



FREQUENTLY ASKED QUESTIONS

Servicemembers Cases in the Land Court

A Servicemembers case is a type of court case brought by a bank or other mortgage holder against a property owner who has defaulted on their mortgage. A Servicemembers case is **not** a foreclosure. Mortgage foreclosures in Massachusetts generally are not conducted by courts. Before going ahead with a mortgage foreclosure, a mortgage holder can bring a Servicemembers case. It is brought to determine one thing: if the property owner is entitled to protections the law gives to certain members of the military and their dependents.

In a Servicemembers case, the mortgage holder (plaintiff) asks the court to determine whether anyone with an ownership interest in the property (defendant) is entitled to the protections of the federal law known as the Servicemembers Civil Relief Act (SCRA) (previously known as the Soldiers' and Sailors' Civil Relief Act of 1940). The SCRA is a federal law that in some cases protects people who serve on active duty for the nation's defense from negative effects on their legal rights because of this service. The SCRA includes protections related to home mortgage foreclosures. Massachusetts has enacted its own state procedure so a court can determine whether or not a defendant is entitled to SCRA protections. In this way, lenders can make sure they comply with the federal SCRA before starting a mortgage foreclosure. A mortgagee (usually a bank or mortgage company) wishing to be sure it will not violate the protections for an eligible servicemember, may file a Servicemembers case in the Land Court or the Superior Court and ask that court to determine whether anyone with an ownership interest in the property is entitled to benefits under the SCRA.

The following FAQs provide information and a general summary of the Servicemembers case process for cases filed in the Land Court. The federal SCRA is found at [50 U.S.C. § 3901, et seq.](#) The state law establishing the procedures for Servicemembers cases is found in [Chapter 57 of the Acts of 1943](#), as amended through [Chapter 142 of the Acts of 1998](#).

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INFORMATION ABOUT SERVICEMEMBERS CASES IN THE LAND COURT

Definitions of common terms begins at FAQ #35.

1. What is a “Servicemembers” case?

A “Servicemembers” case is a case filed by a bank or someone who holds a mortgage (the plaintiff) against the owners of a property (the defendants). A Servicemembers case is NOT a foreclosure. A Servicemembers case is brought in advance of a foreclosure to determine if the property owner is entitled to protections the law gives to certain members of the military. In a Servicemembers case, the court makes sure that proper notice of the case is given to the defendant and decides if the owner took out the mortgage before the owner (or someone whom the owner depends upon for support) began military service. If so, and that person is currently on active duty or within 90 days after the end of active duty, the property owner may be entitled to protections and benefits under the Servicemembers Civil Relief Act (SCRA). Where SCRA protections apply, a mortgagee/bank cannot foreclose on a mortgage unless the court issues an order allowing the foreclosure to move forward or the owner agrees in writing.

2. What is the purpose of a Servicemembers case?

The purpose of a Servicemembers case is to determine, before a foreclosure, if a property owner has any rights under the federal law known as the Servicemembers Civil Relief Act (SCRA). The SCRA and Massachusetts state law give eligible servicemembers and their dependents some protections in mortgage foreclosures, including delaying the foreclosure (a “stay”) or reducing mortgage payments.

If a property owner (or someone whom the owner depends upon for support) **is an eligible Servicemember**, the court will appoint a Military Attorney.

If a property owner ***is not an eligible Servicemember and is not entitled*** to the benefits of the SCRA, the court will enter a judgment stating that the “defendant(s) is/are not entitled to the benefits of the SCRA.” At that time, the Servicemembers case will end and the plaintiff (usually a bank) will record the judgment with the local Registry of Deeds or register it with the Registration District of the Land Court. After the plaintiff records or registers the judgment, the court is not involved in the foreclosure.

If the court decides that an owner ***may be entitled*** to the benefits of the SCRA, the court may then consider what those protections and benefits are and issue orders to protect those benefits. For example, a judge may delay the foreclosure (“grant a stay”) or may adjust the



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terms of the mortgage (for example, by lowering or delaying the required payments or by reducing the interest rate).

3. Who are the parties (plaintiff and defendant) in a Servicemembers case?

The plaintiff in a Servicemembers case is the mortgage holder (usually a bank or other financial servicer).

The defendants in a Servicemembers case are the owners of the property who are listed on the deed for the property. Sometimes, there are additional parties who also hold mortgages and liens against the property (“junior lienholders”). Junior lienholders are also named as defendants or interested parties in a Servicemembers case so they can get notice of any activities happening in the case.

4. Which courts hear Servicemembers cases?

In Massachusetts, Servicemembers cases can be heard in either the [Land Court](#), located in Boston, or in the [Superior Court](#), in the county where the property is located. The plaintiff chooses the court when it files the case.

5. Is a Servicemembers case a foreclosure?

No. A bank, mortgage holder, or servicer must take many steps before they can foreclose on your property. The steps and the process that the mortgage holder must follow are outlined in the terms of the mortgage and in federal and state law. One step is to file the Servicemembers case, but filing it does not guarantee there later will be a foreclosure. Also, the filing of a Servicemembers case does not make it too late for the borrower to apply for a loan modification or to look into other foreclosure prevention options. You may wish to seek legal or financial guidance on avoiding foreclosure. You can also find links to information resources for distressed homeowners and homeowners facing foreclosure at the end of the FAQs.

INFORMATION ABOUT THE SCRA

6. What is the Servicemembers Civil Relief Act (SCRA) (also known as the Soldiers’ and Sailors’ Civil Relief Act)?

The SCRA, [50 U.S.C. § 3901, et seq.](#),¹ is a federal law that provides legal and financial protections for military members and their families. The provisions of the SCRA were

¹ The Soldiers’ and Sailors’ Civil Relief Act of 1940 was the predecessor federal Act to the Servicemembers Civil Relief Act (SCRA), which was enacted in 2003 and has been amended several times since.



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enacted to allow servicemembers to "devote their entire energy to the defense needs of the Nation." To do this, the SCRA temporarily suspends (stops or delays) judicial and administrative proceedings and transactions that may impair the civil rights of servicemembers during their military service. Among many topics, the SCRA's protections apply to property leases, security deposits, prepaid rent, evictions, property taxes, mortgage interest rates, and mortgage foreclosures.

7. Who is protected by the SCRA?

The SCRA provides a wide range of benefits and protections to persons serving in the military and their dependents. At the time of this writing, the SCRA applies to:

- Full-time active duty members of the five military branches (Army, Navy, Air Force, Marine Corps and Coast Guard);
- Reservists on federal active duty; and
- Members of the National Guard mobilized on federal orders for a period of more than 30 days;
- Commissioned officers in active service of the Public Health Service (PHS) or the National Oceanic and Atmospheric Administration (NOAA).
- Any of the above who are absent from duty for a lawful cause or because of sickness, wounds or leave.

The SCRA also provides certain benefits and protections to spouses, children, and other dependents of servicemembers and, in certain instances, to those who co-signed a loan for, or took out a loan with, a servicemember.

Some SCRA benefits also extend for a period after a servicemember's military service ends. Under current law at the time of this writing, the SCRA's mortgage foreclosure protections extend to 90 days after a servicemember's period of military service ends.

8. Who qualifies as a servicemember under the SCRA?

Under the SCRA, a servicemember is a member of the uniformed services, including the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

9. What qualifies as "military service" or "active duty" under the SCRA?

"Military service" means "active duty," which is full-time duty in the active military service of the United States. "Active duty" includes training duty, and attendance, while in the active



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military service, at a school designated as a service school by law or by the Secretary of the military department.

For a servicemember who is a member of the National Guard, “military service” includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by federal funds.

For commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration, “military service” means active service.

For all categories of servicemembers, “military service” includes any period during which a servicemember is absent from duty because of sickness, wounds, leave, or other lawful cause.

10. Who qualifies as a “dependent” of a servicemember under the SCRA?

A dependent is the spouse or child of a servicemember. If the servicemember provided more than one-half of the support for a person for 180 days before that person asserts the right to benefits under the SCRA (for example, by filing an Answer in a Servicemembers case), that person is also considered a dependent of the servicemember.

11. What foreclosure protections are available under the SCRA?

If you are a servicemember on active duty, or the dependent of a servicemember on active duty, and the active duty affects your ability to pay your mortgage, the SCRA may protect you. If you qualify under the SCRA, a bank or other mortgage holder cannot foreclose on your property without an order from the court or your written agreement.

In Massachusetts, the Servicemembers case will determine if foreclosure protections are available to you under the SCRA. A servicemember or a dependent may request that a judge delay the case or modify your obligations under the mortgage to protect your interests.

12. What mortgages are covered by the SCRA?

The SCRA’s foreclosure protections apply only to mortgages taken **before** the period of military service began.

13. What is a Military Attorney? What does a Military Attorney do?

A Military Attorney is an attorney who is appointed by the court to represent a defendant in the military service. The Military Attorney will attempt to find and speak to the defendant to determine if there are any legal grounds to oppose the plaintiff’s case. The Military Attorney will also appear before the court on behalf of the servicemember, and advocate for



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any protections under the SCRA to which the servicemember may be entitled. If the Military Attorney cannot locate the servicemember, the attorney's actions will not waive any of the servicemember's defenses, if presented to the court in a proper and timely way, and will not prevent the servicemember from taking actions on their own behalf.

INFORMATION FOR PEOPLE NAMED IN A SERVICEMEMBERS CASE

14. How do I know if I am eligible for or entitled to benefits under the SCRA?

You are eligible for the foreclosure protection provisions of the SCRA if you are a servicemember in active military service or within 90 days after active military service (or if you are a dependent of such a servicemember) **and** if you took out your mortgage **before** the military service began. Additionally, your ability to perform the obligations of the mortgage must have been "materially affected by such military service," which generally means that your income is materially less after military service began than in civilian life either before enlisting or being called to active duty. However, a judge considers the entire impact of military duty on a servicemember.

In Massachusetts Land Court, if you are a servicemember in military service, the court will appoint a Military Attorney to represent you.

15. How do I assert my rights under the SCRA in a Servicemembers case?

You or your attorney should file an "Answer" to explain your side of the case to the court. You should state why you believe you are entitled to the benefits of the SCRA. After you file and serve (send a copy to the Plaintiff) an Answer accepted by the court, a Judge will review your case to determine what, if any, additional proceedings may need to occur.

16. I'm a servicemember in active military service (or within 90 days of active service). What do I need to do?

You or your attorney should file an "Answer" to explain your side of the case to the court. If you are a servicemember, you should state so in your Answer. The Answer should be filed with the court (and a copy sent to the Plaintiff's lawyer) by the deadline specified by the court in the citation (notice) you receive. The court will appoint a Military Attorney to represent you. After you file and serve an Answer and the court accepts it, a Judge will review your case to determine what additional proceedings may need to occur.

17. I'm a dependent of a servicemember. What do I need to do?

You or your attorney should file an "Answer" to explain your side of the case to the court. If you are a dependent of a servicemember, you should state so in your Answer. The Answer



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should be filed with the court (and a copy sent to the Plaintiff's lawyer) by the deadline specified by the court in the citation (notice) you receive. If you do not qualify for appointment of a Military Attorney, you should still file an Answer to claim your rights. After you file and serve an Answer and the court accepts it, a Judge will review your case to determine what additional proceedings may need to occur.

18. I am a servicemember who has given my "power of attorney" to someone. Can they claim my rights under the SCRA?

Yes. An individual to whom a servicemember has given a power of attorney is the legal representative for the servicemember under the SCRA. The person with a power of attorney may take all actions on behalf of the servicemember, including by claiming the servicemember's rights under the SCRA in a Land Court Servicemembers case.

19. I'm not a servicemember or dependent. What do I need to do if I am named in a Servicemembers case?

You do not need to respond or participate in a Servicemembers case if you are not entitled to the benefits of the SCRA. The only purpose of a Servicemembers case is to determine if the owners of a property have any rights under the SCRA. You cannot file an Answer in a Servicemembers case unless you are claiming rights under the SCRA.

20. I have been named in a Servicemembers case. Do I need to hire a lawyer?

If you are a servicemember named in a Servicemembers case, the Land Court will appoint a Military Attorney to represent you. If the court has not appointed a Military Attorney in your case, and you are a servicemember, please contact the Land Court Recorder's Office by phone at: 617-788-7470 or by mail at: 3 Pemberton Square, 5th Floor, Boston, MA 02108.

If you are not a servicemember or a dependent and you are not entitled to the benefits of the SCRA there is no need to respond to or participate in the Servicemembers case. You do not need to hire a lawyer to appear on your behalf in court.

The filing of a Servicemembers case is one of the steps a bank or other mortgage holder takes before foreclosing on a property. However, filing does not guarantee there later will be a foreclosure. Also, the filing of a Servicemembers case does not make it too late for the borrower to apply for a loan modification or to look into other foreclosure prevention options. You may wish to seek legal or financial guidance on avoiding foreclosure. You can also find links to information resources for distressed homeowners and homeowners facing foreclosure at the end of the FAQs.



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21. How long does a Servicemembers case take?

Where no defendant claims rights under the SCRA, a Servicemembers case can take between 2 to 4 months to complete, but may take longer.

Servicemember cases where a servicemember or a dependent is named as a defendant may take longer while the Military Attorney investigates the servicemember's status and possible defenses, or while the court determines the defendant's rights under the SCRA. In such cases, the court may enter an order to delay the case (enter a "stay").

22. What if I am named in a Servicemembers case and I have filed (or will file) for bankruptcy?

When you file for bankruptcy (either a Chapter 13 or Chapter 7 bankruptcy), the federal bankruptcy court automatically issues an order (called the "order for relief") which includes an "automatic stay" that directs your creditors to immediately stop collection or foreclosure activities. The automatic stay stops your creditors from continuing the Servicemembers case against you, unless and until the bankruptcy court lifts the automatic stay. When a defendant in a Servicemembers case files for bankruptcy, the parties must notify the Land Court. The Land Court will then issue a stay to delay the Servicemembers case until the bankruptcy court issues further orders.

When the bankruptcy court lifts the automatic stay, or if the plaintiff obtains "relief" from the automatic stay, the Servicemembers case may continue.

23. There are additional liens against my property. What happens to those liens in a Servicemembers case?

Nothing. The Servicemembers case has no effect on other mortgages or liens against the property.

24. The property is owned by a corporation; a limited liability company; a limited partnership; a "business" trust; or a general partnership or joint venture. Does a Servicemembers case need to be filed?

No. Under Massachusetts state law, a Servicemembers case does not need to be filed if the property is wholly owned by a corporation, limited liability company, limited partnership, a "business" trust, general partnership, or joint venture.

25. Will the court order my property foreclosed in a Servicemembers case?

No. The court will not order a foreclosure of your property in a Servicemembers case. The purpose of a Servicemembers case is to determine if owners of a property (mortgagors) have



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any rights under the SCRA, **before** a foreclosure on a property. After the Servicemembers case ends the bank may foreclose under the terms of your mortgage and state and federal law.

In almost every situation in Massachusetts, the foreclosure of a mortgage takes place without any court case and without any involvement by a court. If a borrower has any legal defenses which may stop a foreclosure, those must be raised in a separate case in an appropriate court. Those defenses cannot be raised or heard in a Servicemembers case. Servicemembers cases are only about the eligibility of the borrower for Servicemembers protection under federal law.

COURT PROCEDURES IN A SERVICEMEMBERS CASE

26. What is a “complaint”?

The complaint is the first paper, or pleading, the plaintiff files with the court and gives the reasons for the lawsuit. In a Servicemembers case complaint, the plaintiff asks the court to declare that the defendants in the case have no right protected under the SCRA. The plaintiff must follow certain rules to file a complaint in the Land Court.

27. What is an “Order of Notice”?

When the plaintiff files a Servicemembers case, the court will prepare an order of notice to notify the defendants (and any other parties who may have an interest in the property or the mortgage) that the case was filed. The notice tells all the parties the date (“return day”) by which they must file an Answer to the Servicemembers case to claim the benefits of the SCRA. Fourteen (14) days before the return day, the plaintiff must send the order of notice to each defendant and interested party by registered or certified mail, publish the order of notice in a newspaper designated by the court, and record the order of notice with the Registry of Deeds or register the notice with the Land Registration District in the county where the property is located.

28. What is an “Answer”? How do I file an Answer?

The Answer is the document that a defendant must file with the court (called a “pleading”) to respond to the plaintiff’s complaint. In a Servicemembers case, if you are a defendant, to claim your rights under the SCRA, you must file an Answer with the court before the “return day”.

To file an Answer, you or your attorney must file a written document with the court before the return day stating (at a minimum) that you (1) own or have an interest in the property;



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(2) are a servicemember or dependent; (3) are entitled to the benefits of the SCRA; and (4) object to a foreclosure of the property for that reason. In the Answer, you can explain your side of the case and ask the court for relief, such as a delay of the case or an adjustment of the mortgage obligations. When you file an Answer with the court, you must also “serve” a copy of your Answer on the plaintiff in the case. To serve your Answer, you need to deliver or mail a copy to the service address of the plaintiff’s attorney listed in the Complaint.

29. What is a “return day”?

The return day is the specific day set by the court by which the defendants must file a written appearance and answer with the court if they wish to do so. In a Servicemembers case, if the defendants want to claim any rights they might have under the SCRA, they must file an answer before the return day ends. ***A “return day” is not an in-court event***, so you do not need to come to the court that day.

30. What is a “Military Affidavit”?

A Military Affidavit is a form used to indicate if a party to a case is serving in the United States military. In a Servicemembers case, the plaintiff must file a [Military Affidavit form](#) with the court to state the military status of each defendant.

31. What is a “stay”?

A stay is the suspension of a judicial proceeding by court order. When a judge issues a “stay” in a Servicemembers case, no further proceedings or court activities will be held until the judge lifts the stay.

32. I saw my name in the newspaper for a servicemembers case. What do I need to do?

If you are a servicemember or dependent and you are named in a Servicemembers case, you may be entitled to the benefits of the SCRA. If you believe you are entitled to the benefits of the SCRA, you or your attorney should file an Answer with the court before the return day. If you are a servicemember, the Land Court will appoint a Military Attorney to represent you.

If you are **not** a servicemember or a dependent of a servicemember, or if you are not claiming any rights or benefits under the SCRA, you do not need to respond to or participate in a Servicemembers case.



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33. I just found out that a judgment was entered against me in a Servicemembers case. What do I need to do?

If you are a servicemember, and you did not have notice of the Servicemembers case, you or your attorney can ask the court to reopen the case and set aside (“vacate”) the judgment. As soon as you become aware, you or your lawyer should file a motion to vacate the judgment with the court explaining (at a minimum): (1) how your military service “materially affected” your ability to defend against the case; (2) why you did not take part in the case earlier; and (3) that you are entitled to the benefits of the SCRA. Once you have filed the motion, a judge will review the case to determine what (if any) proceedings need to occur next.

If you are **not** a servicemember or a dependent of a servicemember, you do not need to do anything because the only purpose of a Servicemembers case is to determine if the property’s owner is a servicemember, and if so, what rights under the SCRA the owner may be entitled to claim.

34. I want to reopen a Servicemembers case to assert my rights under the SCRA. What do I need to do?

If you are a Servicemember, and you did not have notice of the Servicemembers case, you or your attorney may file a motion to “vacate” the judgment with the court. The motion to vacate must be filed not later than 90 days after the date of the termination of, or release from, military service. The motion should explain (at a minimum): (1) how your military service “materially affected” your ability to defend against the case; (2) why you did not take part in the case earlier; and (3) that you are entitled to the benefits of the SCRA. Once you have filed a motion, a judge will review the case to determine what (if any) proceedings need to occur next.

DEFINITIONS FOR COMMON TERMS (GLOSSARY)

35. What is a mortgage?

A mortgage is a document that creates a lien on real estate to secure the performance of some obligation, usually the payment of a loan. The lien is discharged upon full payment of the loan.

Most real estate owners borrow money from a bank to purchase the property. The bank receives a mortgage on the property in exchange for the payment of the money loaned, and the property owner agrees to make periodic payments to the bank to pay back the loan. If the property owner does not make the payments, the bank can take ownership of the property in a process called foreclosure.



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In mortgage documents, the borrower is the mortgagor and the lender (or their agent) is the mortgagee.

36. Who is a mortgage holder (mortgagee)?

Someone who holds a mortgage; the creditor, often a bank or its agent, like a servicer.

37. Who is a mortgagor (borrower)?

The maker of a mortgage; the debtor, often a homeowner.

38. What is a mortgage servicer?

Your mortgage servicer is the company that sends you your mortgage statements. Your servicer also handles the day-to-day tasks for managing your loan. Your loan servicer typically processes your loan payments, responds to your inquiries, keeps track of principal and interest paid, and manages your escrow account (if you have one). The loan servicer may initiate foreclosure under certain circumstances. Your mortgage servicer may or may not be the same company that originally gave you your loan.

39. Descriptions for a business or person who holds a mortgage, or has a right to enforce the terms of a mortgage:

Plaintiff, bank, mortgagee, mortgage holder, servicer, creditor.

40. Descriptions for a person who owns the property and owes money on the mortgage:

Defendant, property owner, homeowner, mortgagor, borrower, debtor.

41. What is the equity of redemption? / Who is the holder of the equity of redemption?

The borrower in a mortgage retains the equity of redemption. When the borrower repays the loan, the lender gives them a mortgage discharge, which the borrower records or registers to “redeem” the property. If the borrower is unable to repay the loan and defaults, the borrower’s right to redeem the property is cut off (or “foreclosed”) by a process called a foreclosure. Foreclosure of a mortgage in Massachusetts usually takes place after the end of the Servicemembers case, and without involvement by a court.

42. What is the statutory power of sale?

A “statutory power of sale” is a provision that may be in your mortgage that legally allows a lender to foreclose non-judicially (meaning, without going to court) if you default on the mortgage.



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43. What is a mortgage default?

A “default” is when a borrower does not comply with the terms of the mortgage, most often because the borrower misses or is late on payments on their loan. When this happens, the borrower risks foreclosure.

44. What is a foreclosure?

A foreclosure is the legal process where the mortgage holder, lender, or servicer takes back property after the homeowner fails to make payments and has defaulted or violated the terms of their mortgage loan (i.e., repossess the property).

Typically, a foreclosure begins after a homeowner falls behind on mortgage payments. The lender or servicer must follow the processes outlined in state and federal law and in the mortgage documents before it can sell the home at auction. The process involves numerous steps, including notification to the homeowner. Foreclosure of a mortgage in Massachusetts usually takes place after the end of the Servicemembers case, and without involvement by a court.



FREQUENTLY ASKED QUESTIONS

Servicemembers Cases in the Land Court

INFORMATION ABOUT MORTGAGE FORECLOSURES & THE SCRA

45. Where I can I find more information about foreclosures or the SCRA?

Resources about mortgages and foreclosures

- Trial Court Law Libraries
 - [Massachusetts law about foreclosure](#)
 - [Massachusetts law about mortgage loans, brokers and lenders](#)
- Massachusetts Attorney General's Office
 - [Mortgage lending and foreclosures](#)
- Consumer Financial Protection Bureau (federal)
 - [Information about mortgages](#)
 - [How does foreclosure work?](#)

Resources about the Servicemembers Civil Relief Act (SCRA)

- United States Department of Justice
 - [The Servicemembers Civil Relief Act \(SCRA\)](#)
 - [For Servicemembers, Veterans, and Military Family Members](#)
- [United States Department of Defense](#)
- [United States Department of Defense Financial & Legal Services Resources](#)
- [Request a military active duty status record, United States Defense Manpower Data Center](#)
- [United States Armed Forces Legal Services Locator](#)
- [Massachusetts Department of Veterans' Services](#)
- [American Bar Association Information Center](#)

State and federal resources available to homeowners and borrowers

- Massachusetts Attorney General's Office
 - [Preventing foreclosure](#)



FREQUENTLY ASKED QUESTIONS

Servicemembers Cases in the Land Court

- Consumer Financial Protection Bureau (federal)
 - [How to avoid foreclosure](#)