Update from the President
By William Hannosh, Esq., FBA President

On June 28, 2018, the Foothills Bar Association held its annual membership drive mixer at Hooley’s at Grossmont Center in La Mesa. Approximately 30 attorneys and members were present to enjoy a fun time of camaraderie, food and spirits. Many new members were in attendance, including several who were enjoying their first FBA social event. This was a great opportunity to catch up with old friends, meet new colleagues and exchange ideas about future CLE programs and social events.

For those of you who have not yet renewed your membership, the time is now! Please do so at: http://foothillsbar.org/membership. The cost is only $65 – and this is the lowest bar association fee in the county. Your valuable membership benefits include excellent MCLE programs, subscription to the newsletter, networking opportunities, inclusion in the FBA membership directory (on-line and printed versions) fun social events and more.

Attorneys Sheryl Graf and William Hannosh, FBA president.
Attorneys Amy West, Katie Cadiente, Elizabeth Lefiti, Paul McGuire, and Hiba Benny.

Attorneys Steven Banks, Mark Raftery with Attorney Brad Schuber, membership coordinator, at check-in table.
Counting the Days Landlord Style

By Keith Jones, Esq.

Attorneys face many challenges in a variety of issues every day, including counting days for filing and business deadlines, and determining how those deadlines are impacted by weekends and holidays. You know, the days when the courts or businesses are closed, or when it's unclear when you start counting. Deadlines are typically extended to the next court or business day. And in some rare instances revert to the prior business day.

For landlords, they can't file an unlawful detainer to evict a defaulting tenant until after first serving the appropriate default notice and allowing the time period specified in the notice for the tenant to cure the default to expire. Calculating days requires considering when and how the notice was served (personal, posting, mailing, etc.), and whether the cure period ends on a weekend or court holiday.

The California appellate court recently considered how days should be calculated in an unlawful detainer case based on the tenant's failure to pay rent. The tenant successfully claimed in the trial court that the landlord filed its eviction lawsuit too soon. The landlord had personally served a fourteen day pay rent or quit notice on April 22, 2017, and then filed its lawsuit on May 10, 2017, on the eighteenth day after service which did not count the day of service.

The trial court ruled that the fourteenth day would have been May 11, not May 10, because the notice required the tenant to cure the default by remitting payment to the landlord's address during business hours on Monday through Fridays. In essence, the trial court agreed with the tenant that weekend days had to be excluded in calculating the last day for the tenant to timely cure the default because the notice stated a Monday through Friday rent delivery period.

The appellate court reversed after evaluating the Code of Civil Procedure's notice provisions. The statute requires that the notice state: i) the amount due; ii) the name, address and telephone number of the person to whom the payment should be made; and iii) if the payment can be accepted personally, the usual days and hours for accepting payments. The statute further states that a tenant can mail the payment before the expiration of the default period, but the tenant must show proof of timely mailing to the name and address specified in the notice.
Continued from Page 3…

In this case, the landlord's notice as construed by the appellate court didn't require that the tenant could only personally deliver the unpaid rent to the landlord during the Monday through Friday business hours to cure the default. Rather, the tenant could have timely mailed the rent payment and provided proof of mailing to rebut the landlord's allegation that the default had not been timely cured.

Based on this analysis, the appellate court calculated that the tenant had until May 6 to cure the default (note that the day of service of the default notice didn't count). Since the landlord didn't file the lawsuit until May 10, the appellate court found that the landlord did not file the lawsuit prematurely and reversed the trial court's ruling.

As a side note, the appellate court didn't consider that May 6, 2017 was a Saturday. A different result may have occurred if the last day for the tenant to cure the default by mail fell on a Sunday when the tenant would have not had access to an open post office or postal delivery for establishing proof of mailing. A zealous landlord may not have succeeded in such an instance if it filed its unlawful detainer action on Monday as a trial court may have determined that fairness dictated extending the cure period to the next available business day. One has to wonder how the appellate court would have counted the landlord's days under such a scenario.

Understanding Credits & Reimbursements in Family Cases

By Koryn K. Sheppard, CFLS, PMP

One of the more confusing issues in family law are Watts, Epstein, and Jefferies credits. This is a handy guide for understanding when they apply.

**Epstein**

When one spouse uses separate property to pay a community obligation, they are entitled to an Epstein reimbursement. Commonly, this happens when one spouse uses post-separation earnings to pay down community credit cards. Generally, courts *must* reimburse one spouse who uses post-separation earnings or other separate funds to pay pre-existing community obligations.
Continued from Page 4…

Watts/Jefferies

Watts credits arise when one party has the exclusive beneficial use of community property—usually the community residence (the occupier). If the property has no mortgage and one party has exclusive use of that property—the amount of reimbursement the occupier owes the community will depend upon the property’s fair rental value. Watts credits are usually considered to be discretionary. This can apply to other items as well, such as vehicles.

A Jefferies credit arises when there is some mortgage debt for the house being occupied is being paid monthly. Assume the obligation to be $2,000 combined (including mortgage, taxes, and insurance). If the fair rental value (FRV) is $3,000/month but the occupier pays $2,000 monthly, then the net benefit to the occupier is $1,000 each month. The occupier could owe a Watts reimbursement of one-half that sum to the other spouse.

If instead community funds were pay the mortgage, this would not be subtracted from the fair rental value because the community estate (by virtue of the use of community funds) has already been “charged.”

Moore/Marsden

If the community helps to pay down the mortgage on a separate property residence, the community “gains an interest” in the residence which is proportional to the amount the home’s value has increased. This is what is sometimes referred to as a Moore/Marsden claim. This comes from case names. This reimbursement applies to “acquisition” of property—in other words, the payment towards principal, not interest because interest payments do not increase the equity.

Family Code 2640

When one party uses their separate property money or the proceeds of separate property to acquire community property during the marriage, the spouse is entitled to a reimbursement of their separate property (subject to tracing and available funds for reimbursement).

A party can also request reimbursement of separate property funds used to improve a community property. As an example: if spouse one used an inheritance to build an addition on to a community residence. As mentioned above, this does not include payments of interest. Nor does it include payments made for maintenance (regular wear and tear), insurance, or taxation of the property. It is reserved for improvements/acquisition.

The right to a Family Code 2640 reimbursement can only be waived by a very specific writing.
Notices

Looking for Speakers for Future FBA Civil Litigation Section Meetings:

If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Steven Banks at: sbanks@krigerlawfirm.com or 619-589-8800, or Christopher Hayes at cjhayes@cox.net or 619-846-0183.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the second Tuesday of each month. The next meeting will be on July 10, 2018 at the Law & Mediation Firm of Klueck & Hoppes, APC., 7777 Alvarado Road, Suite 413, La Mesa, CA 91942 beginning at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming event planning or would simply like to learn more about the organization, your attendance is welcome.

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or Kelly.Fabros@SDCourt.CA.Gov.
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