

From Landlord To Locked Up: The Long Arm Of The SCRA

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On May 17, 2007, Randall McLeod pled guilty to a class A misdemeanor for violating the eviction protections of Section 531 of the Servicemembers Civil Relief Act (SCRA).[1] The court sentenced McLeod to six months in prison, one year of supervised relief, a \$1,000 fine, and a payment of \$15,300.28 in restitution. In addition to the criminal charges brought by the United States attorney's office, the district court also ordered McLeod to pay \$15,300.28 in restitution to his former tenants.[2]

These severe punishments stemmed from McLeod's actions as a landlord. In December 2004, the Flesserts — McLeod's tenants — failed to pay the rent due on their home in Wilson, Michigan. While Flessert was away on active duty with the United States Army and his wife was visiting family in Wisconsin, McLeod unilaterally — and without first obtaining a court order — removed all of the Flesserts' belongings from their house and padlocked the door to keep them out.



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Over the past few years, the U.S. Department of Justice and federal banking regulators have aggressively increased their efforts to enforce the SCRA. Both federal and state regulators now focus on SCRA compliance when examining institutions, and government enforcement attorneys are keenly aware of the various protections afforded to service members by the SCRA.[3] While most scrutiny has been directed toward the SCRA's foreclosure, default judgment and interest rate protections, creditors should not overlook the risks associated with the SCRA's eviction protection. And, while most SCRA enforcement actions do not result in criminal charges, the McLeod case demonstrates that violations of the SCRA's eviction protections can lead to severe penalties, including incarceration.

Section 531 of the SCRA prohibits "a landlord (or another person with paramount title)" from evicting a service member or the service member's dependents from a residence during the service member's period of active duty.[4] This protection only applies to properties with a rental value of less than \$3,217.81 per month.[5] While most financial institutions do not typically view themselves as "landlords," many investors have sought to purchase and rent out residential properties seeking both the rent value and the potential increase in home prices, thus expanding into property management.[6]

Furthermore, since 2012, several private equity firms have invested heavily in acquiring distressed

homes.[7] Long term, these private equity firms believe that housing prices will continue to rebound, and that this will turn out to be a wise investment. In the short term, however, many of these private equity firms are generating revenue by renting these homes out. In doing so, these firms are effectively becoming landlords themselves. Given their lack of expertise as landlords, these private equity firms need to be keenly aware of their responsibilities under the SCRA.

When drafting the SCRA's eviction protection, Congress intentionally sought to apply this section of the statute broadly. Under the SCRA's predecessor, the Soldiers' and Sailors' Civil Relief Act, the statute read, "No eviction or distress shall be made during the period of military service"[8] Recognizing that the statutory language could be considered unclear, in 2003, Congress revised this section to protect service members against eviction from either a landlord or any "person with paramount title." [9] This change emphasizes that Section 531 extends beyond common eviction proceedings and covers eviction actions from an individual with paramount title.[10]

Although Section 531 is drafted broadly — and courts should construe ambiguities in the SCRA in favor of service members who have "dropped their affairs to answer their country's call"[11] — an unreported case from Florida illustrates the outer bounds of the protections afforded by Section 531.

In *Jimenez v. Miami-Dade County*, [12] the service member-plaintiff asserted, among other claims, that the local government evicted his family from a condemned property in violation of Section 531.[13] In this case, Jimenez owned three properties in Miami-Dade County; while he was on active duty, his wife lived in one of these properties.[14] The county condemned all of Jimenez's properties while he was on active duty; after taking title, the county evicted Jimenez's wife and his other dependents.[15]

In Jimenez's complaint, he argued that the county had violated his rights under Section 531 of the SCRA.[16] After the county filed a motion to dismiss, the court dismissed the claim. The court focused on the fact that Section 531 and its predecessor statute appears to contemplate "a landlord-tenant relationship." [17]

After determining that a landlord-tenant relationship is required to implicate the protections of Section 531, the court went on to hold that the condemnation process and the subsequent removal of the plaintiffs from the property did not resemble a landlord-tenant relationship. Rather, the court found that because the plaintiffs did not pay rent on the property, [18] they did not "reside in a premises covered by Section 531 — that is, they [did] not reside in a premises 'for which the monthly rent does not exceed \$[3217.81].'" [19] Without the requisite landlord-tenant relationship, the court found that the plaintiffs failed to state a valid claim under Section 531.

Although in *Jimenez*, the owner of the property was a government entity, the same analysis should hold — and Section 531 should not apply — to a mortgagee in a foreclosure action. Often, when a new owner (either a mortgagee or third party) takes title to a property after a foreclosure sale, the former mortgagor remains on the property. The new owner must then initiate an eviction action to remove the former mortgagor from the property. Like the plaintiffs in *Jimenez*, the former mortgagor is not in a landlord-tenant relationship and is not paying rent; accordingly, Section 531 of the SCRA should not apply.

Importantly, however, the SCRA's eviction protection may apply to a prior tenant who remains on the property. If the mortgagor had leased the property (or a portion of the property) to a tenant and the tenant continued to occupy the residence through the foreclosure action, the tenant may be eligible for protection under Section 531 of the SCRA.[20] This may come as a surprise to financial institutions, as

creditors rarely have the information required to determine if a tenant in a real estate-owned (REO) property is a service member — that is, the tenant’s Social Security number or date of birth.

While financial institutions rarely think of themselves as landlords, they may be subject to a narrow window of exposure under the eviction provisions of the SCRA. Accordingly, Jimenez and McLeod serve as a reminder that it is critical for creditors to ensure that SCRA compliance remains a top priority throughout all phases of a foreclosure — including any post-foreclosure eviction action against a holdover tenant.

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[1] United States v. McLeod, No. 2:06-CR-27, 2008 WL 114789 (W.D. Mich. Jan. 9, 2008).

[2] Id.

[3] Independent Foreclosure Review Consent Orders (2011); National Mortgage Settlement (2012)

[4] 50 U.S.C. app. § 531(a)(1).

[5] Publication of Housing Pricing Inflation Adjustment Under United States Code, 79 Fed. Reg. 115-01 (Jan. 2, 2014). The maximum monthly rent to qualify for the eviction protection adjusts every year based upon changes in the Consumer Price Index.

[6] See Matthew Goldstein, Investors Who Bought Foreclosed Homes in Bulk Look to Sell, THE NEW YORK TIMES (June 27, 2014, 3:58 PM), <http://dealbook.nytimes.com/2014/06/27/investors-who-bought-foreclosed-homes-in-bulk-look-to-cash-in/>.

[7] See John Gittelsohn and Heather Perlberg, Blackstone Buys Atlanta Homes in Largest Rental Trade, BLOOMBERG (April 25, 1:18 PM), <http://www.bloomberg.com/news/2013-04-25/blackstone-buys-atlanta-homes-in-largest-bulk-rental-trade.html>.

[8] 50 U.S.C. app. § 530(a) (2000).

[9] 50 U.S.C. app. § 531(a)(1).

[10] Legislative history shows that this change was specifically designed to reiterate the application of Section 531 to more modern administrative proceedings involving license and zoning issues and federal mineral rights. See 149 Cong. Rec. H3697 (daily ed. May 7th, 2003) (statement of Rep. Smith).

[11] Boone v. Lightner, 319 U.S. 561, 575 (1943).

[12] Jimenez v. Miami—Dade County, No. 11-23131-CIV, 2013 WL 214673 (S.D. Fla. Jan. 18, 2013).

[13] Id. at *1.

[14] Id.

[15] Id.

[16] Id. at *2. The Jimenezes also filed other claims under 42 U.S.C. § 1983 (which they voluntarily dismissed) and under 50 U.S.C. app. § 522, the SCRA provision related to requests for a stay of proceedings. The Jimenezes' Section 522 claim survived the county's motion to dismiss.

[17] Id. (citing *Clinton Cotton Mills v. United States*, 164 F.2d 173, 176 (4th Cir. 1947)).

[18] In the instant case, the plaintiffs actually owned the property before it was condemned.

[19] Jimenez, 2013 WL 214673, at *2. (citing 50 U.S.C. app. § 531).

[20] In addition, the tenant may be eligible for protection under the federal Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5220 (2012), as well as various state and local laws.