

# Kimball, Tirey & St. John LLP

## Legal Alert

### Bankruptcy Court

April 2004

In San Diego and Orange Counties, Sheriffs will no longer conduct lockouts without court approval if a tenant files for bankruptcy after an unlawful detainer judgment is entered. This change in policy is the result of a recent Southern District of the United States Bankruptcy court ruling in which the court ruled that a landlord must obtain relief from stay before proceeding with the lockout. This ruling mirrors the current position of the Central District. Previously, San Diego and Orange County Sheriffs would proceed with a lockout without an order for relief from stay if the tenant filed for bankruptcy after an unlawful detainer judgment was entered in State Court..

California law currently provides that “. . . a writ of possession issued pursuant to a judgment for possession in an unlawful detainer action shall be enforced pursuant to this chapter without delay, notwithstanding receipt of notice of the filing by the defendant of a bankruptcy proceeding”.

Bankruptcy Court Judge Myers declared the state law unconstitutional and in violation of the Supremacy Clause of the United States Constitution. Sheriffs in San Diego and Orange County will now join Los Angeles' Sheriffs' practice of refusing to conduct lock-outs when a bankruptcy action is filed after entry of an unlawful detainer judgment. Rental owners will now be required to file a formal motion in Bankruptcy Court requesting the continuation of their eviction notwithstanding the bankruptcy filing. While virtually all of these motions for relief from stay for residential properties are granted, the time delays and additional expenses for property owners in bringing these motions will be another burden for rental property owners.

Kimball, Tirey & St. John attorneys represent residential and commercial property clients step-by-step through every phase of the eviction process. Our proven, strategic approach to each case dramatically increases your chances of a successful and expeditious outcome. Our practice includes obtaining orders for relief from stay when necessary.

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