

# NORTH CAROLINA SERVICEMEMBERS CIVIL RELIEF ACT: AN EXPANSION OF EXISTING FEDERAL PROTECTIONS

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## Complex Commercial Litigation and Dispute Resolution Alert

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Within the past several years, North Carolina and the federal government have enacted a number of protections for consumers in various aspects of litigation. For example, Congress recently enacted the Coronavirus Aid, Relief, and Economic Security Act,<sup>1</sup> which, among other things, provides various protections from eviction for tenants in properties with certain federally backed mortgages. Many people are familiar with at least some of the more recent state and federal enactments; however, the North Carolina Servicemembers Civil Relief Act (SCRA) is an oft-overlooked statute that can have a substantial impact on plaintiffs generally and, more specifically, on landlords and creditors.

On 25 July 2019, the SCRA was signed into law by Governor Roy Cooper. Like a 2003 federal statute of the same name, the SCRA's purpose is to extend protections to active-duty military members in an effort to avoid evictions, default judgments, and other collection efforts and pending litigation during potential deployments or other times when they otherwise might not be in a position to participate in court proceedings. Unlike the federal SCRA, the North Carolina SCRA expands protections to members of the National Guard and has important ramifications for how creditors and property owners handle collecting debts and evicting tenants in North Carolina moving forward.

## BACKGROUND

The federal SCRA was first enacted in 2003 to revise and expand the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). The SSCRA was designed to protect service members during their period of active duty military service, a goal that the federal SCRA subsequently adopted.<sup>2</sup> The federal SCRA, and by adoption the North Carolina SCRA, provides protections for active duty servicemembers<sup>3</sup> in the areas of rental agreements, security deposits, evictions, installment contracts, and mortgage foreclosures, just to name a few.<sup>4</sup> The two laws functionally apply in virtually any civil action to which an active duty servicemember could be a party.<sup>5</sup>

## THE FEDERAL SCRA

The federal SCRA provides a number of benefits and protections to servicemembers engaged in military service.<sup>6</sup> Most relevant to this alert are the protections against default judgments and limits on mortgage foreclosures and vehicle repossessions:

- **Protection Against Default Judgments:** Under the federal SCRA, in any lawsuit where the defendant does not appear in the case, the plaintiff—whether a landlord, creditor, or otherwise—must file an affidavit with

the court confirming whether the defendant is in military service.<sup>7</sup> This requirement applies in every case, even cases where the defendant is a corporation or entity that could not be in military service.<sup>8</sup> If it appears that the defendant might be in military service, the court may not enter a judgment against the defendant until it appoints an attorney to represent the defendant.<sup>9</sup> If the defendant is in military service, the court is required to stay the action for at least ninety (90) days if the court believes that the defendant has a valid defense that requires the defendant's presence in court or if the defendant's attorney cannot reach the defendant or otherwise determine if there are valid defenses.<sup>10</sup>

- **Court Orders Needed for Mortgage Foreclosures:** Similarly, for real or personal property loans secured by a mortgage, deed of trust, or similar security instrument, creditors are limited in their ability to pursue collection.<sup>11</sup> For lawsuits involving loans originated before the servicemember's military service and where the service impacts the servicemember's ability to comply with his or her obligations, courts must generally stay the case for a reasonable time or "adjust the obligation to preserve the interests of all parties."<sup>12</sup> Further, creditors are prohibited from conducting sales, foreclosures, or property seizures during or within 90 days after the service period absent either (1) a court order allowing the sale, foreclosure, or seizure; or (2) the servicemember's agreement to waive the protection.<sup>13</sup>
- **Vehicle Repossession Generally Prohibited:** Creditors should also be aware that the federal SCRA generally prohibits termination of agreements for the purchase of real or personal property (including vehicles) where the servicemember's breach occurred before or during the military service and where the servicemember paid a deposit or installment before entering military service.<sup>14</sup> In such a case, any repossession also requires a court order.

This list is not exhaustive, and plaintiffs who find themselves dealing with servicemembers should carefully review the federal SCRA. More important for many plaintiffs, however, will be state-level statutes that adopt or mimic the federal SCRA and apply it to a larger protected group.

## **THE NORTH CAROLINA SCRA**

For example, the North Carolina SCRA, as amended in 2019, adopts and incorporates all of the protections of the federal SCRA, making any violation of the federal SCRA a violation of the state SCRA.<sup>15</sup> However, it also expands the group to whom protections apply by including members of the National Guard serving on active duty for the state.<sup>16</sup> The North Carolina SCRA extends the protections of the federal SCRA to members of the state National Guard that are serving on active duty at the *state* level for a period of more than 30 consecutive days.<sup>17</sup>

In addition to the protections provided by the federal SCRA, the North Carolina SCRA also gives servicemembers the ability to terminate certain long-term contracts, such as contracts for Internet and television services, upon receiving orders to relocate for military service lasting at least ninety 90 days.<sup>18</sup> More importantly, after written notice from a servicemember, the state SCRA requires landlords to automatically extend residential leases for active duty servicemembers through and until 10 days after the end of the servicemember's military service, as long as the servicemember's lease is otherwise in good standing.<sup>19</sup>

Finally, the North Carolina SCRA makes any violation an automatic unfair or deceptive trade practice for purposes of Chapter 75 of the General Statutes, which permits treble damages and attorneys' fees in certain instances. The state SCRA also permits the North Carolina Attorney General, of his or her own volition, to commence an action against anyone who violates the North Carolina SCRA on behalf of an injured servicemember.<sup>20</sup>

## CONCLUSION

In sum, while both the state and federal SCRA are important for all plaintiffs and potential plaintiffs to understand, creditors and residential landlords should take heed of their provisions, particularly those affecting foreclosures and secured loans.

## FOOTNOTES

<sup>1</sup> Pub. L. No. 116-136 (2020).

<sup>2</sup> U.S. Dep't of Justice, [The Servicemembers Relief Act](#) (Oct 1, 2019).

<sup>3</sup> A “servicemember” is defined as a member of the uniformed services, which includes members of the armed forces (Army, Navy, Air Force, Marine Corps, and Coast Guard), the National Oceanic and Atmospheric Administration; and the Public Health Service. 50 U.S.C. § 3911(1).

<sup>4</sup> See Dep't of Justice, *supra* note 2.

<sup>5</sup> See Dep't of Justice, *supra* note 2.

<sup>6</sup> “Military service” under the federal SCRA generally includes members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who are on active duty and National Guard members on federal orders for a period of more than 30 days. 50 U.S.C. § 3911(2).

<sup>7</sup> *Id.* § 3931(b).

<sup>8</sup> *Id.* § 3931(a).

<sup>9</sup> *Id.* § 3931(b)(2).

<sup>10</sup> *Id.* § 3931(d).

<sup>11</sup> *Id.* § 3953(a).

<sup>12</sup> *Id.* § 3953(b).

<sup>13</sup> *Id.* §§ 3953(c), 3918.

<sup>14</sup> *Id.* § 3952(a)–(b).

<sup>15</sup> N.C. GEN. STAT. § 127B-28(a), (d).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* §§ 127B-26, -27(4), -27(3)(b)–(c).

<sup>18</sup> *Id.* § 127B-30(b).

<sup>19</sup> *Id.* § 127B-32(b).

<sup>20</sup> *Id.* § 127B-34-35; see generally *id.* § 75-1.1, *et seq.*

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