

## **Hurricanes and the Law**

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The Atlantic hurricane season is upon us. Knowing your rights and liabilities now, before these sea monsters strike, can help lessen their financial effect.

**Renters' Insurance** can reduce financial loss due to storms, as well as losses due to fire, theft, and other disasters. Carefully consider whether you need such coverage. Coverage amounts generally begin at about \$20,000 and such policies are fairly inexpensive. Make sure to review coverage exclusions; water damage due to flood and losses resulting from electrical power outage may not be covered. If you already have such a policy and need to evacuate, you may want to bring it with you.

**Family Housing Renter's Insurance.** Lincoln Military Housing used to provide a \$10,000 renters' insurance policy as a benefit to all its tenants. However, that policy has been discontinued, effective March 1, 2021. If you are a resident of Lincoln Military Housing, you have probably received a notice to that effect. Residents of Atlantic Marine Corps Communities (AMCC) housing also no longer receive this benefit, which was discontinued January 1, 2015. AMCC residents, if any, who began their tenancy prior to that date should still be covered.

**Homeowner's Insurance.** Make sure that you are current in your payments and that you have a copy of the policy available, or at the very least, the policy number and telephone number of your agent. Check the coverage limits and update as needed. Many policies, especially in hurricane prone areas, do not cover damage by flood, a separate matter covered by a policy with the Federal Emergency Management Agency (FEMA). Make sure you have made the required payments for any FEMA flood policy you may have. After you have made the required payment, FEMA will send you a document proving that you are insured for the coverage period.

**Vehicle Insurance.** Liability coverage, required under state law, only insures against damage or injury to another caused by the insured. It does not cover damage to the insured's own vehicle. Lenders will usually require comprehensive insurance as a condition of obtaining a loan, and failure to maintain such insurance constitutes default and justification for repossession. Motorists who can and do choose to purchase liability insurance only, either because comprehensive insurance is not required by their lender or because no balance is owed, will not be compensated by their insurer if the car is damaged or destroyed by a storm. In other words, if a tree falls on your car and you have liability only insurance, you're not covered.

**Evacuation Expenses and Insurance.** Under certain circumstances, the installation commander, pursuant to chapter 6 of the Joint Travel Regulation (JTR) and volume 9, chapter 7 of the Department of Defense Financial Management Regulation (DODFMR) has the discretion to authorize the United States to pay per diem to service members and Department of Defense employees and their respective dependents who evacuate due to a hurricane. Such payments were authorized in September 2018 in response to the devastation wrought by Hurricane Florence. As with any other potential claim, claimants should be prepared to provide receipts for travel related expenses, such as lodging. Receipt of such payments does not require the claimant to reduce his / her insurance claim expenses. A claimant may receive both the commander authorized per diem, and any authorized insurance compensation. Put another way, receipt of command authorized evacuation expense does not require a downward adjustment of an insurance claim.

**Claims Against the Government.** Relying solely on the Federal government to compensate you for your hurricane damage losses involves some risk because:

-The federal Personnel Claims Act (32 U.S.C. 3721) *authorizes, but does not require*, the United States to provide compensation for losses “incident to service,” including losses in Base quarters. Historically, the most common claim is food spoilage caused by power outage.

-The United States will not pay claims when negligence of the claimant or his/her guests caused the loss.

-The United States will not compensate for losses where the possession of the items is not considered reasonable under the circumstances or where the claimant failed to take reasonable precautions to protect the property.

-Private insurance proceeds are generally paid more quickly than government claims.

### **Making a Claim Against the Government.**

-If your storm related, on base property damage claim exceeds the applicable deductible of your renter’s policy, if any, you must first submit a claim to your insurer. Once this claim is settled, you must then settle with any other private renter’s insurance that you have prior to submitting a claim against the government. Submit a copy of all private insurance settlements with your claim against the United States. If your total loss does not exceed the applicable deductible or you have no private renter’s policy, file a claim directly against the United States. Persons who wish to file a weather related claim against the government should contact the Legal Service Support Section (LSSS) at building 66 on Holcomb Blvd [POC CWO3 Jeremy M. Burns (910) 451- 8452,

[Jeremy.m.burns@usmc.mil](mailto:Jeremy.m.burns@usmc.mil) ]. Completed claims submitted to the LSSS will be forwarded to the Tort Claims Unit (TCU) in Norfolk, Virginia for adjudication. If circumstances warrant, TCU may send a claims adjudicating official to Lejeune to speed up the process.

-For storm related, on base damage to vehicles, claimants must file through their insurer and then may submit a claim against the United States. Claimants must show that their vehicle was aboard the installation for a legitimate purpose. Only vehicles registered in the name of the active duty service member or federal employee are covered under this statute.

**Proving Loss.** A good inventory of your property can be very helpful, including a videotape. Receipts for the more expensive items will be helpful in substantiating the claim, whether against a private insurer or the government.

**Repairing Rented Premises.** If your rental home is damaged by a storm, notify the landlord immediately by phone and follow up in writing. If the damage significantly lessens the value of the property, request rent reduction until the repairs are made. If the landlord agrees, get it in writing. If the landlord does not agree to rent reduction, you can sue the landlord in small claims court for an order reducing the rent until the repairs are made. If you have already paid the full rent in any month for substantially damaged premises, you may sue for the difference in the value of the damaged property and the value of the property without damages. You should also consider complaining to the Onslow County housing inspector and the North Carolina Real Estate Commission. The NCREC does not regulate individual landlords, but it does regulate property managers.

It is the responsibility of the landlord to rectify problems resulting from destructive weather. In accordance with NC law, the landlord must provide fit premises, including, but not limited to, compliance with applicable building codes, maintenance of utilities, and a duty to “make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition” (NCGS 42-42). More to the point, in spelling out the *tenant’s* responsibility for damages, an exception is specifically carved out for damage caused by “natural forces” (NCGS 42-43).

**On base dispute resolution process.** The National Defense Authorization Act (NDAA) for Fiscal Year 2020 made several changes to federal law concerning privatized, on base housing. These changes included a dispute resolution process (DRP). In sum, the DRP says that the tenant can request informal dispute resolution with the local property manager, and if that process is unsuccessful, engage in informal dispute resolution with the regional property manager. If, and only if these informal processes are tried and found to be unsuccessful, the tenant can initiate a more formal DRP with the installation Military Housing Office (MHO). The regional commander, as the designated Decision Authority, will appoint an investigator and any relevant subject matter experts, and solicit

input from the landlord and tenant. The tenant can request that up to two months' rent not be paid to the landlord but instead be placed in a segregated fund, essentially be held in escrow until resolution. The DA can:

- Direct the disposition of the segregated funds;
- Direct the landlord to make repairs by a specified date (failure to complete within the timeline will result in a 10% reduction of rent for each five days late);
- Direct the landlord to relocate the tenant;
- Direct that reimburse or credit of fees, charges, or damage assessments due to landlord or tenant
- Direct that the tenant be allowed to terminate the lease or excuse the tenant from move out notice and any associated fees.

Military legal assistance is available to assist aggrieved tenants.

### **Lease Termination under the Servicemember Civil Relief Act.**

The Servicemember Civil Relief Act authorizes lease termination in the following six circumstances:

- tenant signs lease and then joins the armed forces;
- military tenant signs lease and then receives PCS Orders;
- military tenant signs lease and then receives orders to deploy in excess of 90 days;
- military tenant signs lease and then dies;
- military tenant signs lease and thereafter suffers a catastrophic illness or injury; and
- military tenant receives orders, signs lease, and then receives stop movement orders for an indefinite period or for 30 days or more.

See your military legal assistance attorney for additional details.

### **Lease termination under North Carolina law**

North Carolina Law (NC Gen Stat 42-12) provides that if a residential rental home is damaged so badly that it will cost more than a year's rent to fix it, the tenant may terminate the lease without penalty. However, the tenant must pay rent up to the time of the damage and must notify the landlord of intent to terminate *in writing and within ten days* of the damage. Read the lease carefully. This provision of the law only applies if the lease does not contain an agreement concerning destruction of the premises.

On July 25, 2019, North Carolina enacted the NC SCRA (see N.C. Gen Stat Ch. 127B, Article 4). The Act incorporates the federal SCRA into North Carolina law, extends its rights and benefits to certain people serving on state Guard service, and prohibits waiver of these rights and protections.

In some circumstances, North Carolina statutes also authorize as a result of domestic violence, sexual assault, and stalking (NC Gen Stat 42-45.1).

**Consumer Fraud.** When the winds die down, home repair con artists descend on affected areas like vultures. Here are some danger signs to look for:

- The door-to-door seller of home repair services fails to comply with state (NC Gen Stat 25A-39) and Federal (32 CFR 429) law requiring written notice of a three-day right to cancel the contract.

- The company headquarters is out of state and/or is impossible to contact. Or maybe there is just a post office box and no physical address.

- The contract fails to completely and accurately describe the work to be done and/or the price to be paid.

- The seller tells you not to worry about the price, because the insurance company will pay for everything.

**Fake Charities.** Watch out for fake charities in the wake of a natural disaster. Scammers initiate unsolicited emails or phone calls, during which they ask for money directly, or ask for personal information which can be used to steal from you. Red flags include a lack of detailed information about the organization, a name similar to some legitimate organization, and a demand for payment in cash, gift card, or money wire. Research the organization before giving. The North Carolina Secretary of State maintains a registry of organizations licensed to solicit in this state, which can provide an important data point for your research. <https://www.sosnc.gov/CSL/>

**Emergency Funds.** If the President declares a national disaster, individuals may be eligible for loans or grants administered by the FEMA. FEMA provides grants to help repair damaged homes, loans to compensate for personal or business property loss, and grants to people unable to afford the loans. However, FEMA money can be delayed and may compensate for only a small portion of the loss.

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