

Dorian Update: How State Laws Protect Servicemembers

By Jeffrey Naimon, Sasha Leonhardt and Jessica Shannon (September 18, 2019)

Hurricane Dorian devastated the Bahamas and southeastern United States in late August and early September, and the governors of Florida, Georgia, North Carolina, South Carolina and Puerto Rico authorized the activation of state National Guard forces for response efforts. In addition, the Rhode Island National Guard mobilized as part of a State Partnership Program with the Bahamas.[1]

We highlight below the laws in these states that provide protections to members of the National Guard called to state military service. Creditors should be aware of these laws and pay attention to which of their customers may be entitled to these protections.[2]



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Florida

Florida law limits a creditor's ability to foreclose on the mortgage loans of individuals serving on active duty in the Florida National Guard under an order of the governor for a period of more than 17 days.[3] Florida law also includes prohibitions on evictions without first obtaining a waiver or court order, restrictions on terminations of installment contracts and repossessions of associated property, and protections permitting individuals to terminate residential and motor vehicle leases.[4]



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Georgia

Servicemembers generally may terminate a residential rental or lease agreement under Georgia law if they are serving on active duty in the armed forces, the National Guard or the Air National Guard for more than 90 days under an order of the president supported by federal funding.[5]



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North Carolina

Any member of the North Carolina National Guard serving on state active duty, and any member of the National Guard of other states serving on state active duty who resides in North Carolina is entitled to receive all of the protections provided to individuals under the federal Servicemembers Civil Relief Act.[6] 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 servicemembers, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6% limitation on interest rates.[7]

Going beyond the rights afforded to servicemembers under the federal SCRA, the North Carolina law also provides certain federal SCRA protections to the dependents of servicemembers, including the SCRA's protection against default judgments and the 6% interest rate cap.[8] Moreover, North Carolina law authorizes servicemembers to terminate certain service contracts and allows a servicemember to extend a residential lease agreement until ten days after the servicemember's active duty ends.[9]

Rhode Island

Under Rhode Island law, any member of the National Guard ordered to state active duty for more than 90 consecutive days is entitled to receive all of the protections provided to individuals under the federal SCRA.[10] As noted above, 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 servicemembers, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6% limitation on interest rates.[11]

South Carolina

Any member of the South Carolina National Guard on active duty for a period of more than 30 consecutive days, or any member of the National Guard of another state under an order of the governor of that state for a period of more than 30 consecutive days, is entitled to all of the protections provided to individuals under the federal SCRA.[12]

As noted above, 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 servicemembers, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor— a 6% limitation on interest rates.[13]

Going beyond the rights afforded to servicemembers under the federal SCRA, South Carolina law also provides certain federal SCRA protections to the dependents of servicemembers, including the SCRA's protection against default judgments and the 6% interest rate cap.[14] Moreover, South Carolina law authorizes the termination of certain service contracts.[15]

Puerto Rico

Puerto Rico law does not provide additional protections for individuals in federal service or service in the Puerto Rico National Guard.

If you are interested in laws affecting National Guard units in other states, our prior Law360 articles have focused on those states that were affected by Hurricanes Harvey and Florence.

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[1] Alexandra Curtis, Rhode Island National Guard Supports Dorian Relief in Bahamas, United States Army, Sept. 5, 2019, https://www.army.mil/article/226740/rhode_island_national_guard_supports_dorian_relief_in_bahamas.

[2] 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 servicemembers.

[3] Fla. Stat. § 250.5205.

[4] Id. §§ 250.5202, 250.5204, 83.682 and 520.14.

[5] Ga. Code Ann. § 44-7-22.

[6] N.C. Gen. Stat. § 127B-28.

[7] 50 U.S.C. §§ 3952-53, 3931, 3951 and 3937.

[8] N.C.G.S. § 127B-29.

[9] Id. §§ 127B-30, 127B-32.

[10] R.I. Gen. Laws § 30-7-10.

[11] 50 U.S.C. §§ 3952-53, 3931, 3951 and 3937.

[12] S.C. Code Ann. § 25-1-4040.

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

[14] S.C. Code § 25-1-4050.

[15] Id. § 25-1-4060.