

## Harvey Crisis: How State Laws Will Protect Service Members

By Jeffrey Naimon and Sasha Leonhardt

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As Hurricane Harvey devastated Houston and southeastern Texas this past weekend, thousands of first responders were called to action to provide critical assistance to communities along the Gulf Coast. Even as this storm continues to affect those along the water and move inland, rescue operations, flood prevention and humanitarian assistance are ongoing and will undoubtedly continue for a long time.

During natural disasters, governors often activate members of the National Guard to assist in rescue and recovery efforts, and this crisis is no different. Texas Gov. Greg Abbott has activated the entire Texas National Guard,[1] and several of his fellow governors — as of the time this article was drafted, the governors of Arizona, Arkansas, Florida, Louisiana, New Mexico, New York and Oklahoma[2] — have deployed members of their states' National Guards to assist communities affected by the storm.

When members of the National Guard enter harm's way, several laws can provide them with additional protections for their civilian obligations. As a general rule, the federal Servicemembers Civil Relief Act (SCRA) does not apply to members of the National Guard called to state service by their governor;[3] however, many states have passed laws that fill this gap by providing certain protections to individuals in state service. Creditors need to be aware of these laws and pay attention to which of their customers may be entitled to these protections. Although these laws vary significantly among the various states, chief among the protections that the above states provide to service members are the following:[4]

**Arizona:** Under Arizona law, any member of the Arizona National Guard ordered to active duty by the governor in response to an emergency is entitled to receive all of the protections provided to individuals under the federal SCRA.[5] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6 percent limitation on interest rates.[6]

**Arkansas:** Under Arkansas law, if a soldier or airman of the Arkansas National Guard is ordered to



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military service by the governor for more than 180 continuous days, state law limits a creditor's ability to foreclose on the individual's mortgage loan.[7] In addition, if such individual provides notice to a creditor, Arkansas law limits a creditor's ability to charge interest in excess of 6 percent during the period of military service.[8] Arkansas law also limits the ability to evict an individual during military service if the lease on the premises is less than \$1,200 per month.[9]

**Florida:** Under Florida law, if an individual has been called to full-time state military service for more than 17 days, state law limits a creditor's ability to foreclose on the individual's mortgage loan.[10] Florida law also limits the ability to evict an individual during military service if the lease on the premises is less than \$1,200 per month.[11]

**Louisiana:** Under Louisiana law, any member of the Louisiana National Guard ordered to active duty by the governor, or any other National Guard member ordered to active duty by any other governor, is entitled to receive all of the protections provided to individuals under the federal SCRA.[12] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6 percent limitation on interest rates.[13] In addition, if a member of the Louisiana National Guard or militia (or the spouse of such person) entered into an obligation for the purchase of goods or services and provides the creditor with notice, that individual is entitled to a maximum interest rate of 6 percent.[14]

**New Mexico:** Under New Mexico law, any member of the New Mexico National Guard ordered to 30 or more consecutive days of state active duty, or any other National Guard member ordered to 30 or more consecutive days of active duty by any other governor, is entitled to receive all of the protections provided to individuals under the federal SCRA.[15] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6 percent limitation on interest rates.[16]

**New York:** Under New York law, if an individual is called to military service pursuant to an order of the governor, state law limits a creditor's ability to foreclose on the individual's mortgage loan.[17] In addition, New York law limits a creditor's ability to charge interest in excess of 6 percent during the period of military service.[18] New York law also limits the ability to evict an individual during military service or the individual's spouse, children or dependents.[19]

**Oklahoma:** Under Oklahoma law, any member of the Oklahoma National Guard ordered to state active duty is entitled to receive all of the protections provided to individuals under the federal SCRA.[20] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6 percent limitation on interest rates.[21]

**Texas:** Under Texas law, if an individual is serving on active duty in the United States armed forces, the Texas National Guard or another state's National Guard under an order of the president, or a reserve component of the United States under an order of the president, state law limits a creditor's ability to foreclose on the individual's mortgage loan.[22] Texas law also requires a creditor to provide certain notices prior to foreclosure[23] and eviction[24] that advise service members that they may be entitled

to protections under the law.

Over the coming weeks, we expect to see both state and federal leaders activate resources to help those affected by Hurricane Harvey. Financial institutions can assist in these efforts by ensuring that national guard members who are ordered to assist in these efforts receive the protections provided under state and federal law.

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[1] Office of the Texas Governor, Governor Abbott Activates Entire Texas National Guard In Response To Hurricane Harvey Devastation, <https://gov.texas.gov/news/post/governor-abbott-activates-entire-texas-national-guard-in-response-to-hurric>.

[2] Richard Sisk, Military.com, National Guard Units Join Hurricane Rescue Efforts in Texas (Aug. 28, 2017, 5:47 PM), <http://www.military.com/daily-news/2017/08/27/national-guard-units-join-hurricane-rescue-efforts-texas.html> (Arizona, Florida, Louisiana, New Mexico, New York, Oklahoma); Jacob Kauffman, Arkansas National Guard Heads to Texas For Harvey Relief Efforts, KUAR (Aug. 28, 2017, 5:47 PM), <http://ualpublicradio.org/post/arkansas-national-guard-heads-texas-harvey-relief-efforts#stream/0> (Arkansas).

[3] 50 U.S.C. § 3911(2)(A)(ii) (“The term “military service” means ... in the case of a member of the National Guard, 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 under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President and supported by Federal funds.”).

[4] This is a brief summary of the most critical state laws that affect the relationship between creditors and state National Guard members, and is not meant to be an exhaustive list of all state-specific laws that may protect service members.

[5] Ariz. Rev. Stat. §§ 26-168, 16-172(A).

[6] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.

[7] Ark. Code §§ 12-62-704, 12-62-716.

[8] Id. § 12-62-713.

[9] Id. § 12-62-714. Unlike the federal SCRA, which provides eviction protection for leases with a maximum rent of \$3,584.99, Arkansas law only provides protection for leases of less than \$1,200 per month. Compare id. with 82 Fed. Reg. 10762.

[10] Fla. Stat. §§ 250.01; 250.5201; 250.5205.

[11] Id. § 250.5202. Unlike the federal SCRA, which provides eviction protection for leases with a maximum rent of \$3,584.99, Arkansas law only provides protection for leases of less than \$1,200 per month. Compare id. with 82 Fed. Reg. 10762.

[12] La. Rev. Stat. § 29:403(11), 29:422(A)(1).

[13] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.

[14] See La. Rev. Stat. §§ 29:7(c), 29:311(1), 29:312.

[15] N.M. Stat. § 20-4-7.1.

[16] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.

[17] N.Y. Mil. Law § 312.

[18] Id. § 323-a.

[19] Id. § 309.

[20] Okla. Stat. tit. 44, § 208.1.

[21] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.

[22] V.T.C.A., Property Code §§ 51.015(a), (d).

[23] Id. § 51.002(i).

[24] Id. § 24.0051(d).