

VETERANS LEGAL INSTITUTE FIGHTS TO ENFORCE THE SERVICEMEMBERS CIVIL RELIEF ACT

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Imagine this: You enlist to serve your country, deploy to a foreign nation, and serve tours in active conflict zones. You see combat, witness several of your brothers and sisters fall, and win hard-earned battles through blood, sweat, and sheer determination. Throughout all of this, a ray of sunshine is contact with your friends and family back home. One day, to your horror, you discover that the bank foreclosed on your home, leaving your spouse and children homeless. You return to your now-destitute family. This is a scenario that no servicemember should have to face. Yet, after September 11, 2001, more than one dozen military families experienced such a scenario when a major American bank failed to comply with the Servicemembers Civil Relief Act (SCRA), a World War I era federal statute designed to prevent such tragedies. Torrey Shannon, *JP Morgan-Chase "Accidentally" Foreclosed on Military Mortgages: Violated Decades of Existing Law*, Huff Post, Jan. 19, 2011, https://www.huffpost.com/entry/jp-morganchase-accidental_b_810785.

History of the SCRA

Originally called the Soldiers' and Sailors' Civil Relief Act of 1918, the Act was a resurrection and expansion of a Civil War-era moratorium on civil actions against union soldiers during wartime. R. Chuck Mason, *The Servicemembers Civil Relief Act (SCRA): An Explana-*

tion, U.S. Department of Justice Congressional Research Service, August 27, 2014, <https://fas.org/sgp/crs/misc/RL34575.pdf>. Though the present-day statute was passed by Congress in 1940 and is now titled the SCRA, it remains largely the same statute. Congress has enacted over a dozen SCRA amendments over the years to ensure that it remains effective and relevant. Historically, the courts have inter-



preted the legislation expansively: “[T]he Act [SCRA] must be read with an eye friendly to those who dropped their affairs to answer their country’s call.” *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943)). After the events of September

11th, with the activation and mobilization of so many troops in support of the defense of the United States, the SCRA was again amended to modernize and restate the protections that have proven continually relevant and necessary since the Act was first passed.

Purpose of the SCRA

The purpose of the Servicemembers Civil Relief Act is broad and serves to protect active military servicemembers against a variety of civil claims and activities. These protections include but are not limited to: *a six percent annual interest cap* (50 U.S.C. § 3937(a)(1) (West 2019)), *protection against default judgments* (*id.* § 3931(g)(1)), *protection against non-judicial foreclosures* (*id.* § 3953), *prohibition against vehicular repossession* (*id.* § 3952), *flexibility in lease terminations* (*id.* § 3955), and *protection against enforcement of storage liens* (*id.* § 3958). It requires creditors who bring civil suits to declare the defendant’s military status. Courts treat these declarations seriously and have been known to issue sanctions for inaccurate declarations stemming from a lack of due diligence. Furthermore, the SCRA mandates *sua sponte* court action, including appointing counsel for absentee defendants who are also active-duty servicemembers, in some cases. The Act also authorizes the U.S. Attorney General to file suit against actors who repeatedly violate its

provisions. In many cases, knowingly filing a complaint against an active-duty servicemember and concealing the military status of the defendant is punishable by sanctions, reporting to the State Bar, or imprisonment.

Veterans Legal Institute and the SCRA

Local to Orange County with a regional reach, the Veterans Legal Institute (VLI) is a 501(c)(3) nonprofit organization that provides pro bono legal assistance to homeless, at-risk, disabled, and low-income current and former servicemembers to eradicate barriers to housing, health, education, and employment, and to foster self-sufficiency. In 2018 alone, VLI handled over 2,231 cases, held 41 legal clinics, and ensured 270 veterans and servicemembers did not lose their homes. To the credit of the 200+ volunteers that serve at VLI annually, VLI is poised to advocate for a greater amount of heroes in need this year with SCRA appointments on an upward rise. Congress, in drafting the current version of the SCRA, has made the appointment of counsel mandatory in cases involving active-duty military servicemembers, though it provided no guidance as to how this was to occur. Courts themselves are not well versed in the Act's provisions and often look to counsel for guidance. Indeed, jurisdictions vary greatly in their approach, and the Judicial Council of California has yet to create a standardized form for SCRA appointment or attorney's affidavit.

As a law firm dedicated to serving active-duty servicemembers and veterans, VLI is a leader in matters involving the protections of the SCRA. Orange County superior courts recognize the leadership role VLI has assumed and notifies its office directly when they have reason to believe a defendant is serving on active duty in the military. Local courts appoint VLI to reach out to these defendants and represent their interests until they can be contacted and fully apprised of their pending legal matters. Sometimes this occurs prior to the full resolution of the case. In some instances, it happens after a judgment has been entered against the defendant, and the court has plenary discretion to completely vacate such judgments. In all cases, VLI steps in to defend the servicemember's interests in absentia until it can establish contact to determine how the servicemember would like to proceed.

Veterans Protected by SCRA and VLI

In one case, where the court determined the defendant was a servicemember but did not have current contact information for the defendant, Veterans Legal Institute volunteers

and staff set the standard for what constitutes the "due diligence" the SCRA demands in attempting to contact the servicemember before the court will issue a mandatory ninety-day stay of proceedings. *See* 50 U.S.C. § 522(d)(2). Diligent VLI volunteers, using meager information, were able to track the servicemember down via social media and, using metadata from geo-tagged photos, were able to narrow the search to a specific out-of-state county. After researching military bases in that county, VLI advocates were able to identify a probable location of the servicemember's duty station. Contacting the base legal department, VLI relayed non-confidential information to the staff with a message for the servicemember to contact VLI because

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the military—for obvious reasons—will not release private contact information of active-duty personnel. The stay was granted, and while it was still in effect, the case resolved itself favorably for the defendant because the plaintiff voluntarily dismissed the suit.

In another case, an active-duty servicemember contacted VLI directly for advice on SCRA protections and how they related to her conflict with her mortgage provider, which was refusing to honor its own legal provisions. VLI was able to provide the servicemember with the information she needed to protect her and her children's interests while serving on active duty.

Most of VLI's SCRA cases tend to be unlawful detainer actions filed after a reserv-

ist or member of the national guard has been called up to active duty. In one egregious example, neither the plaintiff nor their attorneys attempted to determine whether the defendant was an active-duty servicemember. Worse, they represented to the court that they had determined the defendant *was not* in the military. The servicemember was defaulted and the writ of possession fully executed. When the servicemember found out about the case, he filed an ex parte motion to set aside the default and appoint an attorney pursuant to the SCRA on the basis that he was in the National Guard when he was called up to active duty following a national tragedy and, therefore, could not defend the suit. When the court found out about his military status, the judge immediately recalled the writ of possession, vacated the judgment, appointed VLI to assist the defendant and provide updates to the court, and demanded to know why the plaintiff and their attorneys failed to determine the active-duty status of the defendant.

Why We Do It

Due to the demands of military service, the nation understandably wants its protectors to be entirely focused on achieving their strategic goals in defense of the United States and national interests. When a servicemember has to defend a lawsuit, their effectiveness in combat or on duty will be diminished. Yet, every year, plaintiffs continually demonstrate disregard for servicemembers and the rights afforded them by the SCRA. In its capacity as a law firm focused on the military community, VLI, along with its brother and sister organizations across the nation, fulfills this obligation by defending servicemembers so that they can fully focus on defending our nation.



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