

## SOLDIERS AND SAILORS CIVIL RELIEF ACT OF 1940 AND ITS APPLICABILITY TO THE RECENT DEVELOPMENTS IN THIS COUNTRY

At the time of the writing of this article it appears that we may be sending many of our troops, including reservists and national guard members overseas for active military service. This development may have an implication on how you operate your Self-Storage business.

In 1940 Congress enacted a law called the Soldiers and Sailors Civil Relief Act, which is still in force today. The act is lengthy and has many provisions of which you may want to be aware if you will be doing any sort of litigating against people who are or may be in the military, especially overseas, or their spouses and dependants.

The most important section of the Act for this brief description is Section 5.10 which provides the purpose of the Act.

“ In order to provide for strength and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States to more successfully to fulfill the requirements of National Defense, provision is hereby made to suspend “enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified.....”.

Section 5.20 of the Act provides that in the event it is necessary to take a default judgment against any Defendant, the Plaintiff before entering the judgment shall file in the Court an Affidavit setting forth facts showing that the Defendant is not in the military service. If you are unable to file an affidavit you are required, in lieu, to file an affidavit setting forth either that Plaintiff knows that the Defendant is in the military service or that

the Plaintiff is not able to determine whether or not the Defendant is in military service. Barring this affidavit, a default judgment should not be rendered. Please note this is not a recent change in the law for war time, this has been a requirement, albeit generally unenforced, since 1940. We simply expect to see the Act enforced more vigorously during this period of great national crisis.

In the event a Defendant is in active military service the Court may; 1) Appoint an attorney to represent the Defendant and protect his/her interests upon application to the Court to make such an appointment, or; 2) The Court may require as a condition before judgment is entered that the Plaintiff file a bond approved by the Court conditioned to indemnify the Defendant, if in military service. The bond would secure Defendant against any loss or damage that he/she may suffer by reason of any judgment should that judgment thereafter be set aside in whole or part. The use of a false affidavit in this situation is perjury punishable by imprisonment not to exceed a year or fine not to exceed a \$1,000.00 or both. Alternately, the Court can Stay an action until 3 months after the person is discharged from the active duty.

The long and short of this Act in its practical application is that you may not be able to take default judgments against people in the military because those actions will be stayed by the Soldiers and Sailors Relief Act.

From a Self Storage application the Act does not appear to affect your ability to conduct a properly sanctioned lien sale because Section 5.17 (B) states that nothing contained in the Act shall prevent the repossession, retention, foreclosure, sale, forfeiture or taking possession of property which is security for any obligation or for which has been purchased or received under a contract, lease, or bailment pursuant to a written

agreement of the parties. Thus, if your state and your lease provide your lien rights as a remedy in the event of a default for non-payment you are not prevented from pursuing your lien remedies. You would however be prevented potentially from taking a judgment as a result of an eviction or claim in court for damages which you suffer as a result of the default. Also, if you do business in one of the three states which do not have statutory lien rights that we have described above your ability to initiate litigation to remove a non-paying tenant may be affected. There are also occasions where Self Storage operators institute litigation to evict for failure to leave when requested at a termination of a term, and/or owners institute lawsuits to collect money damages where you would be taking a default judgment. These types of actions would appear to be prevented against a person, their spouse, or dependant while your tenant is actively engaged in military service.

As a practical matter it may not be a bad idea to add a reference to the Soldiers and Sailors Relief Act and the protections provided in any default letter that you are sending out if you have military service personnel on active duty. While it may not be a 100% to your advantage to mention the Act, if somebody else is reading the soldier's mail, they can let you know that the person is engaged in military service and thus you will not end up as a headline in the newspaper that you sold or took judgment against somebody who is fighting a war, which would be a public relations nightmare and damage your business reputation, even though probably not illegal.

If you wish to read more of the Act it is contained in Title 50 , Appendix of the United States Code beginning at Section 510. In the alternative, you can consult your local attorney for further direction.

Jeffrey Greenberger practices with the law firm of Katz Greenberger & Norton LLP in Cincinnati, Ohio and is licensed to practice in the states of Ohio and Kentucky. This column is for the purpose of providing general legal insight into the Self Storage field and should not be substituted for the advice of your own attorney.

Mr. Greenberger's practice focuses primarily on representing the owners and operators of commercial real estate including self storage owners and operators.

Mr. Greenberger is the legal counsel for the Ohio Self Storage Owners Society, Inc., and the Kentucky Self Storage Association, Inc. You can send your questions or comments to Jeffrey Greenberger at [JJG@kgnlaw.com](mailto:JJG@kgnlaw.com) or mail them to Jeffrey Greenberger c/o Katz Greenberger & Norton LLP, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 or you can reach Mr. Greenberger at (513) 721-5151.