

## **After Storm And Fire: How States Protect Service Members**

By **Jeffrey Naimon, Sasha Leonhardt and Jessica Shannon**

This has been an active year for National Guard call-ups to active duty, as the U.S. addresses hurricanes, wildfires and the novel coronavirus pandemic. National Guard activations are likely to remain high for several months due to ongoing responses to COVID-19, the National Oceanic and Atmospheric Administration's prediction of a volatile hurricane season and other issues.

The governors of Louisiana, Texas and Arkansas called up significant portions of their state National Guard for relief efforts in the wake of Hurricane Laura last month. The governors of California and Nevada have ordered National Guard troops to active duty in response to the California wildfires.

This article highlights the laws in these states that provide protections to members of the National Guard called to state military service. These laws are in addition to new foreclosure, eviction and other protections enacted to address the COVID-19 pandemic. Creditors should be aware of these laws and pay attention to which of their customers may be entitled to these protections.[1]

### **Arkansas**

Any member of the Arkansas National Guard serving on state active duty for a period of more than 180 continuous days is entitled to a 6% interest rate cap during their period of military service on any obligation or liability incurred prior to the borrower's entry into military service.[2]

Arkansas law also includes prohibitions on foreclosures and evictions without first obtaining a waiver or court order, restrictions on terminations of installment contracts, and protections permitting individuals to terminate residential leases.[3]

### **California**

Any member of the California National Guard, State Military Reserve or the Naval Militia called to full-time active state service or full-time active federal service, as well as any other individual called to full-time active duty for a period in excess of seven days in any 14-day period, is entitled to a 6% interest rate cap during their period of military service, and for 120 days thereafter, on any obligation or liability incurred prior to the borrower's current period of military service.[4]

California law also includes prohibitions on foreclosures and evictions without first obtaining a waiver or court order, restrictions on terminations of installment contracts, and protections permitting individuals to terminate residential leases.[5]

Moreover, the surviving spouse or beneficiary of a member of the California National Guard who is killed in the line of duty is entitled to defer all principal and interest due on any financial obligation or liability, entered into prior to military service, for six months after the



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death of the member without penalty or accrual of additional interest.[6]

In addition to the traditional Servicemembers Civil Relief Act-like protections, California law requires creditors to defer specific payments for certain individuals called to full-time active service.[7] Specifically, a qualifying individual called to active duty may defer payments for the lesser of 180 days or the period of active duty plus 60 calendar days for the following obligations:

- Obligations secured by a mortgage or deed of trust;
- Credit cards;
- Retail installment contracts;
- Retail installment accounts, installment accounts or revolving accounts;
- Up to two vehicle loans;
- Student loans; or
- Any payment of property tax or any special assessment of in-lieu property tax imposed on real property that is assessed on residential property owned by the reservist and used as that reservist's primary place of residence on the date the reservist was ordered to active duty.[8]

The total deferment period associated with this protection cannot exceed 180 days in any 365-day period.[9] This protection only applies to financial obligations and liabilities incurred prior to the borrower's entry into the current period of active duty service, and to those payments falling due after the creditor receives the required notice from the borrower.[10]

## **Louisiana**

Any member of the Louisiana National Guard called to state active duty by the governor of Louisiana or of any other state is entitled to receive all of the protections provided to individuals under the federal Servicemembers Civil Relief Act.[11]

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% limitation on interest rates.[12]

Going beyond the rights afforded to service members under the federal Servicemembers Civil Relief Act, the Louisiana law provides the federal act's 6% interest rate cap to the obligations of spouses even where the service member is not jointly obligated.[13]

## **Nevada**

Nevada law prohibits serving a summons for, or notice of, a civil action or administrative proceeding against any member of the Nevada National Guard ordered to state active duty.[14] The law further provides that such action or proceeding must be postponed, stayed or delayed.

Nevada law also requires that creditors notify individuals of their potential protections against foreclosure during military service before proceeding with such action.[15]

## **Texas**

Any member of the Texas National Guard ordered to state active duty, training, or other duty by the governor, the adjutant general, or another proper authority under the law of Texas, is entitled to receive all of the protections available under the federal Servicemembers Civil Relief Act.[16]

As noted above, these protections 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% limitation on interest rates.[17]

Texas law also requires that landlords and creditors notify individuals of their potential protections against eviction and foreclosure during military service before proceeding with either of these actions.[18]

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[1] 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 in these states or elsewhere.

[2] Ark. Code Ann. § 12-62-713.

[3] Id. §§ 12-62-716, 714, 715, 705.

[4] Cal. Mil. & Vet. Code § 405.

[5] Id. §§ 406-409.

[6] Id. § 409.13.

[7] Id. §§ 800, 803.

[8] Id. § 800.

[9] Id.

[10] Id.

[11] La. Rev. Stat. Ann. § 29:422.

[12] 50 U.S.C. §§ 3952-53, 3931, 3951 and 3937.

[13] La. Rev. Stat. Ann. § 29:312.

[14] NRS § 412.154.

[15] NRS § 107.50

[16] V.T.C.A., Gov't Code § 437.213.

[17] 50 U.S.C. §§ 3952-53, 3931, 3951 and 3937.

[18] V.T.C.A., Property Code §§ 24.0051, 51.002.