

## SERVICEMEMBERS CIVIL RELIEF ACT

*By Timothy J. Zimmerman*

- I. Applies to both homeowner and condominium associations.
- II. Who is protected?
  - A. Members of Army, Navy, Marine Corps, Air Force, and Coast Guard on active duty
  - B. Members of National Guard called to active duty for over 30 days
  - C. Commissioned members of Public Health Service and National Oceanographic and Atmospheric Administration
- III. How long are protections in place?
  - A. Varies depending on specific protection
  - B. May extend up to 90 days from date of release from or termination of military Service
- IV. Practical Impact on HOAs
  - A. Interest
  - B. Fines and Penalties
  - C. Any other obligation or liability incurred before military service
    - 1. Rental restrictions
    - 2. Architectural review or compliance
      - a. Painting
      - b. Landscape
  - D. Assessment collection/Judgments

VIII. Mortgages and Trust Deeds originated before military service  
(*and other security in nature of mortgage*)

- A. Sale, foreclosure, or seizure of property is not valid if made during or within 90 days after servicemember's military service
  - 1. Recently extended period from 90 days to 6 months through 12/31/2009
- B. In an action filed during or within 90 days after servicemember's military service, the court may:
  - 1. Stay proceedings for period of time as justice and equity require
  - 2. Adjust the obligation to preserve the interests of all parties

IX. Protections against Judgments

- A. Affidavit stating whether servicemember in military service
- B. If servicemember is in military service:
  - 1. The court is required to appoint attorney for servicemember prior to entering judgment.  
Query: Who pays for attorney?
  - 2. Must grant minimum 90 day stay of proceedings:
    - a. If court determines there may be a defense to action which cannot be presented without the presence of servicemember.
    - b. If after due diligence, defense counsel has not been able to contact servicemember or determine whether a meritorious defense exists
  - 3. Court must set aside any judgment entered while servicemember was in military service or within 60 days thereafter upon request of servicemember if:
    - a. Servicemember was materially affected by reason of military service in making a defense
    - b. Servicemember has meritorious or legal defense
    - c. Filed within 90 days after termination or release from service.