



## NATIONAL UNDERWRITING BULLETIN

**FROM:** WFG Underwriting Department

**DATE:** October 15, 2014

**TO:** All Policy Issuing Agents of WFG National Title Insurance Company

**BULLETIN NO.:** NATIONAL 2014-06

**SUBJECT:** Servicemembers' Civil Relief Act (SCRA) following Foreclosure of Mortgage/Deed of Trust

When examining title following a judicial or non-judicial foreclosure of a mortgage on the property, the agent shall confirm that (i) the docket or court file of a judicial foreclosure proceeding, (ii) the affidavits/certifications, Trustee's certificates or statement in the trustees deed in a non-judicial foreclosure, or (iii) other documents recorded in the land records, confirm that each of the property owners and any other individual defendants whose interest was foreclosed was not in the Military Service of the United States during the 1 year preceding the final date of the foreclosure, forfeiture or sale.<sup>1</sup>

As corporations and other "entities" cannot serve in the U.S. Military, no affidavits or proofs are required for corporations or other "entities."

If the above records do not confirm that every one of the foreclosed individual defendants were not in the Military Service, any search or commitment shall include the following exception:

- #. Any claim based upon the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 501 et seq., which restricts foreclosure, forfeiture and other legal proceedings based upon Military Service of the United States.

NOTE: This exception may be removed only upon providing evidence satisfactory to the Company that the foreclosure [described as] was conducted in accord with the requirements of or an exemption from the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 501 as set forth in National Bulletin #2014-6.

The exception may be removed under the following circumstances:

1. Insuring a Subsequent Sale.

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<sup>1</sup> The time period was increased from 90 days to 9 months effective July 30, 2008, and to 1 year effective Feb. 2, 2013. It will revert back to 90 days on January 15, 2015. P.L. 112-154, Title VII, §710(d)

WFG will insure the second sale to a bona fide purchaser (BFP) following foreclosure or a refinance by the second BFP without taking an SCRA exception. Any post foreclosure transaction involving a lender, servicer or lender affiliate or a BFP who acquired at the foreclosure sale, should require proof of compliance with applicable provisions of the SCRA.

2. Evidence in Non-Judicial Foreclosure.

In some jurisdictions, the practice is for the foreclosing trustee to provide a separate Trustee's certificate or affidavit as to non-military status. WFG agents are authorized to rely on such certificates whether or not recorded or in recordable form to remove the SCRA exception.

3. Non-Military Evidence as to All Foreclosed Individual Owners.

Non-Military affidavits are provided to the title agent/escrow officer for recording in the land records certifying that each of the property owners whose interest was foreclosed was not in the Military Service of the United States at any time during the one year<sup>1</sup> preceding the final date of the foreclosure, forfeiture or sale. Evidence of current military status is not sufficient to satisfy the requirement.

The Defense Manpower Data Center has an online portal to verify Military Service at <https://www.dmdc.osd.mil/appj/scra/>. The foreclosing lender should be able to confirm their compliance with the SCRA using data available in the loan file and the online certificate generated at the above site.

Because of the impossibility of generating proof of non-military status for an unknown spouse, heir or tenant who may or may not be in the military, WFG will insure a default judgment of foreclosure notwithstanding the absence of a non-military affidavit as to unknown parties.

4. Mortgage or deed of trust executed during Military Service:

The SCRA exception may be removed with appropriate evidence that the foreclosed mortgage or deed of trust was executed during each servicemember's period of Military Service AND if the foreclosure was judicial, that there was no default judgment. Note that under §533, a non-judicial foreclosure of mortgage or deed of trust during the servicemembers period of Military Service may proceed.

5. Appearance in a judicial mortgage foreclosure:

When insuring title to real property acquired out of a judicial mortgage foreclosure, you may remove the SCRA exception with regard to a court ordered foreclosure in which each individual defendant, for whom non-military evidence is not of record, made an appearance (filed an answer or motion) in the action (except if such appearance is solely to apply for a stay pursuant to 50 App. U.S.C.A. § 522 or to deny jurisdiction or adequacy of service).

6. Written Agreement:

WITH THE EXPRESS APPROVAL OF A WFG UNDERWRITER, you may rely upon a written agreement by the servicemember defendant waiving rights under the SCRA and acquiescing in any proceeding (foreclosure, sale, etc.), whether or not an appearance is made, if the agreement is executed during or after the servicemember's period of Military Service. The written agreement must specify the legal instrument or proceeding to which it applies, and it must be in recordable form.

OR

7. Express Approval by WFG Underwriting

Additional information regarding the Servicemembers Civil Relief Act is available in the attached Background Materials.

NOTE: This bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.