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## A MERE JUDGMENT FOR POSSESSION MAY IMPOSE UPON THE LANDLORD A DUTY TO INSPECT AND CORRECT

In *Stone v. Center Trust Retail Properties, Inc.*, 08 C.D.O.S. 6575 (May 30, 2008), a divided appellate court imposed **an entirely new physical inspection obligation upon a landlord** reclaiming its property from a delinquent tenant. The majority opinion in an attempt to create a workable bright line held as follows:

That a landlord's "duty to inspect attached upon entry of the judgment of possession in the unlawful detainer action and included reasonable periodic inspections thereafter."

As a result of the application of this new obligation, the majority would hold the landlord responsible for personal injuries incurred by the delinquent tenant's invitee subsequent to the entry of the judgment in the eviction action, **but prior to the landlord's regaining physical control of the premises** through either voluntary surrender or service of a writ of possession by the sheriff.

### How Does this Impact a Landlord's Potential Liability?

Prior to this decision, the established body of law in California imposed a duty upon the landlord to use reasonable care to correct an unsafe condition under the landlord's control if the landlord knew, or reasonably should have known, about the unsafe condition. In the eviction context, this principle had been consistently applied to preclude landlord liability in circumstances where the landlord did not have knowledge of an unsafe condition and did not have possession and control of the property sufficient to effectuate the required repair.

Now, however, the landlord is charged with a duty of immediate and periodic inspection (and correction) once it obtains a judgment for possession in its eviction action. This duty arises irrespective of whether the landlord has actual or presumptive notice of an unsafe condition on the property and whether or not the landlord can gain physical access to the premises.

### What Steps Can a Landlord Take to Mitigate Potential Exposure?

First, in the judgment for possession, attempt to include language expressly authorizing the landlord's immediate access to the property to conduct periodic inspections and to make corrective repairs, if reasonably necessary.

Second, exercise, or attempt to exercise, the right of inspection. If entry is prohibited by the tenant, document that event, but do not resort to self help entry which may simply make matters worse.

Third, work with the local sheriff to expedite service of the writ of possession so as to minimize the gap period between judgment and physical possession.

#### HRO REAL ESTATE PRACTICE GROUP CONTACTS

##### San Francisco

Bruce M. Boyd  
Partner  
bruce.boyd@hro.com  
415.268.1974

Dena M. Cruz  
Senior Counsel  
dena.cruz@hro.com  
415.268.1975

Norman Cruz  
Senior Associate  
norman.cruz@hro.com  
415.268.1940

Scott D. Rogers  
Partner  
scott.rogers@hro.com  
415.268.1990

Kenneth R. Whiting, Jr.  
Partner  
ken.whiting@hro.com  
415.268.1976

Dawniell Zavala  
Associate  
dawniell.zavala@hro.com  
415.268.1948

##### Los Angeles

Eric A. Altoon  
Senior Counsel  
eric.altoon@hro.com  
213.572.4355

Marcia Z. Gordon  
Partner  
marcia.gordon@hro.com  
213.572.4324



Holme Roberts & Owen LLP  
Attorneys at Law

## Conclusion

Although the majority decision in the Stone case can be viewed as an aberration and may ultimately be overturned, it should not be ignored. Landlords should act quickly to update their eviction practices and procedures to account for this new potential liability.

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