Title Chat

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Persons in the Military

Did September 11 create any title issues in real estate transactions?

Its aftermath brought to our attention two federal laws or regulations that have been in existence for some years that now warrant our attention.

In response to the attacks, President Bush authorized the ordering of persons in certain reserve units to active federal duty. These persons while on active federal duty and all those who are on active federal duty in military service are entitled to the benefits of the *Soldiers' and Sailors' Relief Act of 1940* ("SSCRA"). Those who were called to active state duty by a state governor are not covered by SSCRA but may be covered by applicable state law.

What are the benefits and how do they affect title transactions?

1. Litigation against the person on active duty can be stayed during the period of active duty and three months thereafter. *50 U.S. Code Appendix Ss. 521 and 523*. This touches real estate by applying to foreclosures and tax sales. How does this apply to title insurance and real estate closings? If asked to insure title coming through a foreclosure we must make sure that certain papers and procedures were followed in the foreclosure process to ensure that the titleholder was not on active military duty when the foreclosure was commenced.

2. The amount of interest that a person on active duty would have to pay on obligations undertaken before entering active duty can be limited to 6% while the person is on active duty, in certain situations, if certain procedures are followed. *50 U.S. Code Appendix s. 526*. This touches payments of interest on mortgages, credit card debt or judgments.

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3. Time periods of powers of attorney executed by a person on active duty giving a power to certain relatives, such as the person's spouse or parents, for specified periods of time are extended during any time period when the person is in a missing status. *50 U.S. Code Appendix s. 591.* How do parties to real estate transactions determine that the person is "missing"?

4. The spouse, children or other dependents of the person on active duty cannot be evicted from any premises they occupy where the rent does not exceed $1,200 per month, unless pursuant to an appropriate court order. *50 U.S. Code Appendix s. 530.*

5. Deposits under purchase contracts or payments on installment sales contracts, contracted before the person went on active duty cannot be forfeited without an order by an appropriate Court. *50 U.S. Code Appendix s. 531*. Before a closing could occur where the rights described in *Sections 4* or *5* are involved, a court order is required unless the person in the service gives the right up voluntarily.

The second matter involves Federal Regulations allowing the President to issue Executive Orders blocking property or prohibiting transactions with persons who commit, threaten to commit, or support terrorism. Such an order was issued on September 24, 2001. The Office of Foreign Assets Control (OFAC) is to administer and enforce the sanctions. The Order refers to Federal Statutes and Regulations and contains a listing of names (which has since been expanded) of individuals and entities alleged to be or have connections with terrorists or organizations supporting terrorists. The order requires persons who may become involved in transactions involving these entities or persons to block the transaction and notify the OFAC within ten days of blocking. The order specifically refers to "financial institutions" as being required blocking the funds of such persons or organizations. Among the types of business that fall within the definition of "financial institutions" are "persons involved in real estate closings or settlements".
The Executive Order can be found at the Internet site http://www.treas.gov/ofac.

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