

Fordham University School of Law

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Military Law in New York Landlord-Tenant Actions and Proceedings

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33 on Top of Mt. Jo

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See pages 169-172 for more photos of the Section's Summer Meeting

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Military Law in New York Landlord-Tenant Actions and Proceedings

By Gerald Lebovits

I. Introduction

As of March 31, 2005, the United States military had 1,398,833 active duty volunteer servicemembers worldwide.¹ Of those, approximately 221,500 members—including reservists and National Guard members called to active duty—are deployed around the globe for Operation Enduring Freedom and Operation Iraqi Freedom.² Reservists and National Guard members are men and women with jobs, homes, and families they must leave to fulfill their obligations when called to active duty. Sometimes called “weekend warriors” because they serve one weekend a month and two weeks a year in peace time, reservists and National Guard members currently make up 30 percent of the United States active military force in Iraq.³ Many reservists and National Guard members suffer significant pay cuts while on active military duty.⁴ They and their dependants often cannot meet the financial obligations they entered into before being called to active duty.

The same is true for full-time servicemembers called abroad. They and their dependants accumulate debt and sometimes face eviction actions and proceedings or foreclosure actions.

Members on active duty, whether full time or reserve, are frequently unable to appear in court to defend themselves. Their inability to appear exposes them to the threat of default judgments, even nonmeritorious defaults, while they risk their lives defending our nation.

The United States, New York State, and other states recognize that servicemembers on active duty are vulnerable to lawsuits. Therefore, the United States—through the Service-

members’ Civil Relief Act (SCRA)⁵—and New York—through the New York Soldiers’ and Sailors’ Civil Relief Act (NYSSCRA)⁶—protect members from rupture and ruin, not to mention distraction and dislocation, while they attend to matters of import and immediacy.

Import and immediacy have added significance since the attacks of September 11, 2001, and the call to arms in Afghanistan and Iraq. Reacting to that call to arms, the New York City Civil Court’s Housing Part has taken significant steps to protect servicemembers’ vulnerability to landlord-tenant lawsuits. If a respondent alleges or a petitioner’s nonmilitary affidavit states that a respondent is on active military duty or dependent on someone on active duty, the case will be assigned to Part M, for “Military Part,” a Civil Court part in Bronx, Kings, New York, and Queens Counties.⁷ When a respondent appears to answer a petition, the clerk must inquire whether the respondent is on active military duty or whether the respondent depends on someone on active duty.⁸ If the respondent is on active duty or depends on someone who is, the case will be assigned to Part M. The case will also be transferred to Part M if facts at any stage of the litigation reveal that a litigant is or has become an active duty member or a dependent.

New York City’s Part M is a microcosm of the nation’s response to 9-11. In 2003, Congress enacted the SCRA, which significantly amended the Soldiers’ and Sailors’ Civil Relief Act (SSCRA) of 1940.⁹ Congress revised the SSCRA

to make the Act easier to read and understand by clarifying its language

and putting it in modern legislative drafting form, to incorporate into the Act many years of judicial interpretation, and to update the Act to take into account generally accepted practice under its provisions and new developments in American life not envisioned by the original drafters.¹⁰

The SCRA was widely supported. The United States House of Representatives Committee on Veterans’ Affairs issued a report supporting the SCRA stating that, “[w]ith hundreds of thousands of servicemembers fighting in the war on terrorism and the war in Iraq, many of them mobilized from the reserve components, the [SSCRA] should be restated and strengthened to ensure that its protections meet their needs in the 21st century.”¹¹

This article analyzes the SCRA and NYSSCRA and discusses what practitioners, litigants, and judges need to know when servicemembers or their dependants are involved in landlord-tenant disputes.

II. History and Purpose of the Federal and New York Acts

During the Civil War, Congress enacted a moratorium on civil actions brought against Union soldiers and sailors.¹² During World War I, Congress passed the SSCRA of 1918 to protect members of the armed forces.¹³ Although not an absolute moratorium on civil actions against servicemembers, the 1918 SSCRA suspended the enforcement of all civil liabilities against military personnel if active duty materially affected their ability to defend civil lawsuits.¹⁴ The 1918 SSCRA had a

sunset provision. It expired shortly after World War I ended.

In 1940, because of World War II, Congress re-enacted the SSCRA of 1918, this time without an expiry date. The 1940 SSCRA was designed “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 national defense. . . .”¹⁵ Congress intended the SSCRA to delay, in certain cases, enforcing civil liabilities so that servicemembers could focus their energy on the nation’s defense needs. Since 1940, members have received uninterrupted coverage.

Servicemembers’ coverage was strengthened in 2003. On December 19, 2003, President George W. Bush signed into law Public Law No. 108-189, 117 Stat. 2835—the SCRA—a major revision of the SSCRA. Before the SCRA went into force, the 1940 SSCRA had been amended 15 times. The SCRA continues to protect servicemembers and the nation from harm that will result from a member’s inability to defend against lawsuits because of active military service.¹⁶

New York State legislation shares the ideals of the federal legislation. In 1951, the New York State Legislature enacted the NYSSCRA, New York’s version of the Federal SSCRA.¹⁷ It closely follows the 1940 SSCRA’s substantive and procedural provisions but is less detailed than either the SSCRA or the SCRA.¹⁸ For example, the SCRA defines the term “dependents” whereas the NYSSCRA does not. In 1941, New York enacted legislation similar to the NYSSCRA,¹⁹ which by its terms expired during times of peace.²⁰ The 1951 NYSSCRA, enacted in response to the Korean War, has no expiry date. New York enacted it to give servicemembers continued protection in times of peace and in times of war. In enacting the NYSSCRA, the

Legislature stated that to promote national security, “it is essential to provide in certain cases for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in the military service.”²¹ Further protecting servicemembers, Governor George E. Pataki signed Executive Order 125 on March 24, 2003.²² The order makes discrimination based on military status unlawful and classifies that discrimination as a violation of a member’s civil rights.²³

Where possible, the NYSSCRA and the SCRA must be read together.²⁴ When the NYSSCRA does not address a point the SCRA addresses, the SCRA controls.²⁵ If the SCRA is silent and the NYSSCRA provides protection, the NYSSCRA applies.²⁶ In New York eviction actions and proceedings, a court will not evict a member unless the landlord satisfies both the SCRA and the NYSSCRA.

Satisfying the Federal and New York Acts means understanding their goals. The Federal Act’s goal, as Supreme Court Justice Hugo M. Black explained, regarding the SSCRA, is

to prevent soldiers and sailors from being harassed by civil litigation “in order to enable such persons to devote their entire energy to the defense needs of the Nation.” He is required to devote himself to serious business, and should not be asked either to attempt to convince his superior officers of the importance of his private affairs or to spend his time hunting for lawyers.²⁷

The Act gives servicemembers a measure of comfort so that they do not have to worry about defending civil proceedings while serving on active duty. As one Civil Court judge put it during World War II, the Act is

intended, “to give members of the armed forces a degree of mental repose and to protect their rights and their remedies and to free them from hardships which might be imposed upon them solely because of the performance of their patriotic duties.”²⁸

To achieve the SCRA’s and the NYSSCRA’s goals, courts must construe the Acts liberally.²⁹ The NYSSCRA explicitly provides that “[a]ll the provisions of this article shall be liberally construed. . . .”³⁰ No one said it better than Justice Robert H. Jackson, who explained that a law that aids military members in defending civil cases “is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”³¹

III. Overview of the Federal and State Acts

Although the NYSSCRA and SCRA give servicemembers broad protection against civil defaults, neither Act applies to all members or in all circumstances, and neither Act enables a member to escape from civil liability altogether. Even when a court stays an action or proceeding, the stay is not indefinite. At some point the member must return to the jurisdiction to defend the case. The overview below discusses whom the Acts apply to and the circumstances in which they apply.

A. Where Applicable

The NYSSCRA applies to all civil proceedings in all New York state courts of record or not.³² Under the NYSSCRA, New York courts, administrative and licensing agencies, and public authorities are vested with the power to stay proceedings on their own motion.³³ Although the SSCRA had applied only to cases heard in a court,³⁴ the SCRA extended the SSCRA’s scope to protect servicemembers in civil matters before “any judicial or administrative proceedings commenced in any court or agency” in all federal, state, and ter-

ritorial courts.³⁵ For example, the protective provisions of the SCRA and NYSSCRA apply if a landlord seeks administrative relief before the New York State Department of Housing and Community Renewal (DHCR) or if a proceeding over public housing is heard by a New York City Housing Authority (NYCHA) administrative law judge. Thus, the SCRA and the NYSSCRA apply to actions and proceedings, whether judicial or administrative.

The SCRA does not, however, give the federal courts the collateral power “to review, vacate, or impede state decisions” applying the SCRA.³⁶ Wrote one federal court: “[J]udgments made in violation of the Act are subject to attack only in the courts which rendered the judgment.”³⁷

B. Servicemembers Covered by the SCRA

The SCRA protects those in military duty. The SCRA defines “military duty” as a servicemember’s being in “active duty.”³⁸ The SCRA defines “active duty” as “full-time duty in the active military service of the United States.”³⁹ The 2003 SCRA protects the same servicemembers as the 1940 SSCRA: members of the United States Army, Navy, Marine Corps, Air Force, Coast Guard.⁴⁰ The SCRA also extends coverage to those the SSCRA did not: reserve forces called to active duty and National Guard members called to active duty for over 30 consecutive days who answer national emergencies declared by the president and supported by federal funds.⁴¹ In New York, members of the National Guard include members of the New York National Guard, the New York Naval Militia, and the New York Guard.⁴² The SCRA further covers commissioned officers in the National Oceanic and Atmospheric Administration and Public Health Service in active service.⁴³ Reserve Officer Training Corps (ROTC) cadets are not included in the SCRA’s defini-

tion of “servicemember” or in the definition of “active service”⁴⁴ unless they are undergoing “training or education under the supervision of the United States preliminary to induction into the military service,”⁴⁵ such as in an ROTC summer training camp.⁴⁶

C. Dependents Covered by the SCRA and NYSSCRA

The SCRA protects more than just servicemembers. It also protects members’ dependents. The SCRA defines a dependent as “(A) the servicemember’s spouse, (B) the servicemember’s child, [or] (C) an individual for whom the servicemember provided more than one-half of the individual’s support for 180 days immediately preceding an application for relief under this Act.”⁴⁷ A dependent may invoke the SCRA if the member’s active military service materially “affects the dependent’s ability to comply with a lease, contract, bailment, or other obligation.”⁴⁸ Thus, the SCRA protects dependents in eviction proceedings, with some qualifications, as explained below.

The NYSSCRA affords much broader protection to dependents than the SCRA. The NYSSCRA extends all its protections to dependents.⁴⁹

D. When the SCRA Covers Servicemembers

Unlike the SSCRA, which protected servicemembers during active military duty only, the SCRA protects members absent from active duty because of “sickness, wounds, leave, or other lawful cause.”⁵⁰ This reflects Congress’ realization that members who are hurt or who depend on injured members have important obligations to tend to and only a limited time to tend to them.⁵¹ Members’ health or family problems can hinder their ability to defend lawsuits. Unlike a court proceeding, a member’s health or family concerns cannot be stayed.

To take advantage of the SCRA, active duty must prevent a member from appearing. Granting a member protection under the Federal and State Acts is inappropriate if the court is shown only that the member is in the military and outside the court’s jurisdiction.⁵² The member must also prove an inability because of military obligations to return to the jurisdiction.⁵³

IV. Affidavits of Nonmilitary Service

The SCRA prohibits entering a default judgment against any person in a civil plenary action or summary proceeding if the plaintiff/petitioner seeking the default judgment does not first file an affidavit stating that (1) the defendant/respondent is not in military service or (2) that the plaintiff/petitioner is unable to determine whether the defendant/respondent is in military service.⁵⁴ Unlike the SCRA, the NYSSCRA extends to dependents all its benefits, including the nonmilitary affidavit’s protection and the ability to stay an action.⁵⁵ Under the NYSSCRA, therefore, the affidavit must also state whether (1) the defendant/respondent depends on a servicemember or (2) the plaintiff/petitioner is unable to determine whether the respondent depends on a member.⁵⁶

The nonmilitary affidavit requirement is the cornerstone of both the Federal and New York Acts. It protects servicemembers against default judgments while they serve their country. A court may, however, dispense with the affidavit requirement if it is satisfied that the defendant/respondent is not an active member.⁵⁷

Nonmilitary affidavits are required in both holdover and nonpayment proceedings.⁵⁸ Except as the NYSSCRA concerns stays, an issue discussed below, neither the SCRA nor the NYSSCRA distinguishes between holdovers and nonpayments. Rather, the SCRA—and the

NYSSCRA through the SCRA—applies to “any judicial or administrative proceeding,”⁵⁹ and therefore to holdover and nonpayment cases. As two commentators have explained, “a petitioner must submit an affidavit or testimony of non-military status prior to the entry of a default judgment whether the case is a non-payment or holdover.”⁶⁰ In a nonpayment proceeding, a court awards a judgment on default after reviewing the papers. In a holdover proceeding, however, a court must hold an inquest before it awards a judgment of possession on default.⁶¹ A court may, accordingly, inquire into the defendant/respondent’s military status during the holdover inquest and, if offered sufficient evidence to conclude that the defendant/respondent is not an active servicemember, may forgo a non-military affidavit.⁶²

A defendant/respondent’s appearance, even by counsel, eliminates the need for a nonmilitary affidavit. The SCRA and the NYSSCRA protect members from default judgments entered without their knowledge.⁶³ A member’s appearance means that the member had notice of the action or proceeding.⁶⁴

A. Investigating for Affidavits of Nonmilitary Service

Plaintiffs/petitioners must complete a military service investigation before they may execute a nonmilitary affidavit. The SCRA does not provide when the military service investigation must occur, although case law interpreting the SCRA and its predecessor SCCRA, imposed a “contemporaneous” standard.⁶⁵ Under the NYSSCRA, the investigation must occur after the default but before the default judgment is entered.⁶⁶ That was the rule in New York City Civil Court actions and proceedings before September 11, 2001.⁶⁷ The Civil Court’s rule changed after September 11, 2001.⁶⁸ According to a post 9-11 Civil Court directive, investigations in all civil actions and proceedings, (including

nonpayment and holdover proceedings), must now take place not more than 30 days before application for default judgment.⁶⁹ The 30-day requirement ensures that the information gathered during the investigation is current when a court enters a default judgment.

To ascertain a defendant/respondent’s military status, the investigator must speak to the defendant/respondent personally, to the defendant/respondent’s neighbors, or to any individuals, such as the defendant/respondent’s employers or fellow employees, who know the defendant/respondent personally.⁷⁰ An investigator’s reviewing the occupant’s file is sufficient for the court to conclude that the occupant is not in the military, so long as the file is identified to the court and is current and so long as the facts in the file show that the occupant is not in the military.⁷¹

After investigating, a plaintiff/petitioner who concludes incorrectly that a defendant/respondent is not in the military risks incurring the court’s wrath. In *Secretary of Housing & Urban Development v. McClenan*, a 2004 New York City Housing Part proceeding, the respondent, called to duty after the 9-11 attacks, sought to be restored to her home after she was evicted.⁷² She was evicted in accordance with a stipulation awarding final judgment to the petitioner, subject to negotiations between her and the petitioner to buy the premises, although she had been paying use and occupancy and had been negotiating with the petitioner. Before she signed the stipulation, she returned to New York from active military duty but was ill and stayed with her mother to convalesce. After the marshal executed the warrant and she moved to be restored, the petitioner’s attorney, aware of the respondent’s condition, argued that she was not on active duty and thus not entitled to SCRA protection. The court held under SCRA § 511 that she was protected from eviction

while she was absent from active duty “because of sickness.”⁷³ The court reprimanded the petitioner’s attorney for allowing an eviction in the face of evidence that she was in active military duty and therefore protected under the SCRA.⁷⁴

Another case, *Heritage East-West, LLC v. Chung*, provides an example of how courts punish for filing false nonmilitary affidavits.⁷⁵ In *Heritage*, an attorney who authorized a false nonmilitary affidavit was fined \$6,000.⁷⁶ The investigator had attested that she conducted six investigations simultaneously.⁷⁷ The court—the same judge who decided *McClenan*—found that the petitioner’s attorney, who submitted the affidavits to the court, had actual or imputed knowledge that the affidavits were false and therefore had engaged in fraud for filing false nonmilitary affidavits in the six cases he was prosecuting. The court fined the attorney under the SCRA \$1,000 in each case.⁷⁸

Process servers and marshals can also be punished for assisting in falsifying affidavits of nonmilitary service. In *In re Jacobs*, the court accepted a marshal’s resignation for, among other things, filing false nonmilitary affidavits.⁷⁹

These cases are just examples. If anyone falsifies an affidavit of nonmilitary service, courts may impose many forms of punishment, including criminal penalties.⁸⁰ Courts may also hold perjurers in contempt,⁸¹ impose sanctions,⁸² award costs,⁸³ grant attorney fees,⁸⁴ and censure attorneys for fraud.⁸⁵

B. The Affidavit’s Requirements

A nonmilitary affidavit can be signed only by certain persons and must contain certain facts about the investigator, the defendant/respondent, and the investigation.

According to a New York City Civil Court directive, the investigation underlying the affidavit must be performed and sworn to by: “a) The

Plaintiff/Petitioner or his/her attorney; b) Anyone requested to do so by the Plaintiff/Petitioner or his/her attorney; c) Anyone hired for that purpose by the Plaintiff/Petitioner or his/her attorney; [or] d) An employee of the Plaintiff/Petitioner or his/her attorney.”⁸⁶

Under the SCRA and the NYSSCRA, the affidavit must state the investigator’s name and the place, date, and approximate time the investigation took place. The plaintiff/petitioner must also include in the affidavit the name of the person with whom the affiant spoke as well as that person’s relationship with the defendant/respondent. The plaintiff/petitioner must file an affidavit for every person against whom the default judgment is sought based on that person’s failure to answer a summons and complaint or a petition and notice of petition. In a landlord-tenant action or proceeding, all the premises’ occupants may be included in one nonmilitary affidavit, so long as each occupant—under-tenants included—is identified and so long as the plaintiff/petitioner explains the basis for contending that the occupants are not servicemembers or dependents.⁸⁷

Under the SSCRA, a plaintiff/petitioner was required to use a nonmilitary affidavit only for tenants named in the lease, regardless of whether anyone else lived in the premises. Under the revised SCRA, an affidavit is required for all occupants, regardless of whether the landlord knows who all the occupants are. In the past, most landlords used fictitious names like “John Doe or Jane Doe” when suing to evict unknown occupants. Required now is an affidavit of nonmilitary service, not only for the lease’s primary tenant, but for all the rental unit’s occupants.⁸⁸ If a “John Doe” or “Jane Doe” is included in the caption, it will be impossible to evict the occupant because it is impossible to determine whether an unknown occupant is in the military.⁸⁹ To evict

all the occupants, a landlord must find out the names of all the occupants in the rental premises and name them in the court papers. It is an affirmative obligation of each landlord to know whether any occupants, other than the principal tenant, live in the rental home.⁹⁰

The SCRA does not require that a nonmilitary affidavit be notarized. The SCRA permits a written but unsworn “statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury”⁹¹ to take the place of a notarized affidavit. The SCRA has no need for a notarization requirement; it contains criminal penalties up to one-year imprisonment and a fine for knowingly violating the SCRA’s nonmilitary-affidavit provisions.⁹² The NYSSCRA is silent about whether nonmilitary affidavits must be notarized, but the custom is to notarize nonmilitary affidavits submitted to the New York City Civil Court.

C. The Investigation’s Sufficiency

An extensive investigation must usually be completed to determine the defendant/respondent’s military or dependency status. The affidavit must include facts supporting the plaintiff/petitioner’s beliefs that show to the court’s satisfaction that a respondent/defendant is not in active military service or, in New York, dependent on someone serving actively.

Case law prescribes the factors to determine whether the information in a nonmilitary affidavit is sufficient. Calling the occupant’s apartment, asking whether the person on the telephone is the occupant, and finding out whether that person is in the military or dependent on someone in the military is sufficient to determine the defendant/respondent’s military status.⁹³ It is also sufficient to determine nonmilitary status if the occupant told someone like

an identified neighbor, relative, or superintendent that the occupant is not in the military or dependent on anyone in the military.⁹⁴

Also sufficient are allegations that the affiant knows, or that an identifiable person stated, that the occupant is elderly (if people of the occupant’s age are beyond military age to serve in the military), physically incapacitated (if the incapacity is such that the defendant/respondent would not be allowed to serve in the military), or receiving public assistance.⁹⁵ Although alleging that an occupant is physically incapacitated or receiving public assistance raises the problem that the occupant’s status might have changed or that the occupant might have lied, these statements are reliable because they can be verified.

An affidavit cannot, however, be based on conclusions, or statements without underlying factual support.⁹⁶ A statement that to the affiant’s “best information and belief” the occupant is not in the military may not, without providing the foundation for that belief, support a default judgment.⁹⁷

Some facts are insufficient as a matter of law, such as statements that the investigator went to the occupant’s apartment five times and never saw the occupant,⁹⁸ that the person to whom the investigator spoke was not in military uniform,⁹⁹ or that the occupant is between the ages of 40 and 50.¹⁰⁰

D. If Military Status Cannot Be Determined

When the occupant’s military status cannot be determined from a nonmilitary affidavit, the court may require, as a condition before entering a default judgment, that the plaintiff/petitioner file a bond to indemnify the defaulting party from damages. The SCRA and NYSSCRA give courts the discretion to require a bond to protect an occupant if the plaintiff/petitioner turns out to be

wrong about the occupant's military status and if the default judgment will harm the occupant.¹⁰¹ The bond remains in effect until the occupant-defendant/respondent's time to appeal expires.¹⁰²

If an occupant's military status cannot be determined after an investigation, a plaintiff/petitioner can ask the court to dispense with the nonmilitary-affidavit requirement.¹⁰³ Courts have the discretion to waive nonmilitary affidavits if presented with satisfactory proof that an occupant is not an active servicemember.

A plaintiff/petitioner unable to determine whether an occupant is in the military can contact the military. The U.S. government created the Defense Manpower Data Center (DMDC) to collect and maintain the Department of Defense's records about individuals' military status. An investigator can write to the DMDC and, with an occupant's name, social security number, and date of birth, get a letter that reveals the occupant's military status.¹⁰⁴ The DMDC will not include whether anyone is dependent on someone in the military. But if an occupant depends on a servicemember, the dependent—unlike a member who may not leave a military post—can appear and inform the court of that status. The DMDC is a reliable source of information of an occupant's military status and may be sufficient by itself to constitute a proper investigation to dispense with a nonmilitary affidavit.¹⁰⁵ A landlord can also research a defendant/respondent's military status on the DMDC Web site at <https://www.dmdc.osd.mil/scra/owa/> home. In addition to a DMDC search, a plaintiff/petitioner can contact each individual branch of the armed services to inquire about an occupant's military status.¹⁰⁶

Tivoli Associates v. Foskey provides one unsuccessful example of a plaintiff/petitioner's request to waive a nonmilitary affidavit. In *Tivoli*, a petitioner-landlord sought a

default judgment in a summary non-payment proceeding against the respondent-tenant and requested that the court waive the military investigation and the Federal and New York Acts' nonmilitary-affidavit requirements.¹⁰⁷ The petitioner-landlord asked the court to accept the process server's affidavit in lieu of a nonmilitary affidavit. The process server's affidavit stated only that he attempted to serve the respondent twice in person and that the respondent was not at home on either occasion. The process server's affidavit did not note any additional inquiry into the respondent's military status. The court held that this investigation was insufficient to determine whether the respondent was in the military. Thus, the court could not justify waiving the nonmilitary affidavit and denied the petitioner's request for a default judgment.

V. Court-Appointed Attorney

If the defendant/respondent's military status is unknown, the court, under both the SCRA and the NYSSCRA, may appoint an attorney for the member.¹⁰⁸ Neither Act provides the amount of compensation to which a court-appointed attorney is entitled. Resort is made to the case law, none of which is from New York. In *Dorsey v. McClain*, a Maryland divorce proceeding, the court used a family law statute to determine the amount of attorney fees.¹⁰⁹ In *In re Ehlke's Estate*, a 1947 Wisconsin case, the court held that \$75 paid out of the member's share of his sister's estate was "reasonable compensation" for the work the appointed attorney performed.¹¹⁰

If the court fails to appoint an attorney for the member, then the default judgment or decree the court enters against the member is voidable. If the member is in the United States and is available to appear but intentionally defaults, the court will not appoint an attorney for the member. If a member intentionally defaults, neither the SCRA nor the NYSSCRA applies.¹¹¹ Nor will a

court appoint an attorney for a member's dependents. Nothing prevents a dependent from appearing in court.

The SCRA prohibits entering a default judgment against a defendant/respondent whose military status is unknown until after the court appoints an attorney to protect the litigant's interests.¹¹² The court-appointed attorney's job is to protect the member's rights.¹¹³ If the attorney cannot locate the member, the attorney may assert any rights the member has under the SCRA but may not waive the members' defenses or bind the member in any way.¹¹⁴

The role of the court-appointed attorney includes first finding out—if possible—where the defendant/respondent is and the defendant/respondent's status; second, contacting the defendant/respondent to advise the defendant/respondent that a default judgment might be entered; and third, if necessary, asking the court to stay the proceeding.¹¹⁵

VI. Court-Ordered Stays

The SCRA and NYSSCRA are intended to protect servicemembers' civil rights while they serve on active duty. To do so, both the SCRA and NYSSCRA allow, and sometimes mandate, courts to stay—that is, adjourn or postpone—actions or proceedings in which the member is a litigant. If the defendant/respondent is not a necessary party to the action, the court may proceed against any co-defendant/respondent in the action or proceeding without the member's presence.¹¹⁶ Moreover, a stay is meant to last only until the members can return to protect their interest adequately.

A court will not stay in every instance. For example, a court will not stay an action or proceeding if the member-defendant/respondent has no defense in a nonpayment case and the nonpayment occurred before the member entered active duty.¹¹⁷

Nor will the court stay a case if the member could have obtained leave but chose not to do so. The Act is intended to protect servicemembers, not grant them immunity from civil suit.¹¹⁸

The SCRA and the NYSSCRA each has two stay provisions. One stay provision applies to all actions and proceedings except eviction proceedings; the other applies to eviction actions and proceedings only. The following explores when courts can grant stays under the SCRA and the NYSSCRA and considers their stay provisions generally and for eviction cases.

A. Requesting SCRA and NYSSCRA Stays

The NYSSCRA does not contain a provision detailing the procedure to request a stay. The SCRA's procedure therefore governs. Before the SCRA was promulgated, a split of authority existed about which side—plaintiffs/petitioners or defendants/respondents—had the burden of proof to show whether military service materially affected the member's ability to appear.¹¹⁹ The SCRA resolves that split. It places the burden of proof on the member and explains what showing a member must make.

Under the SCRA, a servicemember's request for a stay will be granted if: (1) the member explains why current military duty materially affects an ability to appear; (2) the member gives the court a date by which the member can appear; and (3) the member's commanding officer states that the member's duties preclude appearing and that the member is not authorized for leave at the time of the hearing.¹²⁰ No specified format exists to inform the court of the requirements, but letters to the court from both the member and the member's commanding officer will suffice.

The SCRA requires the court to determine whether the member and the member's commanding officer

provide sufficient factual information to ascertain whether the member's military status materially affects an ability to appear.¹²¹ The best guidance about whether the facts underlying a defendant/respondent's application for a stay are sufficient is case law, which holds that the SCRA must be liberally construed to protect a member in active duty and an active duty member's dependents.¹²²

The court in *Turchiano v. Jay Dee Transportation* made it clear that servicemembers may not abuse the NYSSCRA's generous stay provisions.¹²³ In *Turchiano*, a member was a defendant in an automobile accident case. The trial court granted a stay under the NYSSCRA after finding that the member's military service materially affected his ability to appear. The plaintiff moved to restore the action to the calendar almost six years after the stay was granted, but the trial judge denied the motion. The Appellate Division reversed, finding that the defendant-member produced insufficient evidence to show that his military service continued to affect his ability to appear. The Appellate Division found that the NYSSCRA does not give members blanket immunity from suit. The Appellate Division restored the action to the trial calendar pending more recent affidavits¹²⁴ from the member and his commanding officer that his military service materially affected his ability to appear.

B. Stays Under the SCRA

1. General SCRA Stays

Under the SCRA, courts must stay an action or proceeding if the servicemember-defendant/respondent's ability to defend is "materially affected" by active military service.¹²⁵ To grant a stay, the court must find that (1) the member is on active duty or has been relieved of active duty within 90 days of the requested stay, (2) the military service materially affects the member's ability to defend the action, and (3) the mem-

ber had notice of the pending action or proceeding.¹²⁶ Courts consider several factors to determine whether a member's military service materially affects an ability to appear. They include the member's accrued leave, the means of communication available between the member and the court, and member's efforts to obtain leave.¹²⁷ If a member intentionally defaults, then the military duty did not materially affect any ability to appear, and the court will deny a stay.¹²⁸

The court has the discretion to decide how long the stay should last. Once a court finds that the servicemember is entitled to a stay, the stay may not be less than 90 days.¹²⁹ If a stay is appropriate, the court will typically stay the action or proceeding until the member can appear—that is, when the member ceases to be unable to appear because of active military duty.

Under the SSCRA and the SCRA, courts have the discretion to deny a servicemember's request to stay the action or proceeding. The court should ascertain whether the evidence shows that the defendant/respondent's military service substantially affects an ability to appear.¹³⁰ When a member's application was denied under the SSCRA, some courts considered the application an appearance and therefore a waiver of some SSCRA protections.¹³¹ Under the SCRA, a member's request for a stay is not an appearance or a waiver of any rights or defenses.¹³²

2. SCRA Eviction Stays

The SCRA offers special protection for servicemembers and their dependents threatened by an action or proceeding for not paying rent. The SCRA's eviction provision applies to all premises used primarily as a residence for which the monthly rent is \$2,400 or less.¹³³ But the 2003 SCRA revisions mirror the rise in housing costs in this country in the last 60 years. Starting in 2004,

and continuing annually, the rent amount will increase each year to reflect inflation.¹³⁴ To determine the rent increase amount the SCRA eviction-stay provision covers, the SCRA is indexed to the Consumer Price Index (CPI). Each year, the base rent increases by the percentage change by which the CPI for November of the preceding calendar year exceeds the November 1984 CPI.¹³⁵ Once the November CPI is published, the amount of the new increase must be calculated and published within 60 days.¹³⁶ In 2004, the SCRA covered servicemembers and their dependents whose monthly rent for their residence was \$2,465 or less.¹³⁷ The 2006 rent increase will be based on the difference between the November 2005 CPI and the November 1984 CPI.

If a member's rent is less than the current \$2,465 base and the member cannot pay the agreed upon rent because of active military service, the court may either (1) stay the proceeding for 90 days, or shorter or longer in the interests of justice, or (2) adjust lease obligations to preserve the litigants' interests.¹³⁸ Of critical importance, the SCRA eviction-stay provision empowers a court to adjust a residential lease—such as by lowering the rent amount or by creating a payment plan for the member or the member's dependent—in addition to staying the proceeding. Thus, a court may ignore RPAPL rent deposit laws and grant a motion to stay the execution of a warrant of eviction to benefit a member or dependent who defaults in a stipulation or trial judgment that gave a landlord a final judgment. A court may even modify a lease at the warrant phase. In exercising its discretion, a court may garnish the member's military salary to pay some percentage of the member's salary directly to the landlord.¹³⁹

The SCRA offers no specialized protection in summary holdover proceedings or plenary ejectment actions. But the SCRA's broad language—it applies to "any judicial or

administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act"¹⁴⁰—encompasses holdover proceedings and ejectment actions.

C. Stays Under the NYSSCRA

1. General NYSSCRA Stays

The NYSSCRA, like the SCRA, contains a general stay provision. Courts may grant a stay when a servicemember is a party to an action or proceeding and is either in active military service or has been out of active military service for 60 days or less.¹⁴¹ A stay can be granted only when a member's active duty service materially affects an ability to appear and prosecute or defend the case.¹⁴² Under the NYSSCRA, as under the SCRA, courts have the discretion to determine how long the action or proceeding should be stayed. According to the NYSSCRA, courts may stay the action or proceeding "for the period of military service and three months thereafter or any part of such period."¹⁴³

The language of the NYSSCRA's stay provision is similar to that of the SSCRA, the former Federal Act, but servicemembers are given more generous stay protections under the SCRA than under the SSCRA or the NYSSCRA.¹⁴⁴ The NYSSCRA allows a member to request a stay while on active duty or 60 days after the member leaves active duty; the SCRA allows a member to request a stay while on active duty or 90 days after leaving active duty.¹⁴⁵ Additionally, judges have the discretion under the NYSSCRA to stay an action or proceeding for up to three months after a member's military service is supposed to conclude.¹⁴⁶ The SCRA, on the other hand, leaves the duration of the stay to the judge's discretion, so long as the stay lasts at least 90 days.¹⁴⁷

2. NYSSCRA Eviction Stays

Like the SCRA, the NYSSCRA contains a provision that applies only to nonpayment proceedings. The nonpayment stay provision

applies to "any premises occupied chiefly for dwelling purposes" by either the servicemember or the member's dependents¹⁴⁸ but only when a member's military service materially affects an ability to pay rent.¹⁴⁹ This provision is especially pertinent for reserve and National Guard members, who must leave their private sector jobs and perhaps take a pay cut when called to active duty. If the court finds that active military service materially affects the member's ability to pay rent, the court may stay the proceeding for up to three months from the time the judge grants the stay.¹⁵⁰

The NYSSCRA's specialized section for nonpayment actions and proceedings does not apply to holdover proceedings or ejectment actions.¹⁵¹ The question is whether the NYSSCRA's general stay provision, discussed above, protects servicemembers in holdovers and ejectments.

Although one opinion assumes without deciding that the Acts cover holdovers,¹⁵² the only on-point published New York case law, *London v. O'Connell* and *Bronson v. Chamberlain*, holds that the NYSSCRA does not apply to holdovers.¹⁵³ But neither *London* nor *Bronson* has precedential value.

First, both *London* and *Bronson* are decades-old Municipal Court cases that discussed the issue in dictum. The dictum in *London* was the court's statement that even though neither the SSCRA nor the NYSSCRA covers holdovers, the tenant would lose even if the Acts applied to holdovers. The dictum in *Bronson* was that the court mentioned the NYSSCRA's inapplicability to holdovers as but one ground among many in ruling for the landlord.

Second, both *Bronson* and *London* ignore relevant portions of the SSCRA (now the SCRA) and the NYSSCRA. *Bronson* and *London* correctly held that NYSSCRA § 309 applies to nonpayment proceedings

only. Relying on *Bronson* and *London*, other leading authorities also state correctly that NYSSCRA § 309 applies only to nonpayment proceedings.¹⁵⁴ *Bronson* and *London* erred, however, in not applying NYSSCRA § 304—NYSSCRA’s general stay provision—to holdover proceedings.

Third, both *Bronson* and *London* predate the passage of the SCRA, which applies “to any judicial or administrative proceeding commenced . . . in any jurisdiction subject to this Act.”¹⁵⁵

Thus, the NYSSCRA by its own terms, or through the SCRA’s eviction stay provision, applies to nonpayment actions and proceedings and to holdover proceedings and ejectment actions.

Other commentators agree that the NYSSCRA applies to holdovers. For example, one commentator—this author’s predecessor in New York County’s Military Part—has opined that “provisions in the New York Act apply to holdover proceedings permitting the judge in his or her discretion to stay the proceeding, if it appears that the respondent’s ability to defend the action is materially affected as a result of his or her military service.”¹⁵⁶

Additionally, a member may invoke CPLR 2201 in moving to stay both nonpayments and holdovers or ejectments. CPLR 2201 allows a court to stay an action or proceeding “upon such terms as may be just.” In *Mirisoloff v. Monroe*, a servicemember moved for a stay under both CPLR 2201 and the SCRA.¹⁵⁷ Although the Appellate Division denied the motion because the member had not provided facts to support his stay application, the court considered CPLR 2201 with the SCRA.¹⁵⁸

D. Additional SCRA and NYSSCRA Stays

1. Additional SCRA Stays

If the court’s initial stay is insufficient, the servicemember may

apply for an additional stay if military duties continue to affect materially any ability to appear.¹⁵⁹ The member must give the court updated information of the kind the member was required to provide to obtain the initial stay: a letter from the member and the member’s commanding officer stating how the military duty materially affects the ability to appear and a date by which the member can appear.¹⁶⁰ If the court finds that the member’s military duty no longer materially affects an ability to appear, the court will deny the additional stay. If the court denies the additional stay, the court must appoint counsel for the member.¹⁶¹

2. Additional NYSSCRA Stays

The NYSSCRA specifies no procedure to apply for an additional stay. By implication, therefore, the NYSSCRA defers to the SCRA’s provisions when an additional stay is requested. An action or proceeding stayed under the NYSSCRA is taken off the trial calendar and placed on the military suspense calendar until the member can appear.¹⁶² The plaintiff/petitioner may thereafter apply to move the case from the military suspense calendar to the trial calendar.¹⁶³ At that point, the member must once again meet the SCRA’s requirements to show continued unavailability by reason of military service. That is, the member and the member’s commanding officer must explain in a letter or other communication why military duty prevents the member from appearing and provide a date by which the member will appear.¹⁶⁴ If the court is satisfied that military service still materially affects the member’s ability to appear, then the court may grant an additional NYSSCRA stay.¹⁶⁵

VII. Added Protections for Servicemembers

Under the SCRA, servicemembers or members’ dependents may unilaterally terminate a lease signed before the member entered active

duty.¹⁶⁶ The SCRA’s lease termination provision covers residential, professional, business, and agricultural leases, as well as leases for “similar purpose[s].”¹⁶⁷ The SCRA also allows members and their dependents to terminate without financial repercussions leases entered into while on active duty if the member later receives orders for a permanent change of station or deployment for 90 days or more.¹⁶⁸ The lease termination provision allows members and their dependents to terminate leases that become untenable because of active duty service.

The SCRA requires that servicemembers give a landlord notice before breaking a lease.¹⁶⁹ For a month-to-month tenancy, once the member gives the landlord notice the lease will terminate 30 days after the date of the next payment is owed.¹⁷⁰ For other lease agreements, the lease will terminate on the last day of the month following the month notice is given.¹⁷¹ The member must give the landlord a copy of the transfer or deployment order along with a termination notice.¹⁷² Only members may terminate leases. Dependents are protected from financial repercussions if a member terminates a lease, but they have no authority unilaterally to terminate a lease.¹⁷³

The SCRA applies not only to actions and proceedings about rental housing but also to mortgage payments, if the foreclosure action was filed within the member’s period of active military or within 90 days after.¹⁷⁴ When servicemembers default on their mortgage payments because of financial hardship, a court may grant them a stay or modify their obligations if they can show that military service materially affects their ability to make mortgage payments.¹⁷⁵ Courts have complete discretion to determine the length of the stay and to adjust the member’s mortgage payment obligations to preserve all the parties’ interests.¹⁷⁶

The SCRA also helps indebted servicemembers. The SCRA reduces the interest on any debt a member has to six percent for the member's entire active military service.¹⁷⁷ This provision applies to any debt, including credit card and mortgage debts.¹⁷⁸ The SCRA forgives any interest over six percent.¹⁷⁹ To take advantage of this protection, a member must give the creditor written notice and a copy of the military orders at any time during the member's military service but not later than 180 days after release from service.¹⁸⁰

VIII. When Defaults Are Wrongly Entered Against Servicemembers

The 2003 SCRA defines the term "judgment" as "any judgment, decree, order, or ruling, final or temporary."¹⁸¹ Servicemembers can set aside judgments in more circumstances than under the 1940 SSCRA, which did not define "judgment."¹⁸²

If a servicemember did not receive notice of an action or proceeding and a default judgment is entered while the member is on active duty, the member may seek to open the default judgment to defend on the merits. The motion must be made when the member completes active military service or within 60 days after.¹⁸³ In addition to proving that the default judgment was entered while the member was on active duty, the member must prove that the member was unable to defend because of active military service and that the member has a meritorious defense to the claim or "some part of it."¹⁸⁴

If one servicemember-defendant/respondent can prove the factors required to open a default judgment, the court must then open the default against all the member-defendants/respondents in the case.¹⁸⁵

Opening a default judgment will not impair a bona fide purchaser's

right or title acquired under that judgment.¹⁸⁶ Instead, the court might try to compensate the member who lost land because of a wrongly entered default judgment. The court can order the seller of the land to indemnify the defendant for the amount the defendant would have received for the land.

IX. Tolling Statutes of Limitation

The SCRA tolls the statute of limitations during military service for both service member-plaintiffs/petitioners and defendants/respondents.¹⁸⁷ The SCRA does not, however, affect time periods within a suit, such as the time period to dismiss for failure to prosecute.¹⁸⁸ Nor need plaintiffs/petitioners wait until the member's last day of active service to bring an action or proceeding if they can effect proper service before the member is released from military service.¹⁸⁹

Once active military service is proven, tolling is automatic for the duration of service, and members need not show that their active military service prejudiced their ability to prosecute or defend an action or proceeding.¹⁹⁰ Thus, the United States Supreme Court held in *Conroy v. Aniskoff* that "[a] member of the Armed Services [need not] show that his military service prejudiced his ability to redeem title to property before he can qualify for the statutory suspension of time."¹⁹¹

X. Waiver

Servicemembers may waive their rights under both the Federal and New York Acts.¹⁹² The waiver must be in writing and executed after the member began a tour of active duty.¹⁹³ The waiver can occur any time after the member enters active duty, even after the member defaults. If the plaintiff/petitioner submits a written statement in which a member waived SCRA protection, a court may enter a default judgment.¹⁹⁴

The SCRA provides that any waiver of rights be in a separate document and in 12-point type.¹⁹⁵ A member who wishes to waive the right to break a residential lease must therefore sign a waiver form separate from the lease itself. A waiver of one SCRA provision does not, moreover, waive the member's rights to all SCRA protections.¹⁹⁶ Congress sought to reduce the possibility that members might waive SCRA rights unknowingly.¹⁹⁷

XI. Conclusion

Those who protect us all need protection themselves. Enshrining that doctrine, Congress enacted the SCRA and the New York Legislature enacted the NYSSCRA to defend servicemembers and their dependents from civil liability while they serve our country. Taken together, the SCRA and the NYSSCRA give due process to members on active duty in the United States and around the globe. If both Acts are applied properly, members will not return from service to find unexpectedly that a landlord has secured an eviction, that a bank has foreclosed on property, or that a creditor has won a money judgment. Cherished must be the principle that members of the United States armed forces will not come home to find themselves or their loved ones homeless.

Endnotes

1. Department of Defense Active Duty Military Personnel Strengths by Regional Area and by Country, *available at* <http://www.dior.whs.mil/mmids/military/history/hst0305.pdf> (last visited Aug. 22, 2005).
2. *Id.*
3. *The National Guard and Reserves: Once was Enough*, *The Economist*, July 9, 2005, at 77 (noting that early in 2005, reservists made up as many as 50% of U.S. military force in Iraq).
4. Sandra Block, *Reservists Pay Steep Price for Service*, *USA Today*, June 9, 2003, at A1 ("More than a third of military reservists and National Guard members suffer a cut in pay when they're called to active duty.").
5. 50 U.S.C. app. §§ 501 *et seq.*

6. N.Y. Military Law §§ 300 *et seq.*
7. In Richmond County, all Housing Part cases, including military cases, go to Part Y, an all-purpose resolution and trial part.
8. See generally Larry S. Schachner & Susan Avery, Outside Counsel, *Housing Court Part M, The Military and Their Dependents*, N.Y.L.J., May 14, 2003, p.4, col. 4.
9. See 50 U.S.C. app. §§ 501 *et seq.* (1940).
10. John T. Meixell, *Servicemembers Civil Relief Act Replaces Soldiers' and Sailors' Civil Relief Act*, Army Law. 38, 38 (Dec. 2003).
11. H.R. Rep. No.108-81, at 32 (2003).
12. See An Act in Relation to the Limitation of Actions in Certain Cases, 13 Stat. 123 (1864).
13. See 50 U.S.C. app. §§ 101 *et seq.* (1918).
14. *The Sylph*, 42 F. Supp. 354, 356 (E.D.N.Y. 1941).
15. 50 U.S.C. app. § 510 (1940).
16. See 50 U.S.C. app. § 502(1) & (2).
17. See N.Y. Military Law §§ 300 *et seq.*
18. *Kelley v. Kelley*, 38 N.Y.S.2d 344, 347 (Sup. Ct., Oneida Co. 1942).
19. See New York Soldiers' and Sailors' Civil Relief Act, N.Y. Military Law §§ 300 *et seq.* (1941).
20. *Id.* § 322.
21. N.Y. Military Law § 300.
22. See N.Y. Exec. (Human Rights) Law §§ 296 *et seq.* (N.Y. St. Patriot Act) (eff. Aug. 29, 2005); Maria I. Doti, *Military Families and Civil Court/Pro Bono Needs*, 3 (unpublished N.Y. County Lawyers' Ass'n Civ. Ct. Prac. Sect. memorandum dated June 9, 2005).
23. See N.Y. Exec. (Human Rights) Law §§ 296 *et seq.*
24. *Heritage East-West, LLC v. Chung*, 6 Misc. 3d 523, 528, 785 N.Y.S.2d 317, 321-22 (Hous. Part Civ. Ct., Queens Co. 2004) (reading SSCRA and NYSSCRA together); *Cornell Leasing Corp. v. Hemmingway*, 147 Misc. 2d 83, 85, 553 N.Y.S.2d 285, 286 (Hous. Part Civ. Ct., N.Y. Co. 1990); *Kelley*, 38 N.Y.S.2d at 347.
25. *Kelley*, 38 N.Y.S.2d at 347.
26. *Id.*
27. *Boone v. Lightner*, 319 U.S. 561, 578 (1943) (Black, J., dissenting) (quoting 50 U.S.C. app. § 510 (1940)).
28. *Meyers v. Schmidt*, 181 Misc. 589, 591, 46 N.Y.S.2d 420, 422 (Columbia County Ct., 1944); accord *Jaworski v. McCloskey*, 47 N.Y.S.2d 26, 27 (Sup. Ct., N.Y. Co. 1944); Larry S. Schachner, *Affidavits of Military Status As Required by the United States Soldiers' and Sailors' Civil Relief Act of 1940 and the New York State Soldiers' and Sailors' Civil Relief Act of 1951*, at 3 (2002) (unpublished paper for N.Y. County Lawyers' Ass'n Jack Newton Lerner CLE Lecture Series, Apr. & May 2002).
29. *Arkless v. Kilstein*, 61 F. Supp. 886, 887 (E.D. Pa. 1944); *Leshner v. Louisville Gas & Electric Co.*, 49 F. Supp. 88, 90 (W.D. Ky. 1943); *Balconi v. Dvascas*, 133 Misc. 2d 685, 688, 507 N.Y.S.2d 788, 790 (Monroe County Ct., 1986); Bernice Siegal & Christina Caturano, *Non-Military Affidavits: Providing Civil Relief at Home*, 4 Landlord-Tenant Prac. Rep. 1, 8 (Mar. 2003).
30. N.Y. Military Law § 300.
31. *Boone*, 319 U.S. at 575.
32. N.Y. Military Law § 301(3).
33. *Id.* § 304.
34. See 50 U.S.C. app. § 512(1) (1940) ("The provisions of [§ 512] 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.").
35. *Id.* § 512(b); see also Meixell, *supra* note 10, at 38.
36. Major Hostetter, *Using the Soldiers' and Sailors' Relief Act to Your Clients' Advantage*, Army Law. 34, 36 (Dec. 1993) (citing *Shatswell v. Shatswell*, 758 F. Supp. 662, 663 (D. Kan. 1991) (holding that federal court may not supercede state determination not to stay proceedings)).
37. *Longmire v. Longmire*, 2000 WL 796435, at *2, 2000 U.S. Dist. LEXIS 8506, at *6 (N.D. Miss. 2000) (referencing SSCRA).
38. 50 U.S.C. app. § 511(2).
39. *Id.* (citing 10 U.S.C. § 101(d)(1) (defining "active duty")).
40. *Id.* § 511(2)(A).
41. *Id.* § 511(2)(A)(i) & (ii).
42. Schachner, *supra* note 28, at 3.
43. 50 U.S.C. app. § 511(2)(B) (citing 10 U.S.C. § 101(a)(5) (defining "uniformed services")).
44. *Id.* § 511(2) (citing 10 U.S.C. § 101(d)(1) (defining "active duty")).
45. *Id.* § 511(2)(A)(i) (citing 10 U.S.C. § 101(d)(1)).
46. Mark S. Cohen, *Entitlement to a Stay or Default Judgment Relief Under the Soldiers' and Sailors' Relief Act*, 56 Am. Jur. Proof of Facts 3d § 5(2) (last updated June 2005).
47. 50 U.S.C. app. § 511(4).
48. *Id.* § 538.
49. N.Y. Military Law § 301-b; *Jusino v. N.Y.C. Hous. Auth.*, 255 A.D.2d 41, 46, 691 N.Y.S.2d 12, 17 (1st Dep't 1999) (extending stay to servicemember's dependent).
50. 50 U.S.C. app. § 511(2)(C).
51. Mark E. Sullivan, *Judge's Guide to the Servicemembers Civil Relief Act* 1-2 (Mar. 16, 2004), available at <http://www.abanet.org/family/military/scrajudgesguidecklist.pdf>. (last visited Aug. 9, 2005) (updated from 41 Judges' J. 28 (2002)).
52. *Branch v. Stukes*, 2001 WL 1550903, at *1, 2001 U.S. Dist. LEXIS 20640, at *1 (S.D.N.Y. 2001) (holding that merely showing that defendant is in military does not render stay mandatory unless defendant's ability to defend is materially affected); *Hackman v. Postel*, 675 F. Supp. 1132, 1133 (N.D. Ill. 1988) (refusing to grant stay when defendant made no showing of unavailability or that service materially affected his ability to appear); *Deacon v. Witham*, 131 Misc. 2d 217, 219, 499 N.Y.S.2d 317, 319 (Hudson City Ct., 1985); *Mayfair Sales, Inc. v. Sams*, 169 So. 2d 150, 152 (La. Ct. App. 1964) (holding that defendant not entitled to stay because defendant was service-member only).
53. See 50 U.S.C. app. § 522(b)(2); *Theresa G. v. Eric L.*, 133 Misc. 2d 414, 419, 506 N.Y.S.2d 948, 951 (Fam. Ct., Kings Co. 1986) (holding that because respondent was available to return, military duty did not materially affect ability to appear); *Underhill v. Barnes*, 288 S.E.2d 905, 907 (Ga. Ct. App. 1982) (affirming decision that servicemember did not provide sufficient evidence that military service materially affected his ability to appear).
54. 50 U.S.C. app. § 521(b)(1)(A) & (B).
55. N.Y. Military Law § 301-b(1).
56. *Citibank, N.A. v. McGarvey*, 196 Misc. 2d 292, 297-298, 765 N.Y.S.2d 163, 167 (Civ. Ct., Richmond Co. 2003).
57. *L&F Realty Co. v. Kazama*, N.Y.L.J., Nov. 26, 1997, p. 31, col. 1 (Hous. Part Civ. Ct., N.Y. Co.) (holding that nonmilitary-affidavit requirement may be waived if petitioner is unable to file affidavit but that court must be satisfied with adequacy of landlord's investigation of respondent's military status); *Rosenblum v. Ruiz*, N.Y.L.J., Mar. 6, 1991, p. 24, col. 2 (Hous. Part Civ. Ct., Kings Co.) (stating SSCRA allows court to dispense with nonmilitary affidavit, but declining to do so); *Tivoli Assocs. v. Foskey*, 144 Misc. 2d 723, 724, 545 N.Y.S.2d 259, 260 (Hous. Part Civ. Ct., Kings Co. 1989) ("Federal statute mandates and requires that a nonmilitary investigation be conducted, absent the formal filing of an affidavit of military service."); Schachner & Avery, *supra* note 8, p. 7, col. 5 (stating that courts can dispense with nonmilitary affidavit if petitioner in Housing Part proceeding is unable to determine respondent's military status).
58. See Schachner & Avery, *supra* note 8, p. 7, col. 6.

59. 50 U.S.C. app. § 512(b).
60. Schachner & Avery, *supra* note 8, p. 7, col. 6.
61. *In re Brusco v. Braun*, 84 N.Y.2d 674, 681, 645 N.E.2d 724, 726, 621 N.Y.S.2d 291, 293-94 (1994).
62. Schachner & Avery, *supra* note 8, p. 7, col. 6 (stating that a petitioner must submit affidavits or testimony about military status); N.Y.C. Civ. Ct., Non-Military Affidavits, Legal/Statutory Memorandum, Class LSM-152, at 2 (Apr. 30, 2003) (“[w]here a case is set for inquest, the presiding judge should inquire as to the military status of the defendant or respondent and note it in the decision.”) (hereinafter “Legal/Statutory Memorandum 2003”).
63. Siegal & Caturano, *supra* note 29, at 11.
64. *Id.*
65. *See, e.g., Citibank*, 196 Misc. 2d at 299, 765 N.Y.S.2d at 168.
66. *Nat’l Bank of Far Rockaway v. Van Tassel*, 178 Misc. 776, 777-78, 36 N.Y.S.2d 478, 480 (Sup. Ct., Queens Co. 1942).
67. *Id.*, 36 N.Y.S.2d at 480.
68. *See* Legal/Statutory Memorandum 2003, *supra* note 62, at 2. That directive replaced a directive promulgated immediately after September 11, 2001. *See* N.Y.C. Civ. Ct., Non-Military Affidavits, Legal/Statutory Memorandum, Class LSM-109c, at 2 (Sept. 27, 2001).
69. Legal/Statutory Memorandum 2003, *supra* note 62, at 3.
70. *Id.*; 21948, *LLC v. Riaz*, 191 Misc. 2d 730, 731, 745 N.Y.S.2d 389, 390 (Civ. Ct., N.Y. Co. 2002) (requiring investigator to speak with someone who has actual knowledge of defaulting respondent’s military service) (citing *Benabi Realty Mgmt. Co., L.L.C. v. Van Doorne*, 190 Misc. 2d 37, 38, 738 N.Y.S.2d 167 (Hous. Part Civ. Ct., N.Y. Co. 2001); *N.Y. Mill Rock Plz. Assocs. v. Lively*, 153 Misc. 2d 254, 256-58, 580 N.Y.S.2d 815, 817-18 (Hous. Part Civ. Ct., N.Y. Co. 1990)).
71. *N.Y.C. Hous. Auth. v. Smithson*, 119 Misc. 2d 721, 723, 464 N.Y.S.2d 672, 673 (Hous. Part Civ. Ct., N.Y. Co. 1983) (rejecting nonmilitary affidavit in part because affidavit was based on tenant’s file in which age and contents of file not identified); Legal/Statutory Memorandum 2003, *supra* note 62, at 3.
72. *See* 4 Misc. 3d 1027(A), 2004 Slip Op. 51085(U), at *1, 2004 WL 2187568, at *1, 2004 N.Y. Misc. LEXIS 1540, at *2 (Hous. Part Civ. Ct., Queens Co. 2004).
73. *Id.*, 2004 Slip Op. 51085(U), at *4, 2004 WL 2187568, at *4, 2004 N.Y. Misc. LEXIS 1540, at *8 (quoting 50 U.S.C. app. § 511).
74. *See id.* at *5, 2004 Slip Op. 51085(U), at *5, 2004 WL 2187568, at *5, 2004 N.Y. Misc. LEXIS 1540, at *11-12.
75. 6 Misc. 3d 523, 785 N.Y.S.2d 317 (Civ. Ct., Queens Co. 2004).
76. *Id.* at 532, 785 N.Y.S.2d at 325.
77. *See id.*, 785 N.Y.S.2d at 325.
78. *Id.*, 785 N.Y.S.2d at 325.
79. 43 A.D.2d 8, 9, 349 N.Y.S.2d 935, 936 (1st and 2d Dep’ts 1973) (*per curiam*).
80. *See infra* note 92 and accompanying text.
81. Siegal & Caturano, *supra* note 29, at 11 n.56 (citing *Smithson*, 119 Misc. 2d at 724, 464 N.Y.S.2d at 674 (threatening to refer possible contempt to prosecutor)).
82. *Id.* at 11 n.57 (citing *Brantley v. Riley*, N.Y.L.J., Jan. 19, 1998, p. 32, col. 5 (Hous. Part Civ. Ct., Kings Co.); *De Camp v. Dawson*, N.Y.L.J., Mar. 12, 1997, p. 30, col. 4 (Hous. Part Civ. Ct., Kings Co.)).
83. *Id.*
84. *Id.*
85. Siegal & Caturano, *supra* note 29, at 11 n.58 (citing *In re Siegel*, 47 A.D.2d 461, 463, 367 N.Y.S.2d 294, 295 (1st Dep’t 1975) (*per curiam*); *In re Shenghit*, 44 A.D.2d 440, 441-42, 355 N.Y.S.2d 599, 600 (1st Dep’t 1974) (*per curiam*)).
86. Legal/Statutory Memorandum 2003, *supra* note 62, at 3.
87. *Id.*; *N.Y. Mill Rock Plz. Assocs.*, 153 Misc. 2d at 256-58, 580 N.Y.S.2d at 816-18.
88. *Avoid Using Fictitious ‘John and Jane Doe’ Names in Nonpayment Court Papers*, N.Y. Apt. L. Insider, Aug. 2004, at 14.
89. *Id.*
90. *Id.* at 14-15.
91. 50 U.S.C. app. § 521(b)(4).
92. *Id.* § 521(c) (“A person [who falsifies affidavit] shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”).
93. *In re Jacreg Realty Corp. v. Kornreich*, N.Y.L.J., Apr. 28, 1999, p. 27, col. 4 (Sup. Ct., N.Y. Co.).
94. Larry S. Schachner & Susan Weissman, *Using Affidavits of Military Service in Housing Court Proceedings*, N.Y.L.J., June 6, 2002, p. 8, col. 5.
95. *Oliver v. Oliver*, 12 So. 2d 852, 853-54 (Ala. 1943) (allowing plaintiff to proceed because affidavit alleged that defendant was exempt from military service by reason of physical incapacity); Legal/Statutory Memoranda 2003, *supra* note 62, at 3.
96. *See, e.g., Benabi Realty Mgmt.*, 190 Misc. 2d at 38, 738 N.Y.S.2d at 167 (requiring investigator to ascertain how individual spoken to knows respondent’s military status); *N.Y. Mill Rock Plz. Assocs.*, 153 Misc. 2d at 257, 580 N.Y.S.2d at 817 (requiring clarity in giving basis of knowledge for nonmilitary affidavit).
97. *United States v. Simmons*, 508 F. Supp. 552, 552 (D.C. Tenn. 1980); Schachner & Weissman, *supra* note 94, p. 8, col. 5-6.
98. *L&F Realty*, N.Y.L.J., Nov. 26, 1997, p. 31, col. 1.
99. *Nat’l Bank of Far Rockaway*, 178 Misc. at 778, 36 N.Y.S.2d at 481.
100. *See* 10 U.S.C. § 1251(a) (providing, with exceptions, that Army, Navy, Air Force, and Marine Corps regular commissioned officers must retire at 62 years old); *One Sickles St. Co. LP v. Vasquez*, N.Y.L.J., Mar. 19, 1997, p. 26, col. 3 (Hous. Part Civ. Ct., N.Y. Co.) (alleging that respondent’s age is between 40 and 50 is insufficient to prove that defendant is not in military because some service-members may serve past age 62).
101. *See* 50 U.S.C. app. § 521(b)(3); N.Y. Military Law § 303(1); *In re Realty Assocs. Sec. Corp.*, 53 F. Supp. 1015, 1016 (E.D.N.Y. 1944) (holding that if no evidence of defendant’s military service exists, court may require bond before entering default judgment); *Syracuse Sav. Bank v. Brown*, 181 Misc. 999, 1002, 42 N.Y.S.2d 156, 159 (Sup. Ct., Onondaga Co. 1943) (stating that court may require plaintiff to indemnify defendant against any loss defendant may suffer from judgment later set aside); *One Sickles St.*, N.Y.L.J., Mar. 19, 1997, p. 26, col. 3.
102. 50 U.S.C. app. § 521(b)(3).
103. *See Tivoli Assocs.*, 144 Misc. 2d at 724, 545 N.Y.S.2d at 260.
104. *Avoid Eviction Delays by Getting Information About Tenant’s Military Service*, N.Y. Apt. L. Insider, Jan. 2003, at 2-3. The DMDC’s address is 1600 Wilson Blvd., Ste. 400, Arlington, VA 22209-2593.
105. Sullivan, *supra* note 51, at 2-3.
106. Siegal & Caturano, *supra* note 29, at 10 (giving contact names, addresses, and fees for each armed forces branch).
107. *See* 144 Misc. 2d at 724, 545 N.Y.S.2d at 259.
108. *See* 50 U.S.C. app. § 521(b)(2); N.Y. Military Law § 303(1); *Realty Assocs. Sec.*, 53 F. Supp. at 1016 (noting that appointing counsel to represent servicemember is discretionary); *444 W. 54th St. Tenants Ass’n v. Costello*, 138 Misc. 2d 5, 16-17, 523 N.Y.S.2d 374, 381 (Civ. Ct., N.Y. Co. 1987).
109. *See* 562 A.2d 1302, 1305 (Md. App. 1989).
110. *See* 27 N.W.2d 754, 757 (Wisc. 1947).
111. *E.g., Cornell Leasing*, 147 Misc. 2d at 87, 553 N.Y.S.2d at 287 (refusing to grant stay where servicemember intentionally defaulted despite availability to appear).
112. 50 U.S.C. app. § 521(b)(2) (providing that court “may not enter a [default] judgment until after the court appoints an attorney to represent the defendant”); *see Simkowitz v. Botelho*, N.Y.L.J., Oct. 30,

- 2002, p. 19, col. 3 (Hous. Part Civ. Ct., N.Y. Co.) (refusing to enter default judgment and, instead, appointing attorney).
113. *United States v. Henagan*, 552 F. Supp. 350, 351 (D.C. Ala. 1982); *Citibank*, 196 Misc. 2d at 301, 765 N.Y.S.2d at 170.
 114. 50 U.S.C. app. § 521(b)(2).
 115. *See generally State ex rel. Burden v. Smith*, 1994 WL 714505, at *2, 1994 Ohio App. LEXIS 5881, at *6 (Ct. App. 10th Dist. 1994).
 116. 50 U.S.C. app. § 525(b).
 117. *See DeMetre v. Hall*, 269 A.D. 802, 802, 55 N.Y.S.2d 111, 112 (3d Dep't 1945) (*per curiam*) (refusing to stay case because appellant had no defense); *Franklin Soc. for Home-Building & Sav. v. Flavin*, 265 A.D. 720, 721, 40 N.Y.S.2d 582, 583 (1st Dep't 1943) (*per curiam*); *Schachner & Avery*, *supra* note 8, p. 4, col. 5 (stating that court will not issue stay if respondent/defendant has no defense and if payment default preceded military service).
 118. *See Jamaica Sav. Bank v. Bryan*, 176 Misc. 215, 216, 25 N.Y.S.2d 641, 642 (Sup. Ct., Queens Co. 1941) (refusing to grant stay because court found that servicemember could appear); *Theresa G.*, 133 Misc. 2d at 419, 506 N.Y.S.2d at 951; *Recovery Partners, L.P. v. Murphy*, N.Y.L.J., Sept. 10, 2001, p. 32, col. 3 (Dist. Ct., Nassau Co.) (denying stay because member was fully informed of action and had time to appear and defend); *Schachner & Avery*, *supra* note 8, p. 4, col. 5 (stating that courts will not grant stay unless military service materially affects member's ability to appear).
 119. *Schachner & Avery*, *supra* note 8, p. 4, col. 5 (citing *Boone*, 319 U.S. at 570 (holding that court must use discretion to determine burden of proof); *Thompson v. Anderson*, 37 S.E.2d 581, 589 (Sup. Ct., So. Carolina 1946) (placing burden of proof on servicemember)).
 120. *See* 50 U.S.C. app. 522(b)(2)(A) & (B); *Meixell*, *supra* note 10, at 39.
 121. *Id.* § 522(b)(1) & (2) (directing court to stay action or proceeding if conditions in subsection 2 are met).
 122. *See, e.g., Royster v. Lederle*, 128 F.2d 197, 200 (6th Cir. 1942) (finding that Act should be construed liberally to carry out its intended purposes: to protect servicemembers unavailable for reasons of military service); *Arkless* at 61 F. Supp. at 887; *Leshner*, 49 F. Supp. at 90; *In re Burrell*, 230 B.R. 309, 312 (Bankr. E.D. Tex. 1999); *Balconi v. Dvascas*, 133 Misc. 2d 685, 688, 507 N.Y.S.2d 788, 790 (Rochester City Ct. 1986).
 123. *See* 109 A.D.2d 790, 791, 486 N.Y.S.2d, 301, 302 (2d Dep't 1985); *see also Franklin Soc. for Home-Building & Sav.*, 265 A.D. at 721, 40 N.Y.S.2d at 583; *Nassau Sav. & Loan Ass'n v. Ormund*, 179 Misc. 447, 449, 39 N.Y.S.2d 92, 94 (Sup. Ct., Queens Co. 1942).
 124. Note, however, that 50 U.S.C. app. § 522(b)(2) requires "[a] letter or other communication," not an affidavit.
 125. *See* 50 U.S.C. app. § 522(b)(2)(A).
 126. *Id.* § 522(a) & (b).
 127. *Sullivan*, *supra* note 51, at 5-6.
 128. *In re Title Guarantee Co. v. Duffy*, 267 A.D. 444, 446-47, 46 N.Y.S.2d 441, 443 (1st Dep't 1944); *Burgess v. Burgess*, 234 N.Y.S.2d 87, 89 (Sup. Ct., Westchester Co. 1962); *King v. King*, 193 Misc. 750, 753, 85 N.Y.S.2d 563, 567 (Sup. Ct., N.Y. Co. 1948).
 129. 50 U.S.C. app. § 522(b)(1).
 130. *Id.* § 522(b)(1) & (2).
 131. *E.g., Skates v. Stockton*, 683 P.2d 304, 305-06 (Ariz. Ct. App. 1984); *Vara v. Vara*, 171 N.E.2d 384, 392 (Ohio Ct. Com. Pl., Highland Co. 1961).
 132. 50 U.S.C. app. § 522(c).
 133. *Id.* § 531(a)(1)(A)(ii); *Servicemembers Given Added Protection from Eviction, Expanded Rights to End Lease*, N.Y. Apt. L. Insider, Apr. 2004, at 13 (hereinafter "Servicemembers Given Added Protection"); George C. Thompson, *The Servicemembers' Civil Relief Act*, Res Gestae 13, 17 (Sept. 2003).
 134. 50 U.S.C. app. § 531(a)(2)(A).
 135. *Id.* § 531(a)(2)(B)(i)(I) & (II).
 136. *Id.* § 531(a)(3).
 137. Publication of Housing Price Inflation Adjustment Under Public Law 108-109 § 301, 69 Fed. Reg. § 1281; Stanley Kwieciak, III, *Protecting the Protectors*, 77 N.Y. St. B.J. 42, 43 (Feb. 2005).
 138. *Id.* § 531(b)(1)(A) & (B).
 139. *Id.* § 531(d).
 140. *Id.* § 512(b).
 141. N.Y. Military Law § 304.
 142. *Id.*
 143. *Id.* § 307.
 144. *Compare* 50 U.S.C. app. § 522(a)(1) with 50 U.S.C. app. § 521 (1940) and with N.Y. Military Law § 304.
 145. *See* U.S.C. app. § 522(a)(1); N.Y. Military Law § 304.
 146. *See* N.Y. Military Law § 307.
 147. *See* U.S.C. app. § 522(b)(1).
 148. N.Y. Military Law § 309(1); *Siegal & Caturano*, *supra* note 29, at 8 (citing *Riaz*, 191 Misc. 2d at 730-31, 745 N.Y.S.2d at 390).
 149. N.Y. Military Law § 309(2).
 150. *Id.*; 70 *Linden Realty Co. v. Williams*, N.Y.L.J., Apr. 17, 1991, p. 25, col. 1 (Hous. Part Civ. Ct., Kings Co. 1991) (vacating judgment and staying for three months or until respondent returned from active duty).
 151. *Id.* (mentioning only payment of "rent").
 152. *See* 444 W. 54th St. *Tenants Ass'n*, 138 Misc.2d at 6, 523 N.Y.S.2d at 375.
 153. *See London v. O'Connell*, 20 Misc. 2d 168, 168, 192 N.Y.S.2d 594, 595 (Mun. Ct., N.Y. Co. 1959); *Bronson v. Chamberlain*, 53 N.Y.S.2d 172, 174 (Syracuse Mun. Ct. 1945).
 154. 3 *Rasch's Landlord & Tenant*, Including Summary Proceedings § 47:4, at 222 (Robert F. Dolan, 4th ed. 1998); 77 *Herbert B. Chermiside, Jr.*, N.Y. Jur. 2d Military and Civil Defense § 97, at 240-41 (2d ed. 1989); *Elizabeth K. Ormond et al.*, 90 N.Y. Jur. 2d Real Prop. § 263, at 130-31 (1991).
 155. 50 U.S.C. app. § 512(b).
 156. *Schachner*, *supra* note 28, at 13 (citing N.Y. Military Law §§ 304, 306 & 309; *Adiaco v. Decker*, Index # 51267/01 (Hous. Part Civ. Ct., Richmond Co. 2001) (Bedford, J.)) (footnotes omitted).
 157. *See* 16 A.D.3d 1161, 791 N.Y.S.2d 255 (4th Dep't 2005) (mem.).
 158. *Id.* at 1161, 791 N.Y.S.2d at 256.
 159. 50 U.S.C. app. § 522(d)(1).
 160. *Id.*
 161. *Id.* § 522(d)(2).
 162. *Turchiano*, 109 A.D.2d at 790, 486 N.Y.S.2d at 301.
 163. *Id.*, 486 N.Y.S.2d at 301.
 164. *Id.*, 486 N.Y.S.2d at 301.
 165. *Id.* at 790-91, 486 N.Y.S.2d at 301.
 166. 50 U.S.C. app. § 535(b)(1)(A).
 167. *See id.* § 535(b)(1).
 168. *See id.* § 535(b)(1)(B); *accord Charlton Meginley, The Servicemembers' Civil Relief Act: Protecting Those Who Protect America*, 52 La. B.J. 94, 96 (2004); *Meixell*, *supra* note 10, at 40.
 169. *See* 50 U.S.C. app. § 535(c).
 170. *Id.* § 535(d)(1).
 171. *Id.*
 172. *Id.* § 535(c)(1)(A); *see also Servicemembers Given Added Protection*, *supra* note 133, at 14.
 173. *Id.* § 535(b)(1)(A) & (B).
 174. *Id.* § 533(b).
 175. *Id.*
 176. *Id.* § 533(b)(2).
 177. *See id.* § 527(a)(1).
 178. *Id.*; Charles W. Dobra, *Military, Employment and Business Law—New Developments that Employers, Employees Who are Military Reservists or Guardsmen, and the*

- Lawyers Who Represent Them, Should Be Aware Of*, 17 DuPage County Bar Ass'n Brief 12, 14 (2004).
179. See 50 U.S.C. app. § 527(a)(2).
 180. *Id.* § 527(b)(1).
 181. *Id.* § 511(9); see also *Congress Changes Service Members' Housing Rights*, N.Y. Apt. L. Insider, Apr. 2005, at 11 (hereinafter "Housing Rights").
 182. *Housing Rights*, *supra* note 181, at 11.
 183. 50 U.S.C. app. § 521(g)(1).
 184. *Id.* § 521(g)(1)(A) & (B); see also *Dep't of Hous. Preserv. & Dev. of City of N.Y. v. W. 129th St. Realty Corp. & Green*, 2005 Slip Op. 25323, at *1, 2005 WL 1862717, at *1 (App. Term 1st Dep't 2005) (*per curiam*) (declining to open default in HP proceeding because co-respondent Green did not allege he was member or member's dependent); *Citibank, N.A. v. McGarvey*, 196 Misc. 2d 292, 297-298, 765 N.Y.S.2d 163, 167 (Civ. Ct., Richmond Co. 2003) (refusing to open default judgment because although defendant presented meritorious defense, he did not show he was in active military service).
 185. *Id.* § 521(g)(1) (providing that upon servicemember's meeting burden, court "shall" vacate default).
 186. *Id.* § 521(h).
 187. See *id.* § 526(a).
 188. *Zitomer v. Holdsworth*, 449 F.2d 724, 726 (3d Cir. 1971) (*per curiam*).
 189. *Richard v. Birch*, 529 F.2d 214, 217 (4th Cir. 1975).
 190. Sullivan, *supra* note 51, at 10.
 191. See *Conroy v. Aniskoff*, 507 U.S. 511, 517-18 (1993) (holding that army officer on active duty whose property was bought by town in tax sale and later resold need not show that military service prejudiced ability to redeem title to property before receiving benefit of Federal Act's statute of limitation's tolling provision).
 192. 50 U.S.C. app. § 517; N.Y. Military Law § 302.
 193. 50 U.S.C. app. § 517(a); N.Y. Military Law § 302(3).
 194. Schachner, *supra* note 28, at 10.
 195. 50 U.S.C. app. § 517(c).
 196. *Harris v. Stem*, 30 So. 2d 889, 892 (La. Ct. App. 1947).
 197. *Housing Rights*, *supra* note 181, at 11.

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