

SVL QUARTERLY

Sorenson  Van Leuven LAW FIRM

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Why Compliance with the Servicemembers Civil Relief Act is a Big Deal?

By Jim Sorenson

Compliance with the Servicemembers Civil Relief Act (SCRA) continues to be a hot topic. The law provides servicemembers (members of the armed forces) with protections against certain legal proceedings that could adversely affect their rights while they are in military service. One of those protections is the requirement that a court approve a repossession of any motor vehicle owned by a servicemember if the servicemember took out the loan and made a deposit or installment payment prior to entering military service. The law allows the court discretion to delay the repossession or to condition the repossession on refunding all or part of the prior installment payments or deposits made by the servicemember. The court may also appoint an attorney to represent the servicemember, require the lender to post a bond and issue any other orders it deems necessary to protect the rights of the servicemember.

A violation of the SCRA can result in a civil lawsuit against the Credit Union by the impacted member/borrower and also could result in legal action by the U.S. Department of Justice. The U.S. Department of Justice (DOJ) has been pursuing lenders who it believes have failed to comply with the Servicemembers Civil Relief Act. As you can imagine, these lawsuits by the DOJ bring significant pressure on lenders and serve as examples to other lenders to comply with the law.

As an example, the DOJ recently filed suit in California against a subprime auto lender by the name of California Auto Finance. The company is accused of violating the Servicemembers Civil Relief Act when it repossessed a 2006 Chevrolet HHR from an Andrea Starks' without a court order. According to the complaint filed, Ms. Starks purchased the vehicle from a dealership in September 2015



and made a down payment of \$1,000.00. On October 19, 2015, Ms. Starks made her first loan payment. On April 13, 2016, Ms. Starks enlisted in the United States Army and was ordered to report to Ft. Leonard Wood, Missouri, on May 9, 2016. Ms. Starks provided the lender with her military orders on April 15, 2016. On May 9, 2016, the lender repossessed the vehicle without a court order.

The issue came to the DOJ because Ms. Starks contacted them regarding the repossession which she believed was illegal. While I cannot confirm this, more than likely her commanding officer or a JAG officer advised her of her rights and informed her to contact the DOJ.

The DOJ is seeking an injunction against the lender from future violations of the law and seeking monetary damages and civil penalties. Understand that under most insurance policies, these types of legal actions are not covered by the lender's insurance carrier and the costs of defending these actions, along with the payment of any civil penalties would not be paid by an insurance carrier.

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New Florida Law Strengthens Foreclosure Process

By Blair Boyd

On March 19, 2018, Florida Gov. Rick Scott signed Senate Bill 220 into law which gives Credit Unions a new weapon in dealing with the frustrating foreclosure process. This law allows a lienholder to use documents filed in a federal bankruptcy case, evidencing an intent to surrender property, to prevent a borrower from challenging a subsequent foreclosure proceeding in state court.

In a bankruptcy case, a debtor must file a statement under penalty of perjury stating his or her intention regarding property securing a debt. A debtor may retain, redeem or surrender the property. Commonly, while a debtor may state that they intend to surrender a property in the bankruptcy, they will continue to fight a pending foreclosure case in state court by raising numerous baseless defenses. The filing of these affirmative defenses delays the already lengthy process of getting a foreclosure judgment.

The Courts have recently set forth opinions that have helped financial institutions in dealing with this scenario. *Failia v. Citibank*, an Eleventh Circuit decision found that an individual who agrees to surrender property in bankruptcy court also forfeits the right to challenge any foreclosure proceedings on that property.

What this law does is take it a step further. Once the documents stating the debtor's/defendant's intention of surrendering the property is filed with the Court, it creates



a presumption that a foreclosure defendant has waived any defense to that foreclosure. In addition, the law ensures that any document filed by a debtor under penalty of perjury in the bankruptcy court can be filed as an admission against that person.

The law does contain a provision that a defendant can still raise a defense based upon the lienholder's action or inaction subsequent to the filing of the document in bankruptcy court which evidenced the defendant's intent to surrender. For example, if the debtor files an intent to surrender, but subsequently the Credit Union and debtor enter into a mortgage modification, and later the debtor defaults, the debtor would be able to raise defenses based upon the actions of the Credit Union since the surrender document was filed with the Bankruptcy Court. Exactly how courts will interpret or apply this provision of the law remains to be seen.

While I am sure we will still see "creative" defenses raised by defendants in foreclosure cases, once this bill goes into effect on November 1, 2018, Credit Unions will have another tool in its arsenal to get through the foreclosure process as quickly as possible.

Should you have any questions about this issue or any other bankruptcy or foreclosure matter, please feel free to contact a lawyer at SVL for further instruction and guidance.

Celebrating at the Tally Awards

Sorenson Van Leuven was a sponsor at the 2018 Tally Awards. The Tally Awards is a fun night out to celebrate the "People's Choice for Tallahassee's Favorite Local Businesses" and more importantly this event raises money for Capital City Youth Services, a charity that provides needed services to youth and their families in our city and surrounding communities. Sorenson Van Leuven has participated the last two years and this is an event that our firm looks forward to each year!

— Jim

James E. Sorenson
Attorney



Staff Spotlight on Whitney Whitaker

Whitney Whitaker started working with Jim and Tyler on a part-time basis back in February 2009. Her initial job was recording Final Judgments and preparing Judgment Lien Certificates. In just a few short months, she graduated from FSU and started full-time in May of 2009. Whitney is definitely a team player. She has worked in each and EVERY department from Collections/Post Judgment to Foreclosure, Replevin and has settled down in the Bankruptcy department where she has been for the past two years. Whitney is also our marketing coordinator and is very determined



and hard working. Whitney is a very happy, go lucky person, who loves nothing more than spending time with her family. Whitney has been with the love of her life Brandon for over a decade. They got married in October 2015 and were featured in Vocelle's Bridal magazine! Whitney is a mama of two boys, her son Braedyn who just turned one and her fur baby, Milo. When she isn't working, Whitney loves being at the beach and tries to get away every chance she can to Alligator Point. She is a very big part of our SVL family and we are thankful to have her.

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The DOJ in its complaint makes a big deal out of the fact that the lender did not have any policies or procedures for compliance with the SCRA. As such, the DOJ was taking the position that the lender's action in this one case was not an isolated incident, but instead a pattern or practice of violating the law.

Often we see situations where a client does not have a procedure for complying with the Servicemembers Civil Relief Act, including how to handle the repossession of personal property from active duty members. If your Credit Union does not have such a policy or procedure, we

suggest you develop one. If your policy or procedure regarding the SCRA has not been reviewed by legal counsel for compliance with the law, I suggest you get a review to be assured the procedure is in compliance with applicable law. Finally, your staff must be trained on the procedure and compliance with the procedure must be enforced within the Credit Union.

Should you have a question about the SCRA or the appropriate procedures to have in place, do not hesitate to contact a lawyer at SVL.



See Us At...

Georgia Credit Union Affiliates Annual Conference
May 16th-19th, *Savannah, Georgia*

League of Southeastern Credit Union Annual Conference
June 6th-8th, *Orlando, Florida*

Sorenson Van Leuven Collections & Bankruptcy Legal Workshop
August 8th-10th, *Orlando, Florida*

Kicking Colon Cancer's Hiney



The employees of our firm wore blue in March to provide support and raise awareness for the millions of colorectal cancer patients, survivors and family members. Michelle, Jim Sorenson's wife, battled and won the fight with colon cancer over 10 years ago. This is the reason that the awareness is so near and dear to our hearts.

Golfing *FORE* the Troops

Sorenson Van Leuven was a gold sponsor at the 18th Annual Pen Air Charity Golf Tournament to benefit Friends of the Navy-Marine Corps Relief Society, Inc. on April 13, 2018 in Pensacola. Attorneys Tyler Van Leuven and Blair Boyd participated in a foresome and with their considerable weighted handicaps, shot a 57 for the scramble tournament and had a great time supporting the cause.



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