

Overcoming Protections Under the Servicemembers Civil Relief Act



By: Irene L. Kiet, Esq.

Property owners face difficult challenges when attempting to evict a tenant who is on “active” military duty. On December 19, 2003, President Bush signed into federal law the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§ 501 et seq. The SCRA allows military members to suspend or postpone

some civil obligations so that the military member is able to devote his or her full attention to military duties. This new law was a complete revision of former law known as the Soldiers’ and Sailors’ Civil Relief Act passed in 1940.

The SCRA’s purpose is to strengthen and expedite national defense by giving servicemembers certain protections in civil actions. The SCRA protects the interests of persons on active military service and relieves them from the “distress” that may adversely affect servicemembers’ civil rights during their military service. The SCRA applies to all members of the United States military and those U.S. citizens serving in the military of United States’ allies during a time of war or military action. A few examples of the obligations from which a servicemember may be protected are: outstanding credit card debt; mortgage payments; evictions; taxes; and termination of residential leasehold estates.

In cases of an 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 the property owner (1) files a signed affidavit stating whether or not the defendant is in active military service and showing necessary facts to support the affidavit or (2) if the property owner is unable to determine whether or not the defendant is in active military service, stating that that the property owner is unable to determine whether or not the defendant is in active military service.

If it appears that the defendant is in active military service, the court may not enter a judgment until the court appoints an attorney to represent the defendant, which is akin to a criminal court appointing a public defender to represent an “indigent” defendant. Otherwise, the servicemember has not received due process under the law. In addition, a court may grant a stay of proceedings for a minimum of ninety (90) 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, but really shades of “gray.” In a recent case, a mobilehome park resident who was in the military and who failed to pay rent 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). The Park’s counsel 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 un-convinced that the servicemember resident failed to have the wherewithal to respond to the unlawful detainer action. The Court agreed with the property owner’s position that since the military resident had “actual” notice of trial, had appeared at trial and had no defense to the action; the protections under the SCRA did not apply for this particular active servicemember. Therefore the property owner was able to avoid the pitfalls and delays of the SCRA and win at trial.

Unlike a “run in the mill” eviction action that is set for trial within twenty days upon request to the court, a landlord can expect further delay if the defendant is on active military duty. A landlord who knowingly takes part in an eviction or distress or who knowingly attempts to do so in violation of the SCRA could be held criminally liable and imprisoned for more than one year or fined, or both. Therefore, the SCRA must be taken very seriously. Each SCRA impacted case is approached on a case-by-case basis and it is recommended that the property owner seek legal advice respecting how to proceed. In addition, depending on the circumstances, the dependents of a servicemember could also be entitled to the same protections under the SCRA, if the dependents’ ability to comply with the lease is materially affected by reason of the servicemember’s military service.

Failure to act reasonably and lawfully when dealing with a servicemember’s (or his or her dependents) tenancy default could have severe adverse ramifications beyond the eviction proceedings. Thus, before a property owner considers filing an eviction action against an active military servicemember or his or her dependents, it is recommended that the property owner first investigate, to the extent possible, the tenant’s military status and then get with his or her legal counsel to determine the best strategy.

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