



## Active Duty Military: A Special Class of Distressed Homeowners

**Being forced by relocation to sell a home in this economy is a recipe for financial misery, as military personnel know all too well.**

A small but very important slice of the distressed homeowners population, members of our active military and their families, are approaching a perfect foreclosure storm. The intersection of the real estate recession, foreclosure crisis, and fall-out from deficit reduction mandates recently enacted by Congress almost insure that our service members on active military duty will find themselves “upside down” and unable to sell or refinance their homes just as their tours of duty come to an end or they are relocated.

The difference between the general and military population facing foreclosure is twofold. First, the active military being relocated have almost no choice but to leave their unsold homes behind. My friend, legal assistance attorney Thomas Digan at Great Lakes Naval Base, refers to these as the “geobachelors” (and bachelorettes, he might add) – they go to their new duty station, leave their spouse and family behind to try to sell the family home, and take up quarters in the BOQ.

Beyond that, though, surely something can be done so that our country doesn’t break faith with those who serve. “They told us that we might be deployed in harm’s way and be killed or injured, but they never told us about the housing issues we would face when we are relocated and can’t sell our homes,” Thomas

Digan puts, speaking for them.

The economic downturn is well into its fourth year. Most active military and their families are reassigned every three or so years. In the past, relocating military were usually able sell or rent. At worst, they had to be satisfied with the small equity that accumulated in only three years.

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family's home has, like most other real estate, depreciated in value 30 to 40 percent. And there are no lenders willing to finance any prospective purchasers they might find. The possibility of foreclosure looms.

Add to that the recent budget deficit resolution, whose defense budget cuts in the coming year may result in significant reassignment of military personnel, and it is easy to see why a July 21, 2011, Department of Defense Task Group met to discuss the coming need to reduce "people costs" as a critical component of the military budget.

The meeting was entitled "Corporate Downsizing Applications for DoD." The chairman of the Joint Chiefs of Staff recently addressed changes to military benefits as a result of the anticipated reductions in the defense budget, noting that reductions and cuts should be studied carefully "so the military doesn't break faith with those in the service."

The Naval Legal Services Office recognized nearly three years ago that "home foreclosures are on the rise around the county, and the foreclosure is being felt by some active-duty military." ("Sailors Can Protect Themselves from Foreclosure, Lt. Graham Winegeart, Naval Legal Services Office, Guam, *US Navy Today*, September 16, 2008).

That article listed the usual advice: "Your first step should be to establish an immediate line of honest communication with your creditor...Sailors facing foreclosure are encouraged to seek immediate legal assistance...There are many federal and state laws that protect debtors in general and there are often enhanced protection for service members."

### **The SCRA and other tools**

Homeowners on active duty are entitled to notice of their rights under the Servicemember's Civil Relief Act (SCRA), 50 USC section 533, within 45 days of a missed payment, and can use a toll-free number for assistance (12 USC section 1701x(c)(5)(A)(ii)IV) and HUD Mortgage Letter 2002-12 and 2006-28). The SCRA provides for a reduction of the interest rate on pre-active duty obligations to 6 percent, though loan modifications these days are reducing interest for non-military mortgagors to 2.5 percent.

There are restrictions on evictions in SCRA section 531. Section 521 prohibits default judgments, section 533 provides that foreclosure sales are prohib-

ited without court approval, and the SCRA otherwise empowers the courts to impose a stay of foreclosure or fashion equitable relief as may be appropriate to protect the interest of all parties, including modification of the loan repayment terms and removal of any penalties for late payment during the length of the military term. These SCRA protections are extended to active military and their dependents.

Many lenders are ignorant of these protections or ignore their obligations. See "JP Morgan Chase Apologizes for Military Foreclosures," *Wall Street Journal* (February 9, 2011) and "Mortgage Companies Settle Suits on Military Foreclosures," *New York Times* (May 25, 2011).

The ISBA is committed to arranging low- or no-fee representation for military personnel where appropriate. Keep that in mind as this storm approaches, and read more about laws protecting military personnel at <http://www.illinoislawyerfinder.com/articles/legal-information/laws-protecting-military-personnel>. Consider what you can do to assure we do not "break the faith" with the men and women who serve our country and are struggling to preserve their homes. ■