



## ***DCU BULLETIN***

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### **Servicemembers' Civil Relief Act**

On December 19, 2003, the President signed into law H.R. 100, the Servicemembers' Civil Relief Act. 50 USCS Appx § 501 (2003), et.seq. The law completely rewrites the Soldiers' and Sailors' Civil Relief Act of 1940, expanding many of the previous laws civil protections. Since many state-chartered credit unions work with members of the military serving on active duty, we wanted to remind credit unions about the new provisions of the law.

The new law has specific requirements that must be followed during foreclosure. Under the Act, if a servicemember's obligation is secured by a mortgage or trust deed and an action to enforce the obligation is filed during or within 90 days after the servicemember's military service, the court is authorized to (1) stay the proceedings and (2) adjust the obligation as it sees fit. In addition, a sale, seizure, or foreclosure is not valid if made during or within 90 days after the period of the servicemember's military service except: (1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or (2) if made pursuant to an agreement as provided in the Act. See 50 USCS Appx § 517 (2003). For your review we attach to this document the section of the new law that pertains to foreclosures. 50 USCS Appx § 533 (2003).

If you have any questions or concerns about applying the new law to your members, please consult qualified legal counsel.

## Attachment

### 50 USCS Appx § 533 (2003)

#### § 533. Mortgages and trust deeds

(a) Mortgage as security. This section applies only to an obligation on real or personal property owned by a servicemember that--

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) Stay of proceedings and adjustment of obligation. In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service--

(1) stay the proceedings for a period of time as justice and equity require, or

(2) adjust the obligation to preserve the interests of all parties.

(c) Sale or foreclosure. A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the period of the servicemember's military service except--

(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

(2) if made pursuant to an agreement as provided in section 107 [[50 USCS Appx § 517](#)].

(d) Penalties.

(1) Misdemeanor. A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.