



Arkansas Army National Guard
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Provide Feedback

Arkansas Soldiers & Airmen Civil Relief

This Act is not limited to just Soldiers and Airmen but is extended to the spouse of a Soldier or Airman of the Arkansas National Guard. The Servicemember must meet one of these two requirements to qualify:

1. The Soldier or Airman is ordered into active military service for the State of Arkansas by the Governor under state law or under Title 32, of the United States Code, for a period of more than one hundred eighty (180) continuous days; or
2. The Soldier or Airman is ordered into active military service for the State of Arkansas by the Governor under state law or under Title 32, of the United States Code, for any period as a direct result of the execution of an Emergency Management Assistance Compact or proclamation by the Governor.

Residential Leases

When a Soldier or Airman meets one of the above requirements, the Servicemember, or his or her spouse, is entitled to terminate and cancel the lease for the primary residence of the Servicemember or spouse.

The Process for breaking a residential lease

1. You must provide notice that you want to terminate your lease in writing, it **cannot be emailed**. The notice must be delivered to the Landlord, lessor, or the lessor's agent. It can be delivered one of three ways: USPS mail, private courier, or personal delivery. The delivery **MUST BE** accompanied by a **written receipt** to prove delivery. **Keep the receipt.**
2. The notice must state:
 - a. The start date, and end date if known, for the orders;
 - b. The unit's name, address, and telephone number of the Servicemember's commanding officer or military superior who can verify the authenticity of the orders and where the Servicemember or spouse may be contacted; and

- c. That the Servicemember or spouse claims the benefits of this Act and gives notice that his or her residential lease will be terminated as provided by A.C.A. §12-62-705.
3. In addition to the notice, you **MUST** include payment of the current month's and the next month's rent, and any other monthly charges that are regularly paid as a part of the monthly rent or lease for both months. Any prepaid monthly consideration, security deposit, or other sums held by the lessor (landlord) may be deducted from the payment amounts, **BUT** you **MUST** specify this is your intent.

Reopening Default Judgements

When a default judgment is entered by a court in any civil action against a Servicemember, while the Servicemember has been activated for a period of military service or within thirty (30) days after termination of military service, it may be set aside if:

1. The Servicemember was prejudiced by reason of his or her military service in making a defense to the action;
2. The Servicemember submits an application, for reopening the judgment. The application must be made to the court rendering the judgment no later than sixty (60) days after the termination of the military service; and
3. The application must provide enough facts to make it clear that there is a meritorious or legal defense to the action or some part of the action.

*** Vacating, setting aside, or reversing any judgment because of any provision in A.C.A. §12-62-706 may not impair any right or title acquired by any bona fide purchaser for value under the judgment. A bona fide purchaser is an innocent person who buys something without being told of hidden issues affecting what is being bought or of a third party's claim of ownership. ***

Stay of Proceedings

If during an action or proceeding it appears that a party is a Servicemember and may be adversely affected by his or her military service, the court may:

1. Stay the proceedings, on its own motion. This means that if a judge wants to, he or she can create their own motion to temporarily stop the court proceedings. **DO NOT RELY ON THIS TO HAPPEN.**

2. The court may also stay the proceedings if the Servicemember or another person on his or her behalf **makes a request in writing to the court. YOU SHOULD DO THIS.**

The court **will not** stay the proceedings if it finds, on the record, that that the ability of the plaintiff to pursue the action or the defendant to conduct his or her defense is not materially affected by reason of his or her military service. MEANING: that if it can be proven to the judge that you were able to actively participate in the court proceedings, despite your military orders, you will not get the benefit of this law.

Fines and Penalties on Contracts

If compliance with the terms of a contact is stayed, a fine or penalty may not accrue by reason of failure to comply during the period of the stay. MEANING: if part of a contract is temporarily put on hold by a judge through a court order, no extra interest can be added because of the delay.

If a stay has not been obtained, and a fine or penalty for nonperformance is imposed, a court may relieve enforcement if the Servicemember was in the military service when the penalty was incurred and his or her ability to pay or perform was materially impaired. MEANING: a court can stop a company's enforcement of a penalty if the penalty occurred due to military service.

Exercising Rights Not to Affect Future Financial Transactions

If a Servicemember **applies for, or receives**, a stay, postponement, or suspension toward the payment of any fine, penalty, insurance premium, or other civil obligation or liability, that information **may not be used for any of the following**:

1. Determining that the Servicemember is **unable to pay** any civil obligation or liability in accordance with its terms;
2. Credit transactions between a creditor and the service provider;
Specifically, it cannot be used for a denial or revocation of credit by the creditor; a change by the creditor in the terms of an existing credit agreement; or a refusal by the creditor to grant credit to the Servicemember in substantially the amount or on substantially the terms requested.
3. Towards an **adverse report relating to the creditworthiness** of the Servicemember by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information

Stay of Execution of Judgment

The court may, on its own motion or **upon application** to it by the Servicemember or another person on his or her behalf, stay the execution of any judgment or order entered against the Servicemember; and vacate or stay any attachment or garnish of property, money, or debts in the hands of another, whether before or after judgment as long as the court does not determine on the record that the ability of the Servicemember to comply with the judgment or order entered or sought is not materially affected by reason of his or her military service.

Duration of Stay

A stay ordered by any court under this law may be order for the period of military service, plus sixty (60) days after its termination or any part of that time period.

Where the Servicemember in military service is a codefendant with others, the plaintiff, with leave of the court, may proceed against the others.

Statute of Limitations Affected by Military Service

The period of military service is not included in computing any period limited by law, rule, or order for bringing an action or proceeding in any court, board, bureau, commission, department, or other agency.

Maximum Rate of Interest During State Military Service

An obligation or liability bearing interesting at a rate more than **six percent (6%)** per year incurred by a Servicemember in military service **before** his or her entry into state active military service may not bear interest at a rate in more than **six percent (6%)** per year during any part of military service. Unless the ability to pay interest on the higher rate is not materially affected by reason of his or her service. MEANING: if you have a credit card or other line of credit that charges interest from **before** you went on active orders, and the interest rate was over 6%. Then once you go on orders the company has to reduce the interest rate to no more than 6% for the period of time you are on orders.

Eviction or Distress of Dependents of State Military Servicemembers

A landlord may not evict or take and hold property of a Servicemember or his or her dependents for nonpayment of rent during the Servicemember's period of military service if the rent on the premises occupied is less than one thousand two hundred

dollars (\$1200) per month, unless the landlord petitions the court for an order affecting the Servicemember or his or her dependent's right of possession. Then a court may allow the landlord to evict and hold the property of a Servicemember or his or her dependents.

In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three months (3) or make an order the court determines to be reasonable, unless the court finds that the ability of the tenant to pay the agreed rent is not materially affected by reason of the Servicemember's military service.

When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises to the extent and for any period as the court determines to be just and reasonable under the circumstance.

Any person who knowingly takes part, or attempts to do so, in any eviction or distress other than as provided above is guilty of an unclassified misdemeanor. The governor may order an allotment of the pay of a Servicemember in military service in reasonable proportion to discharge the rent of premises occupied for dwelling.

Installment Contracts

When an installment contract was entered into before the Servicemember was activated, the creditor cannot terminate the contract or repossess the property for nonpayment or any other breach that occurs during military service without a court order from a competent jurisdiction.

Unless the court finds on the record that the Servicemember's ability to comply with the terms of the contract are not materially affected by his or her military service, the court may:

1. Order the creditor to repay any prior installments or deposits as a condition of it terminating the contract and resuming possession of the property;
2. Order a stay of the proceedings whether on its own motion, by motion of the Servicemember, or through motion of a third party; and
3. Make any other decision on the case that it believes is equitable to conserve the interests of all parties.

A creditor is guilty of an unclassified misdemeanor if it does not follow these procedures and repossesses property.

Mortgage Foreclosures

When a mortgage contract for real property is entered into by a Servicemember or spouse **before the Servicemember was activated**, the creditor **may not foreclose** on the mortgage or repossess the property for nonpayment or any breach occurring during the military service **without an order from a court** of competent jurisdiction.

Unless the court finds on the record that the Servicemember's ability to comply with the terms of the contract are not materially affected by his or her military service, the court may:

1. Order the creditor to repay any prior installments or deposits as a condition of it terminating the contract and resuming possession of the property;
2. Order a stay of the proceedings whether on its own motion, by motion of the Servicemember, or through motion of a third party; and
3. Make any other decision on the case that it believes is equitable to conserve the interests of all parties.

***In order for this section to apply, the Servicemember or dependent must establish the following:

1. The obligation to pay is based on a **mortgage, trust deed, or other security** in the nature of a mortgage on either real or personal property;
2. The **obligation originated before** the Servicemember's entry into military service;
3. The **property was owned** by the Servicemember or his or her dependent **before** the commencement of military service; and
4. The **property is still owned** by the Servicemember or his or her dependent at the time relief is sought.

A creditor is guilty of an unclassified misdemeanor if it does not follow these procedures and forecloses on the property.

Application for Relief

A person, at any time during activation or within sixty (60) days after discharge or termination, may apply to a court for relief in respect to any obligation or liability incurred during activation.

Unless the court finds on the record that the Servicemember's ability to comply with the terms of the contract are not materially affected by his or her military service, the court may grant either of the following reliefs:

1. If the obligation or liability is that of a mortgage, payable under its terms in installments under a contract for the purchase of real estate or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's activation period, and from the date that the activation ends or from the date the application was received, if the application was sent after the end of the activation period, for a period of time equal to the remaining life of the installment contract or other installment plus a period of time equal to the length of the activation period, or any part of the combined amount of time, subject to the balance of the principle and accumulated interest due and unpaid at the date that activation ended or from the date of the application, in equal installments during the combined period at the rate of interest on the unpaid balance as is stated in the contract, or other documents proving the existence of the obligation, for installments paid when due, and subject to any other terms as the court may consider just. MEANING: if it can be shown that there was a mortgage or mortgage type loan, and you apply for the payments to be postponed while on orders the court can postpone all payments until the end of your military service. If you sent the application for postponement after you came off orders the court can postpone the payments for whatever amount of time the court decides.
2. In the case of any other type of obligation or liability, a stay of the enforcement during the applicant's activation period, and from the date that the activation ends or from the date the application was received, if the application was sent after the end of the activation period, for a period of time equal to the period of activation of the applicant or any part of that period, subject to the payment of the balance of the principle and accumulated interest due and unpaid at the date the period of activation ends or the date of application, in equal periodic installments during the extended period at the rate of interest listed in the obligation or liability is paid when due, and subject to other terms the court considers to be reasonable and just. MEANING: if you have any other kind of debt, you can apply before or during your orders to a court to have the payments postponed while you are on orders. If you apply after you came off orders the court may postpone payments for a period of time of its choosing.

When any court grants a stay as listed above, a fine or penalty may not be accrued for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted.

Storage Liens

A person may not exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a Servicemember during the period of time of activation and for sixty (60) days after the end of activation or discharge, except upon an order previously granted by a court upon application and a return to the court made and approved by the court. MEANING: the person you rent the storage unit from may not foreclose on your property without a court order given to them before beginning the foreclosure.

Unless the court finds on the record that the Servicemember's ability to comply with and pay storage charges are not materially affected by his or her military service the court may grant the following relief upon application:

1. Stay the proceedings; or
2. Make any other disposition the court considers to be equitable to conserve the interest of all parties.

MEANING: That a judge can decide to postpone the proceedings on his or her own but **must** if they receive an application from the Servicemember or someone on the Servicemember's behalf.

Any person who knowingly takes any action contrary to what is stated above, or attempts to do so, is guilty of a misdemeanor.

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