



Kentucky Bar Association Annual Convention

**MORE THAN A
LAWYER**

Lexington, Kentucky  June 13-15, 2018

A SURVEY OF KENTUCKY LAWS AFFECTING OUR VETERANS

Sponsor: Military Law Committee

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Thursday, June 14, 2018

12:00 p.m. - 1:00 p.m.

Thoroughbred 1-3

Lexington Convention Center

Lexington, Kentucky

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Kentucky Bar Association

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THE PRESENTER



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**SURVEY OF KENTUCKY LAWS PASSED ON BEHALF OF
KENTUCKY'S VETERANS**

Dennis W. Shepherd

I. INTRODUCTION

A. Definition of a Veteran

1. Veteran, as used in KRS 40.305 to 40.310, includes any individual who served on active duty during peace or war in the armed forces of the United States, and who has received an honorable discharge from such service. KRS 40.310(4).
2. What about those who served in the National Guard?
3. Statutory hybrids.

B. Why Do You Need to Know Veteran-Related Legislation?

1. Counseling.
2. Rapport.
3. Completeness.

II. THE KRS 40 SERIES AND KDVA-RELATED LAWS: WHAT THE STATE AGENCY DOES FOR VETERANS

A. Healthcare – KRS 40.320, .325, .330, .335

1. State Veteran Nursing Homes.
2. Who is eligible? Location? How much?
 - a. Kentucky veterans who are residents.
 - b. Wilmore, Hazard, Radcliff, Madisonville (Hanson).
 - c. \$4,000; \$4,500; \$5,000 (private pay rates).

B. Cemetery Services – KRS 40.315

1. Who is eligible? Location? How much?
2. Kentucky veterans (broader than residents) and next of kin.
3. Williamstown, Greenup County, Radcliff, Hopkinsville, Hyden.

4. Cost: Free other than funeral home charges for cremation and caskets.
 5. Burial honors: Flag, Presidential certificate, honor guard.
 6. Indigent interment – KRS 40.355, 40.357.
- C. Homeless Veterans – KRS 40.355 and 40.357
- D. Women Veterans – KRS 40.600: Primarily Outreach Program
- E. Statewide System of Benefit Representatives Advocating for Federal VA Benefits – KRS 40.317
1. Louisville HQs, five RAs, twenty Field Benefit Reps.
 2. Goal: Maximize federal benefits including disability pensions, claims, appeals, and other matters.
- F. IGNORE KRS 40.650 Personal Loan Program (Unfunded FOREVER)
- G. Private Employer Veteran Preference – KRS 40.345
1. NOT considered discriminatory.
 2. Completely voluntary: "Veterans' preference employment policy" means a private employer's voluntary preference for hiring, promoting, or retaining a veteran over another qualified applicant or employee.
 3. Statutorily exempt from being discriminatory: Granting preference under this section does not violate any local or state equal employment opportunity law, including but not limited to KRS Chapter 344.

III. THE NON-KRS 40 LAWS AFFECTING KENTUCKY'S VETERANS

- A. Educational Benefits for Dependents
1. Tuition Waivers - KRS 164.505, 164.507, 164.512, 164.515
 - Note: every tuition waiver section presumes that the veteran was discharged under honorable conditions.
 2. Criteria? What institutions? For how long?
 3. KRS 164.505: Applicant and veteran (statistically, handful, 2017 = twenty-four).
 - a. Applicant is the child or stepchild of veteran, or non-remarried spouse of the veteran.

- b. Veteran was killed on active duty OR died as a result of a service-connected disability acquired during active duty.
 - c. Tuition waived for any state-supported university, junior college, or vocational training institution.
 - d. No time limit as to how many semesters, years, or programs.
- 4. KRS 164.507: Applicant and veteran (statistically, handful, 2017 = forty-three).
 - a. Applicant is non-remarried spouse of any age, and any child, stepchild, orphan all being under age twenty-six.
 - b. Veteran is deceased and:
 - 1. Served in Armed Forces during wartime; OR
 - 2. Died on active duty; OR
 - 3. Died as a result of service-connected disability; AND
 - 4. Was a Kentucky resident at time of death; OR
 - 5. Was married to a Kentucky resident at time of death.
 - c. Waiver good for period not in excess of forty-five months.
- 5. KRS 164.512: Applicant and veteran (statistically, almost never, 2017 = none).
 - a. Applicant is child of a veteran with acquired disability as a direct result of veteran's service.
 - i. Child regardless of age.
 - ii. Disability determined by U.S. Department of Veterans Affairs.
 - b. Any veteran:
 - i. Honorably discharged;
 - ii. Kentucky resident or, if deceased, was a Kentucky resident.

6. KRS 164.515 (vast majority, 2017 = 336 of 403).
 - a. Applicant is child, stepchild, orphan (all under age twenty-six at time of application); OR
 - i. Applicant is spouse of veteran regardless of age;
 - ii. Applicant entering military service and discharged honorably, may apply after age twenty-six up to amount of years served.
 - b. Veteran is totally disabled war veteran OR 100 percent service-connected disabled veteran:
 - i. As rated by U.S. Department of Veterans Affairs or Department of Defense.
 - ii. If veteran deceased, rating at time of death.
 - iii. Veteran a Kentucky resident or, if deceased, was a Kentucky resident.
 - c. Not in excess of forty-five months or lesser number if program is completed under forty-five months.

7. Teacher Certification – KRS 161.048.

- a. Legislative finding: "There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools."
- b. Option 5: Certification of a veteran of the Armed Forces.
 - i. Honorably discharged;
 - ii. Bachelor's degree or graduate degree;
 - iii. Minimum cumulative GPA of 2.75 on a 4.0 scale;
 - iv. Academic major or passing score on academic content assessment;
 - v. Above qualifies veteran for one-year "provisional" certificate and entry into teacher internship program leading to professional teaching certificate.

B. Tax Laws Favorable to Veterans

1. Income tax – KRS 141.01 – Excludes military pensions same as any pension.

- a. Section (10)(h) excludes as income from any judgment for damages due to exposure to Agent Orange for Vietnam veterans and their dependents.
 - Query: Camp Lejeune's contaminated water and eight illnesses?
 - b. Section (10)(t) excludes all income from all sources for those killed in line of duty for year death occurred.
 - c. Section 2: Excludes \$41,110 of military pension from income.
2. Property tax – KRS 132.810 Homestead Exemption.
 - a. Applies to veterans under sixty-five years of age;
 - b. IF service-connected, totally disabled veteran.
- C. Business Laws Favorable to Veterans
1. Disabled veteran-owned business – KRS 42.0146.
 - a. Disabled veteran-owned business.
 - b. Veteran must have 51 percent interest in the business.
 - c. The Office of Equal Employment Opportunity and Contract Compliance shall oversee a program that provides certification of a disabled veteran-owned business in order to encourage growth among businesses owned by disabled veterans within the state and assist those businesses in competing for work in other states that require certification by a statewide body. This certification does not provide a preference in state procurement, nor does it create a point system or set aside for disabled veteran-owned businesses.
 2. Professional licensing and certification – KRS 12.354.
 - a. Honorably discharged and within two years of applying for a license, permit, or other certification.
 - b. Military training satisfies the law and administrative regulations required for the license, permit, etc.
 - c. Has provided the licensing body the required documentation of this training.

- d. Downside: it's up to the licensing board to accept or reject the military training and it cannot take the place of a required degree or test.
3. State Employment Hiring Preference – KRS 18A.150.
- a. Applies to honorably discharged veterans.
 - b. Applicant must meet minimum job qualifications.
 - c. If over five veterans have applied, a minimum of five veterans shall be offered an interview.
 - d. If less than five veterans have applied, all will be offered an interview.

IV. MISCELLANEOUS LAWS AFFECTING VETERANS

- A. Vehicle Laws – KRS 186.041 and KRS 186.162
- 1. Veteran and veteran family license plates.
 - a. Military plates.
 - i. Service plates for branches of service and military academies.
 - ii. Plates recognizing medals and valor: distinguish service cross, POW, Purple Heart.
 - b. Goldstar plates for mothers, fathers, spouses (no fee).
 - c. Goldstar siblings, sons, daughters (with fee).
 - d. 100 percent disabled veterans.
 - e. Medal of Honor recipients.
 - 2. Operator's license – KRS 186.416.
 - a. Honorably discharged.
 - b. Veteran designation on operator's license.
 - c. Initial application, renewal, or duplicate.
 - d. Why? Lowes, Home Depot, etc.

- B. Kentucky Stolen Valor Act – KRS 434.444
 - 1. Deters misrepresentation of current or former military status.
 - 2. If the person's misrepresentation is to obtain money or property, KRS 514.040, theft by deception, applies.
- C. Recording DD 214 – KRS 422.090
 - 1. Discharge papers including DD 214 "may" be recorded in the county clerk's office.
 - 2. Certified copy of recorded DD 214 "admissible evidence in all proceedings" requiring proof of service.
- D. State Contracts – KRS 45.570
 - 1. Those doing business with the Commonwealth SHALL NOT discriminate based upon veteran status.
 - 2. Check on contractors seeking state business.
- E. Exemption from State Park Fees – KRS 148.0212
 - 1. Permanently and totally disabled with 100 percent service-connected disability.
 - 2. Kentucky resident.
 - 3. Maximum of three overnight stays per year.
- F. Veterans Day Observance
 - 1. One class period shall be devoted to meaning of the day.
 - 2. Requires a veteran to speak to class.
- G. High School Diploma Program – KRS 158.140
 - 1. A local schoolboard SHALL issue authentic high school diploma.
 - 2. Any honorably discharged veteran unable to complete high school due to World War II, Korean War, or Vietnam War.

MEETING THE LEGAL NEEDS OF KENTUCKY VETERANS THROUGH ADVOCACY AND UNDERSTANDING

Sean M. Dennis, Joseph R. Schwamb and Dallas J. Selvey
Reprinted from the 2017 Kentucky Law Update Handbook.

Veterans in Kentucky face unique legal challenges, which often lead to under-representation or no representation at all. Navigating the many veterans' services available can be confusing and overwhelming. The purpose of this program is to provide information that attorneys can use to help assist veterans in need of legal representation. Understanding the various resources available will help ensure our veterans receive proper representation and ultimately increase positive legal outcomes.

I. VA SITES IN KENTUCKY, INCLUDING COMMUNITY BASED OUTPATIENT CLINICS

Robley Rex VA Medical Center
VHA Veterans Hospital
800 Zorn Avenue
Louisville, KY 40206
Phone: (502) 287-4000
Hours: 24/7

VA Healthcare Center, Newburg
VHA Community-Based
Outpatient Clinic
3430 Newburg Road
Louisville, KY 40218
Phone: (502) 287-6223
Hours: M-F 8am-4:30pm

VA Healthcare Center, Shively
VHA Community-Based
Outpatient Clinic
3934 Dixie Highway # 210
Louisville, KY 40216
Phone: (502) 287-6000
Hours: M-F 8am-4:30pm

VA Healthcare Center, Dupont
VHA Community-Based
Outpatient Clinic
4010 Dupont Circle
Louisville, KY 40207
Phone: (502) 287-6986
Hours: M-F 8am - 4:30pm

Louisville Vet Center
VHA Readjustment Counseling
1347 S. Third Street
Louisville, KY 40208
Phone: (502) 287-6710

Lexington VA Medical Center,
Cooper Division
VHA Veterans Hospital
1101 Veterans Drive
Lexington, KY 40502
Phone: (859) 233-4511
Hours: 24/7

Lexington VA Medical Center,
Leestown Division
VHA Community-Based
Outpatient Clinic
2250 Leestown Road
Lexington, KY 40511
Phone: (859) 233-4511
Hours: M-F 7am-6pm

Lexington Vet Center
VHA Readjustment Counseling
1500 Leestown Road # 104
Lexington, KY 40511
Phone: (859) 253-0717 or
(877) 927-8387

Berea VA Clinic
VHA Community-Based
Outpatient Clinic
209 Pauline Drive
Berea, KY 40403
Phone: (859) 986-1259
Hours: M-F 8am- 4pm

Hazard VA Clinic
VHA Community-Based
Outpatient Clinic
210 Black Gold Boulevard
Hazard, KY 41701
Phone: (606) 436-2350
Hours: M-F 8am- 4pm

Thomas-Hood Veterans Center
KDVA Long-term Care Facility
100 Veterans Drive
Wilmore, KY 40390
Phone: (859) 858-2814

Morehead VA Clinic
333 Beacon Hill Road
Morehead, KY 40351
Phone: (606) 784-3004
Hours: M-F 8am-4pm

Bowling Green VA Clinic
VHA Community-Based
Outpatient Clinic
600 US-31 Bypass # 12
Bowling Green, KY 42101
Phone: (270) 782-0120
Hours: M-F 8am-5pm

Somerset VA Clinic
VHA Community-Based
Outpatient Clinic
163 Tower Circle
Somerset, KY 42503
Phone: (606) 676-0786
Hours: M-F, 8am-4:30pm

Western Kentucky Veterans
Center
KDVA Long-term Care Facility
926 Veterans Drive
Hanson, KY 42413
Phone: (270) 322-9087

VA Healthcare Center,
Carrollton KY
VHA Community-Based
Outpatient Clinic
1911 US Highway 227
Carrollton, KY 41008
Phone: (502) 287-6060
Hours: M-F 8am-4:30pm

VA Healthcare Center, Fort Knox
851 Ireland Loop
Ft. Knox, KY 40121
Phone: (502) 624-9396

VA Healthcare Center, Clarkson
VHA Community-Based
Outpatient Clinic
619 Elizabethtown Road
Clarkson, KY 42726
Phone: (866) 653-8232

Florence VA Clinic
VHA Community-Based
Outpatient Clinic
7711 Ewing Boulevard
Florence, KY 41042
Phone: (859) 282-4480
Hours: M-F 8am-4pm

II. VETERAN DEMOGRAPHICS

A. Kentucky

1. 303,167 veterans in Kentucky according to Census Bureau's 2010-2014 American Community Survey.
2. Approximately 45,000 veterans in Kentucky live in homes with one or more major problems of quality, crowding or cost.
3. Almost 600 homeless veterans in Kentucky.

B. 2015 CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) Report

1. Top **unmet** legal needs for both male and female veterans.
 - a. Preventing eviction/foreclosure;
 - b. Child support issues;
 - c. Restoration of driving privileges;
 - d. Outstanding warrants and fines;
 - e. Family reconciliation assistance; and
 - f. Discharge upgrades.
2. The top **met** needs were all related to medical treatment, psychological services, and case management. Meaning, the majority of unmet needs for veterans are legal issues.

III. ADDITIONAL SERVICES PROVIDED BY THE VA

Therapeutic and Supported Employment Services (TSES)

A. Coordinated through Robley Rex VA Medical Center in Louisville on Zorn Avenue.

1. Supported employment.
 - a. TSES assists veterans that have been diagnosed with serious mental illness secure employment.
 - b. Designed to focus on the veteran's choices and rapid job search (without pre-employment training) guided by Evidence Based Practice.
 - c. There is no time limitation on this program – veterans receive continuous support as they adjust to employment.

2. Transitional work.
 - a. The transitional work program provides rehabilitation for veterans through a combination of work experience and therapy focused on that work experience.
 - b. Veterans are matched to a work assignment at the local VA Medical Center or in the community.
 - c. Typical length of service is up to nine months.
 - d. Participants actively engage in job search, with the goal of securing competitive employment at discharge from the program.
 3. Peer support and vocational assistance.
 - Peer Support Specialists are available to help all veterans, including those who are not enrolled in the TSES program, with vocational support via phone, individually, and in groups.
- B. Job Seekers Groups are open to all interested veterans weekly at the Shively Community-Based Outpatient Clinic, every Thursday at 1:00 p.m.

IV. HOUSING FOR HOMELESS VETERANS AND COMMUNITY RESOURCES AVAILABLE

- A. HUD-VASH is a partnership between the Department of Veterans Affairs and Housing and Urban Development that provides long-term case management, supportive services, and permanent housing for homeless veterans. The purpose of this program is to end veteran homelessness and promote housing stability by providing housing vouchers to homeless veterans. Every veteran enrolled in HUD-VASH is assigned a case manager who works with the veteran to develop a recovery-focused Housing Stabilization Plan and set realistic treatment goals.
1. Services provided:
 - a. HUD-VASH case managers help veterans locate and secure housing, navigate PHA procedures, agree to a tenancy contract, and plan the move.
 - b. After housing is secured, case managers continue to work with veterans to assist with adjustment to the community and maintaining connections to needed treatment.
 2. In order to qualify for HUD-VASH services the veteran must:
 - a. Be eligible for VA benefits (discharge other than dishonorable);

- b. Require case management to obtain and sustain independent housing; and
- c. Meet the McKinney-Vento Act definition of homeless. [42 U.S.C. §11302, Sec. 103\(a\)\(1\)](#), meaning the Veteran:
 - i. Lacks a fixed, regular, adequate nighttime residence; or
 - ii. Identifies a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/homeless/lawsandregs/mck_v

B. Volunteers of America – VOA is a large non-profit organization that offers many different services, including services for veterans who are experiencing homelessness and substance abuse issues. VOA services link veterans with employment training, affordable housing, and other resources that help them reintegrate into their communities.

1. VOA Homeless Veterans Reintegration Program (HVRP) – Lexington.

- HVRP provides outreach, needs assessment, case management, employment counseling, job training/job skills enhancement, job placement and transportation to homeless Veterans or Veterans at risk of being homeless in the Lexington area. HVRP links homeless veterans with other appropriate service providers, including local Veterans' representatives at the Department for Employment Services, the VA Medical Clinic and VA Medical Center, local housing authorities, community-based services and other service providers.

2. Services provided by VOA's Supportive Services for Veteran Families (SSVF) – Louisville Urban.

- a. Vocational and rehabilitation counseling;
- b. Employment and training services;
- c. Educational assistance;
- d. Health care services;

- e. Daily living services;
 - f. Personal financial planning services;
 - g. Transportation services;
 - h. Income support services;
 - i. Fiduciary and representative payee services;
 - j. Legal services;
 - k. Child care services;
 - l. Housing counseling services; and
 - m. Other supportive services, including third party payments to landlords, utility companies, moving companies and eligible child care providers.
3. Eligibility requirements.
- a. Member of a veteran family: either a veteran, a member of a family in which the head of household is a veteran, or the spouse of the head of household is a veteran. Must provide discharge information (DD-214).
 - b. Very low-income: household income cannot exceed 50 percent of area median income.
 - c. Occupy permanent housing in one of three categories:
 - i. Is residing in permanent housing.
 - ii. Is homeless and is scheduled to become a resident of permanent housing within ninety days.
 - iii. Has exited permanent housing within the previous ninety days to seek alternative low-income housing.

C. VA Home Loans

- 1. The US Department of Veterans Affairs helps veterans secure favorable loans from private lenders to assist them in purchasing homes and is coordinated through the Louisville Regional Benefits Office. 321 West Main Street #390, Louisville, Kentucky 40202 - Phone: (502) 595-4447.
- 2. Eligibility requirements: Your length of service or service commitment, duty status and character of service determine your eligibility for specific home loan benefits.

3. Other financing services available through the VA.
 - a. Purchase Loans and Cash-Out Refinance: VA-guaranteed loans are available for veterans or a spouse and/or dependent (for active duty service members). To be eligible, you must have satisfactory credit, sufficient income to meet the expected monthly obligations, and a valid Certificate of Eligibility (COE).
 - b. Interest Rate Reduction Refinance Loan (IRRRL): The IRRRL is a "VA to VA" loan, meaning it can only be done if you have an existing VA guaranteed loan on the property. The IRRRL is generally performed to lower the interest and reduce the monthly payment on the existing VA guaranteed loan.
 - c. Native American Direct Loan (NADL) Program: The NADL program helps Native American veterans purchase, construct, improve, or re-finance a home on Native American trust lands. Your tribal organization must participate in the VA direct loan program. You must have a valid Certificate of Eligibility (COE).
 - d. Adapted Housing Grants: VA helps veterans with certain total and permanent disabilities related to your military service obtain suitable housing with either a Specially Adapted Housing (SAH) or Special Housing Adaptation (SHA) grant. <http://www.benefits.va.gov/homeloans/>
- D. Veterans of Foreign Wars (VFW) Unmet Needs Program
 1. The program provides financial aid of up to \$5,000 to assist with basic life needs in the form of a grant – not a loan – so no repayment is required.
 2. Unmet Needs Eligibility Criteria states that the financial hardship must be due to one of the following:
 - a. Currently on active duty, whose financial hardship is a result of a current deployment, military pay error, or from being discharged for medical reasons.
 - b. Discharged on or after September 11, 2001, whose financial hardship is a direct result of your military service related injuries or illnesses that are causing employment hardship.
 - c. Discharged prior to September 11, 2001, who are on a fixed income (VA compensation, SSI, SSDI) and/or your financial hardship is an emergency situation.

3. Limitations of the Unmet Needs Program.
 - a. The financial hardship cannot be caused by:
 - i. Civil, legal or domestic issues, misconduct, or any issues that are a result of spousal separation or divorce.
 - ii. Financial mismanagement by self or others, or due to bankruptcy.
 - b. All grants are paid directly to the creditor and not to the applicant. The applicant must provide the most current bills due. Payment is rendered for eligible current bills only.
4. Expenses eligible for payment.
 - a. Household expenses – mortgage, rent, repairs, insurance.
 - b. Vehicle expenses – payments, insurance, repairs (major repairs for vehicles over ten years old will not be considered).
 - c. Utilities.
 - d. Food and clothing.
 - e. Children's clothing, diapers, formula, school or childcare expenses.
 - f. Medical bills, prescriptions & eyeglasses – the patient's portion for necessary or emergency medical care only.
5. Ineligible expenses.
 - a. Credit cards, military charge cards, or retail store cards.
 - b. Cable, internet, or secondary phones.
 - c. Cosmetic or investigational medical procedures & expenses.
 - d. Taxes.
 - e. Furniture, electronics, and vehicle rentals.
 - f. Any other expenses that don't meet a basic life need.
<https://www.vfw.org/assistance/financial-grants>

V. SERVICEMEMBERS CIVIL RELIEF ACT – SCRA

SCRA is a program that provides certain protections from civil actions against servicemembers who are called to active duty. It restricts or limits actions against these personnel in the areas of financial management, such as rental agreements, security deposits, evictions, installment contracts, credit card interest rates, mortgages, civil judicial proceedings, income tax payments, and more.

A. Eligible Service Members

1. "Servicemember" means a member of the uniformed services – defined as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard. [§511\(1\) and \(2\)](#).
2. Applies to National Guard members when called to active service. [§511\(2\)\(A\)\(ii\)](#).
3. Dependents of an eligible service member. [§511\(4\)](#)
 - a. The servicemember's spouse; [§511\(4\)\(a\)](#).
 - b. The servicemember's child (as defined in [section 101\(4\) of Title 38](#), United States Code); [§511\(4\)\(b\)](#).
4. An individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act. [§511\(4\)\(C\)](#).

B. Application of the SCRA

1. The SCRA applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdictions subject to this Act. This Act **does not apply to criminal proceedings**. [§512\(b\)](#).
2. Jurisdiction.
 - a. The United States;
 - b. Each of the States, including the political subdivisions thereof; and
 - c. All territory subject to the jurisdiction of the United States. [§512\(a\)](#).

C. Protection against Default Motions

1. The SCRA protects servicemembers against default judgments for any civil action or proceeding, including child custody proceedings. [§521\(a\)](#)

2. Stay of proceedings – In an action in which the defendant is in military service, the court shall grant a stay of proceedings for a **minimum period of ninety days** upon application of counsel, or on the court's own motion. [§521\(d\)](#)
3. Before entering judgment for the plaintiff, the court shall require the plaintiff to file an affidavit stating whether the defendant is in military service and showing necessary facts to support that determination. [§521\(b\)](#)
4. Protection of *bona fide* purchaser. If a court vacates, sets aside, or reverses a default judgment against a servicemember because of a provision of this Act, the action will not impair the right or title acquired by a *bona fide* purchaser for value under the default judgment. [§521\(h\)](#)

D. Notice to Service Members

Stay of proceedings – the SCRA applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing –

1. Is in military service or within ninety days after termination of or release from military service; and
2. Has received notice of the action or proceeding. [§522](#)

E. Waiver of Rights pursuant to a Written Agreement

In general, a servicemember may waive any of the rights and protections provided by this Act. [§517\(a\)](#)

1. Action requiring waivers in writing. [§517\(b\)](#)
 - a. The modification, termination, or cancellation of –
 - i. A contract, lease, or bailment; or
 - ii. An obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.
 - b. The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that –
 - i. Is a security for any obligation; or
 - ii. Was purchased or received under a contract, lease, or bailment.

2. A waiver is only effective if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. [§517\(a\)](#)
 3. Prominent display of certain contract rights waivers: Any waiver in writing of a right or protection provided by the Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type. [§517\(c\)](#)
- F. The SCRA protects service members from foreclosures of mortgages, deeds of trusts and other security devices and is intended to relieve service members of certain civil obligations so they may focus on their military service.
1. Eligibility.
 - a. Any active duty service member who took out their loan before he or she began active duty.
 - b. If the loan originated after active duty began, the law does not apply, and the service member in default will most likely not be able to rely on the SCRA to prevent foreclosure.
 2. How does it work?
 - a. [Section 533](#) of the SCRA restricts mortgage servicers from foreclosing on active duty homeowners.
 - b. Service members must show they took out the loan before active duty, and will also have to demonstrate how their military service affected their ability to pay their mortgage.
 - Example: A service member who took a pay cut to enlist, or whose spouse lost their job after moving to a new part of the country.
 - c. If these two conditions are met, the SCRA will likely prevent most foreclosures without court approval.
 - d. Rather than facing the cost of legal fees, many servicers place the foreclosure on hold to work out a loan modification, forbearance, or some agreement to reinstate the homeowner's account.
 - e. The SCRA set a 6 percent cap on interest rates for home loans and other obligations for eligible service members.
 - f. Service members should be prepared to provide a copy of their military orders no later than 180 days after termination or release from active duty.

3. Trained VA counselors can be contacted at the service member's nearest Regional Loan Center at (877) 827-3702.

VI. KENTUCKY DEPARTMENT OF VETERANS AFFAIRS – KDVA

- A. The three main duties of KDVA are to collect data and information from veterans' agencies, inform veterans of relevant services, benefits, and legal privileges that accrue to them, and help veterans to access those benefits and services. KDVA does not primarily provide benefits directly, but rather helps veterans to coordinate with other agencies to access the benefits and services to which they are entitled.
- B. There are **three distinct operational elements** in the department: field operations, healthcare services, and cemetery services.
 1. Field Operations Branch consists of eighteen field offices strategically located throughout the state with Veterans Benefits Field Representatives (VBFR) located within each nursing home and one at the Kentucky Veterans Cemetery West in Hopkinsville.
 2. Health services – KDVA provides long-term care facilities for Kentucky's veterans, offering a broad range of versatile nursing care.
 3. Cemeteries – The mission of KDVA's Cemetery Branch is to ensure dignified interment for veterans. KDVA operates four state veterans cemeteries.

VII. CHALLENGES OF DEPLOYMENT

- A. Estate Planning
 - Most estate documents are completed prior to deployment and are mandatory. This includes wills, living wills, and Power of Attorneys.
- B. Power of Attorney Issues regarding Deployment
 1. Agent can raise any protections afforded by the SCRA with a valid POA.
 2. A key issue is returning from deployment. The POA should expressly state when the POA is revoked. This is usually done by setting a specific date, death of the agent or principal, or if the principal revokes it in writing.

VIII. REMOVING LEGAL BARRIERS TO HOUSING AND EMPLOYMENT

- A. Criminal Record Expungements
 - Kentucky Law

B. Importance of Removing Legal Barriers

- Employment and Housing

IX. MILITARY SEXUAL TRAUMA (MST)

A. We know about the high incidence of MST from VA screening for MST among veterans who seek treatment from VA service providers.

B. According to the VA, one in four women and one in 100 men receiving VA healthcare have experienced sexual trauma in the military. However, because there are so many more men than women who serve, there are as many men as women who report experiencing MST.

C. MST can happen to anyone, regardless of gender, strength, size, age, race, sexual orientation, or branch or era of service.

D. Resources Available for Help with Past MST

1. Veterans Crisis Line: 1-800-273-TALK (8255).
2. Every VA health care system has a designated MST Coordinator who serves as a contact person for MST-related issues. This person can help veterans find and access VA services and programs.
3. All treatment for physical and mental health conditions related to experiences of MST is provided free of charge. Eligibility:
 - a. Veterans may be able to receive this benefit even if they are not eligible for other VA care.
 - b. Veterans do not need to have reported the incident(s) when they happened or have other documentation that they occurred.

<https://www.mentalhealth.va.gov/msthome.asp>

X. HOW CAN YOU, AS A LAWYER, GET INVOLVED?

A. Department of Veterans Affairs

1. In order to assist veterans with VA claims you must first be accredited. The application is free!
2. Once accredited, attorneys can assist in the preparation and presentation of claims for VA benefits.

B. Legal Aid Society

