

## SCRA PROTECTIONS AGAINST FORECLOSURE

*NACA Defending Servicemembers by Building an Army of Informed Consumers*

The National Association of Consumer Advocates (NACA) is a non-profit association of attorneys and consumer advocates committed to representing consumers' interests. **This Handout addresses protections against foreclosure available to servicemembers under the Servicemembers Civil Relief Act (SCRA)**, formerly known as the Soldiers and Sailors Civil Relief Act (SSCRA).

1. If you entered into a mortgage loan **before** you started active duty, you have certain protections against foreclosure of your home. The rest of this handout assumes that you entered into the loan before active duty and that the SCRA applies to you (and that you did not sign a written agreement waiving your SCRA rights during active duty).
2. The SCRA provides that a mortgage lender cannot foreclose on your home while you are on active duty (or within a 9 month grace period **after** active duty if before 12/31/12, 90 day grace period if after) without first getting a court order.
3. If you receive notice that the lender is trying to foreclose on your home while you are on active duty (or within the grace period – see above), contact an attorney to assist you. Your legal services office can help, or they can refer you to a private attorney experienced in SCRA protections. Do this as quickly as possible.
4. Once a lawsuit to foreclose has been started, the SCRA gives you the right to ask for a “stay” of the lawsuit until you are more able to defend yourself in court. A “stay” means that the lawsuit is suspended for a specific period of time. The SCRA gives servicemembers an automatic 90 day stay. But you can ask for more time. You will need to let the judge know why you need more time to defend the lawsuit. If you are deployed and you will not be back home for some period of time, that may be reason for additional time. Also, the judge may adjust your loan obligation depending on the facts. It will be up to the judge to decide.
5. If a lawsuit to foreclose on your home was started, but you did not receive notice of it, you have the opportunity to undo the foreclosure or sale. If the lender obtained a “Default Judgment” from the court, it had to first file an affidavit about your military status. If the affidavit incorrectly states that you were not on active duty, or within the grace period, when in fact you were (or the lender’s lawyer didn’t file an affidavit at all), you may have a claim against the lender for violating the SCRA.
6. If the lender foreclosed without a court order, and instead by using a non-judicial method (also known as foreclosure by advertisement), you may have a claim for a SCRA violation and be able to get damages. Contact a consumer lawyer experienced in SCRA litigation to assist you. Under the SCRA, you can recover your costs and attorney fees if you have to bring an action to enforce your rights. Many consumer lawyers will take the case on a contingent fee basis.

This handout is for information purposes only and is not intended to be legal advice. If you need legal advice and assistance you may see legal advice from your Legal Assistance Office. Legal Assistance Offices can be located at <http://legalassistance.law.af.mil/content/locator.php>. You may also locate and contact a NACA attorney in your area logging on to <http://naca.net/find-attorney>.