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Overcoming Protections Under the Servicemembers Civil Relief Act

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At a time when a tenant may be called to military active duty, property owners face difficult challenges when evicting a tenant who is on "active" military duty. On December 19, 2003, President Bush signed into law the "Servicemembers' Civil Relief Act" (SCRA). The SCRA allows military members to suspend or postpone some civil obligations so that the military member can devote his or her full attention to military duties. This new law is a complete revision of former law, the Soldiers' and Sailors' Civil Relief Act (SSCRA) passed in 1940.

The SCRA's purpose is to protect the interests of persons in military service and to relieve them from mental distress occasioned by their handicap of responding to the military call of their country. In cases of eviction, unless there is a court order, a property owner cannot evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises that are (1) occupied or intended to be occupied primarily as a residence; and (2) for which the monthly rent does not exceed \$2,400, as adjusted under housing price inflation for years after 2003; or subject such premises to a distress during the period of military service.

When an active military defendant is unable to make a "general appearance" in court, the defendant cannot be "defaulted" unless an attorney is appointed

on behalf of the defendant. Alternatively, a court may grant a stay of proceedings for a minimum of ninety days on the court's own motion if the court determines that: 1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or 2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

However, not all situations are black and white. HK&C successfully prosecuted a non-payment of rent case against an active military serviceman. The facts involved a mobilehome park resident who failed to pay rent who was served a Three-Day and Sixty Day Notice prior to being called on active duty. Unbeknownst to the property owner, the resident was called on active duty after the filing of the Summons and Complaint.

The case required a combination of timing and key contacts with military personnel. It was revealed that the defendant returned to the premises temporarily (but was still on active duty). As a result, counsel for the property owner notified the military resident of the pending unlawful detainer trial and he subsequently appeared at trial. At trial, the defendant requested an appointment of an attorney and a trial continuance. The trial court was not convinced that the military resident did not have the wherewithal to respond to the unlawful detainer action. The Court agreed with the property owner's rationale that since the military resident had "actual" notice of trial and appeared at trial, the protections under the SCRA did not apply for this particular military resident. Hence, the trial court awarded possession of the space and monetary damages,

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Coming Up In The Next Issue of Legal Briefing...

In 1996, California's Megan's Law was put into effect as a result of the tragic rape and killing of seven-year-old Megan Kanka, of New Jersey. Megan's assailant, a known child molester, had moved across the street from the Kanka family without their knowledge. In the wake of the tragedy, the Kankas sought to have local communities warned about sex offenders in the area. The result, all 50 states now have a form of Megan's Law. Since September 24, 2004 the State of California offers the Megan's Law database online at www.meganslaw.ca.gov. In our next Legal Briefing, we will discuss responsibilities and options available to property owners, managers and homeowners associations to its residents under Megan's Law.

HK&C is pleased to announce the following victories on behalf of its clients.

Executive vs. Company

Congratulations to Bill Hart and David Baker for achieving a substantial settlement just prior to trial by binding arbitration. The firm represented an executive, whose employment had been terminated by his employer of 12 years and was owed substantial unpaid compensation and bonuses at that time. A large multinational firm aggressively defended the company. Pursuant to the settlement, our client was paid a very sizeable, confidential settlement consisting of back pay, bonus, and severance pay in exchange for a release. Congratulations to Bill Hart, David Baker, and their staff on an excellent result!

National Brokerage Network vs. Large Insurance Company

Litigators Bill Hart and Jim Morse helped the firm achieve a superb result on behalf of our plaintiff clients, (a national group of insurance brokers) against a well-known insurance company. The case involving a claim for unpaid bonus compensation was set for a protracted jury trial before the U.S. District Court beginning in July. We defeated a motion to dismiss the case, brought by the insurance company, and prevailed on the key pre-trial motions that came before the Court. As a result, the insurance company was persuaded to pay a very substantial confidential sum in cash. The settlement in favor of our clients was more than double the offer that had been made one month earlier at a settlement conference before the Court. Congratulations to Bill Hart and Jim Morse and their staff for this great result for these clients!

Overcoming Protections

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including attorneys' fees and costs, in favor of the property owner.

Unlike a "run in the mill" eviction action that is set for trial within twenty days, expect further delay if the defendant is on active military duty. However, the SCRA does not always necessarily lend protection to active servicemembers. Each case is treated on a case-by-case basis. Thus, before a property owner considers filing an eviction action against an active military resident, it is recommended that the property owner investigate and evaluate the defendant's delinquent history. The defendant's family may be able to resolve these problems by way of an installment payment plan. Alternatively, a property owner can exercise their rights in court to seek recovery of possession but legal hurdles are to be expected.

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