spent in the service.

Protection For The Creditor

While the intent of the Soldiers' and Sailors' Civil Relief Act is primarily to benefit those in the military, and in some cases their dependents, the Act does offer some protection for creditors. If there is a mortgage or contract for the purchase of personal property, the court has the authority to appoint three appraisers and in the absence of undue hardship on the dependents of the person in the service, order a just sum to be paid to either the person in the military or the dependents as a condition to terminating the contract, foreclosing the mortgage or resuming possession of the property.¹¹³ This section applies to actions stayed by a court under section 531 and section 533 and is intended as a means to settle these matters.¹¹⁴

Further protection is given to the creditor by allowing him to modify, terminate or cancel any contract, lease or obligation secured by an instrument in the nature of a mortgage by written agreement with the debtor,¹¹⁵ and the Act will not be applied at all if it is shown that an interest is transferred or acquired in order to take advantage of this Act and to delay thereby the creditor in the enforcement of his right.¹¹⁶

Termination of Leases

Many servicemen stationed throughout the United States are occupying housing units by virtue of lease agreements and the duties and responsibilities of both the lessor and the lessee as affected by the Act are often misunderstood. The availability of a stay in some instances was discussed previously¹¹⁷ but not the possibility of an out-

113. 50 U.S.C. APP. § 533 (1970).

114. Nash, *supra* note 31, at 1142.

115. 50 U.S.C. APP. § 517 (1970); Nash, *supra* note 31, at 1143.

116. 50 U.S.C. APP. § 580 (1970).

117. 50 U.S.C. APP. § 530 (1970).

right termination of a lease. Such a termination may be brought about as applied to any lease, including not only those for dwellings, but those for professional, business and agricultural purposes as well,¹¹⁸ as long as (a) it was executed by or on behalf of a person who, after execution, entered the military service and (b) the structure has been occupied for such purposes by him or his dependents.¹¹⁹ To avail himself of this provision a written notice of termination must be delivered to the lessor, and this may be done at any time after entrance into the military. Termination of a lease providing for monthly payments of rent will actually be effective thirty days after the first date on which the next rental payment is due and payable subsequent to the date when the notice is delivered.¹²⁰ For all other leases, the termination is effective on the last day of the month following the month in which notice is delivered and in such case any unpaid rental for a period preceding termination is prorated and any rental paid in advance for a period succeeding termination shall be refunded to the lessee.¹²¹ The lessor has the right, however, to apply to the court for relief prior to the termination period and the court may make such modification or restriction in the operation of this section as "justice and equity may in the circumstances require."¹²² Therefore termination is not a matter of right in any case. It is always subject to review by the court.¹²³

Assignor of Life Insurance Policy; Enforcement of Storage Liens

Section 535 applies to two unrelated matters. In the first, a person covered by the Act assigns a life insurance policy prior to his entrance into the military to secure payment of an obligation. Upon breach of the terms of the underlying obligation, the assignee cannot exercise any right or option during the period of military service or for one year thereafter, unless he first receives leave of the court upon application therefor, or has the written consent of the insured. The assignee may proceed if the premiums on the policy are due and unpaid or upon the death of the insured.¹²⁴ Action of the court is dis-

118. 50 U.S.C. APP. § 534(1) (1970).

119. *Id.*

120. 50 U.S.C. APP. § 534(2) (1970).

121. *Id.*

122. *Id.*

123. Skilton, *supra* note 21, at 186.

124. 50 U.S.C. APP. § 535(1) (1970). Premiums guaranteed under Article IV of the Act discussed hereinafter are not deemed "due and unpaid" for purposes of this section.

cretionary but relief is based on a showing that the breach was due to the obligor's ability being materially affected by the military service.¹²⁵

In an attempt to cover another financial situation with which a serviceman might be confronted, the Act provides that foreclosure or enforcement of a lien for storage of household goods, furniture, or personal effects of servicemen during service and for three months thereafter is prohibited except when application is made to a court and an order rendered. The court has authority to issue a stay after hearing or make any other order to conserve equitably the interests of all parties if the reason for nonpayment is materially due to military service.¹²⁶ Section 532 dealing with mortgages and trust deeds is not limited in scope by this subsection.¹²⁷

Dependents

References to dependents of servicemen are made in the various sections. For example, as a prerequisite for the issuance of a section 530 stay of eviction, the premises must be occupied for dwelling purposes by the wife, children or other dependents. They could also be included in the general language of those having statutory authority to make application for relief on behalf of the serviceman as in section 531(3). The main source of benefits to be received by dependents themselves is contained in section 536 which is applicable to Article II, sections 530 through 535, and broadly extends relief of the Act to them if the ability of the dependents to comply with the terms of obligations, contracts, leases or bailments has been materially impaired "by reason of military service of the person upon whom the applicants are dependent." In one case, an adult single woman purchased an automobile and the debt was evidenced by a note and chattel mortgage executed solely by her. Eight months thereafter she married a man who was inducted into the service one year after the marriage. Even in this situation, a court held that the obligation was within the protection of the Act.¹²⁸

E. INSURANCE

Insurance policies are included within the Act under the provisions of Article IV. Nonpayment of policy premiums, indebtedness or interest will not result in the lapse of the policy and it will not be other-

125. *Id.*

126. 50 U.S.C. APP. § 535(2) (1970).

127. *Id.*

128. Tucson Telco Federal Credit Union v. Bowser, 9 Ariz. App. 242, 451 P.2d 322 (1969).

wise terminated or forfeited.¹²⁹ The insurance policy must be found to be entitled to the protection of this section by the Administrator of Veteran's Affairs¹³⁰ and must be in force at the time of application for benefits with a premium actually paid not less than 180 days before entrance into military service.¹³¹ Insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended, are specifically excluded.¹³²

Application for protection under this article must be made by the insured or a person designated by him, or the beneficiary if the insured is not in the United States.¹³³ For purposes of coverage, the term "insured" includes persons in the military as discussed previously,¹³⁴ whose life is insured under and who is the owner of and has an interest in the policy.

Restrictions include a \$10,000 limit on policies to which this Article is applicable.¹³⁵ Dividends and other monetary benefits cannot be paid to the insured or used to purchase dividend additions while a policy is protected by the Act.¹³⁶

The United States guarantees payment of premiums and interest becoming due while the policy is protected and if the premiums and interest are not paid to the insurer before the expiration of the period of insurance protection, the amount due is treated as a policy loan. If at the expiration of the period the surrender value is less than the amount due, the policy is to cease and the United States will pay the difference between such amount and the cash surrender value. Any amount paid by the United States on behalf of the insured becomes a debt and may be collected by deducting it from any sum due the insured by the United States or in any other lawfully authorized manner.¹³⁷

TAXES AND PUBLIC LAND

Taxes

Before property is sold for nonpayment of taxes or assessments,

129. 50 U.S.C. APP. § 543 (1970).

130. *Id.*

131. 50 U.S.C. APP. § 540 (1970).

132. *Id.*

133. 50 U.S.C. APP. § 541 (1970).

134. 50 U.S.C. APP. § 511 (1970).

135. 50 U.S.C. APP. § 541 (1970).

136. 50 U.S.C. APP. § 544 (1970).

137. 50 U.S.C. APP. § 546 (1970).

an application for leave of court must be filed by the tax collector or any other officer who is charged with the duty of enforcing the collection of taxes or assessments. This provision applies to taxes or assessments, general or special, which fall due prior to or during military service, on real property owned and occupied for dwelling, professional, business or agricultural purposes by a serviceman or his dependents at the commencement of military service and which is still so occupied by dependents or employees while the taxes remain unpaid. Once again the court makes a determination as to how the entrance into the military affects the serviceman financially and if it determines he is materially affected, a stay of the proceedings or sale will be granted for a period extending not more than six months after termination of the period of military service.¹³⁸ If the property is sold or forfeited for failure to pay taxes, the owner has the right to redeem or commence an action to redeem the property at any time not later than six months after the date when the Act ceases to be in force.¹³⁹ That date has not been established by Congress.

While the statute provides specifically that this section will not shorten any state redemption laws,¹⁴⁰ it is assumed that it would extend such laws since the federal and state laws, if conflicting, would probably be read in the light most favorable to the person in the military.¹⁴¹ A direct conflict with various state laws is precipitated by the clause limiting interest on taxes and assessments to 6% per annum, when not paid, along with the provision that no other penalties can be charged. Some states operate under a system where an initial interest charge is made plus "damages" (other costs involved due to the sale) and for each month of nonpayment during the statutory period in which the property can be redeemed an additional interest charge is made so that eighteen months after sale the interest could be approaching 23%.¹⁴²

For personal property and income purposes, duplication of taxes is avoided by allowing a serviceman to continue to be considered a resident or domiciled within a particular state or political subdivision

138. 50 U.S.C. APP. § 560(1), (2) (1970); *Van Heest v. Veech*, 58 N.J. Super. 427, 156 A.2d 301 (1959) (discretion does not exist in operation of this section).

139. 50 U.S.C. APP. § 560(3) (1970).

140. *Id.*

141. *Illinois Nat'l Bank v. Guinn*, 390 Ill. 345, 61 N.E.2d 249 (1945) and *Shire v. Superior Court*, 63 Ariz. 420, 162 P.2d 909 (1945). See generally, *Crowell, Soldiers' and Sailors' Civil Relief Act: Redemption of Property Sold During Term of Military Service*, 1 U. FLA. L. REV. 314 *et seq.* (1948).

142. An example of this method is the tax sale procedure in the state of Mississippi.

thereof when he is absent due to military or naval orders.¹⁴³ The state in which he is stationed is not permitted to tax his military income. His personal property is not deemed to be located for tax purposes in the state where stationed.¹⁴⁴ "Taxation" includes licenses, fees, or excises imposed on motor vehicles. To prevent the use of this section to avoid payment of all taxes, the license, fee or excise on motor vehicles required by the state where the person is a resident or in which he is domiciled must be paid. However, the home state as a practical matter sometimes has difficulty in enforcing the collection of taxes, especially when the serviceman remains out of the state.¹⁴⁵ Under this provision there is a choice of registering motor vehicles either in the home state or where stationed.¹⁴⁶ Dependents must comply with the tax and motor vehicle laws of any state in which they are residing.¹⁴⁷

In relation to the collection of income taxes due before or during military service, they are deferrable for up to six months after termination of military service if military service impaired the ability to pay and no interest or penalty can be charged on the amount deferred.¹⁴⁸ For the period of military service and for nine months thereafter, the statute of limitations on the collection of the tax is suspended.¹⁴⁹

Public lands

Various types of interests of servicemen, including those under twenty-one years of age,¹⁵⁰ in public lands are protected by the Act. Homestead entries and settlement claims,¹⁵¹ desert-land entries,¹⁵² and mineral permits and leases¹⁵³ must be in existence before induction into the military to be entitled to relief under this Article. All relief operates in the nature of a suspension, either temporarily or permanently, of requirements for establishing claims to public lands. For example, homestead entries are not to be considered abandoned if a person enters the military unless this is specifically alleged and proved, and military service will in fact be considered the equivalent

143. 50 U.S.C. APP. § 574(1) (1970).

144. *Id.*

145. Callaway, *supra* note 43, at 35, 36.

146. 50 U.S.C. APP. § 574(2) (1970).

147. Callaway, *supra* note 43, at 35, 36.

148. *Id.*

149. *Id.*

150. 50 U.S.C. APP. § 571 (1970).

151. 50 U.S.C. APP. § 562 (1970).

152. 50 U.S.C. APP. § 564 (1970).

153. 50 U.S.C. APP. § 566 (1970).

to residence and cultivation requirements.¹⁵⁴ The time of enlistment and hospitalization due to wounds or disability are deducted from the required length of residence without reference to the time actually spent in actual service.¹⁵⁵ This particular section is distinctive in that no patent will be issued unless there is at least one year of residence, improvement and cultivation of the homestead.¹⁵⁶ In the event the serviceman dies in the service or as a result of service, his heirs (unmarried widow first, then minor children, or their representatives) are entitled to a patent without performing any further conditions.¹⁵⁷ For desert-land entries any right to contest or cancel the entry for failure to pay a minimum amount for improvements on the land or to effect reclamation is suspended during service and for six months thereafter or during any period of hospitalization for wounds.¹⁵⁸ All requirements are permanently suspended and a patent issued in the event there is physical incapacity due to service that renders the claimant unable to accomplish reclamation and such person receives an honorable discharge.¹⁵⁹ Mineral permit and lease operations may be suspended during military service and for six months thereafter and the term of the permit or lease is not to run during suspension.¹⁶⁰ Rentals and royalties are not to be charged during that period against the permit or lease.¹⁶¹ For mining claims that have been "regularly located and recorded" requirements concerning minimum improvements are suspended and the claim is not subject to forfeiture by nonperformance of annual assessments for similar periods as referred to above.¹⁶² Irrigation rights are protected in the same manner.¹⁶³ A form of notice of intention on the part of the serviceman is needed in reference to desert-land entries,¹⁶⁴ mining claims,¹⁶⁵ and mineral permits and leases¹⁶⁶ after entrance into service, and in the event steps need to be taken during service through affidavits or proof, presentment may be made to a commissioned officer in immediate command and this will be as binding

154. 50 U.S.C. APP. § 562 (1970).

155. *Id.*

156. *Id.*

157. 50 U.S.C. APP. § 563 (1970).

158. 50 U.S.C. APP. § 564(1) (1970).

159. 50 U.S.C. APP. § 564(2) (1970).

160. 50 U.S.C. APP. § 566(1) (1970).

161. *Id.*

162. 50 U.S.C. APP. § 565(1) (1970).

163. 50 U.S.C. APP. § 568 (1970).

164. 50 U.S.C. APP. § 564(3) (1970).

165. 50 U.S.C. APP. § 565(2) (1970).

166. 50 U.S.C. APP. § 566(2) (1970).

as having been made before an officer designated by the Secretary of Interior.¹⁶⁷

RELIEF FOR MILITARY MEN IN A MISSING STATUS

Section 591 provides that if a power of attorney was executed by a military man in the Vietnam era naming a spouse, parent or other relative as an attorney in fact for special or general purposes and it expires by its terms after the person is included in the missing status, it is automatically extended for the time the person is missing.¹⁶⁸

However, if the instrument was executed after the effective date of this section, and clearly indicates by its terms that the power is to expire on a certain date, it will not be extended even though the person signing the instrument subsequently becomes missing as defined by statute.¹⁶⁹

CONCLUSION

Whether a problem arises in relation to tort law, family relations, probate, real estate, personal property ownership, or one of many other areas of the law, the Soldiers' and Sailors' Civil Relief Act when applicable has an impact that must be considered. Every attorney should be familiar in some way with the Act so that at least a determination can be made as to its applicability. Once this is ascertained the following checklist might be used. It is not intended to encompass all of the issues that are involved but could be functional as an outline for further research into particular sections of the Act.

CHECKLIST

1. Date of entry into military service; period of service and termination date where applicable.
2. Nature of obligation in question; date incurred; date of default where applicable.
3. Availability of serviceman to prosecute or defend a claim.
4. Is a court proceeding pending?
5. Is there a judgment or order against the serviceman? If so, determine date of entry, amount, and whether affidavit was filed and attorney appointed for serviceman.

167. 50 U.S.C. APP. § 567 (1970).

168. 50 U.S.C. APP. § 591(a)(1)-(3) (1970).

169. 50 U.S.C. APP. § 591(b) (Supp. 1974).

6. Factors relating to the financial condition before service and the change occurred after entry into service, if any.
7. Dependents of the serviceman and the nature of the particular financial reliance upon the serviceman.
8. If a judgment has been rendered against the serviceman, is a bona fide purchaser for value involved?
9. Rate of interest charged on any obligation during service; fines or penalties paid as a result of nonpayment of indebtednesses.
10. If the serviceman is a tenant, was a lease executed? How much is the monthly rent?
11. Who occupies the rented building? What was the purpose of its use?
12. Has a deposit been given for the purchase of real or personal property?
13. If property is involved, when was it purchased? Is it owned presently? Has there been a foreclosure or seizure for a breach of the obligation? If so, when?
14. Was a court order obtained before foreclosure or seizure?
15. Is the property income producing?
16. Has a life insurance policy been assigned to secure an indebtedness?
17. If so, what was the date of the policy and when was the first premium paid? What are the amounts of the policies?
18. Does the serviceman have furniture and personal effects stored?
19. What are his interests in public lands, if any?
20. Is the serviceman paying taxes on real and personal property in his home state, or where he is stationed?
21. Has the serviceman signed a written consent for modification, termination or cancellation of an obligation?