







- Loan limit is \$1,500,000, but may be waived if the business is a major employer.
- The maximum interest rate is 4%.
- Loan period is set by SBA based upon ability to repay.
- Loans of \$5,000 or less do not require pledging of collateral.
- SBA requires appropriate business insurance coverage for loans over \$5,000.
- Loan money cannot be used to pay off debts, refinance long term debt or expand the business, or make up for lost profits.

### APPLICATION PROCESS

As with any loan application, basic information is needed, in this case using SBA Form 5R package, that includes a statement by the business owner that the reservist is an essential employee, copy of activation orders or discharge orders from active duty with a written concurrence by the essential employee. The business must provide a written explanation and estimate of how

the essential employee's activation resulted in the small business experiencing substantial economic injury. Additionally, a description of the steps the business is taking to alleviate the substantial economic injury and a certification from the business owner that the essential employee will be offered the same or similar job upon the employee's return from active duty must be included.

### GET MORE GUIDANCE

Specific information should be sought from the Small Business Administration at: 800-659-2955 or via [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov). Completed loan applications may be mailed to: U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Ft. Worth, Texas 76155-2243.

The author is a retired Army JAGC LTC with over 43 years of legal practice both in uniform and as a Department of the Army civilian attorney. Mr. Chucala served at every echelon of command from garrison to major Army command Staff Judge Advocate and in multi service commands in the Republics of China and Korea. He is a member of the Virginia, New York and the District of Columbia Bars.

regardless of rank. Further, the Virginia State Bar Lawyer Referral Service agreed to waive its normal \$35 referral fee under these circumstances. If you would like to join the growing list of attorneys willing to assist Virginia military clients on a reduced fee or pro bono basis, please provide your resume to Board of Governors Member Christopher Dunne at [Christopher.m.dunne@uscg.mil](mailto:Christopher.m.dunne@uscg.mil). Finally, the Section wraps up the year with its annual CLE Program on May 15, 2009 beginning at 9:00 a.m. at Geiger Hall, Marine Corps Base Quantico. This free program includes one hour of instruction about Veteran's and Disability benefits presented by William & Mary Adjunct Law Professor (and Former Army Judge Advocate) Mark Matthews, one hour on family law issues for military families presented by Dwain Alexander of the Navy Legal Services, and one hour of ethics presented by yours truly, Bar Counsel (and Retired Colonel, U.S. Army Reserve) for the Virginia State Bar. The Section's Five-Year Plan includes increasing its membership to raise more revenue, thereby enabling it to publish a second newsletter and continue presenting its annual CLE programs for no charge. I hope that all of you will consider joining the Section if you have not done so already. We look forward to greater things to come.



# SCRA Changes in 2008: Not Perfect, But Moving in the Right Direction

By Lieutenant Colonel Jeff Sexton, Judge Advocate, U.S. Army

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Not since 2004 has Congress been so active in amending the Servicemembers Civil Relief Act (SCRA). In 2008, Congress set its SCRA sights on two areas that are likely to catch the attention of the typical soldier, sailor, airman or marine: cell phone contracts and mortgages. Although Congress made other changes to the SCRA (as briefly discussed later in this article), cell phone contracts and mortgages will undoubtedly stand out as the SCRA headlines for 2008.

## NEW CELL PHONE CONTRACT TERMINATION/ SUSPENSION PROVISION

The Veterans' Benefits Improvement Act of 2008 became law in October 2008 and created a brand new SCRA protection (50 U.S.C. app. § 535a) that requires cell phone companies to terminate or suspend cell phone contracts under certain situations. Servicemembers have asked for this provision for a number of years. While the provision is a welcome addition to the SCRA, it contains some confusing language that renders the protection incomplete in some situations.

First, the new language provides that a servicemember may request termination or suspension of a cell phone contract if he deploys outside the continental United States for 90 days or more. The provision applies to all cell phone contracts entered into before commencement of the deployment. Oddly, the provision does not *require* the cell phone company to terminate the contract, but rather gives the company the option to *either* terminate or suspend the contract at that point. Next, the amendment provides that a servicemember

may request termination or suspension of a cell phone contract if the servicemember has a permanent change of duty station (PCS) *within* the United States. As with the deployment situation, the provision applies to all cell phone contracts entered into before commencement of the PCS. In this situation, unlike the overseas deployment provision, the cell phone company is *required* to terminate the contract if requested. What is perplexing about this provision is that it only addresses PCS moves *within* the United States, and is silent regarding PCS moves to foreign countries. For example, a servicemember reassigned from Fort Hood, Texas to Germany or Korea would not be authorized to request termination or suspension of his phone contract because the reassignment is not a PCS move within the United States and is not a deployment. Is this an oversight by Congress? Did they intend for the terms "deploy" and "deployment" in the first provision (the deployment situation) to include PCS moves, but fail to make that clear?

A final important point about the cell phone amendment is that the provision requires the servicemember to demonstrate that his military service materially affects his ability to either satisfy the contract or utilize the service. This requirement is surprising given that other termination provisions in the SCRA, such as the residential and automobile lease termination provisions (50 U.S.C. app. § 535), do not require a showing of material effect. Needless to say, a servicemember whose PCS is within the United States and desires to terminate his cell phone contract will likely have greater difficulty establishing material effect than a servicemember who deploys to Iraq or Afghanistan.



## EXPANDED MORTGAGE PROTECTIONS

*Extension of the Mortgage Foreclosure Protection Period.* Signed into law in July 2008, the Housing and Economic Recovery Act of 2008 (HERA) amended the SCRA's mortgage foreclosure protection provision (50 U.S.C. app. § 533(c)), a renowned protection providing that if a servicemember breaches an obligation secured by a mortgage or trust deed, a sale, foreclosure or repossession action is not valid unless there is a *court order* or waiver from the servicemember. The protection, which

The changes to the SCRA's mortgage provisions are significant. To avoid the SCRA's reach, a mortgagee must now wait to file an action an *additional six months* after the servicemember has left active duty. Given the impact of the mortgage crisis on mobilized servicemembers, the additional time period will undoubtedly assist countless servicemembers, especially the reserve and guard, in their attempts to resolve mortgage disputes prior to foreclosure action. On the other hand, the benefit to career active duty servicemembers is negligible. Unless they purchased their homes prior to entering

CELL PHONE CONTRACTS AND MORTGAGES WILL  
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FOR 2008.

applies only to obligations entered into before entry on active duty (making it applicable to few career active duty servicemembers), has traditionally covered the period of active duty service *and* a period extending 90 days after active duty. The change under the HERA is that the 90 day period has been extended to *nine months*.

*Extension of the Mortgage Protection Stay Period.* The HERA brought a similar change to the mortgage protection's stay provision (50 U.S.C. app. § 533(b)). The mortgage stay provision is available to servicemembers in any action by the mortgagee to enforce a mortgage obligation that was filed during active duty or within 90 days after active duty. It requires the court, upon the request of the servicemember, to either *stay the proceedings or adjust the obligation* in situations where the servicemember's ability to comply with the obligation is materially affected by active duty service. Identical to the change to the mortgage foreclosure provision, the change to the stay provision under HERA is that the 90 day period has been extended to *nine months*. A word of caution is in order, however. The HERA's extension of the protection periods will expire on December 31, 2010, absent action by Congress to make them permanent.

active duty, career active duty servicemembers gain nothing from the new mortgage amendments. Is this an area ripe for change in future legislation? Will Congress extend the mortgage protections to mortgage obligations incurred during active duty service? Who knows, but stay tuned.

*Expansion of the Six Percent Interest Cap Time Period for Mortgages.* The HERA also made a major change to the SCRA's well-known 6% interest rate provision (50 U.S.C. app. § 527). The SCRA authorizes servicemembers to reduce to 6% the interest rate on debts incurred prior to active duty service, with the benefit lasting for the duration of active duty service. The change is that interest rates on mortgages may be reduced to 6% not only during active duty, but also for *one year* after active duty service. Note that this new provision applies *only* to mortgage obligations, and not to other obligations.

The provision is of obvious benefit to reserve and guard servicemembers who mobilize for longer tours such as a year or more. What is not so obvious is the provisions' application to reserve and guard servicemembers serving shorter *active duty* periods. Like other non-mortgage debts, the provision applies to mortgage obligations entered into before the

*Continued on next page*



## SCRA CHANGES

Continued from Page 5

servicemember enters active duty. The definition of “active duty” under the statute includes the traditional two-week annual training (AT) event and active duty for training (ADT) tours (generally a few months or less). Because the 6% mortgage provision applies to any mortgage obligation entered into *prior* to entry on active duty, it is conceivable that some reserve and guard members will invoke the 6% rule upon entering the short AT or ADT tour, with the intent of retaining the 6% interest rate for one year after being released from AT or ADT. Is that what Congress had in mind when passing the HERA? Probably not. Regardless, the new provision makes no distinction between types or durations of active duty tours.

Creditors will no doubt argue that for AT or short ADT tours, the servicemember’s ability to comply with the original higher interest rate is not materially affected by his military service. But this is where the 6% rule gets tricky. Unlike other SCRA provisions that require the *servicemember* to show that his military service materially affects his ability to comply with an obligation, the 6% rule places the burden on the *creditor* to demonstrate *in court* that the servicemember’s military service *does not* materially impact his ability to comply. How this will play out in real life is anyone’s guess. Will servicemembers actually invoke the 6% mortgage rule for AT/ ADT periods? Will mortgage creditors refuse to grant relief in those situations?

### OTHER SCRA CHANGES IN 2008

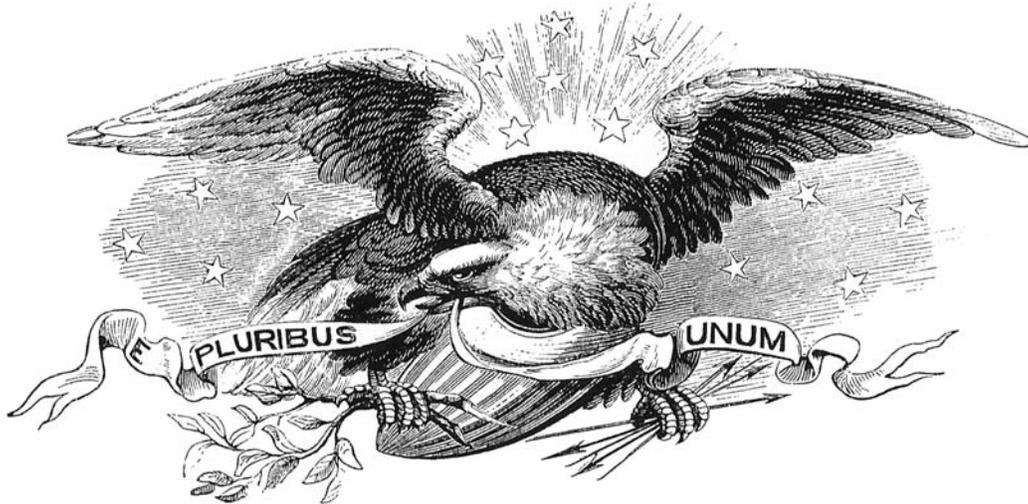
*Criminal Penalties for Violation of the 6% Interest Cap Protection.* Also in the Veterans’ Benefits Improvement Act of 2008 is an amendment making violations of the 6% interest cap limitation (50 U.S.C. app. § 527) a criminal offense, with penalties including fines and imprisonment. This now gives servicemembers and legal assistance attorneys additional ammunition when negotiating with uncooperative creditors who balk at compliance. At least six other provisions in the SCRA already contain language with punitive provisions, such

as the mortgage foreclosure, lease termination and eviction protections.

*New Child Custody Language in the Stay and Default Judgment Provisions.* Passed in January 2008, the National Defense Authorization Act (NDAA) of 2008 added language to the SCRA’s general stay provision (50 U.S.C. app. § 522) and default judgment provision (50 U.S.C. app. § 521), stating that the definition of “civil actions and proceedings” under those provisions includes “any child custody proceedings.” This change is Congress’s attempt to address the burgeoning child custody controversies encountered by servicemembers (whether reserve, guard or career active duty) who mobilize away from home and are suddenly faced with a motion filed by the other parent requesting a permanent change in custody. Although the new language does not institute an absolute ban on permanent change of custody orders during a deployment (as some commentators have called for), it sends a clear message to the courts that a servicemember’s interests in child custody proceedings cannot be ignored.

Taken as a whole, the changes in 2008 to the SCRA are welcome additions to a growing list of federal civil protections provided to servicemembers. Although some of the changes contain language that may create confusion in interpretation and application, there is no doubt that Congress is striving to address the legal and financial struggles of servicemembers. Servicemembers should be encouraged to contact their local legal assistance office to discuss aspects of the changes that may apply to them.

Lieutenant Colonel Jeff Sexton, Judge Advocate, U.S. Army, is a Professor and Vice Chair in the Administrative & Civil Law Department, The Judge Advocate General’s Legal Center and School, Charlottesville, Virginia.



## Pentagon Army and Air Force Legal Assistance Office (PAAFLAO) Opens

By Mary Benzinger, Esq.

The Army and Air Force reunited to open the Pentagon Army and Air Force Legal Assistance Office at an official ribbon-cutting ceremony on February 25. Lt. Gen. Jack L. Rives, Judge Advocate General of the Air Force, and LTG Scott C. Black, Judge Advocate General of the Army hosted the ceremony attended by many Department of Defense dignitaries and high-ranking military officials.

Over a year in the planning, the space for the newly opened legal office became available in 2008, allowing the JAGs from the Army and Air Force to reestablish a presence for Pentagon customers.

The Pentagon, being one of the largest office buildings in the world, contains a huge client base. Additionally, the surrounding area houses many more military commands. There has been no legal office in the building itself since the last joint office was forced to close in 2006 due to Pentagon renovations. The office is staffed by two Virginia attorneys, Mary Benzinger and Christina Smith, and two paralegals. The office serves active duty Army and Air Force Servicemembers and their family members, retirees and their family members, and certain National Guard and Reserve members and

provides advice and legal services on a wide range of personal legal issues including estate planning, family law, landlord/tenant and foreclosure issues.

The office is also a pilot project for the “paperless” office. Lack of storage space in the office for the huge number of client files anticipated called for a practical “paperless” solution. All client documents are scanned and stored in an electronic file. There are no paper client files. Each attorney and paralegal has a small scanner on their desk for ease of document scanning. Electronic files are stored on an off-site server for safety with redundant back-ups. Not only has this system solved a storage problem but it drastically reduced the paper consumption, heightened client confidentiality and made all files easily and reliably sharable for all staff.

The office is located in Room 5B1058A. For more information please call (703) 571-3114.

Ms. Benzinger is the Senior Attorney at PAAFLAO and has over 20 years of experience practicing in Northern Virginia.





# Department Of Justice Files Suit To Protect Servicemember In Car Towing Case

By Dena Panecaldo, Esq.

Storage liens and public auctions of vehicles are common business practices for towing companies in Virginia. What many of these towing companies don't understand is that both federal law and Virginia law take auctioning off a servicemember's vehicle that was subject to a storage lien one step further than the normal process. The Servicemembers Civil Relief Act (SCRA) and the now §43-34 of the Code of Virginia require towing companies to obtain a court order before selling a servicemember's vehicle that was subject to storage lien.

The story is all too familiar for our men and women in uniform. They get called upon to go to a deployment or Individual Augmentee (IA) assignment. They leave their vehicle in the apartment complex parking lot where they continue to pay rent and their car loan while they are away. The vehicle gets towed for any number of reasons, but they do not receive notice. Upon return they find out that their vehicle was towed and subsequently sold at auction.

Virginia law authorizes a towing company to make a request through the Department of Motor Vehicles to process a lien against the vehicle for storage fees that are not paid. Under §43-34 of the Code of Virginia, the towing company can sell the vehicle at public auction to satisfy the storage fees. If the value of the vehicle is under \$7500, the towing company must give written notice of the time and place of the proposed sale, by certified mail, to the owner and/or lienholder. For servicemembers, this can be problematic. If they are on deployment or even underway with the ship and notice comes to their home address, they generally do not receive the letter until it is too late to try and stop the sale from happening. The SCRA and Virginia law have protective measures in place to prevent this from happening to our servicemembers. Under §537 of the SCRA, "a person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before the foreclosure or enforcement." Additionally, the 2008

Amendments to the Code of Virginia under §43-34 states, "Notwithstanding any provisions to the contrary, any person having a lien under §43-32 or §43-33 shall comply with the provisions of the federal Servicemembers Civil Relief Act (50 U.S.C. app. 501 et seq.) when disposing of a vehicle owned by a member of the military duty or service." Both statutes require a court order before a servicemember's vehicle may be sold at auction by a towing company in order to obtain unpaid storage fees.

Recently, the Department of Justice, Civil Rights Division filed suit in The United States District Court for the Eastern Division of Virginia, Norfolk Division against B.C. Enterprises, Inc, d/b/a Aristocrat Towing for violating §537 of the SCRA on behalf of LT Yahya Jaboori, a Hampton Roads sailor deployed to Iraq in the spring of 2007. LT Jaboori left his 1991 Acura at his condo complex in Chesapeake, where he owned a unit. When he returned, his car was missing. According to the pleadings, Aristocrat Towing towed the car in June of 2007 and obtained a storage lien. Subsequently, Aristocrat sold LT Jaboori's Acura at auction without first obtaining a court order. LT Jaboori sought legal advice from the Naval Legal Service Office Mid-Atlantic's [NLSO MIDLANT'S] Legal Assistance Department in September 2007, when he returned from deployment. After several attempts by NLSO MIDLANT attorneys to resolve the matter with Aristocrat, they referred the case to the U.S. Department of Justice, Civil Rights Division. The Civil Rights Division filed suit on December 10, 2008.

This case is particularly significant because it is the first lawsuit filed by the Civil Rights Division under the SCRA. The Civil Rights Division received enforcement authority under the SCRA in 2006, and has since reviewed numerous allegations of SCRA violations nationwide and resolved investigations without the need for litigation.

Dena Panecaldo is a Navy JAGC reservist and civilian legal assistance attorney with Naval Legal Service Office Mid-Atlantic in Norfolk, Virginia.



# Veterans Benefits Clinic at The William & Mary School of Law

By Mark Matthews, Esq.

The William & Mary School of Law recently established Veterans Benefits Clinic is the first law school clinical program in the nation to address both the legal and psychological challenges facing our wounded warriors by collaborating across disciplines and with mental health professionals. The conflicts in Iraq and Afghanistan have a higher rate of wounded or injured survivors of combat than previous wars. Consequently, we have a markedly increasing number of veterans who have a compelling need for disability compensation services. The Clinic is a pilot project initiated by the William & Mary School of Law and supervised by Mark Matthews and Stacey-Rae Simcox, two former Majors in the active duty U.S. Army Judge Advocate General's (JAG) Corps who are adjunct faculty members and graduates of the School of Law.

The Veterans Benefits Clinic assists veterans with pursuing service-related disability compensation benefits from the Department of Veterans Affairs. In collaboration with Virginia Commonwealth University's Center for Psychological Services and Development (CPSD), the Clinic provides wounded veterans access to psychological services, including testing, diagnosis, treatment, and counseling. Given the large number of active-duty and retired military personnel in Hampton Roads and central Virginia, as well as their proximity to Department of Veterans Affairs hospitals in Hampton and Richmond, the Veterans Benefits Clinic and CPSD are ideally located to undertake this critical mission. Moreover, this holistic approach to the challenges facing wounded veterans makes this collaboration unique among law school clinical programs.

The Veterans Benefits Clinic builds upon the William & Mary School of Law's tradition of supporting members of the armed services. The School participates in the Funded Legal Education Program, accepting for admission approximately 10 active-duty service

members annually. In addition, the School has a vibrant student Military and Veterans Law Society that includes veterans and current service members, and several hundred alumni have served or are currently serving in the armed forces.

In January 2009, seven William & Mary law students, supervised and assisted by Matthews and Simcox and Adjunct Professor Linda Quigley, officially began working with clients. The Clinic functions similarly to a small law office. Although the attorneys are the representatives of record, the students perform client interviews, analyze their clients factual and legal issues, prepare action plans, and draft correspondence, all under the supervision of the attorneys. Additionally, students maintain case files, record time entries for the work they perform, and each week notify their professors about both the points of law they have learned and the lessons they have learned about being a client's attorney in the preceding week.

The clinic is currently representing ten wounded veterans, and endeavors to assist all those who contact us by referring those we cannot represent to outside organizations. To date, major Richmond and Norfolk law firms have offered their services, and the VBC is in conversation with several other firms to provide pro bono services to the veterans seeking assistance from the VBC.

For more information, contact Stacey-Rae Simcox at (757) 221-2494 or [srsimc@wm.edu](mailto:srsimc@wm.edu), or Mark Matthews at (804) 339-6138 or [mdmatthews@wm.edu](mailto:mdmatthews@wm.edu).

Mark Matthews is a former Army JAGC Major with nearly 10 years of legal experience. He served as a Field Artillery officer before attending the William & Mary School of Law under the Funded Legal Education Program. As a Judge Advocate, he served as Trial Counsel, JRTC Operational Law Observer/Controller, Senior Defense Counsel, and Deputy Staff Judge Advocate. Mr. Matthews is the owner of The Matthews Law Group, P.L.L.C. and is an adjunct professor of law at William & Mary where he teaches Technology-Augmented Trial Advocacy and manages the Veterans Benefits Clinic.



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