

Handout 1: More Information on the Protecting Tenants at Foreclosure Act

The Comptroller's Handbook explaining the Protecting Tenant's at Foreclosure Act of 2009 may be viewed at this link:

<https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/protecting-tenants-foreclosure/pub-ch-protecting-tenants-foreclosure-act-2009.pdf>

Please see this article for further information:

<http://nlihc.org/article/congress-permanently-authorizes-protecting-tenants-foreclosure-act>

The full text of the 2018 Act may be found at this link:

<https://www.congress.gov/115/bills/s325/BILLS-115s325is.pdf>

Please see the Evictions Deskbook at pages 4 – 11 concerning types of tenants and eviction scenarios, available at this link: <http://www.tjctc.org/tjctc-resources/Deskbooks.html>

July 2014 Newsletter, "The Ins and Outs of Proper Notice in Eviction Cases," at this link: <http://www.tjctc.org/tjctc-resources/publications.html#newsletters>

**Handout 2: Bankruptcy Cases Holding that
Automatic Stay Applies During Appeal Window**

Bedford Hill Cmty. v. Brown (In re Brown), 545 B.R. 123, 126-27 (Bankr. W.D. Pa. 2016); *In re Tatum*, No. 14-03676, 2015 WL 1061673, at *3 (Bankr. S.D. Miss. March 6, 2015); *In re Nitzsky*, 516 B.R. 846, 847 (Bankr. W.D.N.C. 2014); *In re Griggsby*, 404 B.R. 83, 86-87 (Bankr. S.D.N.Y. 2009); *Hous. Auth. of Beaver Cty. v. Alberts (In re Alberts)*, 381 B.R. 171, 177-78 (Bankr. W.D. Penn. 2008).

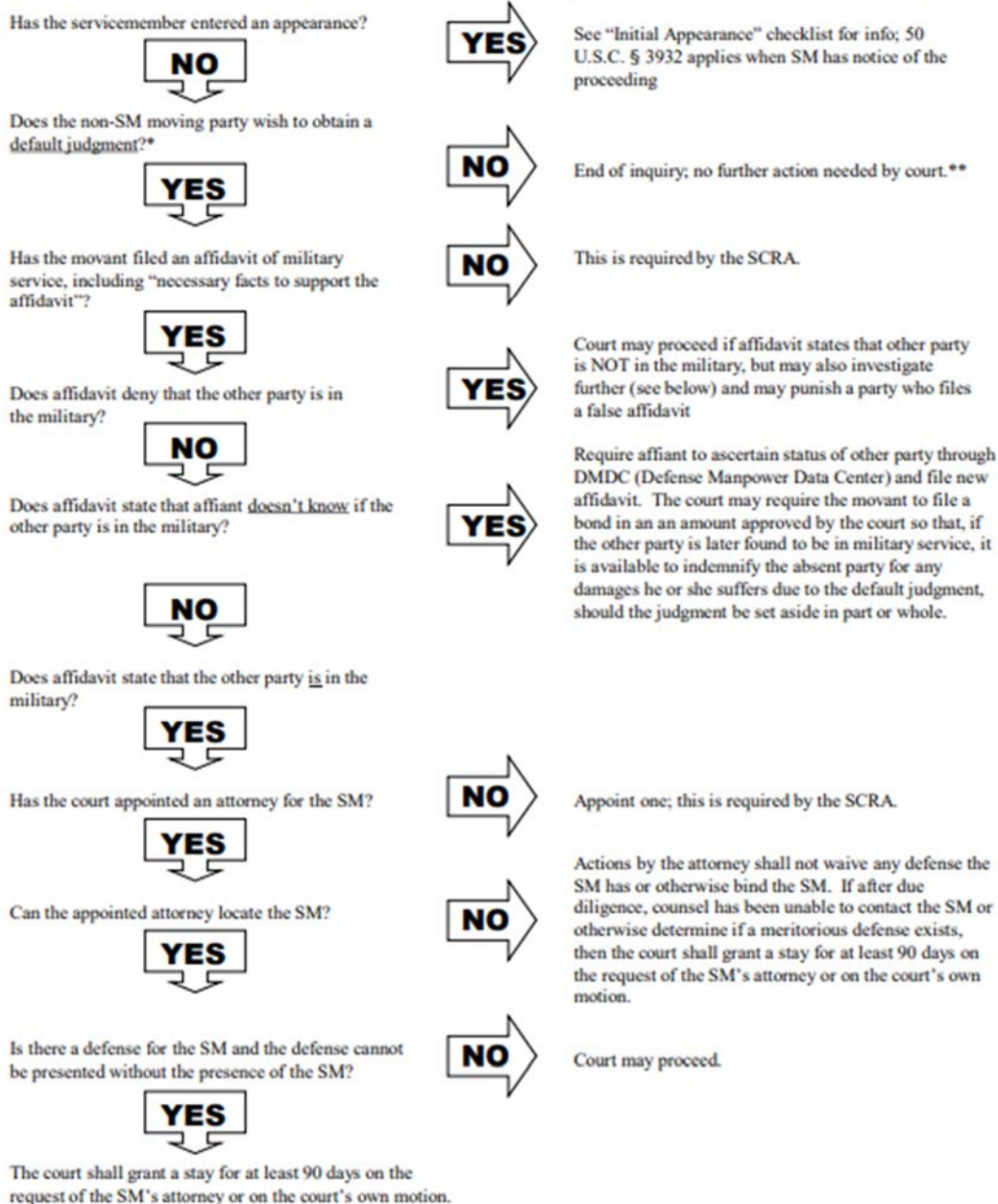
In re Nicholson, 2019 WL 2524291, at *3-4 (9th Cir. June 18, 2019) (discussing these cases and noting that, “We could not find a case holding otherwise and the parties have cited none.”).

Handout 3: Stay Upon Certification and Payment of Rent

A stay may also apply after a judgment for possession 30 days after the date on which the bankruptcy petition is filed **but only if** the debtor files with the petition and serves on the lessor a certification that there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered, and the debtor has deposited any rent that would become due during the 30-day period after the filing of the bankruptcy petition. 11 U.S.C. § 362(b)(22) and (1).

Handout 4: SCRA Flowcharts

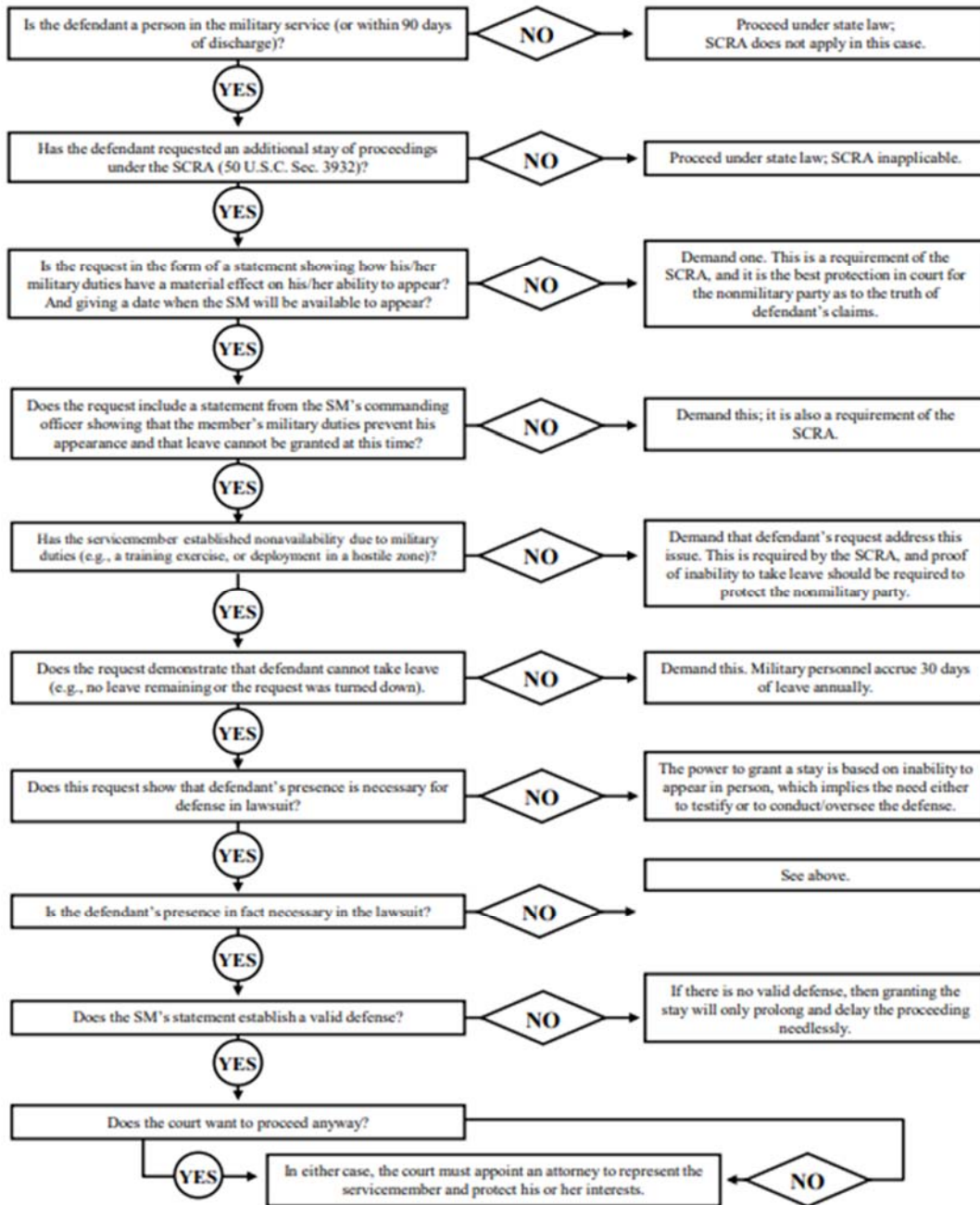
ATCH 1 - SCRA Flow Chart (no appearance by servicemember)



*The non-SM claimant may be either the plaintiff/petitioner or the defendant/respondent. A default judgment means any decree or order granting relief when the other side has not entered an appearance. Whether appearance means a specific appearance in the current proceeding before the court, or the lawsuit itself (irrespective of the stage of proceedings) depends on state law.

** "Court" also means administrative agency.

ATCH 2 - SCRA Flow Chart for "Additional Stay"



Handout 5: Fair Housing Act – Additional Resources

- HUD, A Consumer's Guide to Fair Housing,
https://www.hud.gov/sites/documents/DOC_7452.PDF
- <https://www.tdhca.state.tx.us/fair-housing/>
- https://www.hud.gov/sites/dfiles/FHEO/documents/19ServiceAnimalNoticeFHEO_508.pdf
- https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_overview#_Who_Is_a

Handout 6: Additional Resources on Section 8

- <https://www.tdhca.state.tx.us/section-8/>
- <https://www.law.cornell.edu/cfr/text/24/966.4>
- <https://guides.sll.texas.gov/landlord-tenant-law/federally-subsidized-housing>
- [24 C.F.R. § 966.4\(l\)](#) - Termination of Tenancy and Eviction
- [24 C.F.R. Part 247](#) - Eviction from Certain Subsidized and HUD-Owned Projects

Handout 7: May a Tenant Waive Their Right to a Jury Trial

Q. This is a question concerning whether the right to a jury trial in an eviction case can be waived by a residential tenant in a written lease agreement. In a recent case, the plaintiff sued the tenant for both a non-payment of rent and a lease violation for other than non-payment. The lease was entered into on April 1, 2016. The lease contained a provision for the waiver of a jury trial for any matters under the lease. (Assume the provision was adequate in terms of its conspicuousness.) Tenant timely asked and paid for jury trial; Plaintiff moved to Quash the demand for jury trial per R.510(b). I questioned the enforcement of the provision waiving jury trial under the 2016 amendment to Section 92.006(h) of the Property Code. Plaintiff responded that the eviction was being pursued under Chapter 24 of the Property Code, so the effect of the Chapter 92 restriction did not apply because none of the so-called "Chapter 92 issues" were being litigated--ie, distinguishing FED actions (Chapter 24) from the Chapter 92 matters. But 92.0081 refers to the fact that a landlord is not prevented "by this section [92.0081]" from pursuing "other available remedies, including the remedies provided by Chapter 24." QUESTION: What is the proper way to evaluate whether a jury trial properly requested may be waived, if waiver is permitted at all for a residential tenant?

A. The Texas Supreme Court has held that a waiver of the right to a jury trial in a **commercial** lease is enforceable. See *In re Prudential Ins. Co. of America*, 148 S.W.3d 124, 128-36 (Tex. 2004); *In re Bank of America, N.A.*, 278 S.W.3d 342, 344-46 (Tex. 2009). However, we have not located any cases that address whether a waiver of the right to a jury trial in a residential lease is enforceable. In the absence of any controlling case authority, we would carefully review Chapters 92 and 24 of the Property Code and Rule 510.7(b) of the Texas Rules of Civil Procedure.

As you point out, Section 92.006(h), Property Code, states: "A tenant's right to a jury trial in an action brought under this chapter may not be waived in a lease or other written agreement." The landlord argues that an eviction suit is "brought under" Chapter 24, not Chapter 92. However, Chapter 92 is entitled "Residential Tenancies" and Section 92.002 states: "This chapter applies only to the

relationship between landlords and tenants of residential rental property.” The landlord has a plausible argument that the jury waiver prohibition applies only to actions specifically brought under Chapter 92 (e.g. for a security deposit or for a wrongful lockout). However, an action “brought under” this Chapter could also mean an action brought to enforce rights of either party under a residential lease, including rights enforced by bringing a forcible detainer action under Chapter 24. Under that construction Chapter 92 must be read in conjunction (“in pari materia”) with Chapter 24 and the prohibition on waiver of a right to a jury trial would apply to any residential lease, not just to the few limited actions specifically authorized under Chapter 92. While plausible arguments may be made either way, we think the presumption in favor of the right to a jury trial weighs in favor of the broader construction of Chapter 92, i.e. the right may not be waived in a residential lease. See, e.g., *In re Credit Suisse First Boston Mortgage Capital, L.L.C.*, 257 S.W.3d 486, 490 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding) (“Unlike arbitration agreements, which are strongly favored under Texas law, the right to a jury trial is so strongly favored that contractual jury waivers are strictly construed and will not be lightly inferred or extended.”).

This presumption is expressed in Rule 510.7(b), which states: “**Any party** may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. . . . If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing evidence it will return its verdict in favor of the plaintiff or the defendant.” Can the parties by private agreement override the right of a jury trial granted to either side under the Rules of Civil Procedure in justice court? The right to a jury trial is “so strongly favored,” *In re Credit Suisse First Boston Mortgage Capital, L.L.C., supra*, that we think the court should resolve any doubts in favor of granting a jury trial to the party requesting it. We recognize that the issue is not free from doubt but in the absence of any authority holding that a waiver in a residential lease is enforceable we suggest the better practice would be to allow a jury trial if requested. Of course, the court also has authority to grant a judgment notwithstanding the verdict, if necessary, under Rule 510.8(a).

Handout 8: Tenant Firearm Rights

HB 302 – Tenant Firearms Rights

New Defense to Trespass Offenses

- Defense applies to the following offenses:
 - PC 30.05 – Criminal Trespass
 - PC 30.06 – Trespass by License Holder with a Concealed Handgun
 - PC 30.07 – Trespass by license Holder with an Openly Carried Handgun
- Defense applies only if one of the following is true:
 - The person owns a condominium governed by Prop Code Ch. 81 or 82, Prop Code, or is a tenant or guest of an owner; or
 - The person is a tenant or a guest of a tenant of:
 - A leased premises governed by Prop Code Ch. 92 (residential tenancies); or
 - A manufactured home lot governed by Prop Code Ch. 94.

New Defense to Trespass Offenses



Defense:

- If the reason the person was considered to be “trespassing” was because they brought a firearm or ammunition on property where doing so is forbidden, AND:
 - The person carried or stored the firearm or ammunition directly to/in their unit or directly to/in their vehicle; and
 - The person is not otherwise prohibited by law from possessing a firearm or ammunition.

PC 30.05 – 30.07

Handout 9: Nursing Homes

- There are federal law protections against involuntary eviction from a nursing home that participates either in Medicare or Medicaid.
- The protections apply to all residents even if only a few of them are on Medicare or Medicaid.
- There are limited reasons for which a nursing home may transfer or discharge a patient:
 - The resident's needs cannot be met in the facility;
 - The resident's health has improved and the resident no longer needs the services;
 - The safety of individuals in the facility is endangered;
 - The health of individuals in the facility would otherwise be endangered;
 - The resident has failed to pay OR to apply for Medicare or Medicaid;
or
 - The facility ceases to operate.
- The nursing home is required to follow procedural and substantive guidelines.
- If they do not do so, they may not be legally permitted to transfer or discharge the patient.

Additional Resources on Nursing Homes

<https://www.seniorcitizensguide.com/articles/detroit/nursing-home-evictions.htm>;

<https://www.agingcare.com/articles/patient-rights-and-nursing-home-discharges-205724.htm>;

<https://www.elderlawanswers.com/how-to-fight-a-nursing-home-discharge-6971>

