

# Military Consumer Law

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## Military Consumer Law

- Military Specific Statutes and Regulations
- Issues likely to affect service members
- Resources & Remedies

### References:

#### Military Specific Laws & Regulations

- SCRA: 50 USC appendix 501 et seq
- Military Lending Act: 10 USC 987
  - 32 CFR 232
- Consumer Finance: NC Gen Stat 180.1 (SB 489 2013)
- Life Insurance: NC Gen Stat 58-58-320 et seq
- Lease termination: NC Gen Stat 42-45

# Servicemember Civil Relief Act

## SCRA

- Stay of proceedings
- Protection against default
- Early termination of lease
- Interest rate limits
- Foreclosure
- Repossession
- Storage Liens
- Other

## SCRA: Residential Lease Termination



- 50 USC appx 535
- Joint leases:
  - Termination of SM obligation terminates obligations of dependent lessees
- Applicability
  - Pre-service lease
  - Deployment orders after lease executed
  - PCSO after lease executed

## SCRA: Lease Termination

- PCS Includes
  - Transfer fm 1 duty station to another; e.g., Camp Lejeune, NC to Camp Pendleton, CA
  - Change in ship's home port
  - Call to active duty
  - **Transfer home upon**
    - Discharge, resignation, separation under honorable conditions
    - Reservist release from ActDu after 20 weeks or more
    - Transfer to Fleet Reserve or Fleet Marine Corps Reserve
    - Retirement
    - Temporary disability retirement

## SCRA: Lease Termination

- PCS
  - Joint Federal Travel Regulation (JFTR) U5000
  - US DoJ
  - US v Empirian Property Management, Inc. (D. Neb. 8:12 CV 87 (Consent Decree March 8, 2012))

## SCRA: Termination Mechanics

- Written notice to landlord or his agent AND
- Military orders OR
- Verification "from" the commander
  - "By direction" authority
- Effective date: 30 days after next rent is due. E.g., rent due on the 5<sup>th</sup>, notice given 1 April. Lease terminate 5 April plus 30 days.
- Knowing violation is a criminal offense punishable by fine and 1 year imprisonment.

## SCRA Lease Termination Relationship to State Law

- State may add, but not detract from SM rights
- SM chooses which law to use
- Liquidated Damages
  - SCRA: Not authorized
  - NC Gen Stat 42-45:
    - Vacate before 6 mo: 1 month's rent
    - Vacate after 6 but before 9 mo.: ½ mo. Rent
    - Vacate after 9 mo.; to liquidated damages

## NC / SCRA Comparison

<p><b>SCRA 535</b></p> <ul style="list-style-type: none"> <li>• Coverage: Pre-service, deployment, PCS</li> <li>• No liquidated damages</li> <li>• Effective 30 days after next rent</li> <li>• Waivable if compliance w/ SCRA 517</li> </ul>	<p><b>NC 42-45</b></p> <ul style="list-style-type: none"> <li>• Coverage: PCS, deployment, premature / invol discharge or release, death</li> <li>• Liquidated damages if vacate under 9 mo.</li> <li>• Effective: 30 days after next rent (capped at 45 day max)</li> <li>• Not waivable</li> </ul>
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## SCRA 527 Interest Rate Reduction

- Reduce pre-service obligations to 6%
- Effective date of entry into armed forces
- Interest is forgiven, not accrued
- Includes gov't guaranteed student loans (Higher Ed Act 2008)

## SCRA Rate Reductions

- Notice to creditor required
  - Written request
  - Copy of orders to military service
  - Orders extending service
- Knowing violation is criminal: fine / 1 yr jail

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## Creditor Response

- Reduce interest on pre-service obligations OR
- Prove to court that military service does not materially affect ability to pay
- Practical application:
  - Delay, denial, refusal
  - Need for consumer persistence
  - Enforcement thru US DoJ, CFPB

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## Foreclosure



- 50 USC appx 533
- Non-judicial foreclosure on pre-service mortgages prohibited!
- SB 1400 (2010) amendment to NC Gen Stat 45-21
  - Essentially, adds SCRA 533 onto state law
  - Increases likelihood that foreclosure clerk will be aware of prohibition

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## Repossession



- 50 USC Appx 532
- Non-judicial repo to enforce pre-service obligations is prohibited!
- Includes motor vehicles

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## SCRA 535a Cellular Phone Service



- Right to terminate if ordered to relocate for
  - at least 90 days to a place that "does not support the contract"
- Obligations of dependents traveling w/ SM also terminate
- No early termination fee
- May retain # if request w/in 3 years
- Request
  - Written / electronic notice
  - Copy of orders

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## SCRA 537 Storage Liens



- Non-judicial enforcement of storage lien prohibited
- Coverage: during active duty and for 90 days thereafter
- Includes pre service and active duty obligations

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## Enforcement



- Criminal liability for viol of specified provisions
- SCRA 597 US Attorney General action
  - Equitable / declaratory relief
  - “all appropriate relief” including money damages to aggrieved persons
  - \$55K penalty (1<sup>st</sup> violation); \$110K penalty subsequent violations

## SCRA 597a Private Right of Action

- Equitable and declaratory relief
- Money damages
- Costs and attorney fees
- Doesn't limit other remedies available under any law

## Military Lending Act

## Military Lending Act 10 USC 987

- SECDEF authority to regulate lending
- Narrow implementing regulation (32 CFR 232)
  - Payday loans
  - Refund anticipation loans
  - Car title loans

## Covered Borrower



- Servicemember
- Servicemember dependent
- Lender to obtain written statement of service affiliation or lack thereof

## MAPR Elements:

- MAPR Includes:
  - Interest, fees, credit renewal charges
  - Credit insurance, debt cancellation
  - Fee for “ancillary credit related products” sold at or before the consummation of the credit cancellation
- Does not include
  - Tax
  - Late fees
  - Default fees

## Limitations of covered transactions



- No rollover loans under more favorable terms
- No rights waivers, no SCRA waiver
- No forced arbitration
- Can not require allotment
- Prepayment penalty prohibited
- MAPR Limit to 36%
- Written disclosure of MAPR

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## Payday Loan



- Loan term of 91 days or less AND
- Closed ended credit, AND
- Amount \$2,000 or less

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## Vehicle Title Loans



- Closed ended credit, AND
- Loan term 181 days or fewer, AND
- Secured by motor vehicle title

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## Industry Avoidance

- Fast Loans, Inc.: 300% APR, 30 day installments, \$50 membership fee, motor vehicle "line of credit"
- Plain Green Loans: 359% APR, Governed by Chippewa Tribe, 11 month payback
- TreeMac Funding: 580% APR, payment every two weeks x 24 weeks
- U.S. Military Lending: 80% APR, 12 month payback
- Smart Choice Title Loans: 400% APR, 32 month payback, car as security, amt financed \$1,615, finance charge \$15,613.48
- Etc., etc., etc.

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## Not Covered

- Rent to Own
- Installment Loans
- Senator Jack Reed amendment proposal
  - S 1867 NDAA 2012
  - Prohibit banks from reordering presentment of checks to maximize late fees
  - Did not pass

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## Expand coverage, remove loopholes?

- JAG Letter August 29, 2007
- ABA Letter June 11, 2007
- DoD Rulemaking, Notice and Comment
- DoD Report April 2014
- "the definitions of credit for the implementing regulations of the MLA do need to be updated and expanded...the Department is working on such a comprehensive approach." Executive Summary

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# Consumer Finance Act

## NC Consumer Finance Act

- Chapter 53, Art 15 (NC Gen Stat 53-164 et seq)
- Loans of \$15K or less
- NCCOB License requirement
- APR limited to ch those in 24 unless CFA exception

## CFA Rates

- NC Gen Stat 53-176
- For loans under \$10K
  - 30% on 1<sup>st</sup> 4K owed
  - 24% on balance owed between \$4K and \$8K
  - 18% on the remainder
- For loans over \$10K (\$Max loan \$15K)
  - 18%

## Legislative History

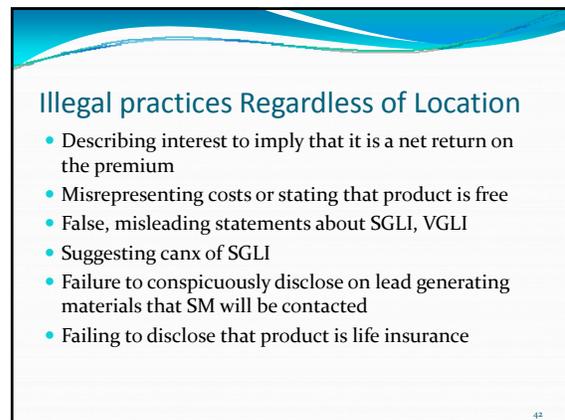
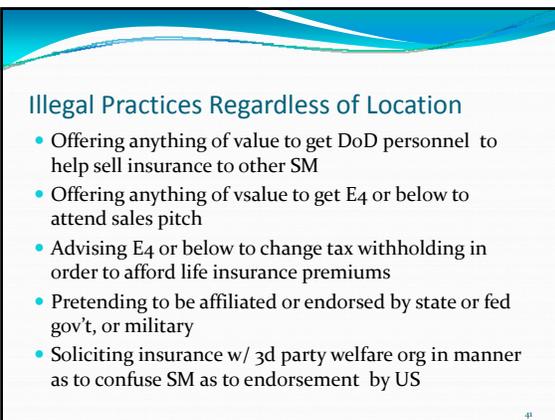
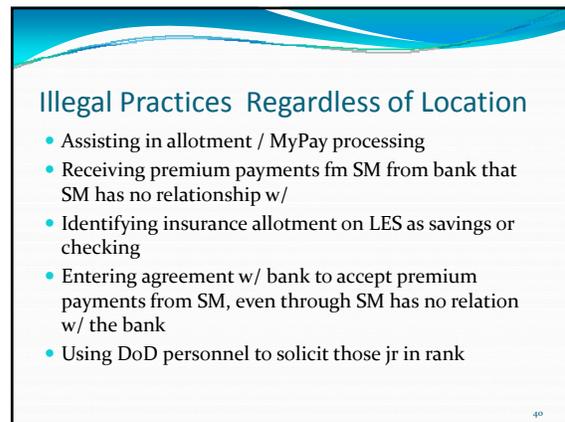
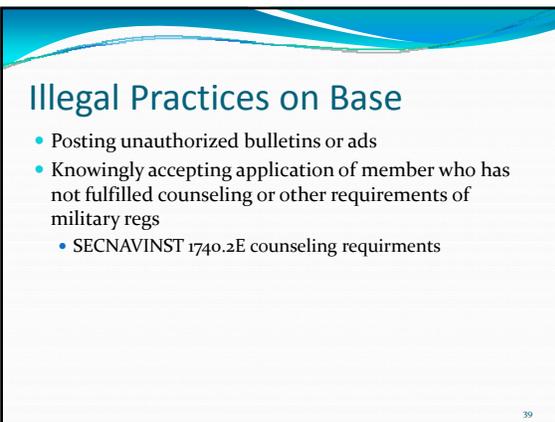
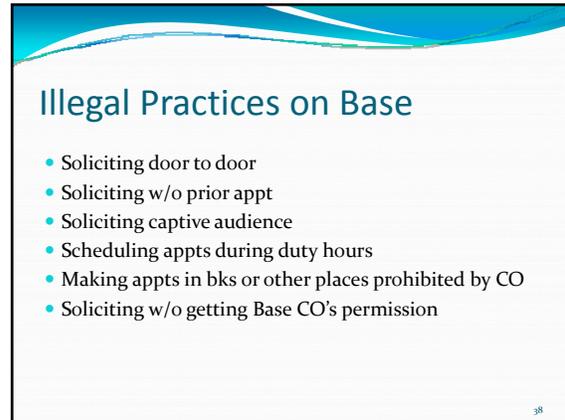
- HB 810 (2012)
  - Defeated
  - DoD Opposition
  - Large rate increases
- SB 489 (2013)
  - NC Commanders Conference
  - Signed by Governor June 19, 2013
  - Large, increases (but less than HB 810)
  - Military Provisions

## Military Provisions

- Covers actdu E-4 and below, not dependents
- Notice to company CO "or equivalent"
  - Prior to loan consummation
  - Need not be in writing
  - Creditor notes to include person contacted and date
- Does NOT authorize debt collection contact w/ CO

## Military Provisions

- Mail copy of contract 5 days after signed
- 30 day right to rescind w/ return of borrowed funds
- No phone / email debt collection contact while SM in combat zone (orders required as proof)



### Illegal Practices Regardless of Location

- Failure to make any disclosure required by law
- Failure to disclose look back period
  - 11 NCAC 12.0447
- Recommending policy w/ savings side fund to E4 or below w/o reasonable basis for suitability after insurable needs assessment.
- Selling any SM policy that excludes coverage of war related death

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### Penalties

- Suspension, revocation, probation, nonrenewal
- Civil penalty under 58-2-70
  - Restitution
  - \$100-\$1,000 per violation

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## Recurring Issues

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### Recurring Issues

- Debt Collection Abuse (military specific issues)
- ID Theft
- Auto purchase, finance & repair
- Consumer finance
- Personal Loans

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### Debt Collection Abuse

- Federal FCRA: 15 USC 1692
- NCGen Stat: 58-70.1 thru 130 (Debt Collection Agencies)
- NC Gen Stat 75-50 thru 56 (Debt collectors / creditors)
- UCMJ Part IV Para 71 (Dishonorable failure to pay debt)

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### Debt Collection

- Wide variety of harassment
- Failure to validate debt
- Litigation abuse / Debt Buyers
- Zombie debt collection



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## Debt Collection Abuse: Military Issues

- Unreasonable publication / threat
- Threat to arrest
- Involuntary allotment

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## Unreasonable publication: NC Gen Stat 75-53



- 3d party debt collection contact prohibited
- Threats to contact other prohibited unless
  - Written permission
  - Provided after default
- “Consent” in contracts and applications invalid

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## Threat to arrest

- Impersonating law enforcement/ public officials
- UCMJ

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## UCMJ “Dishonorable Failure to Pay Debt

“More than negligence in nonpayment is necessary. The failure to pay must be characterized by deceit, evasion, false promises or other **distinctly culpable circumstances** indicating a deliberate nonpayment or grossly indifferent attitude toward one’s just obligations. For a debt to form the basis of this offense, the accused must **not have had a defense**, or an equivalent offset or counterclaim, **either in fact or according to the accused’s belief**, at the time alleged. The offense should not be charged if there was a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation of the accused to pay. The offense is not committed if the creditor or creditors involved are satisfied with the conduct of the debtor with respect to payment. The length of the period of nonpayment and the denial of indebtedness which the accused may have made may tend to prove that the accused’s conduct was dishonorable, But the court-martial may convict only if it finds from all of the evidence that the Conduct was in fact dishonorable.” (MCM 2012, Part IV, Para 71c)

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## Involuntary Allotment

- 5 USC 5520a
- 32 CFR Part 112,113
- DFAS Instructions
- Application
  - Court order signed by judge (not clerk)
  - DD Form 2653
- Member response DD 2654

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## DD 2653:

### Creditor asserts that

- Judgment not amended / set aside
- ActDu member was present or SCRA complied with
- No discharge in bankruptcy
- **“The member’s pay could be garnished under applicable State law and 5 USC 5520a if the member were a civilian employee”**
  - Harris v Hinson 87 NC App 148, 360 SE 2d 118 (NC App 1987)

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## Member response

- Grounds for dispute
  - SCRA noncompliance
  - “exigencies of military duty” caused absence fm court
    - CO makes final determination
  - Info in application is false or erroneous in material part
  - Judgment has been satisfied
  - Judgment materially amended or partially satisfied
  - “There is a legal impediment to the establishment of the involuntary allotment.”

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## ID Theft

- FTC: 9M new cases per year
- SM vulnerabilities
- Broad Categories of attack
  - On existing credit (protections under EFTA, FCBA)
  - New credit (credit report monitoring, security alerts /freeze)
  - Other
- Reactive measures
  - See NC Atty Gen / FTC on line suggestions

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## Auto Purchase

- Defective cars
- Inaccurate car history
- **Free transport to dealership**
- Bait & Switch
- **Yo Yo Sales**
- Phony financing
- Warranties and other aftermarket add ons
- Dealer interest rate mark up
- **Forced arbitration**

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## Free Transport to Dealership



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## Yo Yo Sales



- Conditional sale
- Drive off the lot
- “Sorry, your financing fell through, come back”
- Refusal to return down payment
- Refusal to return trade in
- NC DMV: License and Theft Bureau

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## Forced arbitration



- Commonplace in auto sales
- Limited applicability of MLA
- Effect on SCRA rights
- Dealer / Manufacture Contracts
  - Motor Vehicle Franchise Contract Arbitration Act 15 USC 1226(a) (2)
  - Arbitration agreement void unless entered after dispute arises

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## Auto Repair



- NC Lemon Law : NC Gen stat 20-351
- NC Mechanics' Lien: NC Gen Stat ch44A
- NC Motor Vehicle Repair Act: NC Gen Stat 20-354

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## NC Motor Vehicle Repair Act

- Written estimate required if cost \$350 or more
- Can't charge over 10% more than estimated w/o customer authorization
- Right to inspect or return of parts
- Invoice
  - Parts, labor and itemization of costs

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## Prohibited Acts

- Charge over 10% more than est w/o customer approval
- Charge for repairs not authorized
- Misrepresent repairs performed
- Misrepresent vehicle as dangerous
- Make statement repairman knows or should know is untrue/ deceptive, misleading
- Used/rebuilt parts vice new w/o consent
- Refuse to provide invoice

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## Consumer Finance

- Focus on financing to SM
- Extraordinary base price mark-ups
- Forced arbitration
- Debt collection "consent"

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## Consumer Finance

- TILA Violation
  - Falsely describe as open ended vice close ended (avoid disclosing total cost)
  - Failure to disclose all costs of financing
- Payment enforcement
  - Allotment
  - Credit card
  - Bank draft

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## Personal Loans

- High Interest
- Junk fees
- "Consent" to contact 3d parties
- Choice of law
- Pretended endorsement

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## Resources and Remedies

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### Federal Trade Commission



- FTC Military Sentinel / Consumer Sentinel
  - Gov't lawsuit unlikely in absence of egregious conduct, widespread harm
  - Referral to other agencies
  - Inform Congress
  - Rulemaking
    - Particular interest currently in auto finance, esp BHPH lenders exempted fro CFPB. Enhanced rulemaking.
    - Public comment

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### Consumer Finance Protection Bureau

- Office of SM Affairs: Section 1013(e) Wall St reform and Consumer Finance Protection Act
  - Educate SM to make better s decisions
  - Monitor SM complaints and gov't responses
  - Coordinate consumer protection measures at all levels of gov't
- On line complaints and info
- Enforcement

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### From the CFPB Newsroom



- "CFPB Shuts Down USA Discounters Fee Scam" says Director Cordray. USAD to pay \$50K fine, \$350K restitution Aug 14, 2014
- MILES engaged in Deceptive Marketing & Lending\* Lenders to refund \$6.5M to service members June 26, 2013
- CFPB / DoJ Order Ally to Pay \$80M restitution, an additional \$18M in fines for discriminating against minority buyers Dec 13, 2013

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### U.S. Department of Justice

- Enforcement of SCRA (50 USC app 597)
  - \$55K fine, 1<sup>st</sup> violation, \$110K subsequent violations
  - Equitable Declaratory Relief
  - Restitution

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- "Sallie Mae to pay \$97M for unlawfully charging troops on student loans" Washington Post May 13, 2014
- Bank of America to pay service members \$20M for illegal foreclosure on 160 service members. November 10, 2011
- Aristocrat Towing Consent Order April 30, 2012 \$75K restitution. Complaint alleges enforcement of storage lien in violation of SCRA
- US v Empirian Property Management, Inc Defendant to pay restitution, train employees, for violating SM lease termination rights May 8, 2012

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## NC Department of Justice



- Military Liaison
  - David Fox
  - dfox@ncdoj.gov
  - (919) 716-6000
- Response
  - Consumer alerts
  - Mediation
  - Enforcement actions
- On line complaints

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- “AG Cooper Wins \$6.8 million settlement for NC Servicemembers in Electronics Scam: More than 17,000 U.S. Military consumers worldwide to see debt relief worth \$92 million” NC DoJ Press release July 29, 2014
- “GIBill.com to Stop Misleading Veterans, Service Members Official looking website used to promote for profit schools.” Web site shut down, defendant to pay \$2.5 million NC DoJ Press release June 27, 2012

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## NC Department of Motor Vehicles



- Title and Licensing Division
  - Approx 150 Inspectors
  - Vehicle theft, title fraud, DL fraud
  - Rules governing vehicle dealers, towing and storage, vehicle repair business
- Do it on query: [https://apps.dot.state.nc.us/ContactUs/Feedback.aspx?Unit=DMV\\_ID\\_006](https://apps.dot.state.nc.us/ContactUs/Feedback.aspx?Unit=DMV_ID_006)
- District Office locations: <http://www.ncdot.org/dma/contact/>
- Greenville (District Office) : (252) 752-4435
- Cashier County: (919) 435-8835
- Morehead City (252) 728-8111

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## NC Department of Insurance

- Question, complaints, assistance
  - [http://www.ncdoi.com/Consumer/Consumer\\_Complaint\\_Info.aspx#Num1](http://www.ncdoi.com/Consumer/Consumer_Complaint_Info.aspx#Num1)
  - (800) 546-5664 // (919) 807-6750
- Unlawful solicitation:
  - NC Gen Stat 58-58-320 et seq
  - DoDI 1344.07 dtd 30 Mar 2006
  - SECNAVINST 1740.2E dtd 12 Jul 2008

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## Housing Inspector



- NC Gen Stat 160A-411 et seq
- Enforce state /local laws re bldg construc (e.g., a/c, plumbing), maintenance in safe and sanitary condition. NC Gen Stat 160A-412.
- Onslow County:
  - (910) 989-3071 // (910) 989-3086
  - Procedures and minimum housing standards <http://onslowcountync.gov/planning/content.aspx?id=2648>

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## Armed Forces Disciplinary Control Board

- Joint Forces Order
  - AR 190-24 / OPNAVINST 1620.2A
  - AFI 31-213 /MCO 1620.2D
  - COMDTINST 1620.1E
- Inspector / Board President
- Procedures
  - Warnings, hearing, notice and opportunity to be heard
  - Emergency cases: Hearing *after* off-limits designation

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## The Press



- Hungry for military rip off stories
- Especially want drama, interviews w/ victims
- Effective in gaining high level attention and correcting errors
- Make sure you have the right client
- Make sure you have the right case
- Collect anecdotes and pass them to ME.

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