LAW OFFICES OF Kimball, Tirey & St. John LLP



California Commercial Landlord/Tenant Preventive Law Handbook

2026 Edition

www.kts-law.com

Serving:

San Diego, Orange County, Inland Empire, Los Angeles, Kern, Fresno, Bay Area & Sacramento

CALIFORNIA COMMERCIAL

LANDLORD/TENANT

PREVENTIVE LAW HANDBOOK

LAW OFFICES OF Kimball, Tirey & St. John LLP

Attorneys at Law
7676 Hazard Center Drive, Suite 900
San Diego, CA 92108
(800) 574-5587

2026 Edition, First Printing
Printed in the United States of America

California Commercial Landlord/Tenant Preventive Law Handbook

© 1997 - 2026 Kimball, Tirey & St. John LLP

All rights reserved. This book may not be duplicated in any way, without the expressed written consent of Kimball, Tirey & St. John LLP, except for the California Code sections and the forms designated as reproducible for use by owners and managers for commercial rental property in California. Making copies of this book, or any portion of it, for any purpose other than your own non-commercial use, violates United States copyright law. Previous editions of this Handbook cannot be relied upon as providing the most current legal information on Commercial Law.

Limits of Liability and Disclaimer of Warranty

Kimball, Tirey & St. John LLP has used its best efforts in preparation of this handbook. These efforts include the development, research, and verification of all information. Kimball, Tirey & St. John LLP makes no warranty of any kind, expressed or implied, regarding the information. Kimball, Tirey & St. John LLP will not be liable if incidental or consequential damages occur in connection with, or arising out of, using any information in this book.

The information is general in nature and is not intended as legal advice. Readers should always consult with an attorney to discuss the facts of their particular situation.

Caution: The laws are modified regularly and, while they are current in this handbook as of January 1, 2026, they are subject to change before the next edition is published.

LAW OFFICES OF Kimball, Tirey & St. John LLP

Kimball, Tirey & St. John LLP's "Commercial Landlord/Tenant Preventive Law Handbook" can help you avoid many costly legal problems that frequently arise in the landlord/tenant relationship. It is designed to guide you, step-by-step, through common situations that can occur in your commercial rental operations.

This information is intended to be educational rather than legal advice. Always call a KTS attorney for advice on how to proceed with your particular situation.

Contributing authors to this handbook include Cynthia Stelzer, Abel Ortiz, Jamie Sternberg, Robert Thorn, and Christine Relph

We maintain a website, www.kts-law.com, which provides a library of articles. Visit it often for legal alerts and other new information.

Our statewide offices are ready to serve you.

San Diego

7676 Hazard Center Dr., Suite 900
San Diego, CA 92108
(619) 231-1422
(800) 574-5587
Fax (619) 234-7692

Sacramento

9401 E. Stockton Blvd., Suite 140
Elk Grove, CA 95624
(916) 714-6611
(844) 239-7948
Fax (916) 714-6872

Orange County

2040 Main St., Suite 500
Irvine, CA 92614
(949) 476-5585
(800) 564-6611
Fax (800) 453-1125

Bay Area

2300 Clayton Rd., Suite 1350
Concord, CA 94520
(925) 942-1690
(800) 525-1690
Fax (800) 281-1911

Los Angeles

915 Wilshire Blvd., Suite 1650
Los Angeles, CA 90017
(213) 337-0050
(800) 577-4587
Fax (800) 921-5131

Fresno

2440 W. Shaw Ave., Suite 108
Fresno, CA 93711
(559) 401-3464
(800) 525-1690
Fax (800) 281-1911

Kimball, Tirey & St. John LLP © 1997-2026

TABLE OF CONTENTS

Section One: California Legislation Updates 5

New in 2026: 5

Section Two: Pre-Tenancy Issues 6

Lease Negotiations and Drafting for Commercial Properties 6

Exclusive Use Provisions 13

ADA Litigation 15

California Tax Withholding Requirements for Out-of-State Landlords 16

Section Three: Tenancy Issues 17

NSF Checks 17

Owner's and Manager's Guide Through the Commercial Eviction Process 18

Frequently Asked Questions 25

Jury Waivers 28

Stipulated Agreements in Evictions 28

Animals on Commercial Property 30

Covenant of Quiet Enjoyment 31

When Your Tenant Files for Bankruptcy 32

Mechanic's Liens 34

Assignment and Subletting for California Commercial Landlords 35

Estoppel Certificates 37

Towing: Removing Unauthorized Vehicles from Private Property 38

CPI Increases 40

Section Four: Post-Tenancy Issues 41

Abandonment of Personal Property 41

Commercial Tenant Improvements: Who Owns What? 43

Checklist for Improving Collections from Commercial Tenants 44

The Collection Process 46

Asset Searches 48

Seizing Accounts Receivable 50

Third Party Examinations 51

Case Investigation: Maximizing Commercial Collections 52

Business Record Retention 52

Section Five: Post Possession Litigation 55

Breach of Lease/Breach of Lease Guaranty 55

Writ of Attachment 56

Section Six : Important Code Sections for Commercial Property Management 58

Notice to Pay Rent or Quit 75

Declaration of Service 77

Notice to Perform Covenant or Quit 79

30-Day Notice to Terminate Tenancy 81

Notice of Termination of Tenancy and Non-Renewal of Lease 82

Notice of Right to Reclaim Abandoned Property (former tenant) 85

Notice of Right to Reclaim Abandoned Property (other than former tenant) 86

Kimball, Tirey & St. John LLP © 1997-2026

Kimball, Tirey & St. John LLP has been the firm of choice for professional managers and owners of residential and commercial property in California since 1977.

Use this list as a guide to our services the next time you have a legal problem:

Landlord/Tenant Practice Group

- Residential evictions
- Phone counseling
- Opinion letters
- Homeowner associations
- Notices
- Educational programs

Collection Practice Group

- Judgment cases
- Creditor's rights
- Non-Judgment cases

Business Real Estate Group

Real Estate Transactions/Litigation

- Purchase/Sale
- Fair housing defense
- Document/Lease review
- Commercial evictions
- Easement and boundary disputes
- Co-ownership disputes
- Receivership and foreclosure litigation
- ADA/Accessibility issues
- Loans
- Escrow and title matters
- Evictions under the Mobilehome Residency Law
- Evictions under the RV Code

Business Transactions/Litigation

- Business formation
- Contracts
- Foreclosure of security interests
- Temporary restraining orders
- Leases, amendments, property management agreements
- Business disputes
- Fraud and nondisclosure litigation
- Unfair and unlawful business practice defense
- Secured financing
- Sale of business

Employment Law

- Employment agreements
- Consultations
- Employee occupancy agreements
- Sexual harassment
- Discrimination defense

Estate Planning

- Wills and trusts
- Powers of attorney
- Probate and probate litigation
- Trust administration
- Guardianship

Bankruptcy

- Relief from stay
- General creditor representation
- Preference litigation

DRE Compliance

- Licensing
- Discipline
- Compliance
- Policies and forms

Fair Housing Practice Group

- Accommodation agreements
- Document reviews
- Disability forms
- Policy and procedure reviews
- Consultation
- Trainings
- Letters
- Opinion letters

Kimball, Tirey & St. John LLP © 1997-2026

SECTION ONE: CALIFORNIA LEGISLATION UPDATES

New in 2026:

This section provides information about California laws that took effect for **2026** which affect California commercial landlords.

Commercial Unlawful Detainers
AB 1384

Provides greater landlord protections against protracted commercial unlawful detainer proceedings. Specifically, this law limits a court's ability to continue the hearing on a Demurrer or Motion to Strike an unlawful detainer Complaint. Demurrers and Motions to Strike are motions often filed by tenants to challenge Complaints and can delay proceedings. Under the old rule, a hearing on a Demurrer or Motion to Strike was required to be heard within 5 to 7 court days after its filing unless good cause was shown, in which case the court could continue the hearing to any date thereafter. Under the new rule, the court may continue the hearing on the motion if the parties stipulate to the continuance or, if good cause is shown, may continue the hearing on the motion to a maximum of ten (10) court days after the first hearing.

Pricing
AB 325

AB 325 amends California's anti-trust law, the Cartwright Act, to include the use of common pricing algorithms. A common pricing algorithm is defined as any methodology used by at least two individuals that uses competitor data to recommend, align, stabilize, set or otherwise influence a price or commercial term. Furthermore, AB 325 does not make the mere use of common pricing algorithms illegal but instead prohibits: (1) the use or distribution of a common pricing algorithm as part of a contract, combination in the form of a trust or conspiracy or (2) the coercion of another person or entity to set or adopt a recommended price or commercial term, such as availability of the product or service, recommended by the common pricing algorithm for the same or similar products or services in California. Interpretation and scope of AB 325 will likely depend upon judicial determinations.

The bill also provides that lawsuits filed under the Cartwright Act are not subject to the heightened pleading standards that have been applied under federal law. If a Complaint alleging a violation of the Cartwright Act contains factual allegations demonstrating the existence of a contract, combination in the form of a trust or conspiracy to restrain trade or commerce is plausible, the Complaint is sufficient to allege the cause of action. The Complaint does not need to allege facts tending to exclude the possibility of independent action (that a business acted on its own to establish prices) which will make it easier for the consumers to allege a violation of the Cartwright Act.

In addition to AB 325, SB 763 has increased the amount of fines and penalties which can be awarded for violations of the Cartwright Act. For corporations, from $1,000,000.00 to $6,000,000.00, or two times the pecuniary gain from the violation or the pecuniary loss to another by the violation, whichever is greater. For individuals, from $250,000.00 to $1,000,000.00, or two times the pecuniary gain from the violation or the pecuniary loss to another by the violation, whichever is greater. These fines are in addition to existing allowable fines and potential imprisonment of up to three years.

Kimball, Tirey & St. John LLP © 1997-2026

Self Storage
SB 709

Requires self-storage rental agreements initially entered on or after January 1, 2026, to contain specific disclosures, including:

- The initial length of the rental agreement and the renewal term.
- Whether the occupant has received a promotional or discounted rental fee.
- If the occupant has received a promotional or discounted rental fee, the duration of the promotional or discounted rental fee.
- Whether the rental fee is subject to change and, if so, the maximum rental fee that the owner could charge during the first 12 months following the date of the rental agreement.
- All required steps for the occupant to terminate the rental agreement and avoid future rental fees or other charges, including removal of all personal property from the occupant's storage space.
- Contact information for the owner.

The disclosures must be: (1) on the first page of the rental agreement; (2) in a larger type than the surrounding text; (3) in a manner that clearly calls attention to the language; and (4) either (a) in a contrasting type, font or color to the surrounding text or (b) set off from the surrounding text by symbols or other marks.

Pursuant to California law, "self-service storage facility" is "property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property or for storing individual storage containers provided to occupants who have exclusive use of the container for the purpose of storing and removing personal property" and "does not include a garage or other storage area in a private residence."

SECTION TWO: PRE-TENANCY ISSUES

Lease Negotiations and Drafting for Commercial Properties

At Kimball, Tirey & St. John LLP, we practice "preventive law." Preventive law attempts to avoid legal controversies through education and timely legal counseling. An area with numerous preventive law opportunities is lease negotiation and drafting. Careful lease drafting and negotiation can reduce the potential for future legal problems.

Form v. Custom Leases
Some landlords use form leases. Others use custom drafted leases. Still other landlords create a hybrid using form leases with custom drafted addenda. In any case, the lease should be reviewed often to determine if it adequately protects the landlord. The initial lease may have protected a landlords but the laws are constantly being updated and therefore the lease should be reviewed to comply and consider those legal changes. Each lease provision should be reviewed to determine if it complies with California and federal law and if it is the most effective way to achieve the owner's goals.

Lease Detail
A landlord who states, "I just want a short, simple lease," may not realize that a short lease will not provide as much protection to the landlord as a standard industry lease. With more experience, the landlord will come to realize that there are many different areas of possible disagreement between landlords and tenants, and that while detail adds to the length of the lease, it helps to more clearly

Kimball, Tirey & St. John LLP © 1997-2026

describe the rights and obligations of the landlord and tenant. When drafting a lease, simplicity should be a goal, balanced with the competing concern of ensuring that the lease contains enough detail to protect the landlord. As a result, a well-drafted lease will be a well-organized, long, detailed lease that is also easy to read and understand and contain unambiguous language.

Property Description

Conflict may arise between the parties from almost any lease provision, even from something as basic as the property description. Cases have been hotly litigated over what is included in the "premises," as this determines the areas controlled by each party and may also have an effect on repair and maintenance obligations.

Cases have also been litigated over a discrepancy between the square footage of property specified in the lease and actual square footage. Landlords can avoid these types of disputes by avoiding using square footage descriptions in the lease, and instead, describing the space only by address and suite number and/or a drawing or plan attached as an exhibit. A knowledgeable attorney can help avoid potential disputes about the size of the premises.

Lease Commencement

The lease commencement date should be stated, but the lease should provide that the landlord is not in default if the landlord is unable to deliver possession of the premises by that date. The lease may specify that the tenant will not be liable for rent until possession is delivered to it, or that the lease may be terminated if the landlord cannot deliver possession, due to no fault of the landlord, by a specific deadline.

Termination Date

Under the case of *Ramona Convalescent v. Care Enterprises,* a tenant who fails to vacate in a timely manner may be liable for damages both to the landlord and the new tenant caused by the old tenant's failure to vacate when required. The lease should provide that, time is of the essence and that if the tenant holds over at the end of the term, the tenant will be responsible for any damages incurred by the landlord and the successor tenant. A tenant who is informed of these financial responsibilities in advance may be more likely to timely return possession without a lawsuit. Some form leases may have automatic "month to month" hold over provisions that may not be landlord favorable.

Renewal Options

Commercial leases often provide for a long lease term or for renewal options. The parties need to be very specific when addressing these areas. A long-term can be an advantage or disadvantage depending on economic conditions and the landlord's future plans for the property. If there is a marked upswing in the economy, and the lease doesn't provide for increases to market rent, the landlord could lose money every month for a very long time. On the other hand, a long-term lease at market rate with appropriate periodic increases, may appeal to buyers and lenders and increase the property's value. A 3% yearly increase, for example, is common in the industry.

The option should identify how the parties will establish the rental rate during the option period. The most common ways to establish the rent are to specify a fixed increase amount (either in dollars or expressed as a percentage increase), an increase tied to the consumer price index (CPI), or a market rate increase. Because the landlord and tenant can disagree regarding the market rate, a well-drafted lease will describe a prompt, cost-effective process for determining the market rate if the parties don't agree. It is also important for landlords to specify increases annually during the option period; this is sometimes overlooked.

Options can be non-transferable as personal to the original tenant, but only with careful drafting.

Kimball, Tirey & St. John LLP © 1997-2026

Renewal options should state the conditions under which they can be exercised. Many landlords have been surprised to learn that unless specifically stated otherwise, a tenant may be able to exercise an option even if the tenant has breached lease obligations. Well-drafted leases eliminate this possibility and numerous other common disputes.

Assignment and Subletting

Assignment and subletting rights should be clearly addressed, along with any use restrictions that limit the tenant's right to conduct certain types of business. In the absence of lease provisions on these issues, a tenant may use the premises for any "reasonable" use and freely assign or sublet the lease without landlord consent. This could be very problematic if the landlord had granted an exclusive use provision to another tenant and had no right to control a transfer to a competitor of that tenant. If specified in the lease, a commercial landlord can absolutely prohibit or restrict assignment, subletting or change in use. However, an absolute prohibition against assignment or subletting will invalidate a landlord's right to sue for periodic damages under California Civil Code §1951.4. Because this remedy is rarely pursued, loss of this remedy may not be significant.

Rent Amount and Increases

The parties must negotiate the rental amount. Will the lease be gross, triple net or a hybrid? Will there be rent increases (fixed, CPI, or adjustments to market)? Will all monetary obligations be deemed additional rent (late charges, property taxes, insurance, or other lease-related expenses)? If the tenancy is terminated because of non-payment, all of these issues will be material to the parties' rights and responsibilities.

Late Charges

Late charge provisions should specify a reasonable amount for late charges and should be considered liquidated damages. The amount must be a reasonable estimate of the damages that the landlord would incur because of a late payment and may not be set so high or set a daily rate so that they would constitute a "penalty." A well-drafted late charge provision will also contain language that states that the landlord's actual damages are difficult to ascertain, thus the parties agree the late charge is deemed reasonable. Standard commercial late fees are 6%-10% but this is not a safe harbor and the decision on how much and whether to charge late fees is a risk management decision as late fees have been the basis for litigation in recent years.

Security Deposits

Commercial security deposits are controlled by California Civil Code §1950.7. There is no legal limit on the maximum deposit amount a commercial landlord may require; the landlord is limited only by the tenant's ability to pay and the landlord's negotiating strength.

The lease may specify the amount of time that the landlord has to send a security deposit accounting after the return of possession, provided that the time periods do not exceed the following:

- If the security deposit is one month's rent or less, the landlord must return the unused portion of the security deposit within 30 days.
- If the security deposit is more than one month's rent, and the deductions:
    - are for rent only, the landlord must return the unused portion that is more than one month's rent within 14 days with the remaining portion to be returned or accounted for within 30 days;
    - include charges that are not rent owed, the landlord has 30 days to provide the accounting and refund (if any).

Kimball, Tirey & St. John LLP © 1997-2026

Attorney's Fees
If the lease doesn't contain an attorney's fees clause, each party will bear their own attorney's fees. If a landlord wants the ability to recover attorney's fees from a breaching tenant, the lease should provide that the "prevailing party" will be awarded reasonable fees.

Provisions that indicate only a landlord can recover attorney's fees will be made reciprocal by a judge, requiring a losing landlord to pay a prevailing tenant's legal fees. Leases may require a flat amount be paid for default notices sent to the tenant, the *quid pro quo* would make the landlord liable for the same for a tenant's attorney fee. Some landlords choose not to include a legal fees clause or to have their leases drafted to state that the fees will not exceed a certain amount. This limits liability if the landlord is not the prevailing party.

Tenant v. Landlord Responsibilities
A commercial lease should explain who bears the burden of utility payments, maintenance, repairs, hazardous material removal, tenant improvements, construction and insurance. A well-drafted lease should also allocate responsibility for ADA (Americans with Disabilities Act) compliance. While a provision in a lease requiring the tenant to bear the burden of ADA compliance won't protect a landlord in a lawsuit brought by a third party, it may give the landlord the right to seek indemnity from a tenant.

Unlike residential tenancies, if a lease contains the appropriate language, a commercial tenant can take property "as is" and bear all of the responsibility for maintenance of the premises (including the roof and common areas, such as the parking lot). In a commercial rental, the "doctrine of independent covenants" applies. That means the obligation to pay rent is independent from the obligation to maintain the premises. If the landlord is responsible for all maintenance items but defaults in his obligations, the tenant must still pay rent. The tenant may, however, elect to quit the premises and sue for damages if failing to maintain the property is material.

Key Money
Commercial landlords who require a tenant (or prospective tenant) to pay "key money" (irrespective of the name given to it usually a function of good will, the value of existing improvements or the unique value of the business conducted at this location) or pay the landlord's attorney's fees incurred to draft a lease as a condition of initiating, continuing or renewing a lease, must specify the amount of the key money payment in the lease. If the landlord doesn't comply with this requirement, under Civil Code §1950.8, the landlord may be liable for up to three times the tenant's damages plus attorney's fees.

CASp Disclosures
CASp (Certified Access Specialist) disclosures are required under Civil Code §1938 for commercial leases signed on or after January 1, 2017, if the property is a "place of public accommodation as defined in Title 24 of the California Code of Regulations, Part 2, Chapter 2, Section 202, or a facility to which the general public is invited."

One Size Lease Doesn't Fit All
Although there are many more issues which should be addressed, the issues outlined above are an overview of some of the most common considerations in commercial property leases. A well-drafted lease should clearly allocate the rights and responsibilities of the landlord and tenant. The terms will vary depending upon the parties' agreement and the property type. There is no "standard, one-size fits all" lease form.

We can help you select and draft a lease appropriate to the property and the landlord's needs, whether single tenant or multi-tenant; industrial, office, retail or other; gross, triple net or a hybrid.

Kimball, Tirey & St. John LLP © 1997-2026

Lease Parties and Signatories

When drafting a lease, a landlord or property manager's attention to detail can maximize the chances of collecting all amounts due under the lease. Some of these details include:

- Naming the landlord and tenant correctly in the lease;
- Specifying whether the tenant is doing business under a fictitious business name;
- Specifying the tenant's entity type (i.e., individual, general partnership, limited partnership, corporation, or limited liability company);
- If the tenant is a corporation, limited liability company or limited partnership, verifying the tenant is active and qualified to do business;
- Verifying the individual signing the lease has the authority to sign the lease;
- Specifying the capacity (title) of the individual signing the lease; and
- Requiring lease guarantors.

Each tenant should be named in the lease as "[*name of tenant*], [*type of entity*] doing business as [*fictitious name*]." The capacity of the individual signing the lease should be indicated. The same applies to landlords.

Tenants Doing Business under a Fictitious Business Name

When a tenant is doing business under a fictitious business name, verify the names of the owners and the fictitious business name by reviewing the fictitious business name statement that the proposed tenant has recorded in the county where the property is located. Fictitious business name filings can generally be reviewed online at the county's website where the business is located. Verification will ensure that the lease correctly names as tenants all the individuals or entities using the fictitious business name, and that you have listed the fictitious business name correctly. If a fictitious business name is included in the lease, it is more likely to be included in a three-day notice, an unlawful detainer complaint, and ultimately an unlawful detainer judgment, which can assist in judgment collection efforts. In addition, knowing a tenant's fictitious business name aids the Sheriff in doing a lockout if the signage on the leased premises matches the fictitious business name.

Individuals

Below is a sample signature line for an individual with a fictitious business name.

Anthony B. Tenant, individually and doing business as Skip-My-Lease

_____

By: Anthony B. Tenant

An individual named *in a lease in this manner will be personally liable under the lease.*

General Partnerships

If your tenant is a general partnership, obtain a copy of any Statement of Partnership Authority (GP-1) filed with the Secretary of State (available at https://bizfileOnline.sos.ca.gov/) or with the County Recorder. A partnership may, but is not required to, record a Statement of Partnership Authority. If filed, it will provide you with the names of the general partners authorized to bind the partnership. If the partnership has not recorded a Statement of Partnership Authority, require the tenant to provide a copy

Kimball, Tirey & St. John LLP © 1997-2026

of the written partnership agreement, if any, to verify the general partners' names and which partner(s) have authority to bind the partnership.

The lease should be signed by all general partners unless the partnership agreement or Statement of Partnership Authority indicates otherwise. Not all general partnerships have a written agreement. In the absence of a written partnership agreement, have all general partners as signatories on the lease.

An example of signature lines for a general partnership with a fictitious business name is below.

The Broadway Partners, a California general partnership, dba Skip-My-Lease

_____

By: Barney B. Tenant, General Partner

_____

By: Cecelia C. Tenant, General Partner

Limited Partnerships

If your tenant is a limited partnership, verify the exact name and that it is active and qualified to do business. You can do this online at https://bizfileOnline.sos.ca.gov/.

Also obtain documentation confirming that the parties signing the lease are the general partners of the limited partnership. This documentation will consist of either the partnership agreement, or a Certificate of Limited Partnership (LP-1, LP-2, or LP-10) from the California Secretary of State (available at https://bizfileOnline.sos.ca.gov/).

All of the general partners should sign the lease. The exception to this rule is the situation where the limited partnership agreement gives one or more general partners the authority to obligate the limited partnership without the signatures of the remaining general partners.

Below is a sample signature line for a limited partnership with a fictitious business name.

ABC PARTNERSHIP, L.P., a California limited partnership, dba Skip-My-Lease

_____

By: Barney B. Tenant, General Partner

Corporations

If your tenant is a corporation, verify the exact name and that it is active and qualified to do business. You can do this online at https://bizfileOnline.sos.ca.gov/.

The lease should be signed by two corporate officers to avoid potential arguments in the future regarding authority to execute the lease. An officer from each of the following two categories should sign the lease:

1. Chairman of the Board, President or Vice President; and

2. Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.

You can confirm that the signers are officers through a Statement of Information filed with the Secretary of State (available at https://bizfileOnline.sos.ca.gov/), or through corporate minutes, a certification or a resolution.

Kimball, Tirey & St. John LLP © 1997-2026

If the tenant doesn't intend to have two officers execute the lease (and instead intends to have a single officer or a director or employee sign the lease), require that the corporation provide you with copies of the board minutes or resolution executed by the corporate secretary authorizing the individual to sign the lease for the corporation. Retain the minutes or resolution in your file to show that the individual had authority to bind the corporation. If one person holds two offices and proposes to be the only signatory, he should sign twice (once in each capacity) to bind the corporation. An example of signature lines for a corporation with a fictitious business name is below.

Broadway, Inc., a California corporation, dba Skip-My-Lease

_____

By: Barney B. Tenant, [Chairman of the Board, President or Vice President]

_____

By: Cecelia C. Tenant, [Secretary, Asst. Secretary, Chief Financial Officer or Asst. Treasurer]

The individuals signing the lease for the corporation will not be personally liable under the lease. Only the corporate entity will be liable unless you have obtained guarantees. Obtain personal guarantees, if possible, from officers, directors, and/or principal shareholders before the lease is signed. A corporation may be a viable solvent entity when the lease is executed but may be defunct the next year. Personal guarantees from individuals or entities with leviable assets may provide additional protection.

Limited Liability Companies

If the tenant is a limited liability company, verify the exact name and that it is active and qualified to do business. You can do this online at https://bizfileOnline.sos.ca.gov/.

Review the LLC's most recently filed Statement of Information (available at https://bizfileOnline.sos.ca.gov/) to determine who has authority to sign the lease on the LLC's behalf.

A sample of a signature line by an LLC with a fictitious business name is below.

Broadway, LLC, a California limited liability company, dba Skip-My-Lease

_____

By: Barney B. Tenant, Managing Member

Again, consider requiring that an individual affiliated with the entity tenant sign a Guaranty of Lease. An LLC may be a viable solvent entity at the time of lease execution but may later become insolvent. Personal guarantees from individuals with leviable assets can provide financial protection to the landlord.

Maximize your ability to collect all amounts due under the lease. By following the steps outlined above, you can increase your chances of having a valid, enforceable, collectable lease.

Trusts

If the tenant is a trust, name the trustee in their capacity as trustee, and the name and date of the trust. The trust alone cannot be a plaintiff or a defendant. A sample of a signature line is below.

_____

Theresa Tan, as Trustee of the Tan Family Trust dated 1/1/18

You can request a Certification of Trust from the Trustee to verify they are the currently acting Trustee and to reference the document as to how the name should appear.

Kimball, Tirey & St. John LLP © 1997-2026

Maximize Your Ability to Collect All Amounts Due Under the Lease
It is surprising how many tenants incorrectly identify the name of their company and the type of entity. Tenants sometimes claim that the person who signed the lease had no authority to do so. These situations can create problems collecting from a breaching tenant. By following the steps outlined above you can increase your chances of having a valid, enforceable, collectable lease.

Naming the Landlord in the Lease
When identifying the landlord in a lease, use either:

- the landlord's name as shown on the deed to the property, or
- the property owner's fictitious business name. If the landlord does business under a name other than its full legal name, it must file and publish a fictitious business name statement.

To avoid the possibility of the property manager being legally responsible for the landlord's obligations under the lease, do not list the property manager as the landlord.

If the property manager is signing the lease on behalf of the landlord:

- Verify that the property manager has the authority to sign the lease on behalf of the landlord. If the lease termination date is more than a year in the future, verify that the authority is in writing. (This authority is often included in the property management agreement).
- Use a signature block that clearly identifies the signer and their authority. Below is an example:

  Name of Property Owner (e.g., Sunny Days Apartments, Inc., a California corporation)

  By: *Name of Property Manager* (e.g., Best Property Management Company, Inc., a California corporation), Authorized Agent

  By: _____

  Print Name: _____

  Print Title: _____

Exclusive Use Provisions

Exclusive use provisions (EUPs) in leases prohibit landlords from allowing other tenants in the business center to engage in the same business/trade practice of the lessee to whom this provision is granted. If a landlord breaches an exclusive use provision, the tenant may have no obligation to pay rent while the violation is ongoing.

Examples of EUPS and Violations
In *Medico-Dental Bldg. Co. v. Horton*, the landlord agreed not to rent to another drug store in the same business center. He rented other space to some doctors who opened their own pharmacy in their space. The court found that the landlord violated the exclusive use provision within the lease and found that the tenant was not obligated to pay rent. Failure to restrict that kind of activity in the lease opens up the landlord to a horde of potential claims.

- The tenant can abandon the space or sue for a restraining order/injunctive relief to compel the landlord to enforce the exclusive use provision, and/or

Kimball, Tirey & St. John LLP © 1997-2026

- The tenant can sue the landlord for damages, which is usually the difference in rental value of the premises before the breach of the EUP and the value after, or losing the tenant's business profits resulting from the breach; or
- The tenant can allege the landlord and new tenant have engaged in a civil conspiracy to defraud or engaged in the tortious claim of interference with contract (which can carry high dollar exposure) and also allege violating the implied covenant of good faith and fair dealing implicit in all lease agreements!

So, what's the problem? Can't the landlord just tell the competing tenant to stop competing or the tenant will be evicted? The answer is, "It depends." A landlord can control the competing tenant's competitive use only if the lease contains restrictions on the competing tenant's use of space.

Preparing the EUP

Landlords considering granting an EUP to a tenant should first consult with an attorney. The simplest approach: refuse to grant EUPs. Small center/strip mall landlords should "Just Say No." EUPs are for large shopping centers managed by professionals with many years of lease expertise under their belts. Any landlord considering drafting a EUP should:

1. **Define the criteria**. Draft the provision specifically. If contracting that no one else will set up a competitive business in the center, describe precisely what the existing lessee's business does, who its customers are, what its hours of operation will be, the size of the business, its principal product or service and whether it is a partnership, limited liability company, corporation or sole proprietorship.

Specify whether other businesses in the center can engage in the same business if the business isn't exclusively the prohibited use. For example, if an ice cream store tenant wants an exclusive use provision, specify that other tenants in the center can sell ice cream if ice cream isn't their primary product, thus allowing the grocery store, Chinese restaurant and gas station in the center to sell ice cream too since their sales of ice cream will be nominal. Be careful not to grant an EUP where a direct competitor already exists as that also opens the landlord up to the potential claims as noted above.

2. **Specify a remedy for violation of an EUP**. A violation may "be the basis for landlord to seek injunctive relief, damages and/or termination of tenancy pursuant to California law."

3. **Indemnify and hold harmless clause**. The other tenants' leases should specify that if that tenant engages in activity alleged by the landlord or another tenant in the commercial project to violate an exclusive use provision, besides other landlord remedies, the tenant must indemnify and hold the landlord harmless against the claim of violation.

4. **Exculpatory provision**. Landlords should try to include an exculpatory provision that states that if the landlord inadvertently permits a tenant to engage in competing business practices or other activity violating the EUP that the sole remedy of the offended tenant would be vacating the premises without further liability under the lease while waiving all claims for damages, attorney's fees/costs or injunctive relief against the landlord only and agreeing to absolve and defend landlord in any claim filed against the landlord. Providing that the EUP is personal to the tenant, or non-transferable without landlord consent, could avoid problems with assignments or subleases. Providing the EUP lapses if the tenant ceases the protected use or is in material default in the performance of the lease, can also eliminate or reduce the risks that accompany the grant.

5. **Exclusive and Prohibited Use Addendum**. Landlords who grant EUPs should create an "Exclusive and Prohibited Uses Addendum" for all leases in the center. It will benefit both the landlord

Kimball, Tirey & St. John LLP © 1997-2026

and the tenant. If it is made a part of the standard lease template and updated as tenants vacate and new tenants are granted EUPs, it will serve as a reminder to the landlord of the exclusive use provisions in the center and reduce the likelihood that the landlord would unintentionally violate an exclusive use provision. It also clarifies for the tenant the other exclusive uses given to other tenants in the center.

6. **Effect on EUPs if tenant is in Default**. Landlords should consider adding language in the EUP that if the tenant is in default of the terms of its Lease, the EUP is voided, or otherwise suspended during the period of default.

ADA Litigation

Unfortunately, claims against commercial landlords for ADA (Americans with Disabilities Act) and other barriers to access violations continue to be common. Several laws may reduce the number of ADA lawsuits or reduce potential property owner defense costs and potential liability. However, to minimize exposure, landlords and property managers must act proactively. Beginning in 2024, local government agencies are required to provide a notice to businesses of their obligations to provide meaningful access to the business to those persons with disabilities. This notification will be on an 8 ½ by 11 sheet of paper to ensure commercial businesses have no excuse for ignorance of the law.

For commercial property, a lawsuit is typically filed in Federal Court seeking money damages. Plaintiffs seek statutory minimum damages, general damages and punitive damages. Plaintiffs are also entitled to cost reimbursement, including attorney's fees. The plaintiff usually seeks an injunction to halt the conduct that the plaintiff claims violate the ADA.

Careful property owners and managers avoid potential ADA lawsuits by having ADA surveys conducted of their property. An ADA compliance survey by an ADA consultant is recommended to identify all compliance issues on the property. This expert can also help determine how to correct any deficiencies.

Even if a property was constructed fairly recently, or even if an ADA survey was completed in the past, cautious landlords and property managers should not assume the property is in compliance. ADA compliance may require periodic re-checks and updates. Over time, property conditions may change, and the interpretations of regulations can change, resulting in an unintentional violation. Compliance problems can be as simple as fading paint in a disabled parking area, or a disabled parking sign knocked down and not replaced. Many people are surprised to learn that even if there has been no new construction at a property since the ADA went into effect (1992), the property owner must make changes to the property to comply with the ADA.

Property owners and managers should investigate whether the property's leases require the tenants to maintain the property in compliance with all laws, including the ADA. We can review leases to ensure the landlord is well-protected. The lease should identify the portions of the property that are the landlord's direct responsibility and require the tenant to rectify any compliance issues that are the tenant's responsibility. It is important to verify that the tenant's obligations have been met. A landlord may be sued and held liable for ADA violation even if the lease assigns responsibility for compliance to the tenant. Stating an ADA violation is the tenant's fault is not an absolute defense for the landlord.

California business owners can obtain protection against state and federal disability access law violation claims by contracting with a California Certified Access Specialists (CASp) for an assessment of their premises and then making changes recommended by the Certified Access Specialist. Premises that comply with federal and state accessibility standards may obtain a certificate of compliance which provides a level of protection against disability access claims.

Kimball, Tirey & St. John LLP © 1997-2026

The law also provides for a court procedure to encourage early resolution of disability access lawsuits, requires all cities and counties to have a Certified Access Specialist on staff, allows plaintiffs to recover damages only if a violation was personally encountered or access was deterred on a particular occasion, and allows a court to consider reasonable written settlement offers made and rejected in determining reasonable attorney fees to be awarded.

California has passed numerous laws/legislation relating to handicapped accessibility.

AB 2093 requires disclosures by commercial landlords regarding CASp inspections and handicapped accessibility. Careful landlords who amend leases should include CASp inspection disclosure in the lease amendment (see California Civil Code 1938).

SB 748 requires Notice of Disability Access Information. On and after January 1, 2024, each city, county, shall provide to any applicant for a business license a separate minimum 8 ½ x 11 sheet a statutory statement in 28 point font providing information about ADA disclosure and information on how providers can ensure equal access to businesses. This disclosure provides information about the Certified Access Specialist (CASp) program in an effort to make sure businesses are ADA compliant and remove barriers to access under the ADA. ADA accessibility requirements extend even to websites, and claims may be made that websites are not handicapped accessible. These claims can be avoided by auditing websites for ADA compliance.

AB 1632 requires businesses open to the general public for the sale of goods that have a toilet facility for their employees to permit access to those restrooms to persons with an eligible medical condition during normal business hours. Eligible medical conditions are those which the person requires immediate access to a toilet facility. Businesses may ask for evidence of a condition such as the form provided by the Department of Public Health that is signed by a health care provider.

By implementing policies and procedures to ensure compliance with ADA laws, some of the major exposure areas in ADA litigation can be eliminated. If you need a lease review for ADA compliance issues, a referral to a Certified Access Specialist, assistance with defense against an ADA lawsuit, or other ADA-related assistance, we are available to help you.

California Tax Withholding Requirements for Out-of-State Landlords

If you are a commercial landlord, you may have received a request from your tenant or property manager for a FTB Form 590, “Withholding Exemption Certificate.” Withholdings are required from rent for California properties paid to nonresidents of California. These withholdings must be remitted to the Franchise Tax Board quarterly, unless an exemption applies.

Withholding is required for nonresidents of California. Nonresidents may be nonresident individuals or foreign corporations, LLCS or partnerships. Seven percent (7%) must be withheld from payments that exceed $1,500 in a calendar year. Withholdings must be submitted quarterly to the California Franchise Tax Board. A FTB Form 592, Quarterly Nonresident Withholding Statement, must be submitted with the payment.

Before January 31 of the following calendar year, the withholding tenant or property manager must provide the landlord with a statement showing the total income subject to withholding and total amount withheld, using a FTB Form 592-B, Nonresident Withholding Tax Statement or an equivalent form.

Kimball, Tirey & St. John LLP © 1997-2026

No withholding is required:

- for California residents, which may be individuals, or California corporations, LLCs, or partnerships;
- for landlords with a permanent place of business in California unless the tenant believes the address is merely a forwarding address (i.e., a permanent place of business must be a California street address. A California street address does not include a California post office box or an "in care of" address);
- for corporations, LLCs or limited partnerships qualified to do business in California;
- if less than $1,500 is paid per calendar year;
- at the option of the tenant, on the first $1,500 in payments made during the calendar year;
- if the California Franchise Tax Board has issued a waiver approval letter to the landlord. Nonresident landlords may request a waiver from the California Franchise Tax Board by submitting a FTB Form 588, Nonresident Withholding Waiver Request;
- if the California Franchise Tax Board has issued a Request for Reduced Withholding – Approval letter, less than 7% may be withheld. Reduced withholding may be requested by submitting a FTB Form 589, Nonresident Reduced Withholding Request, to the Franchise Tax Board; or
- for residential property tenants. However, residential property managers must withhold.

Tenants or property managers may request that landlords provide a FTB Form 590, Withholding Exemption Certificate, to establish that the landlord meets one of the exemptions. Tenants or property managers can rely on a Form 590 only if it is complete. An incomplete Form 590 is invalid.

Nonresident withholding is a prepayment of California state income tax or franchise tax for nonresidents, similar to wage withholding. If the withholding amount is more than the landlord's actual tax liability, the Franchise Tax Board will refund the overpayment.

A tenant or property manager who fails to comply with this requirement may be liable for the greater of:

- the amount withheld from the landlord, but not remitted by the tenant; or
- the amount that should have been withheld. A tenant or property manager who fails to withhold will pay the 7% withholding amount twice – once to the landlord and once to the California Franchise Tax Board.

In addition, the tenant or property manager may be responsible for interest and penalties. We recommend that all taxpayers receive tax advice regularly from their counsel or CPA, as these laws tend to be amended frequently.

SECTION THREE: TENANCY ISSUES

NSF Checks

When a rent check is returned for insufficient funds (NSF), your account is charged a fee. It is legal to charge the tenant up to $25 for the first returned check and up to $35 for each subsequent check.

Kimball, Tirey & St. John LLP © 1997-2026

Under California Civil Code §1719, under certain circumstances you may also seek damages of $100 or, if higher, three times the check amount—up to $1,500. Demands under Civil Code §1719 should not be made for any checks that are expected to be the basis for a non-payment of rent eviction.

If you receive NSF checks or checks returned for any other reason, it is also legal to require that the tenant pay future rental payments by money order or cashier's check if this is specified in the lease. NSF charges (or late charges) may be included in a commercial "Notice to Pay Rent or Quit" only if a lease has an "additional rents" provision. Absent an "additional rents" provision, charges for NSF checks must be demanded in a "Notice to Perform Covenant or Quit."

Owner's and Manager's Guide Through the Commercial Eviction Process

This section is intended to give property owners and managers a general overview of commercial unlawful detainer actions. It describes the eviction process step-by-step. Our main goals are to minimize the length of time for the eviction process and maximize our clients' recovery of all monetary losses.

If your particular question is not answered in this overview, please contact us for assistance. Remember that there are significant differences between commercial and residential evictions. This guide is for your general knowledge only and is not intended to apply to any specific situation without first receiving sound legal advice. For more information, you may access our website at www.kts-law.com*.*

Legal Considerations during the Term of the Lease
Identify warning signs of potential tenant problems. Slow pay, lack of communication, a downturn in the tenant's business and irrational or chronic complaining can be signs that a tenant is struggling financially. Communication is essential at this point. Re-evaluation of the tenant's financial stability and prognosis regarding the viability of the business is strongly recommended.

Breach of Lease
Once a tenant breaches the lease, develop an action plan. One of the initial decisions should be whether to terminate possession. Once that decision is made, a legal strategy can be devised to achieve investment goals.

If the decision is made to negotiate a "workout" with the tenant, we often recommend initiating an eviction or (at the least) imposing a negotiation deadline. This maintains maximum pressure on the tenant to meet the terms of the workout. You are less likely to be "led down the garden path" and later regret the additional time delay.

If possession is your goal, we recommend that you immediately begin the unlawful detainer process. This usually requires the service of a valid notice to allow the tenant an opportunity to cure the breach or vacate. The failure to cure the default becomes the basis for eviction.

If the lease has expired, and if the tenant is in possession without the owner's or manager's permission or consent for a holdover, no notice is required (unless otherwise specified in the lease).

If no notice is required, the unlawful detainer action can be filed immediately. Nevertheless, it is recommended that the landlord send a letter or written notice before the lease expires reminding the tenant that the tenancy will end at the termination of the lease.

If the owner or manager agrees to amend the lease to accommodate the tenant's business, use this opportunity to strengthen the owner's legal remedies under the lease. When the opportunity arises, you may be able to increase protection for the landlord. Now may be the time to require an increased

Kimball, Tirey & St. John LLP © 1997-2026

deposit; landlord participation in any income stream from subtenants or assignees; a shortened compliance time for a notice to cure, require monthly audits and/or financial statements; demanding a security interest in furniture, fixtures, and equipment or other collateral; and require a guarantor.

If a rent deferral or forgiveness is agreed upon, the deferral or forgiveness can be made conditional on the tenant's future full and timely compliance with the lease, and an acceleration clause can be added to maximize landlord remedies if a tenant defaults in the future. Attorney assistance drafting the lease amendment can help maximize a landlord's remedies if a tenant later fails to perform.

"Stipulations"

If the landlord and tenant agree, we recommend incorporating the terms into either a "Stipulation for Judgment or Stipulation for Entry of Judgment." A stipulation is used *after* a lawsuit has been filed and does not require an individual tenant to have an attorney. One requires the tenant to vacate and the other allows a tenant to remain in possession, if the tenant complies with the terms of the agreement. Both maintain pressure on a tenant to comply with an agreement, particularly when arrearages are to be paid over time. Stipulations can avoid trials and allow the landlord to regain possession of the property or initiate a payment stream from a tenant, even without a trial. (*See the section on stipulations for more information*.)

QUALIFIED COMMERCIAL TENANT

In 2025, the Legislature created a new concept of a "qualified commercial tenant", which provided for additional rights to certain commercial tenants, typically afforded to residential tenants, and placed new obligations upon commercial landlords. These protections apply to the following scenarios: (i) notices of rental increase (Civil Code §827), (ii) translation of commercial leases (Civil Code §1632), (iii) termination of tenancies (Civil Code §1946.1), and (iv) charging fees to recover building operating costs (Civil Code 1950.9).

Under the above statutes, a "qualified commercial tenant", means a tenant of commercial real property that meets both of the following requirements:

> (i) The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees.
>
> (ii)(I) Subject to subclause (II), the tenant has provided the landlord, within the previous 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this subdivision come into place.
>
> (II) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice and self-attestation described in subclause (I) before or upon execution of the lease, and annually thereafter, at such time the protections under this subdivision come into place.

Additionally, "microenterprise" is defined by the California Business and Professions Code as:

- a sole proprietorship, partnership, limited liability company (LLC), or corporation
- that has five or fewer employees, including the owner (who may be part-time or full-time), and generally lacks sufficient access to loans, equity, or other financial capital. *See* California Business and Professions Code section 18000(a).

Kimball, Tirey & St. John LLP © 1997-2026

Where a "qualified commercial tenant" occupies a commercial property, a landlord must ensure compliance with the requirements set forth in Civil Code §§827, 1632, 1946.1 and 1950.9.

SERVICE OF THE NOTICE

It is important to accurately select, complete and serve the proper notice. Commercial leases vary greatly in their notice requirements. Therefore, review of the lease is important before serving the notice.

Notice to Pay Estimated Rent

Demanding a slightly incorrect amount of rent in a commercial notice is not necessarily fatally defective to an unlawful detainer if the notice contains specific language. California law allows a commercial landlord to serve a "Notice to Pay *Estimated* Rent." This law allows a commercial property owner or manager to estimate the rent owed if the amount stated in the notice is "reasonably" estimated. If the estimate is within 20% of the actual amount owed or tendered, there is a presumption that the estimate was reasonable. Even if the amount is later proved to be incorrect, the tenant may lose possession and be liable for the correct amount of rent owed and other sums found to be due if the estimate was "reasonable."

However, if the amount is incorrect and the tenant tenders an amount that the court later determines to be correct, the tenant will be deemed the prevailing party.

If the tenant tenders an amount, he reasonably estimates is owed but is less than is actually owed, the tenant can remain in possession if he pays the correct amount owed within five days of the judgment including other sums ordered by the court. If the tenant files bankruptcy, this payment may have significance in Bankruptcy Court and should be discussed with our office before acceptance. If you believe your tenant is likely to file bankruptcy, you may wish to discuss with our office the inclusion of estimated language in your notice as such may not be to your advantage.

With proper language in the notice, a landlord can begin and/or continue an unlawful detainer, even if the tenant makes partial payments.

A variation of the following language may be used in the notice:

The owner/owner's agent reserves the right to accept partial payments without waiving the right to seek possession of the property based upon this notice. Further, acceptance of partial payments will not be deemed a waiver of the owner's rights. (California Code of Civil Procedure Section 1161.1(b) et seq.). Further, the amount demanded in this notice will be deemed "estimated" per California Code of Civil Procedure Section 1161.1(a).

The notice should also include an "election of forfeiture." If this language is not included in the notice, a tenant who has lost an eviction will still be allowed to retain possession of the property if the tenant pays past due amounts within five (5) days after entry of the judgment. Election of forfeiture is critical to terminate the tenancy and has Bankruptcy Court implications that favor the landlord.

Serving the Notice

Service of commercial notices is governed by California Code of Civil Procedure §1162(b) and any lease provisions. Absent a lease provision specifying a method for service, California Code of Civil Procedure §1162(b) requires service by:

1. personally, serving the named tenant, or

Kimball, Tirey & St. John LLP © 1997-2026

2. if personal service cannot be attained, substitute service on the tenant by leaving the notice at the property with a person of "suitable age and discretion" and mailing a copy by first class mail to the tenant at the property the same day, or

3. if no person can be found, by posting the notice at the property in a conspicuous place and mailing a copy by first class mail to the tenant at the property the same day.

Personal service should be attempted (during business hours) before resorting to substituted service or posting and mailing.

When the tenant is a corporation, LLC, or LP, service must be on a proper person on behalf of the entity.

California corporations, LLCs, and LPs are required to designate an agent for service of process. The agent's name and service address can be found on the California Secretary of State website at https://bizfileOnline.sos.ca.gov/.

- If the tenant is a corporation, personal service can be made upon a corporate officer, a general manager, or the agent for service of process.
- If the tenant is a partnership, personal service can be made on any general partner, general manager, or agent for service of process.
- If the tenant is a limited liability company, service should be made on the agent for service of process.

In some situations, service may be made on other individuals. However, cautious landlords should consult with their attorney before relying on service on someone other than those specified above.

Commercial leases often contain terms varying the notice and service requirements, such as mailing a copy of the notice to the tenant via certified or registered mail at the rental premises or at another designated mailing address. While the typical notice period is 3 days, many commercial leases specify alternate notice periods such as 5, 10 or even 30 days for the tenant to comply after a notice has been served. Additionally, leases sometimes specify "business days" (as opposed to "calendar days"). Generally, the landlord must comply with the lease provisions, even if they vary from California law. The commercial lease should always be reviewed thoroughly for any additional lease provisions that may affect notices. Regardless of what the lease states, California law requires that a Three-day Notice to Pay Rent or Quit be business days (i.e. exclude Saturdays, Sundays and other judicial holidays). Cautious landlords may want to complete an additional service in compliance with California law.

It is important to remember that, under **SB 611** (Civil Code §1161(6)), which went into effect in 2025, the landlord or its agent is prohibited from charging fees for serving, posting or otherwise delivering any notices.

Termination of Month-to-Month Tenancies

A notice of termination of a month-to-month tenancy may be given in the manner prescribed in §1162(b) as detailed above or by sending a copy by certified or registered mail addressed to the tenant (see California Civil Code 1946). Parties to commercial leases may agree in writing to alternate service requirements that need to be complied with in addition to the legal requirements provided for under California law.

Tenant's Response Time

When calculating the time within which the tenant must respond, don't count the day of service. Count only the business days after the day of service (don't count the day of service, weekends and holidays).

Kimball, Tirey & St. John LLP © 1997-2026

If the tenant fails to comply with the notice within the required time frame, an unlawful detainer action may then be filed. Also, check the lease to determine how the time frames are calculated; the lease may provide a method of calculating the effective date of the notice (such as 48 hours after a landlord deposits the notice in the mail).

THE SUMMONS & COMPLAINT

An unlawful detainer lawsuit has priority over other types of civil cases filed in the court. It is commonly referred to as a "summary" proceeding. Trial and other events are expedited. Because the legislature has specified shorter time periods for tenants to respond than in any other types of civil cases, the court will dismiss the case or rule against a landlord for even a small technical defect. Accuracy and strict compliance with the law is crucial in evictions. The unlawful detainer remedy itself refers to the "guilt" of the tenant for failure to comply with the lease, as such this is a rather unusual civil claim.

Filing the Summons & Complaint

The first step in the eviction lawsuit is filing the Summons & Complaint. The Summons informs the tenant that he or she has been sued. It states that unless the tenant files a response within five days, the court can decide the case against the tenant. The Complaint explains why the owner or manager should regain possession of the property. The Complaint must contain all of the elements that the owner or manager must prove for the court to decide in his or her favor.

The case must be filed in the proper court, determined by the unpaid amount due to the landlord and the property location.

Serving the Summons & Complaint

The Summons & Complaint should be served personally if possible. When the defendant is an entity (e.g., a corporation, limited liability company or partnership), the Summons & Complaint must be served on an authorized individual (such as the agent for service of process). When the defendant is an entity (e.g., a corporation, limited liability company or partnership), the Summons & Complaint must be served on an authorized individual (such as the agent for service of process). It cannot be served by a party to the lawsuit. Other methods of service are available, but the tenant receives an additional ten days to file a response if not personally served. Most courts also require at least three personal service attempts on three dates before resorting to substitute service or service by (court-ordered) posting and mailing. If personal service is achieved after a substituted service, the tenant's response time is shortened.

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

Once an unlawful detainer lawsuit is filed, it may be wise to concurrently file and serve a "Prejudgment Claim of Right to Possession." This procedure is especially important for commercial tenant evictions and in foreclosures. Oftentimes in commercial leases, a tenant has leased a portion of the premises to another business. For example, a commercial tenant that operates a dry-cleaning business may lease a portion of the premises to a tailor. This tailor may have a separate agreement with the tenant that the landlord knows nothing about. If a Prejudgment Claim of Right of Possession is served, the tailor is put on notice of the lawsuit.

Benefits of Using the "Claim"

The Prejudgment Claim of Right to Possession notifies unnamed property occupants of their right to claim possessory rights in the property, that they were not named in the unlawful detainer lawsuit and that they must fill out the claim form and promptly file it with the Clerk of the Court to become a party to the lawsuit. If the form is filed, the claimant is named as an additional defendant to the lawsuit. Unnamed occupants who do not respond to the claim form forfeit their right to claim they are tenants. This important procedure eliminates using the "Third-Party Claim of Right to Possession," also known as

Kimball, Tirey & St. John LLP © 1997-2026

the Arrieta Claim, by unauthorized occupants. Using a Prejudgment Claim of Right to Possession can be wise if the tenant may have assigned or sublet any portion of the property without your consent.

The Third-Party Claim of Right to Possession

If you do not use the Prejudgment Claim, the Sheriff posts a Third-Party Claim of Right to Possession form on the door of the premises during the lockout process. If this claim form is filled out and returned to the Sheriff before the lockout occurs, *the lockout will be canceled*, and a court hearing date will be scheduled to determine if the claimant has a right to possession of the property.

If the claimant pays into court fifteen days of rent, a hearing on the claim will be held within five to fifteen days. If the claimant does not pay, the hearing will be held on the fifth day after filing the claim.

If the claim is denied, the owner or manager may receive the posted rent. If the claim is upheld, the unlawful detainer process starts again at the beginning. The claimant must be served with a new notice to cure the breach followed by service of a copy of the Summons & Complaint. If the claim is denied, the delay is approximately two weeks. If the claim is upheld, it is the equivalent of starting over in the eviction process and will delay the case three weeks or longer.

Possible Disadvantage

A disadvantage of the Prejudgment Claim procedure is that the claimants have 10 days to come forward before the next step of the eviction process can take place. This means that if the named defendants in the unlawful detainer action were served personally, an additional five days would be added to the defendant's five-day response time to contest the case. However, if the named defendants were not served personally, there would be no additional time added because the time period for the named defendants to respond would have already been extended to 15 days instead of five days. This disadvantage may be desirable over the possibility of someone adding themselves to the lawsuit later on, which would likely be longer than this 10 day disadvantage.

RECEIVING A JUDGMENT

The "Answer to Complaint"

After the tenant has been served with the Summons & Complaint, the court allows either ten or twenty days (excluding Saturdays and Sundays and other judicial holidays) to respond, depending on the type of service. To respond, the tenant must file legal documents with the court. The most frequent response is an "Answer." After an Answer is filed, the plaintiff (owner or manager or their attorney) must set the case for trial. The trial must be held within twenty days of the request. This date can be altered by a demand for jury trial, bankruptcy or the discovery process or a busy court calendar.

The Answer lists all the reasons why the tenant thinks he should stay in possession of the property. Unlike residential leases, a commercial tenant's promise to pay rent is independent from the owner or manager's obligations. Even if the owner or manager failed to comply with their obligations under the lease, that allegation will generally not be a successful defense to the tenant's non-payment of rent (but remember the exclusive use provisions exception). However, such a failure may have repercussions in other litigation.

Proving Your Case

The landlord must produce witnesses and/or documentary evidence to prove the landlord's case and to refute the tenant's claims. The witnesses must be those who personally experienced the events or conduct they are testifying about. Landlords who have documentation recording significant events as they occur have a much greater chance of prevailing in trial than those who must rely on only verbal testimony and memory. The tenant's Answer should be reviewed to spot potential issues or necessary

Kimball, Tirey & St. John LLP © 1997-2026

witnesses that will be able to testify to refute any possible defense, including the process server if service of the notice is challenged.

The Judgment
A judgment may be rendered in one of three ways:

a) The tenant may fail to respond to the lawsuit. If so, a default judgment for possession of the property may be entered.

b) If the tenant contests the case, requiring a trial, a judgment will be rendered after the trial.

c) If the parties can agree to a workout, documented in a Stipulation for Judgment or a Stipulation for Entry of Judgment, the parties' agreement may be entered as the judgment.

Relief from Forfeiture
Even after judgment is entered in favor of a landlord, a tenant may petition the court for relief from forfeiture as provided in California Code of Civil Procedure §1179. The court has the power to set aside its order granting possession of the property to the landlord and reinstate the tenancy if the tenant immediately cures the default upon which the unlawful detainer judgment was based and if the judge believes this is equitable. This decision would be within the discretion of the judge presiding over the case and therefore could vary from courtroom to courtroom.

THE LOCKOUT

The "Writ of Possession"
To make the judgment for possession effective, a Writ of Possession is issued by the clerk of the court. The Writ will only be issued after there is a judgment issued within the court system whether by default, trial, or by stipulation. The Writ is an order from the court to the Sheriff giving the Sheriff the power and authority to enforce the judgment. The Writ is certified by the Court Clerk and delivered to the Sheriff. The Sheriff's office also requires written and signed instructions providing the necessary information to conduct the lockout as well as a payment for the lockout itself.

The Lockout
The Sheriff posts an initial notice on the tenant's door giving the occupants notice of the impending eviction and provides five days to vacate the property. No earlier than the sixth day (or next business day if the sixth day falls on a weekend or holiday) but often after the sixth day, the Sheriff arranges to meet the owner or manager at the property. This arrangement often comes on short notice as a written notice or even sometimes a call. The owner should be prepared to be on time for the lockout because if the Sheriff shows up and there is no one present, they will not wait and move to the next lockout, even if they are early to your scheduled time. The owner or manager should plan on having a locksmith present to change the locks on the property to secure it after the Sheriff executes the Writ. After the lockout is complete, a receipt for possession is provided, authorizing the owner or manager to take back possession of the property. Note that current timeframes are far beyond the sixth day but that is the minimum time required before a lockout may occur.

Kimball, Tirey & St. John LLP © 1997-2026

Frequently Asked Questions

About the Commercial Unlawful Detainer Process

What documents are needed to start a case?
Please provide a copy of the Lease/Rental Agreement, any amendments, assignments and exhibits, the most recent tenant ledger, the most recent notice that was served, and the Declaration of Service for the notice.

If the landlord has entered into any agreements with lenders (either the landlord's lender or the tenant's lender) requiring notices to be served on the lender, please also provide a copy of those agreements. If the tenant is a franchise, make sure to include the franchise agreement so that the franchisor is put on notice of the tenant's default.

What is a Summons & Complaint?
The Summons is a document that informs the occupant that he or she is being sued and literally "summons" them to the court to respond to the lawsuit. It states that unless a response is filed by the occupant within five to fifteen days, depending on how the occupant is served) the court could rule against the occupant without being heard. The Complaint is the factual basis for the lawsuit and informs the occupant of the legal reasons why the owner or manager should have possession of the property. The Complaint must contain all of the elements that the owner or manager must prove for the court to decide in their favor.

Should I accept payment from my tenants during the eviction process?
Do not accept payments for any time period after expiration of a termination notice. For example, if your termination notice expires on June 30, do not accept rent for July or any time after June 30.

To avoid waiver claims, do not accept payments after expiration of a Notice to Perform Covenant or Quit. For example, if your notice expires on March 31, do not accept rent for April or any time after March 31, if you intend to enforce your covenant notice violation by unlawful detainer.

If a Notice to Pay Rent or Quit has been served and only a rent notice, in some cases landlords can accept partial payment of the notice amount and retain the right to proceed with the eviction. Acceptance of the full amount will cure the notice and the tenancy default will ordinarily be waived. The law requires a landlord to accept full payment only when it is offered within the notice period. However, it is wise not to accept anything without contacting your attorney to determine whether that is possible under the facts in your case.

Can I stop the eviction if I reach an agreement with the tenant?
Even after filing an unlawful detainer action, many of our clients will provide their tenants a "second chance" and allow their tenants to cure their defaults (and many also require their tenants to pay the landlord's attorney's fees and costs as a condition of settlement). You can contact our office at any time to receive fee and costs amounts. If the tenant is unable to pay all amounts due at once, we can arrange for a payment plan with a Stipulation for Entry of Judgment. If the tenant fails to meet the terms of the payment plan, we can enter the judgment and issue the Writ of Possession. It is wise to memorialize any agreement within the current case in order to make sure the agreement is enforceable.

What is an Order to Post?
The Summons & Complaint must be served on the defendants as individuals in order for a judgment to issue against them. This is a requirement of due process. If the process server has difficulty serving the tenant with the Summons & Complaint, (either personally or by substituted service), an alternate service method is posting and mailing, which requires a Court Order. An Order to Post is an order signed by the

Kimball, Tirey & St. John LLP © 1997-2026

judge allowing the process servers to serve the unlawful detainer lawsuit by attaching a copy to the front entry way of the property and mailing a copy certified mail. Before the judge will sign the order, the process server is required to submit a declaration of the number of attempts of personal service, requiring three different attempts on three different days, with both morning and afternoon/evening attempts.

What is a Prejudgment Claim?

When an unlawful detainer lawsuit is filed in California, every adult occupying a property has the right to be heard in court. This is true even if the person is not a named, nor an authorized occupant, and even if the person is unknown to the landlord.

If an adult occupies the premises and was not named in the unlawful detainer lawsuit, that person can delay the lockout by filing a "Third-Party Claim of Right to Possession," otherwise known as an *Arrieta Claim*, before the lockout.

A last-minute third-party claim can be avoided by serving a "Prejudgment Claim of Right of Possession" form. It is served when the unlawful detainer Complaint is served. A Prejudgment Claim of Right of Possession form alerts all unnamed occupants of the property that an eviction action has been filed, and that they have the right to be heard and defend against the eviction. An unnamed occupant who wants to fight the eviction must complete the Prejudgment Claim form and file it with the court. Unnamed occupants rarely file a Prejudgment Claim form because if they do, they will automatically be named as an additional defendant in the unlawful detainer lawsuit. If a Prejudgment Claim of Possession has been served, and the unnamed occupants do not complete and file the Prejudgment Claim form with the court, the unnamed occupants lose their rights in the property because they will also be defaulted and the ultimate judgment would include all unknown occupants.

If a Prejudgment Claim form is not served, and if an unknown occupant files a last-minute Third-Party Claim Right of Possession, the lockout will not occur as scheduled. Instead, the court will set a hearing to be held in approximately three to four weeks. At the hearing, the court will determine whether the claimant should have been named as a party to the unlawful detainer action.

At the hearing, if the claimant is found to be legitimate, the court could require the landlord to start over again with the eviction process, requiring the claimant be named as an additional defendant. If the claim is denied, the Sheriff will continue with the lockout.

Filing a Prejudgment Claim can delay the eviction process by up to five days, but only if all of the named defendants are personally served with the Complaint. This is because prejudgment claimants have ten days to respond, whereas personally served named defendants only have five days to respond. A Prejudgment Claim will not delay the eviction process if one or more of the named defendants cannot be personally served and are instead served by subservice or posting and mailing.

What is a Default Judgment?

A Default Judgment is a judgment entered when none of the defendants (tenants) have filed a response to the Complaint. Initially we will request a Judgment for Possession only. This judgment can be rendered by the Court Clerk and expedites the eviction process. Later, if you request us to do so, we will follow up with a request for a Money Judgment for the majority, if not all, the amounts owed through the lockout date. This is also required because there can only be one Writ issued at a time and we will seek the Writ of Possession, granting possession, thereafter a Writ of Execution to seek the collection of the money, if you pursue a money judgment.

Kimball, Tirey & St. John LLP © 1997-2026

What is an Answer?
An Answer is one type of responsive pleading and what the defendant may file to contest the case. If an Answer is filed, it identifies the defendant's defenses. If an Answer is filed, a trial will be held to decide the case. If an Answer is filed, we will notify you and send a copy of it to you. The Answer tells the landlord what the tenant may argue at trial and is helpful to prepare a response.

What is a Writ?
A Writ of Possession is an order from the court to the Sheriff requiring the Sheriff to return possession of the property to the landlord. A Writ of Execution is the lawful order the Sheriff will use to attempt to collect on a money judgment. Only one Writ may be issued at a time. Writs are good for 180 days and thereafter go stale and a new Writ will be needed.

When does the lockout occur?
The Sheriff will post a copy of the Writ of Possession and a Notice of Eviction on the door of the property and return six or more days later to remove anyone still at the property. The date of the lockout will depend on the number of deputies handling lockouts and how many lockouts the Sheriff currently has. It will be no earlier than six days after posting but often happens after the sixth day.

Can I enter the unit if I suspect the tenants have moved out?
If your lease gives you the right to enter the premises, follow the procedures specified in the lease (e.g., by providing notice of intent to enter) before entering the property to check.

What is a Money Judgment?
A Money Judgment is a Court Order, awarding money in favor of one party (e.g., the landlord) and against another (e.g., the tenant). Generally, in an unlawful detainer action, the Money Judgment will award the landlord the amount specified in the notices, plus the daily rental value after expiration of the notices through the earlier of (1) the date of the judgment or (2) the date possession of the property is returned to the landlord, plus court costs. If you have a Rental Agreement/Lease that provides for attorney's fees, you can also request an award of attorney's fees that is normally based upon a sliding scale the court uses to determine how much to award in fees. The higher the rental value award, the higher the attorney's fees. A Money Judgment is good for at least 10 years, will be reported on the defendant's credit report, and carries 10 percent interest until paid in full. There have been some changes to some types of money judgments that may provide less interest and are only renewable once. Check with your attorney for additional information.

What is a Stipulation for Judgment?
A Stipulation for Judgment is the legal name for an agreement is a way that the parties to the lawsuit can agree on the terms for a judgment without having the judge or jury decide the outcome. It often includes an agreed upon vacate date and terms for payment of any amounts owed. Once approved and signed by the court, a stipulation has the same force and effect as if the judge made the decision.

When is a case dismissed?
A case can be dismissed for various reasons during the eviction process. It may also be dismissed as an incentive to the defendants who have stipulated for Entry of Judgment. A dismissal may be with or without prejudice. Without prejudice means the lawsuit may be filed again. A dismissal with prejudice means the landlord cannot file again on the same set of facts.

How does a Bankruptcy affect my case?
When a person files a bankruptcy it creates an automatic stay of any efforts to collect on debts, which would include a case for eviction. A bankruptcy filing requires that we immediately cease any state court action including evictions, until and unless we receive specific permission from the Bankruptcy Court to continue with the process. It can also result in a requirement that rent paid by the tenant be disgorged

Kimball, Tirey & St. John LLP © 1997-2026

and paid to a trustee ("preference"). To continue an eviction the landlord must file a Motion for Relief of the Automatic Stay. It can take several weeks for the bankruptcy judge to grant the motion. See Kimball, Tirey & St. John LLP's article, "Bankruptcy – When Your Tenant Files," included in this handbook, for more information.

What is an Abstract of Judgment?
An Abstract of Judgment is a document filed in the County Recorder's office in any county where you may believe the defendant owns or will own property in the future. It creates a lien on the property which must be paid off before the property can be refinanced or sold. An Abstract of Judgment can be recorded only after a judgment has been entered.

What do I do with abandoned personal property?
You must handle abandoned personal property appropriately because it does not belong to you. If you do not follow the law you could be held liable for illegal conversion of property. See the Kimball, Tirey & St. John LLP's article, "Abandoned Personal Property – Commercial," included in this handbook, for information about abandoned personal property.

What can I use the security deposit for?
Rights and obligations regarding a commercial tenant's security deposit are governed by California Civil Code §1950.7. Those rights can be modified by appropriate lease drafting. See the Kimball, Tirey & St. John LLP's article, *The Commercial Security Deposit: Do's and Don'ts*, for information about commercial security deposits.

How can I check the status of my case?
Call or email our office and let the receptionist know you would like a status update on your case. Our legal assistants or attorneys will be happy to assist you.

Jury Waivers

Jury waivers are commonly seen in leases and other contracts. Parties often negotiate for jury waivers because jury decisions and reasoning can sometimes seem more unpredictable than decisions by trial judges. Jury trials also tend to be more expensive and longer than non-jury trials. In August 2005, the California Supreme Court ruled that some pre-dispute jury waivers are unenforceable in *Grafton Partners, L.P. v. Superior Court*.

Stipulated Agreements in Evictions

In a stipulation, the landlord and tenant agree to resolve a matter without a trial. Most judges request that the parties negotiate in the hallway immediately before trial to see if there is a last opportunity to settle the dispute without a trial. Courts appreciate when the parties resolve the action themselves without taking up valuable court time and resources.

There are two distinct types of stipulations:

- A Stipulation for Judgment – a judgment is entered immediately.
- A Stipulation for Entry of Judgment – judgment is not entered immediately but may be entered in the future if the tenant fails to comply with the agreement.

If the parties agree that the tenant will remain in possession of the property, a Stipulation for Entry of Judgment will be issued. In other cases, either type of stipulation is possible, and the choice will depend upon the parties' negotiations and their relative bargaining strengths.

Kimball, Tirey & St. John LLP © 1997-2026

A stipulation has the same force and effect as if the judge made the decision. A judge must sign a stipulation as a judgment of the court for it to be enforceable.

When to Use a Stipulation
The decision to use a stipulation is not always easy to make. There are often many factors to consider.

Advantages of Stipulations

- Some clients want to end the case quickly and prefer an amicable resolution. Avoiding the time, expense, uncertainty and anxiety of trial are strong incentives to use a stipulation.
- Settlement may produce voluntary payments and/or surrender of possession.
- There may be less risk of retaliatory property damage.
- The parties' agreement can be enforced by the court if the tenant fails to comply with the terms. Many stipulations require the tenant to pay past rent, court costs and attorney's fees according to a payment schedule. Current rent must be paid as it becomes due under the stipulation (which may provide different terms than the lease). If the tenant fails to make timely payments, the owner/manager can apply for a judgment for possession of the property and monetary damages and implement involuntary collection procedures such as wage garnishment and bank levies.
- Sometimes our clients are able to negotiate a stipulation that includes losses not normally recoverable in the unlawful detainer action. Most courts are lenient in their interpretation of the scope of stipulations, allowing additional rent and other amounts due to be part of the stipulated amount owed.
- A Stipulation for Entry of Judgment may be the only way to allow a tenant to remain in possession but still allow the landlord to recover possession quickly if the tenant breaches the agreement.
- If the case is weak, because of the case facts or application of current law, a stipulation may be the only way to gain a partial "win."

Disadvantages of Stipulations

- A landlord will incur attorney's fees to prepare a stipulation that the tenant is unwilling to reimburse. However, those fees will probably be less than fees for a trial.
- A tenant may not comply with the stipulation, requiring a landlord to enforce the judgment against the tenant involuntarily. However, a tenant's voluntary compliance is much more likely with a stipulation than with a judgment after trial.
- Some landlords are concerned that other tenants may be aware of the litigation and may be more likely to follow the same path as the defendant/tenant if they think a favorable settlement was reached with the landlord.

It's Your Decision
Stipulations have a role in unlawful detainer actions but should only be used after examination of the advantages and disadvantages in your particular case. A mutually agreeable resolution between a landlord and tenant can often have significant advantages over a judgment after trial. If it appears that the balance favors a stipulation, we will discuss this with our clients and, if agreed by the landlord, we will assist them in obtaining a stipulation.

Kimball, Tirey & St. John LLP © 1997-2026

Animals on Commercial Property

It is common for people to bring dogs and animals to businesses and other commercial property, claiming that they are service animals for the disabled.

Service Animals
A "service animal" is defined by the Americans with Disabilities Act ("ADA") as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." (Service animals may also include miniature horses). Under the ADA, service animals are allowed to accompany disabled individuals in all areas of a public accommodation where members of the public, clients, customers, patrons, or invitees are allowed to go.

What is a Public Accommodation?
The ADA defines public accommodation as a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers.

Excluding legitimate service animals from places of public accommodation can be a violation of the Americans with Disabilities Act, the Unruh Act and the Disabled Persons Act. Under the ADA, violations and/or fines of up to $55,000 may apply for a first violation and $100,000 for subsequent violations, if a lawsuit is brought by the Attorney General.

Service Animal Removal
Under the ADA, a person with a disability may be asked to remove a service animal from the premises if:

- the animal is not housebroken; or
- the animal is out of control and the animal's handler does not take effective action to control it. The service animal must always be under control of its handler, utilizing a harness, leash or other tether, unless it disrupts the service animal's work or the individual's disability prevents using the device. In that case, the service animal must be under the handler's control, through voice control, signals, or other effective means.

If there is a legitimate reason to request removal of the service animal, the person with the disability must be offered the opportunity to obtain goods and services without the animal's presence.

Allowable Inquiries
Under the ADA, if a person's disability is not obvious and it is not clear what service the animal provides, the following inquiries are allowed:

1. Is the dog a service animal required because of a disability?

2. What work or task has the service animal been trained to perform?

Inquiries about the dog's certification, training or special service animal licensing nor the person's disability should not be made. Additionally, documentation about the dog's certification, training or service animal licensing should not be required. The service animal cannot be requested to demonstrate its ability to perform the task it is assigned to do.

Fees and Surcharges
The California Disabled Persons Act (Cal. Civil Code §54.3) protects those people using service animals, guide dogs, and signal dogs from additional fees for utilizing their assistive animal. An individual with a

Kimball, Tirey & St. John LLP © 1997-2026

disability should not be required to pay a fee or surcharge to utilize a service animal, even if people accompanied by pets are required to pay these fees. It is important to distinguish that service animals are NOT pets. If a service animal causes damage to property, the person responsible for the service animal may be charged for that damage ONLY if the accommodation normally charges individuals without service animals for similar damages.

Support Animals

Support animals, also known as emotional support, comfort animals, and therapy animals are not "service animals" and the ADA rules stated above for service animals do not apply to them.

While they are not given protection under the ADA, support animals may, however, be provided protection under the California Fair Employment and Housing Act, if the animal is being used by an employee in a commercial setting, FEHA requires businesses with five or more employees to provide reasonable accommodation for individuals with a physical or mental disability to apply for jobs and to perform the essential functions of their jobs unless it would cause an undue hardship. Employers are required to initiate and engage in a timely, good faith, interactive process with an employee or applicant to determine effective reasonable accommodation for a disability or known medical condition. If your commercial tenant is requesting you to allow an employee to have an assistive animal onsite, we urge you to contact competent counsel to advise you as to the best course of action.

It is important for business and commercial property owners to be mindful of these different definitions and have knowledge of your requirements under the various laws. Attorneys at Kimball, Tirey & St. John LLP, are available to help you navigate this minefield of potential liability.

Covenant of Quiet Enjoyment

Every California lease includes an implied covenant of quiet enjoyment. California Civil Code §1927. This covenant protects the tenant from any act or omission by the landlord (or a person claiming through the landlord) that interferes with the tenant's use and enjoyment of the property. Many commercial leases also contain an express covenant of quiet enjoyment. The right of quiet enjoyment can be waived by commercial tenants.

Some acts or omissions that are a breach of quiet enjoyment may also be breaches of the warranty of habitability. Commercial tenants are not protected by a warranty of habitability.

In a commercial tenancy, breach of quiet enjoyment claims, and disputes can arise when two incongruous business are next to each other. For example, a dance studio or gym with loud music, or business that generates odors (a nail salon or barbeque restaurant) is placed next to a quiet office space. To avoid claims of breach of quiet enjoyment, before signing a lease, landlords should carefully consider a prospective tenant's proposed use and how that may impact surrounding tenants.

What happens when a neighboring tenant substantially interferes with the tenant's right to use and enjoy the premises? This may constitute a breach of the lease and does not need to amount to a constructive eviction. If the acts (or omission) of the landlord or neighboring tenant force a tenant to move out, then the acts may support a claim for breach of quiet enjoyment.

In order for a tenant to establish a breach of the covenant of quiet enjoyment resulting from conduct in connection with a rental agreement, the landlord's act or omission must substantially interfere with a tenant's right to use and enjoy a material part of the premises for the purposes contemplated by the tenancy. On the other hand, "minor inconveniences and annoyances are not actionable."

Kimball, Tirey & St. John LLP © 1997-2026

The act or omission creating the breach of warranty of quiet enjoyment must be by the landlord, the landlord's agent, someone claiming under the landlord (e.g., another tenant in the same property), or by a third person under the landlord's control. Landlords are not responsible for nuisance activities:

- on neighboring premises not owned or controlled by the landlord; or
- of which they are unaware.

For commercial leases, the covenant to pay rent is independent, which means that even if there is a disruption, the tenant must still timely pay the rent in full.

Rules and regulations can help control tenant behavior and therefore avoid quiet enjoyment claims. When a dispute arises, landlords can enforce rules by serving a Notice to Perform Covenant or Quit to the disrupting tenant. Landlords may also want to document their efforts to enforce the rules and protect the quiet enjoyment of other tenants by keeping a copy of the notices or making a log.

The best way to avoid potential disputes is by taking preventative measures before leasing and having an established policy or plan for handling tenant complaints. Careful analysis of the tenant's planned use for the premises should be made, keeping in nearby tenants in mind, to create a harmonious tenant mix.

When Your Tenant Files for Bankruptcy

Bankruptcy filings place a hold evictions and all other debt collection activities. Under our Federal Bankruptcy laws, when a person files bankruptcy, no new notices or demands may be served and all state court procedures, including unlawful detainers, must immediately stop. This is referred to as an "automatic stay." The automatic stay gives the Bankruptcy Court Trustee time to take control of the bankrupt estate's assets, which includes the lease or rental agreement(s). Eviction delay firms, sophisticated tenants and our legal system have allowed bankruptcy to cause major delays in the eviction process. Therefore, it is important to understand the process to minimize delays and maximize a landlord's collections.

Motion for Relief from Automatic Stay
Court permission is required to continue an eviction after a bankruptcy has been filed. A "Motion for Relief from Automatic Stay" must be filed with the Federal Bankruptcy Court. The time it takes to receive an Order granting relief from the automatic stay varies from judge to judge and from court to court—anywhere from a few days to six weeks.

In some cases, tenants will file multiple bankruptcy actions in the same case to cause further delays. In these cases, some Bankruptcy Court judges grant an Order to be effective for six months to prevent future filings from delaying the eviction process.

Types of Bankruptcy
Individual tenants file bankruptcy petitions under either Chapter 7 or Chapter 13.

1. A Chapter 7 bankruptcy is a liquidation bankruptcy. Generally, the debtor's assets are sold, and the proceeds disbursed to creditors.

2. A Chapter 13 filing, otherwise known as a "wage earners plan," restructures the tenant's debts to be paid off through an approved payment schedule.

Business entities file bankruptcy petitions under Chapter 7 or Chapter 11.

1. A Chapter 7 bankruptcy is a liquidation bankruptcy.

Kimball, Tirey & St. John LLP © 1997-2026

2. A Chapter 11 is like a Chapter 13. It reorganizes business debt through a payment plan.

    - Some Chapter 11 cases fail in their goal to reorganize, resulting in conversion to a Chapter 7 and discharge.

Whether the bankruptcy filing was under Chapter 7, 11, or 13, the landlord is entitled to rent accrued after the filing up to the time the tenant vacates. This rent is considered an "administrative expense" that must be given a high priority of payment. A landlord may also be entitled to recover rent or other amounts that became due before the bankruptcy was filed. However, landlords must file a timely claim with the Bankruptcy Court to ensure payment. We can assist landlords by filing claims with the Bankruptcy Court and obtaining relief from stay to proceed with evictions if the post-petition rent is not paid.

It is also very important to serve a notice to pay rent or quit when it is legally correct to do so, as under bankruptcy law, a notice to pay rent or quit, electing forfeiture, that expires before the petition is filed terminates the lease, entitling the landlord to quick relief from stay.

A trustee's right to assume or reject a commercial lease must be exercised within 120 days from the date the bankruptcy petition is filed, or upon confirmation of a reorganization plan, whichever occurs first. The 120-day period can be extended for cause by the court for an additional 90 days. Any further extension requires the landlord's consent.

The trustee must perform non-monetary covenants required under the lease unless the covenant by its nature is impossible to perform (such as a "go dark" provision), in which event the landlord is entitled to damages caused by the breach.

The law on preference payments continues to evolve. If the tenant/debtor is insolvent when the payment is made to a creditor (such as the landlord), bankruptcy law may allow the trustee to demand that the creditor return that payment in certain situations. Current law allows the landlord to retain the payment (rent) if the payment

1. was made to satisfy a debt incurred in the ordinary course of business between the landlord and tenant/debtor,

2. was made in the ordinary course of the debtor and landlord's business or

3. was made according to ordinary business terms between the parties. Before the last round of revisions to the bankruptcy code, the law used to require expert testimony regarding what was a business standard for payment of rental. Now the issue seems to be what ordinary business between the parties is. For example, if the rent is due on the first, but ordinarily not paid by the tenant until the 20th, that might not be in line with the industry standard. But if it is the customary business practice between the parties, the landlord may be able to retain the payment.

Proofs of claim must be filed in a timely manner (i.e., generally either 70 days after a voluntary Chapter 7, 12 or 13 case is filed, or 90 days after the date first set for the §341(a) meeting of creditors for all other cases). A proof of claim should always be filed to protect the landlord's claim as a secured creditor, otherwise the security deposit may be "clawed back" by the court-appointed trustee.

Unfortunately, many tenants who use the bankruptcy action as a delaying tactic dismiss their bankruptcy action as soon as the time delay has occurred. This abuse of a federal right may circumvent

Kimball, Tirey & St. John LLP © 1997-2026

the tenant's financial liability, which is its desired purpose. However, after a bankruptcy dismissal, the landlord may pursue remedies in the State Court.

Bankruptcy law is complex. When a tenant files for bankruptcy, seek legal advice.

Mechanic's Liens

An unpaid contractor or supplier who furnishes labor or materials to improve California property can record a mechanic's lien against the property. Property can be subject to a mechanic's lien even if the property owner did not personally enter into the agreement. Sometimes a property owner may be liable to a contractor who has dealt with a property manager or tenant. To avoid these involuntary liens, property owners and managers should be familiar with mechanics' lien law.

Property is subject to a mechanic's lien if the owner participates in the work, either directly or indirectly. Examples of indirect authorization would be:

- An owner who entered into a lease that requires specific lease improvements by the tenant or has a percentage rent clause;
- The owner's property manager made the agreement with the contractor; or
- The owner learns of the work and does not advise the contractor, material provider or laborers that he is not responsible through a "Notice of Non-Responsibility."

How Can an Owner Avoid Paying Twice?
Sometimes a general contractor fails to pay subcontractors or suppliers, even if the general contractor has been paid. The subcontractors and suppliers can file mechanics' liens against the property if they haven't been paid, even if the amount in dispute has previously been paid to the general contractor. An owner can protect himself against having to pay the same bill twice through the following:

- *Protection through a "Notice of Non-Responsibility."* An owner who did not order the services or materials can prevent a mechanic's lien from being attached to his interest in the property by posting a "Notice of Non-Responsibility." It states that the owner will not be responsible for any claims that arise because of the work. Notices of Non-Responsibility are technical, and all the requirements of the law must be followed for them to be effective. A notice must:
    - Be in a particular form that is signed under penalty of perjury;
    - Describe the property and the nature of the interest of the person giving the notice;
    - Identify the person who ordered the work; and
    - Be posted on the property in a conspicuous place within 10 days of the date that the owner knew, or had reason to know, of the work. This knowledge may come from the receipt of a "20-Day Notice" from a contractor or supplier or by actually observing people working at the property.
    - A verified copy must also be recorded with the county recorder during that same ten-day period.
- *Lien releases*. Requiring the contractor obtain lien releases signed by the contractor and each subcontractor and material supplier, paying the contractor only when s/he provides the lien releases.
- *A payment bond*. Requiring the contractor to obtain a payment bond. A payment bond is another source through which an unpaid subcontractor or supplier can seek payment rather

Kimball, Tirey & St. John LLP © 1997-2026

than through a mechanic's lien on the property. The lease can require a bond, or the owner can withhold consent to the improvement unless the bond is posted or agreed to be posted upon the owner's demand.

- *Joint payments.* Making payments to the general contractor in the form of a joint check to the general contractor and the subcontractors or suppliers providing the labor or materials. Joint checks give the subcontractors and material suppliers an opportunity to negotiate with the contractor regarding payment in exchange for their signature on the check.
- *Fund control.* Requiring that a fund control company be used to disburse payments. A fund control company is a licensed escrow company that specializes in handling funds for construction jobs. The fund control company receives the funds, and then makes payments to the general contractor, subcontractors and suppliers.

If a Mechanic's Lien Has Been Filed

If a mechanic's lien has been filed, a property owner may want to consult with an attorney to develop an action plan. Possible actions may include:

- *Negotiating with the contractor*.
- *Complaining to the Contractor's State License Board*. A person harmed by a contractor can file a complaint with the Contractor's State License Board, which has the authority to investigate and discipline a contractor for the contractor's wrongful actions. The Contractor's State License Board may not always succeed in obtaining restitution for an injured party; sometimes a lawsuit must be filed by the owner against the contractor.
- *Obtaining a Bond to Release the Lien*. The cloud on a title created by a mechanic's lien can be avoided by purchasing a surety bond equal to 1.5 times the mechanic's lien amount. The bonding company agrees to guarantee payment. A payment bond allows the owner to sell or encumber the property without first having to satisfy the mechanic's lien. A standard provision in commercial leases, such as those utilized by the American Industrial Real Estate Association, requires the tenant to post the bond if a mechanic's lien is recorded, usually in 150% of the amount of the lien.
- *Litigating the Dispute*. A contractor must file a lawsuit to foreclose on the mechanic's lien within 90 days after the lien is recorded. If the contractor fails to sue on time, the lien right is lost. If the contractor files a timely lawsuit, the property owner may file an answer and litigate the lien's validity. It may also be advisable for the owner to cross-complaint against the contractor and/or the contractor's bonding company.

Contractors must maintain a $25,000 bond with the California State Contractor's License Board. Owners injured or defrauded as the result of a contractor's violation of the Business and Professions Code may sue the Contractor's bonding company to require payment of the bond to the owner. Status of the bond may be confirmed through the Board before authorizing the work of improvement.

While the law is complex, mechanics' liens can be avoided through careful management. Lease hold harmless and indemnity provisions can be critical. When faced with a mechanics' lien issue and in doubt as to the best course of action, seek legal advice.

Assignment and Subletting for California Commercial Landlords

California Civil Code §§1995.010–1995.340 control commercial lease transfers. Below is a summary of California law regarding commercial lease transfers:

Kimball, Tirey & St. John LLP © 1997-2026

Tenant's Right to Transfer	Landlord's Right to Restrict Transfer
If a lease is doesn't expressly prohibit a transfer, the tenant may transfer its lease interest without landlord consent. CC §1995.210(b).	The lease may restrict (CC §1995.210(a)), or absolutely prohibit transfer (CC §1995.230).
If the lease requires landlord consent, but doesn't provide a standard for consent, the landlord must act reasonably in withholding consent. CC §§1995.260, 1995.270(b).	A transfer restriction may condition landlord consent on any express standard or condition (reasonable or unreasonable), including the landlord's right to receive all or part of the consideration that a tenant would otherwise receive from the transferee in excess of the rent under the lease. CC §1995.240.
The landlord's failure to respond in writing within a reasonable time to a written request is an unreasonable withholding of consent. CC §1995.260.	
If a lease unreasonably restricts the tenant's ability to transfer, the landlord cannot use the remedy contained in CC §1951.4 (i.e., continue the lease in effect without terminating the tenant's possession of the premises and collect rent as it comes due under the lease) if the tenant defaults. However, the CC §1951.4 remedy is rarely utilized by landlords.	

Most well-drafted leases require the tenant to obtain the landlord's prior written consent before transferring its interest under the lease.

Civil Code §1995.020(e) defines a "transfer" as "an assignment, sublease, or other voluntary or involuntary transfer or encumbrance of all or part of a tenant's interest in the lease." A well-drafted lease may expand this definition to include a change in ownership or voting control of an entity tenant as a transfer, requiring landlord consent.

Many well-drafted leases will include (under CC §1995.240), a list of express standards or conditions to be considered by the landlord when the tenant requests landlord consent for a transfer, such as:

- The financial strength of the transferee (e.g., the financial net worth of the proposed transferee may not be less than the tenant's net worth);

Kimball, Tirey & St. John LLP © 1997-2026

- Whether the percentage rent the landlord may expect to receive from the transferee is less than the percentage rent the landlord expects to receive from the original tenant;
- The business experience of the proposed transferee;
- Whether the proposed transferee intends to use the premises for the same type of use and the original tenant; and
- Whether the original tenant fully complies with the lease when the landlord's consent is requested.

A well-drafted lease will also specify the procedure to request landlord consent. It may specify payment of a fee to the landlord (to compensate the landlord for the time, costs and attorneys' fees the landlord may incur to process the request) and will identify specific information to be provided to the landlord (such as details regarding the transfer, the finances, experience, and proposed use of the proposed transferee).

Estoppel Certificates

What Are Estoppel Certificates?
When a leased property is sold or refinanced, the buyer or lender will investigate the lease status.

The buyer or lender will request lease information from the seller or borrower. A cautious buyer or lender may also want to verify that:

- the information provided by the seller/borrower is correct, and
- there are no disputes in the landlord/tenant relationship.

An estoppel certificate provides this verification. An estoppel certificate is a statement signed by a tenant that gives information about the lease and its status.

Different Estoppel Certificate Forms
There are several commonly used estoppel certificate forms. The California Association of Realtors, the California Apartment Association, and the American Industrial Real Estate Association all have form estoppel certificates available. Many lenders require their own specific estoppel certificate forms.

Contents of Estoppel Certificates
Estoppel certificate forms will identify primary lease terms such as:

- landlord name
- tenant name
- property address
- lease start and end date
- monthly rent
- security deposit amount

Estoppel certificates will also typically contain representations and warranties from the tenant that the rental agreement/lease is in full force and effect, that the tenant hasn't paid rent more than 30 days in advance, that the tenant has no claims or offsets against the landlord, and that there are not disputes between the landlord and tenant.

Kimball, Tirey & St. John LLP © 1997-2026

Estoppel Certificates Are Binding on Tenants
Tenants will be bound by the information they provide in an estoppel certificate. For example, if a tenant specifies a $1,000 security deposit in an estoppel certificate, and several years later claims a $5,000 security deposit was paid, the estoppel certificate statement will be binding on the tenant. Estoppel certificates provide protection to buyers and lenders.

Helpful Suggestions
Signed Estoppel Certificates Should Have No Blanks. Many estoppel certificates have blanks to be completed by the tenant. Each blank should be completed or the words "none" or "not applicable" inserted as appropriate. To avoid problems, the landlord, buyer or lender should ensure that all blanks are filled in before the estoppel certificate is signed.

Landlords Should Have Provisions in their Leases/Rental Agreements Requiring Tenants to Provide Estoppel Certificates. Proactive landlords include provisions in their lease/rental agreement requiring their tenant to sign and return an estoppel certificate within a short period of time (e.g., 10 days).

Towing: Removing Unauthorized Vehicles from Private Property

Unauthorized and abandoned vehicles parked on private property are a common problem for property owners and their agents. California Vehicle Code §22658 authorizes property owners and managers to remove unauthorized or abandoned vehicles from private property provided specific conditions exist and certain procedures are followed.

A property owner or manager may tow an unauthorized or abandoned vehicle parked on private property to the nearest public garage under any of the following circumstances:

- a sign is posted, in clear view, at each entrance to the property. The sign must state that public parking is prohibited, that vehicles will be towed at the owner's expense and must contain the telephone number of the local traffic law enforcement agency. The sign must be at least 17" by 22"and lettering on the sign must be at least one inch in height. The sign may also indicate that a citation may be issued for the violation; or
- the vehicle has been issued a notice of parking violation, and at least 96 hours have passed since the notice was issued; or
- the vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the property owner or agent has notified the local traffic law enforcement agency and 24 hours have passed since that notification; or
- the vehicle is parked on a lot or parcel that has been improved with a single-family residence.

The tow truck operator must obtain written authorization for the tow identifying:

- the vehicle (make, model, VIN and license plate number);
- the person authorizing the tow (name, signature, job title, residential or business address and working telephone number);
- the grounds for removal;
- the time the vehicle was first observed parked illegally; and
- the time the authorization to tow was given.

Kimball, Tirey & St. John LLP © 1997-2026

The authorization must be provided upon request to the vehicle owner, although the tow truck operator will not provide the vehicle owner with the identification of the person who authorized the tow.

There are specific requirements for towing authorizations for residential units. If you need information about these requirements, contact your attorney or review California Vehicle Code §§22658.

The vehicle's owner or his or her agent can stop a tow in process by immediately moving the vehicle to a lawful location. The tow company can charge the owner of the vehicle ½ of the normal towing fee if the vehicle has already been coupled to the tow truck or lifted off the ground, but not yet removed from the property.

An owner or manager may not enter into an agreement with a tow company granting general authorization to remove vehicles from the property at the tow company's discretion. (This is known as "patrol" or "contract" towing.) The only exception is that patrol or contract towing is allowed when a vehicle is unlawfully parked within 15 feet of a fire hydrant, in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property, and only after taking a photograph of the violation.

Two notifications of the tow must be given.
The property owner or manager authorizing the tow must notify the local traffic law enforcement agency of the tow within one hour after authorizing the tow. The notification should be by telephone, or if that is impractical, by the most expeditious means available.

- After a vehicle has been towed from the property, the tow truck operator removing the vehicle must immediately give written notice of the removal. The notice must identify the vehicle, state the grounds for removal, the mileage on the vehicle at the time of removal and the vehicle's new location. If the name and address of the registered or legal owner of the vehicle is known or can be determined, (from the property owner, the vehicle owner, DMV records or otherwise), the notice must be given to the registered and legal owner. If the identity of the owner of the vehicle cannot be determined, or for any other reason the tow truck operator cannot give notice to the vehicle owner, and the vehicle is not returned to the owner within 120 hours, the notice must be sent to the Department of Justice, Stolen Vehicle System. If the vehicle is stored in a public garage, a copy of the notice must also be given to the garage's proprietor.

<u>One Hour Delay</u>. If a property owner allows parking, and does not charge a fee, the property owner is not allowed to tow until the vehicle has been parked on the property for at least one hour (Vehicle Code §22953). This rule does not apply to residential property, or to property designated for parking at a hotel or motel where the parking stalls or spaces are clearly marked for a specific room. This rule also does not apply if a vehicle is illegally parked within 15 feet of a fire hydrant, in a fire lane, in a manner that interferes with an entrance to, or an exit from, the private property, or in a parking space or stall legally designated for disabled persons.

Improper removal of a vehicle from private property may subject the property owner and/or manager to civil and criminal liability. A property owner or manager may be liable for two to four times the storage or towing charges for failure to comply with applicable requirements (the amount depends on the nature of the violation). A property owner may also be liable for vehicle damage if caused by any intentional or negligent act of any person causing the removal, or removing, the vehicle. However, the tow company will be solely liable for any damage to the vehicle that occurs during transit from the property to the storage facility.

Kimball, Tirey & St. John LLP © 1997-2026

By meeting the requirements of the California Vehicle Code §22658 and §22853(c) described above, private property owners and managers can control unauthorized or abandoned vehicles on their property while limiting exposure to liability. Because city and counties may have ordinances that contain additional requirements, local ordinances should also be researched and followed.

CPI Increases

Some commercial leases tie rent increases to changes in the CPI. The CPI is a widely used indicator of inflation in the United States. CPI figures are published by the U.S. Bureau of Labor Statistics. The CPI website is at https://www.bls.gov/cpi/.

The Bureau of Labor Statistics publishes CPIs for two population groups:

1. the CPI-U, a CPI for All Urban Consumers (CPI-U) which covers approximately 89 percent of the total population and

2. the CPI-W, a CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 28 percent of the total population.

Landlords typically use CPI-U figures (rather than CPI-W figures).

CPI figures are published for four regions in California:

- Los Angeles-Long Beach-Anaheim includes Los Angeles and Orange counties. It is published monthly. See https://data.bls.gov/timeseries/CUURS49ASA0;
- Riverside-San Bernardino-Ontario includes Riverside and San Bernardino counties. It is published every two months, in January, March, May, July, September, and November. See https://data.bls.gov/timeseries/CUURS49CSA0; and
- San Diego-Carlsbad includes San Diego County. It is published every two months, in January, March, May, July, September, and November. See https://data.bls.gov/timeseries/CUURS49ESA0; and
- San Francisco-Oakland-Hayward (includes Alameda, Contra Costa, Marin, San Francisco, and San Mateo counties) is published every two months, in February, April, June, August, October, and December. See https://data.bls.gov/timeseries/CUURS49BSA0.

Other CPI figures used by California landlords are:

- the West Region CPI-U (published monthly) See https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm; and
- the U.S. City Average CPI-U (published monthly) See https://www.bls.gov/regions/west/data/consumerpriceindex_us_table.pdf.

Below is a sample lease provision to adjust rent based on CPI changes:

*On _____, Base Rent will be adjusted by the change in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for: CPI U (All Urban Consumers), for ☐ Los Angeles-Long Beach-Anaheim ☐ Riverside-San Bernardino-Ontario ☐ San Francisco-Oakland-San Jose ☐ San Diego ☐ West Region ☐U.S. City Average, All Items (1982-1984 = 100) ("**CPI**".)*

To calculate the adjusted Base Rent, the initial Base Rent of $ will be multiplied by a fraction. The denominator (bottom portion) will be the CPI ☐ published most recently before the Commencement Date ☐ that is months before the Commencement Date ☐ of (month and year). The

Kimball, Tirey & St. John LLP © 1997-2026

numerator (top portion) of the fraction will be the CPI ☐ published most recently before the adjustment date ☐ that is months before the adjustment date ☐ in the month of before the adjustment date. The calculated amount will constitute the new monthly Base Rent.

For example, purposes, assume that:

- *the initial Base Rent is $1,000*;
- *the CPI of the calendar month for the numerator month is 180.2; and*
- *the CPI of the calendar month for the denominator month is 176.4.*

The adjusted Base Rent is calculated as follows:

$1,000 x 180.2/176.4 = $1021.54.

The provision should be customized to fit the specifics of the situation. Capitalized terminology should be edited to match the applicable provisions in the lease.

CPI figures are available about two weeks after the end of the measurement period.

SECTION FOUR: POST-TENANCY ISSUES

Abandonment of Personal Property

Sometimes commercial tenants leave personal property behind when they vacate. There may be a box of trash or a warehouse full of belongings. To avoid potential claims that the landlord wrongfully disposed of the abandoned personal property, commercial landlords should follow the steps described in California Civil Code §1993 et. seq.

The process described in California Civil Code §1993 et. seq. is not mandatory. Commercial landlords can use other reasonable means to dispose of the abandoned property. However, the procedure described in California Civil Code §1993 et. seq. establishes a "safe harbor."

How a landlord handles the remaining personal property will depend on the value of the abandoned personal property, whether a Sheriff's lockout occurred, and whether the premises are residential or commercial.

California Civil Code §1993 et. seq. requires that the commercial landlord serve a notice to the former tenant and anyone else they reasonably believe has an ownership interest in the property. The notice must state they can retrieve the property within 18 days from the date the notice is mailed, or 15 days if hand delivered. The necessary forms are included in the back of this book.

If the property is not retrieved within the prescribed time frame, depending upon the value of the property left behind, the landlord may either hold a public auction or dispose of it in another manner. If a Sheriff's lockout has occurred, it is not necessary to serve a notice on the tenant; the back of the writ of possession that will be attached to the premises by the Sheriff serves the same function as the notice.

If the tenant or owner claims the property within or before the deadline, the landlord can condition return of the property on receipt of reasonable storage costs, beginning when the tenant vacates the commercial space. The landlord cannot require that the tenant pay any other amounts (such as rents due from a time period before the tenant vacated the premises, nor future rent).

Therefore, the first requirement is to determine who the landlord "reasonably believes" may have an ownership interest in the abandoned property. "Reasonable belief" is the actual knowledge or belief a prudent person would have without making an investigation. However, if the landlord has

Kimball, Tirey & St. John LLP © 1997-2026

specific information indicating an investigation would more probably than not reveal pertinent information, and the cost of an investigation would be reasonable in relation to the probable value of the property involved, then "reasonable belief" includes the actual knowledge or belief a prudent person would have if an investigation were made. (For example, a commercial landlord discovers that some of the furniture abandoned by the former tenant has a sticker on it from "XYZ Furniture Rentals," the landlord should make an investigation by contacting "XYZ" to determine if they have an ownership interest entitling them to a notice of abandonment.) Unless the landlord has reason to believe the personal property is encumbered, the landlord isn't obligated to search UCC-1 records.

A lienholder may contact the landlord to request access to the property to allow the lienholder to pick up the items in which it has a security interest. While a landlord has no obligation to allow a lienholder access, many landlords will provide access to lienholder after the landlord has verified that the lienholder has a valid lien (generally by reviewing the lienholder's UCC-1).

The landlord can require that the lienholder pay the reasonable storage value, unless the landlord has waived those rights. (The landlord should look for a waiver either in the lease, or in a document signed by the landlord at about the time the lienholder's UCC-1 was recorded.) If the landlord has not waived the right to charge the reasonable storage value, it can be charged from the time the notice of abandonment is sent. It is unclear whether it can be charged for an even longer period of time (i.e., from the date the landlord recovered possession of the premises).

The notice served by the landlord must describe the abandoned property. A detailed list of the abandoned property is advisable as a landlord is shielded from liability only for listed items, unless the items not described were in a container locked or otherwise tied to deter immediate access to its contents. It is often recommended to attach photographs of abandoned personal property to the notice.

Commercial landlords must assess the total value of the abandoned personal property. If it is worth less than $2,500, or an amount equal to one month's rent for the premises occupied by the former tenant, (whichever is greater), the property may be kept, sold, or destroyed if the former tenant fails to reclaim it within 18 days from the date the notice of abandonment was served to the former tenant. If the abandoned property is worth $2,500, or more than an amount equal to one month's rent for the premises occupied by the former tenant, whichever is greater, then the property must be sold through public auction.

To avoid potential liability for conversion, it is important for the landlord to properly assess the value. When the value is not known, a landlord can request an estimate from an auctioneer or other knowledgeable person. Conservative landlords auction property unless they are certain that the value is below the threshold value.

The language of California Civil Code §1993.07 references "one month's rent." This language could create uncertainty in triple net leases, as it isn't clear whether" one month's rent" refers to only base rent or would also include additional rent. A cautious landlord would use only base rent to calculate the threshold, although if the lease has an "additional rents" clause, arguably both base rent and additional rent would determine the value limit.

Sometimes business records with private customer information (such as medical records or financial records) are abandoned. Until recently, the landlord's obligations regarding these abandoned business records were not clear; should the landlord contact the customer (which could be very cumbersome procedure), destroy the records, or auction them off? California law now provides the tenant is the presumed owner of the business records. Therefore, abandoned business records should be listed on the notice of abandonment given to the tenant.

Kimball, Tirey & St. John LLP © 1997-2026

The law defined "business records" as any material (regardless of the physical form), on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed or electromagnetically transmitted (but excluding any publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address or telephone number). If the tenant does not claim the business records containing the private information, the landlord must destroy the records in a secure manner.

If the personal property left behind is an abandoned vehicle, the California Vehicle Code should be followed. If certain steps are followed, the landlord can contact a towing company who will tow the abandoned vehicle and contact the owner. If the vehicle owner does not claim the vehicle, it can be sold to satisfy the towing and storage costs. Landlords should use a licensed towing company familiar with the law regarding abandoned vehicles. For more information about towing vehicles, see the section above, "Towing; Removing Unauthorized Vehicles from Private Property."

Commercial Tenant Improvements: Who Owns What?

When a tenant leases commercial space, it may be in "shell" condition – an empty space without improvements, waiting for the tenant to customize to meet the tenant's unique business needs.

When the tenancy ends, the landlord and tenant may have different expectations regarding the required condition of the premises. The tenant may intend to remove all the improvements the tenant made. Alternatively, the tenant may intend to remove none of the improvements. Unless the parties specifically address this issue in their lease, the tenant and landlord may have different expectations. The law establishes "default" rules that will apply to fixtures in the absence of a specific agreement by the landlord and tenant.

Fixtures Defined

Generally, fixtures are items attached to real property, so they become a part of the property. Examples of fixtures are hot water heaters, air conditioners, sinks, lighting and built-in furniture.

When determining whether an item is a fixture, California courts will consider:

1. How the item is affixed to the property (California Civil Code §660 reads, "A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or embedded in it, as in the case of walls; or permanently resting on it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.");

2. The item's adaptability to the use and purpose for which the property is used;

3. The intention of the party attaching the item (When the improvement is made by a tenant, the court will presume that the tenant intended to retain the ability to remove the item);

4. The difficulty of removal of the item;

5. The damage caused by removal; and

6. The relationship between the parties.

Tenant Removal of Fixtures

California Civil Code §1019 allows a tenant to remove from the leased premises "anything affixed [to it] for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without

Kimball, Tirey & St. John LLP © 1997-2026

injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises," if the tenant removes those items during the lease term.

If fixtures are not removed before the landlord regains possession of the property, the fixtures will become the landlord's property.

The courts' presumptions generally favor the tenant when determining if an item has "become an integral part of the premises" and whether "removal can be effected without injury to the premises." Most items can be removed without permanently damaging the premises (electrical lines and pipes can be capped, holes in drywall can be patched, etc.). Removal is prohibited only when the injury to the leased premises caused by a fixture's removal cannot be repaired, or money damages would not compensate the landlord for the loss.

When applying these rules, the courts balance the equities. To develop business on leased premises, a tenant must be able to improve the property and remove his or her improvements when the tenancy terminates. On the other hand, a landlord is entitled to the return of the premises at the end of the lease term in substantially the same condition that it was at the beginning of the tenancy, subject to depreciation for the reasonable use of the property by the tenant.

Summary
Generally, in California, tenants may remove improvements they have made to the property, if they do so before they return possession of the property to the landlord. When removing a fixture, the tenant must repair or compensate the landlord to return the premises to its pre-improvement condition. However, California tenants may not remove improvements if the lease prohibits removal, if removal of the fixture would cause irreparable damage to the premises, or if they fail to remove it before they return possession of the premises to the landlord.

Avoiding Fixture Disputes
If landlords don't want the "default" rules to apply, or if they want the lease to specifically state that the tenant is required to remove tenant installed improvements before vacating, they should address these issues in the lease.

Checklist for Improving Collections from Commercial Tenants

Collecting from commercial tenants can be challenging. Before agreeing to lease the property, wise landlords evaluate the likelihood that the tenant will comply with all lease obligations. You can increase your collection success rate by obtaining information described in the "Lease Parties and Signatories" section of this handbook. Collection success rates can also be increased by requiring the prospective tenant to provide you with certain information. Each item in the list below can assist in the screening process and can also be valuable to a collector attempting to locate a defaulting tenant and the tenant's assets.

Require the prospective tenant to provide you with:

- ❒ The full legal name of the tenant and guarantors (and other names which may have been used in the past, including any nicknames and dbas), address (both mailing address and street address), phone number, e-mail address, and web page information;
- ❒ (If the applicant or guarantor is an individual) Date of birth and home address and phone number;
- ❒ (If the tenant is a partnership, corporation or LLC) Information about its owners and principals;

Kimball, Tirey & St. John LLP © 1997-2026

- ❒ Names of key employees;
- ❒ Business license number, resale number, sales tax number, social security number (for individuals) and federal tax ID number;
- ❒ Service or sales territory information;
- ❒ Past bankruptcy filing information including, dates filed, Chapter filed and date of discharge or dismissal;
- ❒ A current financial statement, providing detailed information about the tenant's assets, which includes:
    - o A list of all real property that the tenant owns, including the purchase price of each parcel of property and the current fair market value. The tenant should also list the lender on the property and the current amount of any lien secured by the property;
    - o A list of owned personal property (business equipment, office furniture, or other assets), including a specific description (serial numbers, etc.), location of the personal property, purchase price, fair market value, the lender and current balance of any lien secured by the property;
    - o A list of all vehicles owned, including the make, model, and year. If there is an outstanding loan on a vehicle, request the name of the lender and the amount of the outstanding loan; and
    - o A list of all checking and savings accounts, including the bank name, address and account numbers.
- ❒ UCC (Uniform Commercial Code) filings;
- ❒ Three or four credit references; and
- ❒ Written authorization to run credit checks on the prospective tenant and guarantor.

TIPS TO AVOID DELINQUENT TENANTS

- Screen every applicant thoroughly. Run a credit report, check eviction history, call current/past landlords and verify financial status.
- Every prospective tenant should complete an application in full. Let the prospective tenant know that if there are blank spaces, the application will not be considered.
- Make sure the applicant's handwriting is legible. Clarify any portions you can't decipher.
- Make sure your application requests the necessary information, such as banking and credit information.
- Verify the information on the application. Don't assume everything on the application is 100% truthful until you have verified it. Ask for proof to support information on the application, such as tax returns, recent bank statements and current financial statements (preferably audited to ensure a certain level of accuracy).
- Beware of prospective tenants whose credit reports show a history of unpaid debts and charge-offs, bankruptcies, judgments and other red flags.
- Take note if there are several credit inquiries just prior to the application date.

Kimball, Tirey & St. John LLP © 1997-2026

- Recognize that new businesses are risky; many will fail. It can be difficult to evaluate a new business of a tenant without past business history. Consider requiring personal guarantors with a separate guarantor agreement. Screen the proposed guarantor just as you would a prospective tenant. Reviewing a new company's business plan (if one exists) can also help you evaluate the proposed tenant's prospects. View it with a critical eye as the plan may make unrealistic assumptions.
- Include provisions in the lease requiring the tenant to provide updated financial information on request, periodically, or under certain circumstances.

The best time to get this information is when entering into the lease. Financial privacy laws can make it very difficult to obtain information without the tenant's cooperation, and a defaulting tenant will probably not be cooperative. While a tenant's information can change over time, the information attained at the beginning of the tenancy may help later collection efforts.

While there's no guarantee that a tenant won't experience a financial crisis during a tenancy, you can reduce your risk through good screening practices.

HELPFUL TIP
A simple step that you can take during the tenancy to improve your collection rate is to maintain copies of the checks that the tenant gives the landlord. After a default, these check copies can greatly assist a collector by helping to identify the tenant's banks and bank accounts for a bank levy.

The Collection Process

It is frustrating when a tenant refuses to pay amounts due or damages the property. When this happens, we are available to help you.

Collecting from Commercial Tenants
Our experienced legal team can assist you in collecting judgments. We have two departments that handle different types of collection matters. While the two departments often work together:

- The Collection Practice Group handles collections against individuals. This includes commercial collections against individuals and almost all residential collections. The Collection Practice Group generally handles its cases on a contingency fee basis.
- The Business Real Estate Group files breach of lease actions (often necessary to collect large amounts due, and to collect amounts from non-individual entities including LLCs, trusts and corporations) and prejudgment collection tools such as writs of attachment and receiverships. Collection by the Business Real Estate Group may be handled for a flat fee, on an hourly fee basis or on a contingency fee basis, depending on the circumstances.

Collections from entities are handled differently than collections against individuals because they have unique challenges. When an entity stops paying rent and goes out of business, it may have little or no incentive to satisfy past due debts. It may be easier for the individuals involved in the business to create a new entity and start a new business, never paying the old entity's debts. Collections against entities may require different techniques, and asset investigations against entities can be more time consuming and expensive than asset investigations against individuals.

Collection methods include sending demand letters to debtors and filing lawsuits if a monetary judgment has not already been entered in the eviction (or if one is necessary to pursue debt incurred outside of the eviction). Being served with a Summons & Complaint often forces the tenant to finally

Kimball, Tirey & St. John LLP © 1997-2026

address unpaid debts. Prejudgment collection tools, such as writs of attachment and receivership, can also be very effective when used in the right cases.

If a case is litigated to judgment and involuntary collection methods are necessary, our involuntary collection practices include (but are not limited to):

Collection Action	Description
Send a demand letter	A demand letter may trigger payment or open negotiations with a tenant. It may also be required before filing a lawsuit.
Recording an Abstract of Judgment	An Abstract of Judgment is recorded with one or more county recorders. It creates a lien on any real property owned or acquired by the judgment debtor in the recorded county for 10 years from the date of judgment. The debt is often satisfied when the debtor wants to buy, sell or refinance property. A creditor can force a sale of the real property in some situations.
Notice of Judgment Lien filing with the California Secretary of State	A Notice of Judgment Lien creates a lien on accounts receivable, chattel paper, equipment, farm products, inventory and negotiable documents of title. This judgment lien is effective for five years from the date of filing and is often a good idea when the judgment debtor owns a business that could be sold. The debt is often satisfied when the debtor wants to buy, sell or refinance the business or personal property. A creditor can sometimes force the sale of the property.
Judgment Debtor Examination	If you are not aware of any specific assets, Kimball, Tirey & St. John LLP can file a request for a Judgment Debtor Exam, which requires the Defendant to appear in court for an examination of his or her assets and liabilities and bring copies of documentation such as bank statements and tax returns for the Judgment Creditor.

Kimball, Tirey & St. John LLP © 1997-2026

If the debtor's assets can be identified and physically located, we can levy on these assets. A list of types of levies is below.

Collection Action	Description
Bank Levy	A garnishment levy is served on a third party (such as a bank) who has possession of the judgment debtor's assets. The types of assets that are most economical to levy on include bank accounts, contents of safe deposit boxes and small items of personal property (jewelry, valuable coins, etc.), the judgment debtor's accounts receivable (i.e., people who owe money to the tenant) and promissory notes.
Keeper Installation	A keeper is a Sheriff who sits in the tenant's business collecting all income that arrives through the mail or the cash register for several hours. Sometimes a keeper can be effective even if large amounts of cash aren't collected by the keeper; some businesses find a keeper to be embarrassing or detrimental to their ongoing business.
Till Tap	A till tap involves a Sheriff coming into the business and clearing out the cash register. (A keeper involves the Sheriff sitting in the business for some time period, while a till tap is a one-time sweep of the cash register.)
Wage Garnishment	This option is available against employed individuals.

If you are not aware of any specific assets, we can investigate the judgment debtor and attempt to locate assets. Sometimes assets can be located based on information provided by the property owner and manager. For this reason, it is important for the property manager and owner to keep good records and to retain copies of checks tendered by the tenant and to retain the original application and supporting information obtained during the screening process.

Asset Searches

Money judgments are court awarded decrees. The court awards money to one party (the judgment creditor), to be paid by another party (the judgment debtor). The judgment creditor can then use the power of the courts and Sheriffs to collect the judgment, even if the judgment debtor is uncooperative.

Kimball, Tirey & St. John LLP © 1997-2026

Use of involuntary collection proceedings may be the only effective way to collect amounts from an uncooperative judgment debtor.

However, not all judgments are collectible. A defendant may not have assets, may have filed for bankruptcy, or may have other unpaid judgments or liens filed that would have payment priority. It may be difficult to locate a defendant's assets. If the defendant is a business, the business may not be operational. In these instances, it may not be possible to collect a money judgment.

If the ultimate goal of litigation is collection (as opposed to regaining possession of property or some other goal), an asset search is recommended, either before filing a complaint or early in the litigation process. An asset search can be an invaluable time and money-saving tool. It can help a creditor decide whether litigation is likely to be cost effective. It can also be helpful during the litigation process to analyze settlement offers.

The following is some of the information that is analyzed in an asset search:

Real Property
If a judgment debtor has an interest in real property, that interest can often be a recovery source for a judgment creditor. Real property records determine real property ownership and liens. Some of the main factors that are looked at in the asset search are:

1. Does the debtor own any real property (a potential recovery source)?

2. Does the debtor own a beneficial interest in a deed of trust or mortgage (a potential recovery source)?

3. Is there any equity in the property or is the total value less than what is owed on it?

4. Are there any recent notices of defaults and/or notices of an upcoming Trustee's sale?

Employment
Employment information can be helpful in collecting a judgment. If a judgment debtor is employed, wages can be garnished. An asset search can often reveal employment information needed for a successful wage garnishment.

An asset search may also determine whether a defendant owns and operates his or her own business. The business may be a recovery source.

Other Judgments/Liens
Asset searches may determine whether a defendant has liens or other judgments entered against the defendant, either of which may make a new judgment less valuable. Asset searches will reveal the existence of other judgments and liens, the amounts, and indicate whether they have been satisfied. If a defendant has unpaid judgments and liens, the defendant may not have the means to settle any new judgments.

Bankruptcy
While typically creditors are notified of bankruptcy filings, occasionally a creditor is not notified. A bankruptcy record search can determine pending and recent bankruptcy proceedings, and status. Depending on the date and status of any recent bankruptcy proceedings, it may be necessary to suspend or cease collection attempts. In some bankruptcy filings, it may be advisable to file a "Proof of Claim" which may result in payment to a creditor.

Kimball, Tirey & St. John LLP © 1997-2026

Business Status
If the defendant is a business, information should be gathered about the businesses' type (sole proprietorship, LLC, partnership or corporation), its operational status (i.e., is the business active or has it ceased doing business?), any fictitious business names under which it may be doing business, assets and liabilities.

A small investment in an asset search can help determine whether it may be cost effective to pursue litigation and a judgment.

Seizing Accounts Receivable

Accounts receivable can be a valuable source of recovery.

A company's accounts receivable can be a vulnerable asset from a collection law perspective. Generally, when considering alternatives for collecting from an on-going business concern, we first look to seize real property and business assets by Writ of Execution. However, struggling businesses rarely enjoy equity in real property and may lease business equipment such that attempted seizure of these assets would be futile. If so, the forced sale of real property and business equipment may not a viable option.

Accounts receivable can be intercepted by "assignment order." The assignment order is a powerful yet seldom used collection tool in California. Because assignment orders require significant investigation and expense, it is not a remedy normally pursued by law firms that do not specialize in collection law.

What is an assignment order?
An assignment order is a means to seize receivables at the source. That is, if a defendant is expected to enjoy a stream of income or payment from a third party, a judgment creditor can serve the third party with a Court Order to pay that stream of income of payment to the creditor instead of to the defendant. Regular payments from the defendant's customers are fair game. The assignment order is also effective to reach rents, commissions, royalties, or payments due from a patent or copyright, for instance. The assignment order assigns the right to receive payment to the judgment creditor.

When is an assignment order typically utilized?
Assignment orders work well against business defendants that receive money from existing clients regularly. As you can guess, defendant businesses are sensitive with respect to any disruption to their relationships with customers. Assignment orders often result in immediate settlement discussions. The negotiation leverage created by an assignment order is substantial.

What procedure is required to obtain an assignment order?
Initially, for an assignment order to be considered, the judgment creditor must discover a stream of income enjoyed by the defendant or learn of an impending payment to the judgment debtor. Once the creditor has completed the investigative work to discover the stream of income, the judgment creditor must pursue the assignment order by way of "noticed motion."

A noticed motion means that the creditor must reserve a court date with the clerk of the court, prepare moving papers including a proposed Court Order, and serve the defendant with a copy of the moving papers.

At the hearing, the judgment creditor must prove to the court that the debtor stands to be paid by a third party and that the case is appropriate for an assignment order. The creditor's burden of proof is the same as for any civil matter: a preponderance of the evidence. When possible, in preparation for the hearing, the judgment creditor should subpoena from the third party (or from the defendant directly) any documentation that may be necessary to meet the burden of proof. If the creditor can

Kimball, Tirey & St. John LLP © 1997-2026

meet its burden, the judge may sign the proposed order in court or require that the judgment creditor prepare and submit a modified order.

How is the order enforced?
Once the order is signed by the judge, it is incumbent upon the judgment creditor to serve the order upon the third party from whom payment is sought. Once the third party is properly served with the Court Order, the third party is charged with the duty of paying over any monies that may become due to the debtor to the judgment creditor instead. If the third party fails to comply with the assignment order, the third party can be held to be in contempt of court.

Third Party Examinations

Third party examinations can help identify assets that can be a recovery source.

Suppose you have a judgment against ABC, Inc. ABC, Inc. is not responding to your telephone calls and messages. ABC, Inc. owns no real property. Because the defendant is a service business, there is little in the way of capital assets. Under California law, a judgment creditor may examine the defendant in court to identify assets. Thus, you could serve an officer or principal of the defendant business with an order to appear in court to disclose assets.

Another alternative is to obtain an order for the in-court examination of your defendant's customers.

The key to commercial collection is creating leverage. By using a third-party examination proceeding, a creditor can require the client or customer of a commercial defendant to appear in court to answer questions concerning the relationship between that client or customer and the commercial defendant. This proceeding, while highly effective, is underused in California.

By statute, a judgment creditor is entitled to examine third parties who:

1. are in possession or control of property in which the debtor has an interest, or

2. owe the judgment debtor more than $250.

From a commercial collection standpoint, these third parties can include any client or customer who has an unpaid invoice from the defendant that exceeds $250.

To obtain a Court Order requiring a third party's appearance in court, a creditor may apply *ex parte*, which is a hearing done on an emergency basis. The creditor must submit a declaration to the court showing the third person possesses money or property of the debtor or owes more than $250 to the debtor. Courts typically require creditors to be specific in the factual assertions in the declaration before issuing the order for appearance. If the third party is an entity, the judgment creditor may designate in the application who is to appear at the exam on the entity's behalf.

Once obtained from court, the order must be personally served upon the third person along with a tender of mileage fees to the courthouse where the examination will be conducted. If mileage fees are not tendered when the order is served, the examination order is ineffective.

A third-party examination is best utilized when the creditor suspects that the defendant company enjoys an on-going business relationship with some third party. Typically, the examination is used to ascertain the breadth, scope, and nature of that relationship. Once the nature of the relationship is established, the creditor can then choose which judicial enforcement technique best serves the creditor's interest.

Kimball, Tirey & St. John LLP © 1997-2026

Many times, service of the order for a third party's appearance alone results in a successful collection against a business since most defendants take great pains to protect income. No defendant appreciates a collection lawyer interfering with an existing business relationship.

If you are attempting to collect from an unresponsive commercial defendant, create leverage and then pursue a third-party examination.

Case Investigation: Maximizing Commercial Collections

Case investigations can help maximize collections.

Commercial collection can be easy when a defendant owns significant real property, has lucrative relationships with third parties, or maintains significant money in readily identifiable bank accounts.

If it has been necessary to sue and take judgment against a business, it is possible that your defendant has little in the way of assets. It may also be possible that your defendant is hiding assets.

California has a statutory scheme that provides effective mechanisms for judgment creditors to recover money. However, you cannot collect if you fail to find your defendant or its assets.

Locating debtors and assets is referred to in the collection industry as "skip-tracing." Skip-tracing is important in commercial tenant/landlord debt collection since, following an eviction; you must find your former tenant's new location. The hunt must begin.

Effective skip-tracing is equal parts technology, creativity and persistence. To give yourself a fighting chance for locating a debtor, you must have the tools.

The internet has made many sources of public record information readily available. Property ownership, bankruptcy documentation, and business licensing records are examples of information that may be obtained through the internet.

Aside from matters of public record, a host of websites are available and devoted to supplying business information. You may obtain a business credit report from several private companies that offer this product.

Besides public record and credit reports, most successful collection firms have business relationships with asset location companies who specialize in the compilation and sale of location information.

While technology is a key component of effective skip-tracing, the ability to locate debtors and assets is as much art as science. In this regard, skip-tracing is not the only tool.

Succeeding in the hunt includes both a dogged pursuit of available leads and determining which leads to follow. Many times, contacting and sharing information with other creditors is an option. For judgment collection, if another creditor is not willing to share information voluntarily, the power of subpoena may be at your disposal.

A degree of finesse and sales ability may be required when following leads provided by a commercial debtor's credit application or financial statement. The willingness of others to contribute to the search can be surprising.

Business Record Retention

Property owners or managers often don't know how long they should be retaining records.

Kimball, Tirey & St. John LLP © 1997-2026

Generally, records should be retained for as long as possible but for no less than four years. Whether records should be maintained for more than four years depends on why they are being maintained.

There is no single, simple rule establishing the minimum time to retain records. Record retention periods must be determined on a case-by-case basis, after completing a cost/benefit analysis. The cost to retain the records must be weighed against the likelihood they will be needed. Think about why the records are being kept. Are you legally required to keep them? Do you have a business need for them? Focusing on the issues you are most concerned about is an important part of the cost/benefit analysis.

One factor to consider is the time limitations that may apply to claims relating to the records. Many different time periods could apply. The "statutes of limitations" that are most likely to apply are:

- Two years for a verbal contract, for an alleged breach of a real estate agent's duty to inspect and disclose or for personal injury;
- Three years for certain real estate broker/agent transaction and trust records and for alleged fraud claims;
- Four years for a written contract and for an alleged breach of fiduciary duty;
- Up to seven years for some IRS purposes (although some have no limitations); and
- Ten years for latent (not immediately noticeable) construction defects.

Extensions of these time limitations can exist in different situations. Some of these extensions can be based upon:

- Delays in discovery of injury,
- Personal injury claims to people younger than 18 years old and/or
- Cross-complaints and indemnity claims.

If the records are needed for tax reasons (to establish basis in property or otherwise), keep the documents for at least as long as you own the property, plus an additional amount of time, preferably six years or more. While generally the IRS must initiate action to collect taxes within three years from the date the tax return is filed, or two years from the date tax is paid, both the IRS and FTB have six years to start legal action if the taxpayer's income is understated by more than 25%. There is no statute of limitations if a taxpayer files a false or fraudulent return or never files a return at all.

The two most common documents stored by property managers and landlords are leases and tenants' rental applications. Since almost all rental agreements or leases are reduced to writing, landlord should keep leases (or documentary evidence of the terms of the agreement) for at least four years after the tenant vacates.

Real estate broker's records

A real estate broker must retain, for three years, copies of:

- All listings,
- Deposit receipts,
- Cancelled checks,
- Trust records, and

Kimball, Tirey & St. John LLP © 1997-2026

- Other documents in connection with transactions for which a real estate license is required.

The time runs from the date of closing or, if the transaction is not consummated, from the date of listing.

Real estate brokers are not required to maintain electronic messages "of an ephemeral nature" that are not designed to be retained or to create a permanent record, such as text messages and instant messages.

A real estate broker must maintain records for four years of funds solicited or accepted for a purchase or loan transaction where the broker (directly or indirectly) obtains use or benefit of funds other than for commissions, fees and costs and expenses.

Title 10, Chapter 6, Reg. 2729 authorizes a broker to use electronic image storage media to retain and store copies of required documents provided that:

- The electronic image storage is not erasable and does not allow changes;
- The stored documents are made or preserved in the regular course of business;
- The original record from which the stored document was copied was made or prepared by the broker or broker's employees at or near the time of the act, condition or event reflected in the record;
- The custodian of the record can identify the stored document or record, the mode of its preparation and the mode of storing it on the electronic image storage;
- The electronic image storage media contains a reliable indexing system that provides ready access to a desired document, appropriate quality control of the storage process to ensure a good quality image and date ordered arrangement of stored documents or records to ensure a consistent and logical flow of paperwork to preclude unnecessary search time; and
- The broker maintains at his/her office a means of viewing the electronically stored documents.

If requested by the DRE, the broker must provide a paper copy of any document(s) at the broker's expense.

California specifically requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. Generally, client records containing personal information must be destroyed either by shredding, erasing or otherwise modifying the personal information in the records to make it unreadable or undecipherable. "Personal information" is any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including (but not limited to) name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information. A violation of the California specific provision may lead to civil liability for damages and/or civil penalties.

Document Destruction

In 2003, the Fair Credit Reporting Act was amended with the creation of the Fair and Accurate Credit Transactions Act (FACTA). Under the umbrella of the FACTA, the Disposal Rule was implemented and became effective June 1, 2005.

Kimball, Tirey & St. John LLP © 1997-2026

Any business, large or small, that uses consumer reports for a business purpose must properly dispose of sensitive information in order to prevent "unauthorized access to or use of the information." Disposal includes shredding, burning, destroying, and/or pulverizing. Sensitive information is defined as data that is identifiable to an individual person and has the potential to be used, such as social security numbers, driver license numbers, credit card numbers, account numbers, passwords, judgments in civil cases, medical information and financial data such as credit ratings.

The Disposal Rule applies to information in paper, computer, or any other format. It requires reasonable disposal measures to protect against unauthorized access to or use of the information, so that the personal information cannot be read or is incapable of being reconstructed. Discarding consumer reports in a trash can is not just an irresponsible business practice, it is also illegal.

Although the Disposal Rule applies to consumer reports and the information derived from consumer reports, the FTC encourages those who dispose of any records containing a consumer's personal or financial information to take similar protective measures. Businesses should also conduct due diligence and hire a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the Rule. Due diligence could include: 1) reviewing an independent audit of a disposal company's operations and/or its compliance with this rule; 2) obtaining information about the disposal company from several references; 3) requiring that the disposal company be certified by a recognized trade association; or 4) reviewing and evaluating the disposal company's information security polices or procedures. The statute indicates these suggestions are examples and are not exclusive or exhaustive methods for compliance.

It is prudent to immediately cease destruction of all potentially relevant or discoverable documents when a lawsuit or government investigation is pending or even threatened. The two-year statute of limitations period dates from the consumer's discovery of the violation, not the date of the violation itself. However, the consumer must bring the action within five years of the date of the violation, regardless of the discovery date. Non-compliance with the Disposal Rule may result in action initiated by the FTC or a private cause of action, where damages may include, but are not limited to, actual damages, punitive damages, statutory damages up to $1,000.00 per violation, civil penalties, costs and attorney's fees.

Deciding how long to retain business records is a business decision that should be made after considering the applicable laws, the cost of record retention and the likelihood that the record will be needed.

SECTION FIVE: POST POSSESSION LITIGATION

Breach of Lease/Breach of Lease Guaranty

When a landlord recovers possession of the premises, the landlord should consider whether it is worthwhile to sue for breach of lease. As explained above, in an unlawful detainer lawsuit, only the past 12 months of rent can be pursued. If there is rent due prior to 12 months, future rent due, or costs for damage, cleaning and rekeying the premises, a landlord should consider suing for breach of lease. A landlord may pursue its tenant for past and future rent and other losses incurred including damage to the property, tenant improvement costs and broker's commissions.

Oftentimes a prudent landlord requires a personal guaranty of the tenant's monetary performance of the lease. If there is a personal guaranty, the likelihood of collection is doubled, as there are two prospective individuals or entities that are liable for all losses suffered.

Kimball, Tirey & St. John LLP © 1997-2026

Assuming there is an attorney's fee provision in the lease, the judgment should also include an award of attorney's fees and costs expended in the case. In addition, when pursuing a money judgment, the judgment creditor is entitled to prejudgment interest at the legal rate of 10%. This continues to accrue even after a judgment has been entered until paid in full. Further, the judgment is good for 10 years and can be renewed for another 10 year period.

A landlord does not need to wait until the premises is relet to sue for breach of lease/breach of lease guaranty. In fact, sometimes we recommend suing sooner than later so that the defendant's assets aren't lost, spent or transferred. If the tenant and/or guarantor own assets, a landlord should consider filing a pre-judgment writ of attachment.

Writ of Attachment

Early in the litigation process, landlords should consider pursuing a pre-judgment writ of attachment. A writ of attachment encumbers the debtor's property before a judgment is entered. A writ of attachment may make it difficult for the debtor to sell, transfer or refinance the property while litigation is pending. A writ of attachment can be a powerful tool, oftentimes encouraging settlement before trial.

Property Subject to a Writ of Attachment
If the debtor is an individual, the creditor must specifically identify each piece of property that the creditor seeks to attach. Therefore, before pursuing a writ of attachment against an individual, an asset search should be conducted unless the landlord already has complete information about the debtor's assets. The landlord must precisely identify the assets to be attached.

If the debtor is an entity (i.e. a corporation, limited liability company, partnership or an unincorporated partnership), it is not necessary for the creditor to specifically identify each piece of property; virtually all of the debtor's property in California is subject to attachment, even if not specifically identified, including the debtor's bank accounts, accounts receivable, inventory, real property and personal property.

Levying on some types of property are fairly simple (e.g. a real property interest requires that the order be recorded in the San Diego County Recorder's office). Levying on equipment and inventory is fairly simple, as it only requires that the sheriff file a notice of the attachment lien with the Secretary of State. Levying on other property may be more difficult and may require the landlord to physically locate the item, pay the sheriff to levy on it (which in turn may require the sheriff to take custody of the personal property, which can be very expensive).

Requirements for a Writ of Attachment
A writ of attachment will be issued only if all the following criteria are met. The claim must be:

- For money;
- Based on an express or implied contract;
- For a "fixed or readily ascertainable" amount of $500 or more, (excluding costs, interest, and attorneys' fees);
- Unsecured, or secured only by personal property including fixtures; and
- Commercial, and if the claim is against an individual, the claim must arise out of the individual's conduct of a trade, business or profession.

Kimball, Tirey & St. John LLP © 1997-2026

Timing of a Writ of Attachment

A creditor may seek a writ of attachment on an ex parte basis (immediately on an emergency basis) or after a noticed motion (with at least 16 court days advance notice). The court will issue the writ on an ex parte basis if the landlord can demonstrate "great or irreparable" injury to the landlord if the matter was heard after a noticed motion. This normally requires the creditor to show that the property to be attached will disappear or be harmed if the court's decision was delayed to provide for a noticed hearing. If a creditor seeks a writ of attachment on an ex parte basis, sometimes a court will decline to issue a writ of attachment on an ex parte basis, but will instead issue temporary restraining order, which prevents the debtor from selling, transferring or refinancing the property until after the hearing.

Writ of Attachment Process

If the court finds attachment is proper, it will issue a right to attach order. Recording the writ of attachment puts third parties on notice of the attachment lien to prevent any transfer or encumbrance of the attached assets.

Advantages and Disadvantages of Writs of Attachment

Writs of attachment have advantages and disadvantages.

Advantages:

- A writ of attachment may prevent a debtor from transferring or financing the debtor's assets, making it more likely that the asset will be available to the creditor to pay amounts due to the creditor.
- There may be a delay of a year or more before filing a Complaint and entry of judgment in a case, delaying the "day of reckoning" by the tenant. A writ of attachment may expedite the time period in which the debtor has to address the debt.
- Defending a writ of attachment can be expensive, which in turn may cause a tenant to explore settlement earlier in the case.
- A writ of attachment may also allow the creditor a better window into the tenant's potential defenses to the case.

Disadvantages:

- Sometimes attachment proceedings trigger a bankruptcy filing by the debtor. An attachment lien will automatically terminate if the debtor files for bankruptcy.
- Seeking a writ can be expensive; attachment proceedings require a fair amount of attorney time and expense. A creditor seeking a writ of attachment may incur attorney's fees of $5,000 or more in seeking the writ. Seeking a writ may require multiple pleadings and/or multiple court appearances in support of a writ of attachment, plus two court appearances.
- If after issuance, a writ of attachment is found to be wrongful, there can be liability to the creditor. A wrongful attachment is (1) in an action in which attachment is not authorized; (2) in an action in which the plaintiff does not recover judgment; or (3) when property is exempt from attachment. An attachment can be wrongful even if the court originally permits the attachment.
- Attachment can be viewed as an "election of remedies" if a plaintiff is claiming both contract and tort claims arising out of the same set of facts. A writ of attachment can bar tort claims if they are based on the same set of facts as the contract claims.
- A writ of attachment is useful only if the debtor has attachable assets.

Kimball, Tirey & St. John LLP © 1997-2026

SECTION SIX: IMPORTANT CODE SECTIONS FOR COMMERCIAL PROPERTY MANAGEMENT

CALIFORNIA CODE OF CIVIL PROCEDURE

Unlawful Detainer

§ 1161 Unlawful Detainer

A tenant of real property, for a term less than life, or the executor or administrator of the tenant's estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When the tenant continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to the tenant; provided the expiration is of a nondefault nature however brought about without the permission of the landlord, or the successor in estate of the landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it shall first be terminated by notice, as prescribed in the Civil Code.

2. When the tenant continues in possession, in person or by subtenant, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment, stating the amount that is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, if the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of the landlord, if applicable, the tenant shall be deemed to be holding by permission of the landlord or successor in estate of the landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

Kimball, Tirey & St. John LLP © 1997-2026

3. When the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring the performance of those conditions or covenants, or the possession of the property, shall have been served upon the tenant, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days, excluding Saturdays and Sundays and other judicial holidays, after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or the subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of that person's unlawful detention of the premises underlet to or held by that person.

4. Any tenant, subtenant, or executor or administrator of that person's estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of the lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or the landlord's successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits or maintains a public nuisance as described in Section 3482.8 of the Civil Code, or who commits an offense described in subdivision (c) of Section 3485 of the Civil Code, or subdivision (c) of Section 3486 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When the tenant gives written notice as provided in Section 1946 of the Civil Code of the tenant's intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of the landlord, or the successor in estate of the landlord, if applicable.

6. A landlord or its agent shall not charge a tenant a fee for serving, posting, or otherwise delivering any notice, as described in this section.

7. As used in this section, “tenant” includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

8. This section shall become operative on February 1, 2025.

§ 1161.1 Unlawful Detainer; Commercial Real Property; Estimated Notice/Partial Payment

With respect to application of Section 1161 in cases of possession of commercial real property after default in the payment of rent:

a) If the amount stated in the notice provided to the tenant pursuant to subdivision (2) of Section 1161 is clearly identified by the notice as an estimate and the amount claimed is not in fact correct, but it is determined upon the trial or other judicial determination that rent was owing, and the amount claimed in the notice was reasonably estimated, the tenant shall be subject to judgment for possession

Kimball, Tirey & St. John LLP © 1997-2026

and the actual amount of rent and other sums found to be due. However, if (1) upon receipt of such a notice claiming an amount identified by the notice as an estimate, the tenant tenders to the landlord within the time for payment required by the notice, the amount which the tenant has reasonably estimated to be due and (2) if at trial it is determined that the amount of rent then due was the amount tendered by the tenant or a lesser amount, the tenant shall be deemed the prevailing party for all purposes. If the court determines that the amount so tendered by the tenant was less than the amount due, but was reasonably estimated, the tenant shall retain the right to possession if the tenant pays to the landlord within five days of the effective date of the judgment (1) the amount previously tendered if it had not been previously accepted, (2) the difference between the amount tendered and the amount determined by the court to be due, and (3) any other sums as ordered by the court.

b) If the landlord accepts a partial payment of rent, including any payment pursuant to subdivision (a), after serving notice pursuant to Section 1161, the landlord, without any further notice to the tenant, may commence and pursue an action under this chapter to recover the difference between the amount demanded in that notice and the payment actually received, and this shall be specified in the complaint.

c) If the landlord accepts a partial payment of rent after filing the complaint pursuant to Section 1166, the landlord's acceptance of the partial payment is evidence only of that payment, without waiver of any rights or defenses of any of the parties. The landlord shall be entitled to amend the complaint to reflect the partial payment without creating a necessity for the filing of an additional answer or other responsive pleading by the tenant, and without prior leave of court, and such an amendment shall not delay the matter from proceeding. However, this subdivision shall apply only if the landlord provides actual notice to the tenant that acceptance of the partial rent payment does not constitute a waiver of any rights, including any right the landlord may have to recover possession of the property.

d) “Commercial real property” as used in this section, means all real property in this state except dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code, mobilehomes as defined in Section 798.3 of the Civil Code, or recreational vehicles as defined in Section 799.24 of the Civil Code.

e) For the purposes of this section, there is a presumption affecting the burden of proof that the amount of rent claimed or tendered is reasonably estimated if, in relation to the amount determined to be due upon the trial or other judicial determination of that issue, the amount claimed or tendered was no more than 20 percent more or less than the amount determined to be due. However, if the rent due is contingent upon information primarily within the knowledge of the one party to the lease and that information has not been furnished to, or has not accurately been furnished to, the other party, the court shall consider that fact in determining the reasonableness of the amount of rent claimed or tendered pursuant to subdivision (a).

§ 1162 Service of Notice

a) Except as provided in subdivision (b), the notices required by Sections 1161 and 1161a may be served by any of the following methods:

1. By delivering a copy to the tenant personally; or,

2. If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence; or,

Kimball, Tirey & St. John LLP © 1997-2026

3. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

b) The notices required by Section 1161 may be served upon a commercial tenant by any of the following methods:

1. By delivering a copy to the tenant personally.

2. If he or she is absent from the commercial rental property, by leaving a copy with some person of suitable age and discretion at the property and sending a copy through the mail addressed to the tenant at the address where the property is situated.

3. If, at the time of attempted service, a person of suitable age or discretion is not found at the rental property through the exercise of reasonable diligence, then by affixing a copy in a conspicuous place on the property, and also sending a copy through the mail addressed to the tenant at the address where the property is situated. Service on a subtenant may be made in the same manner.

c) For purposes of subdivision (b), "commercial tenant" means a person or entity that hires any real property in this state that is not a dwelling unit, as defined in subdivision (c) of Section 1940 of the Civil Code, or a mobile home, as defined in Section 798.3 of the Civil Code.

§ 1179 Relief against forfeiture of lease

The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion.

An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served at least five days prior to the hearing on the plaintiff in the judgment, who may appear and contest the application. Alternatively, a person appearing without an attorney may make the application orally, if the plaintiff either is present and has an opportunity to contest the application or has been given ex parte notice of the hearing and the purpose of the oral application. In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

CALIFORNIA CIVIL CODE

Changes in Terms of Lease

§ 827 Changes in Terms of Lease; Notice

(a)(1) Except as provided in subdivision (b), in all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure,

Kimball, Tirey & St. John LLP © 1997-2026

change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.

(2) The notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

(b)(1) In all leases of a residential dwelling, commercial real property by a qualified commercial tenant, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:

(A) By delivering a copy to the tenant personally.

(B) By serving a copy by mail under the procedures prescribed in Section 1013 of the Code of Civil Procedure.

(2) If the proposed rent increase for that tenant is 10 percent or less of the rental amount charged to that tenant at any time during the 12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 30 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(3)(A) If the proposed rent increase for that tenant is greater than 10 percent of the rental amount charged to that tenant at any time during the 12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 90 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(B) If the proposed rent increase for that tenant is caused by a change in a tenant's income or family composition as determined by a recertification required by statute or regulation, the notice shall be delivered at least 30 days before the effective date of the increase as described in paragraph (2), and subparagraph (A) of this paragraph shall not apply.

(4) A landlord of a commercial real property shall include in the notice information on the provisions of this subdivision.

(5) In all leases for commercial real property by a qualified commercial tenant, a rent increase shall not be effective until the notice period required by this subdivision has expired.

(6) Notwithstanding any other provision of law, a violation of this subdivision by a landlord of a commercial real property does not entitle a qualified commercial tenant to civil penalties.

Kimball, Tirey & St. John LLP © 1997-2026

(7) For the purposes of this subdivision, the following definitions apply:

(A) "Commercial real property" means all real property in this state, except dwelling units subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, mobilehomes as defined in Section 798.3, and recreational vehicles as defined in Section 799.29.

(B) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(C) "Nonprofit organization" means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code 1 of 1986.

(D) "Qualified commercial tenant" means a tenant of commercial real property that meets both of the following requirements:

(i) The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees.

(ii)(I) Subject to subclause (II), the tenant has provided the landlord, within the previous 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this subdivision come into place.

(II) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice and self-attestation described in subclause (I) before or upon execution of the lease, and annually thereafter, at such time the protections under this subdivision come into place.

(c) If a state or federal statute, state or federal regulation, recorded regulatory agreement, or contract provides for a longer period of notice regarding a rent increase than that provided in subdivision (a) or (b), the personal service or mailing of the notice shall be in accordance with the longer period.

Termination of Tenancy

§ 1946.1 Renewal at End of Implied Term Absent Written Notice

(a) Notwithstanding Section 1946, a hiring of residential real property or *commercial* real property by a qualified commercial tenant for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of the party's intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling or *commercial* real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) Notwithstanding subdivision (b), an owner of a residential dwelling or *commercial* real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 30 days

Kimball, Tirey & St. John LLP © 1997-2026

prior to the proposed date of termination if a tenant or resident has resided in the dwelling or occupied the property for less than one year.

(d) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if all of the following apply:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.

(2) The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a title insurer or an underwritten title company, as defined in Sections 12340.4 and 12340.5 of the Insurance Code, respectively, a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.

(3) The purchaser is a natural person or persons.

(4) The notice is given no more than 120 days after the escrow has been established.

(5) Notice was not previously given to the tenant pursuant to this section.

(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(e) After an owner has given notice of the owner's intention to terminate the tenancy pursuant to this section, a tenant may also give notice of the tenant's intention to terminate the tenancy pursuant to this section, provided that the tenant's notice is for a period at least as long as the term of the periodic tenancy and the proposed date of termination occurs before the owner's proposed date of termination.

(f) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(g) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

(h) A notice given by an owner pursuant to this section shall contain, in substantially the same form, the following:

“State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.”

(i) A landlord or its agent shall not charge a tenant a fee for serving, posting, or otherwise delivering any notice, as described in this section.

Kimball, Tirey & St. John LLP © 1997-2026

(j) A landlord of a *commercial* real property shall include in the notice required by this section information on the provisions of this section.

(k) For the purposes of this section, the following definitions apply:

(1) "Commercial real property" means all real property in this state, except dwelling units subject to this chapter, mobilehomes as defined in Section 798.3, and recreational vehicles as defined in Section 799.29.

(2) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(3) "Nonprofit organization" means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code 1 of 1986.

(4) "Qualified commercial tenant" means a tenant of commercial real property that meets both of the following requirements:

(A) The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees.

(B)(i) Subject to clause (ii), the tenant has provided the landlord, within the previous 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this section come into place.

(ii) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice and self-attestation described in clause (i) before or upon execution of the lease, and annually thereafter, at such time the protections under this section come into place.

Security Deposits

§ 1950.7 Security Deposits for Commercial Property

a) Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement for other than residential property or any part of the agreement, other than a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement, shall be governed by the provisions of this section. With respect to residential property, the provisions of Section 1950.5 shall prevail.

b) The payment or deposit of money shall be held by the landlord for the tenant who is party to the agreement. The claim of a tenant to the payment or deposit shall be prior to the claim of any creditor of the landlord, except a trustee in bankruptcy.

c) The landlord may claim of the payment or deposit only those amounts as are reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises caused by the tenant, or to clean the premises upon termination of the tenancy, if the payment or deposit is made for any or all of those specific purposes.

Kimball, Tirey & St. John LLP © 1997-2026

1. If the claim of the landlord upon the payment or deposit is only for defaults in the payment of rent and the security deposit equals no more than one month's rent plus a deposit amount clearly described as the payment of the last month's rent, then any remaining portion of the payment or deposit shall be returned to the tenant at a time as may be mutually agreed upon by landlord and tenant, but in no event later than 30 days from the date the landlord receives possession of the premises.

2. If the claim of the landlord upon the payment or deposit is only for defaults in the payment of rent and the security deposit exceeds the amount of one month's rent plus a deposit amount clearly described as the payment of the last month's rent, then any remaining portion of the payment or deposit in excess of an amount equal to one month's rent shall be returned to the tenant no later than two weeks after the date the landlord receives possession of the premises, with the remainder to be returned or accounted for within 30 days from the date the landlord receives possession of the premises.

3. If the claim of the landlord upon the payment or deposit includes amounts reasonably necessary to repair damages to the premises caused by the tenant or to clean the premises, then any remaining portion of the payment or deposit shall be returned to the tenant at a time as may be mutually agreed upon by landlord and tenant, but in no event later than 30 days from the date the landlord receives possession of the premises.

d) Upon termination of the landlord's interest in the unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the payment or deposit:

1. Transfer the portion of the payment or deposit remaining after any lawful deductions made under subdivision (c) to the landlord's successor in interest, and thereafter notify the tenant by personal delivery or certified mail of the transfer, of any claims made against the payment or deposit, and of the transferee's name and address. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

2. Return the portion of the payment or deposit remaining after any lawful deductions made under subdivision (c) to the tenant.

e) Upon receipt of any portion of the payment or deposit under paragraph (1) of subdivision (d), the transferee shall have all of the rights and obligations of a landlord holding the payment or deposit with respect to the payment or deposit.

f) The bad faith retention by a landlord or transferee of a payment or deposit or any portion thereof, in violation of this section, may subject the landlord or the transferee to damages not to exceed two hundred dollars ($200), in addition to any actual damages.

g) This section is declarative of existing law and therefore operative as to all tenancies, leases, or rental agreements for other than residential property created or renewed on or after January 1, 1971.

Kimball, Tirey & St. John LLP © 1997-2026

Additional Rent Charges

§ 1950.9 Requirements Charging Qualified Commercial Tenants Fees to Recover Building Operating Costs

(a) A landlord of a commercial real property shall not charge a qualified commercial tenant a fee to recover building operating costs unless all of the following apply:

(1) The building operating costs are allocated proportionately per tenant, by square footage, or another method as substantiated through supporting documentation provided by the landlord to the qualified commercial tenant.

(2) The building operating costs have been incurred within the previous 18 months, or are reasonably expected to be incurred within the next 12 months based on reasonable estimates.

(3) Before the execution of the lease, the landlord provides the prospective qualified commercial tenant a paper or electronic notice stating that the tenant may inspect any supporting documentation of building operating costs upon written request pursuant to paragraph (4).

(4) Within 30 days of a written request, the landlord provides the qualified commercial tenant supporting documentation of the previously incurred or reasonably expected building operating costs.

(5) The costs do not include expenses paid by a tenant directly to a third party.

(6) The costs do not include expenses for which a third party, tenant, or insurance reimbursed the landlord.

(b) A landlord of a commercial real property shall not charge a fee to recover any building operating costs from the qualified commercial tenant until the landlord provides the qualified commercial tenant supporting documentation.

(c) During the course of a commercial tenancy, the landlord shall not alter the method or formula used to allocate building operating costs to the qualified commercial tenant in a way that increases the qualified commercial tenant's share of those costs, unless the qualified commercial tenant is provided with written notice of the change in the method or formula with supporting documentation of the basis of the alteration.

(d) In an action for an unlawful detainer, ejectment, or other action to recover possession based on a failure to pay a fee to recover building operating costs, a qualified commercial tenant may raise, as an affirmative defense, that the landlord violated this section.

(e) A landlord of a commercial real property who violates this section shall be liable to a qualified commercial tenant in a civil action for all of the following:

(1) Actual damages.

(2) In the courts discretion, reasonable attorney's fees and costs.

Kimball, Tirey & St. John LLP © 1997-2026

(3) Upon showing that the landlord, lessor, or their agent has acted willfully or with oppression, fraud, or malice both of the following:

(A) Three times the amount of actual damages.

(B) Punitive damages.

(f) The district attorney, city attorney, or county counsel in the jurisdiction in which the commercial real property is located, in the name of the city or county, may seek injunctive relief based on a violation of this section.

(g) Any waiver of a right under this section by a qualified commercial tenant shall be void as a matter of public policy.

(h) For the purposes of this section, the following definitions apply:

(1) "Building operating costs" means costs that are incurred on behalf of a tenant for the operation, maintenance, or repair of the commercial real property, including, but not limited to, maintenance of common areas, utilities that are not separately metered, and taxes or assessments charged to the landlord pursuant to property ownership.

(2) "Commercial real property" means all real property in this state, except dwelling units subject to this chapter, mobilehomes, as defined in Section 798.3, and recreational vehicles, as defined in Section 799.29.

(3) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(4) "Nonprofit organization" means any private nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code 1 of 1986.

(5) "Qualified commercial tenant" means a tenant of commercial real property that meets both of the following requirements:

(A) The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees.

(B)(i) Subject to clause (ii), the tenant has provided the landlord, within the previous 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this section come into place.

(ii) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice and self-attestation described in clause (i) before or upon execution of the lease, and annually thereafter, at such time the protections under this section come into place.

Kimball, Tirey & St. John LLP © 1997-2026

(6) "Supporting documentation" means a dated and itemized quote, contract, receipt, or invoice from a licensed contractor or a provider of services that includes, but is not limited to, both of the following:

(A) A tabulation showing how the costs are allocated among tenants in compliance with paragraph (1) of subdivision (a).

(B) A signed and dated attestation by the landlord that the documentation and costs are true and correct.

(i) This section shall only apply to the following:

(1) Leases executed or tenancies commenced or renewed on or after January 1, 2025.

(2) A tenancy that is from week to week, month to month, or other period less than a month.

(3) Leases executed or tenancies commenced before January 1, 2025, that do not contain a provision regarding building operating costs.

(j) This section does not apply to assessment levied pursuant to Part 7 (commencing with Section 36600) of Division 18 of the Streets and Highways Code.

CALIFORNIA CIVIL CODE

Lease Termination & Continuation

§ 1951.2 Lease Termination – What a Landlord May Recover

a) Except as otherwise provided in Section 1951.4, if a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

1. The worth at the time of award of the unpaid rent which had been earned at the time of termination;

2. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;

3. Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided; and

4. Any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

Kimball, Tirey & St. John LLP © 1997-2026

b) The "worth at the time of award" of the amounts referred to in paragraphs (1) and (2) of subdivision (a) is computed by allowing interest at such lawful rate as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in paragraph (3) of subdivision (a) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

c) The lessor may recover damages under paragraph (3) of subdivision (a) only if

1. The lease provides that the damages he may recover include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award, or for any shorter period of time specified in the lease, exceeds the amount of such rental loss for the same period that the lessee proves could be reasonably avoided; or

2. The lessor relet the property prior to the time of award and proves that in reletting the property he acted reasonably and in a good-faith effort to mitigate the damages, but the recovery of damages under this paragraph is subject to any limitations specified in the lease.

d) Efforts by the lessor to mitigate the damages caused by the lessee's breach of the lease do not waive the lessor's right to recover damages under this section.

e) Nothing in this section affects the right of the lessor under a lease of real property to indemnification for liability arising prior to the termination of the lease for personal injuries or property damage where the lease provides for such indemnification.

Foreign Language Translation of Commercial Lease

§ 1632 Trade or Business Negotiating Primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean.
(a) The Legislature hereby finds and declares all of the following:

(1) This section was enacted in 1976 to increase consumer information and protections for the state's sizeable and growing Spanish-speaking population.

(2) Since 1976, the state's population has become increasingly diverse and the number of Californians who speak languages other than English as their primary language at home has increased dramatically.

(3) According to data from the American Community Survey, which has replaced the decennial census for detailed socioeconomic information about United States residents, approximately 15.2 million Californians speak a language other than English at home, based on data from combined years 2009 through 2011. This compares to approximately 19.6 million people who speak only English at home. Among the Californians who speak a language other than English at home, approximately 8.4 million speak English very well, and another 3 million speak English well. The remaining 3.8 million Californians surveyed do not speak English well or do not speak English at all. Among this group, the five languages other than English that are most widely spoken at home are Spanish, Chinese, Tagalog, Vietnamese, and Korean. These five languages are spoken at home by approximately 3.5 million of the 3.8 million Californians with limited or no English proficiency, who speak a language other than English at home.

Kimball, Tirey & St. John LLP © 1997-2026

(b) A person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement, and any other person who will be signing the contract or agreement, and before the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, that includes a translation of every term and condition in that contract or agreement:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family, or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family, or household purposes in which the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.

(5) Notwithstanding paragraph (2), a reverse mortgage as described in Chapter 8 (commencing with Section 1923) of Title 4 of Part 4 of Division 3.

(6) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(7) A foreclosure consulting contract subject to Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3.

(8) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement covering a nonresidential-zoned commercial space entered into between a landlord and a qualified commercial tenant, on or after January 1, 2025.

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

(d) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (b) is executed, notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be provided to the lessee or tenant.

Kimball, Tirey & St. John LLP © 1997-2026

(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, before the execution of the contract or agreement, shall also be deemed in compliance with the requirements of subdivision (b) with regard to the original contract or agreement.

> (1) "Regulation M" and "Regulation Z" mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).
>
> (2) As used in this section, "supervised financial organization" means a bank, savings association as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or a person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

(f) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (b) is executed, a notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be conspicuously displayed to the effect that the person described in subdivision (b) is required to provide a contract or agreement in the language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the language in which the contract or agreement was negotiated, as the case may be. If a person described in subdivision (b) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the language in which the contract or agreement was negotiated is used.

(g)(1) The term "contract" or "agreement," as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term "contract" or "agreement" does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

(2) The term "contract" or "agreement" does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer's obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if the home improvement contract or installation contract is otherwise a part of a contract described in subdivision (b).

(3) Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (b), including, but not limited to, rules and regulations governing a tenancy and

Kimball, Tirey & St. John LLP © 1997-2026

inventories of furnishings to be provided by the person described in subdivision (b), are not included in the term “contract” or “agreement.”

(h)(1) This section does not apply to a person engaged in a trade or business who negotiates primarily in a language other than English, as described by subdivision (b), if the party with whom that person is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating that party as a tenant, lessee, or sublessee, or similarly obligates the party by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through the party's own interpreter.

(2) As used in this subdivision, “the party's own interpreter” means a person who is not a minor and who is able to speak fluently and read with full understanding both the English language and any of the languages specified in subdivision (b) in which the contract, lease, or other obligation was negotiated, and who is not employed by, or whose service is not made available through, the person engaged in the trade or business.

(3) This subdivision does not apply to a contract or agreement described in paragraph (8) of subdivision (b).

(i) Notwithstanding subdivision (b), a translation may retain the following elements of the executed English-language contract or agreement without translation: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation. It is permissible, but not required, that this translation be signed.

(j) The terms of the contract or agreement that is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures required by subdivision (e) in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(k)(1) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. If the contract for a consumer credit sale or consumer lease that has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom the consumer made the contract and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded, and the assignor shall promptly repurchase the contract from the assignee.

(2) Notwithstanding paragraph (1), only a qualified commercial tenant may rescind a contract described in paragraph (8) of subdivision (b) pursuant to this subdivision.

(l) Any waiver of a provision of this section is contrary to public policy and is void and unenforceable.

(m) For the purposes of this section, the following definitions apply:

Kimball, Tirey & St. John LLP © 1997-2026

(1) “Commercial real property” means all real property in this state, except dwelling units subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4, mobilehomes, as defined in Section 798.3, and recreational vehicles, as defined in Section 799.29.

(2) “Microenterprise” has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(3) “Nonprofit organization” means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986. 1

(4) “Qualified commercial tenant” means a tenant of commercial real property that meets both of the following requirements:

(A) The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees.

(B)(i) Subject to clause (ii), the tenant has provided the landlord, within the prior 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this section come into place.

(ii) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice and self-attestation described in clause (i) before or upon execution of the lease, and annually thereafter, at such time the protections under this section come into place.

Kimball, Tirey & St. John LLP © 1997-2026

Notice to Pay Rent or Quit

(Commercial Notice)

TO: [(1)] _____

AND ALL OTHERS IN POSSESSION:

WITHIN _____ [(2)] DAYS (excluding Saturdays and Sundays and other judicial holidays), after the service on you of this notice you must pay the delinquent rent for the premises described below, of which you now hold possession:

$_____ FROM:_____ TO:_____

[(3)] or you are required to deliver up possession of the described premises, to the undersigned, _____ _____or [(4)] who/which is authorized to receive the same, or legal proceedings will be instituted against you to declare the forfeiture of the lease or rental agreement under which you occupy the property described below and to recover possession of said premises, to recover all rent past due, to recover court costs and attorney fees as permitted by law, because of your failure to comply with this notice.

The premises are in the City of_____, County of_____, State of California, designated by the number and street as: _____[(5)].

Owner/owner's agent reserves the right to accept partial payments without waiving the right to seek possession of the premises based on this Notice. Further, acceptance of partial payments will not be deemed a waiver of any and/or all rights under the rental agreement/lease between the parties. (California Code of Civil Procedure Section 1161.1(b) et seq.). Further, the amount demanded will be deemed "estimated" under California Code of Civil Procedure 1161.1(a).

Make payments payable to:_____

Payment may be delivered to the following individual: _____

at the following address: _____

and the following telephone number:_____

Payments made in person shall be delivered between the hours of _____and _____ _____on the following days of the week:_____

❑ *(If checked)* There is a 24-hour drop box available at the payment location, but you assume any risk of loss in the delivery.

Date: [(6)] _____ By: [(7)] _____

Agent/Landlord

Print Name:_____

Kimball, Tirey & St. John LLP © 1997-2026

Instructions for Notice to Pay Rent or Quit

1. Names of occupants. It is important to list the names EXACTLY as they appear on the rental agreement/tenant application. Include all known entities and/or individuals and fictitious business names on the notice and make one original and serve copies to each named adult. If there has been an assignment, the assignee is a proper party, not the assignor, to be named in the notice.

2. Specify the number of days the tenant has to pay. While three days is the "default" amount specified by law, for a commercial tenancy, the parties may specify a different time period in the lease (such as 5 days). Check the default provision of your lease.

3. This section describes the rent owed. Do not prorate rent for the month of service. If the rent is due on the first of the month, list the rent for the entire month of service, plus any other months owed (within the last 12 months) after deducting any partial payments. DO NOT include late charges, interest or any other charges owed other than rent without legal advice regarding the "additional rent" clause in your lease. You can use a separate notice for other amounts owed and serve it at the same time as the non-payment of rent notice.

4. Insert the name of the property management company, owner or other authorized representative of the owner here.

5. List the complete address of the property here. Include unit and building number. The street designation must also be exact (such as avenue, street, boulevard, circle, etc.).

6. Insert the date you filled out the notice form.

7. The notice should be signed by either the owner or an authorized agent of the owner. Identify the signature by either "agent" or "owner."

Kimball, Tirey & St. John LLP © 1997-2026

Declaration of Service

(Commercial Notice)

I, the undersigned, declare that at the time of service of the papers identified below, I was at least EIGHTEEN (18) years of age, and that I served the following checked notice: (1)

- ❑ Notice to Pay Rent or Quit
- ❑ Notice to Perform Covenant or Quit
- ❑ Other:_____

on the following persons: _____ (2)

at _____ (3)

on the _____ day of _____, 202_____ (4)

- ❑ BY DELIVERING PERSONALLY a copy of the Notice to the following **TENANT(S) OR OCCUPANTS**: _____

_____

_____

- ❑ BY LEAVING a copy of the Notice for _____

_____

with _____

being a person of suitable age and discretion, the **TENANT(S) OR OCCUPANT(S),** being absent from the commercial rental property;

AND MAILING by first class mail on said date a copy to each tenant or occupant named above by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named persons at the address where the commercial rental property is situated.

- ❑ BY POSTING a copy for each of the above-named **TENANT(S) OR OCCUPANT(S)** in a conspicuous place on the commercial rental property therein described, there being no person of suitable age or discretion to be found at the commercial rental property;

  AND MAILING by first class mail on the same day as posted, a copy to each tenant or occupant named above by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the persons at the commercial rental property.

- ❑ BY _____

_____, the manner specified in the rental agreement or lease for the commercial rental property.

I declare under penalty of perjury that the foregoing is true and correct and if called as a witness I could competently testify thereto.

Executed this _____day of ____, 202____ at _____, California.

By: _____ (5)

Print Name: _____

Kimball, Tirey & St. John LLP © 1997-2026

Instructions for Declaration of Service

1. Check the type of notice or notices served. Remember, a thirty-day notice can be served at the same time as a three-day notice to pay rent or quit. For other notices, check with us!

2. List all persons or entities served exactly as they appear on the notice.

3. Insert the address where served.

4. Check the appropriate method of service of process. Personal service means that the named person was in your presence at the time of delivery.

5. To be signed only by the person who served the notice.

Kimball, Tirey & St. John LLP © 1997-2026

Notice to Perform Covenant or Quit

(Commercial Notice)

TO: _____ (1)

AND ALL OTHERS IN POSSESSION:

NOTICE IS HEREBY GIVEN that within _____ days (excluding Saturdays and Sundays and other judicial holidays) after the service upon you of this notice, you are required to comply with the below described covenant or quit and deliver up possession of the premises to the undersigned or to _____ (2) who/which is authorized to receive the same, or the undersigned will institute proceedings against you to recover possession of said premises, to recover court costs, attorney's fees as permitted by law, because of your failure to comply with this notice UNLESS YOU PERFORM SAID COVENANT WITHIN _____ DAYS (EXCLUDING SATURDAYS AND SUNDAYS AND OTHER JUDICIAL HOLIDAYS).

You are being served with this Notice because you have breached a covenant in your Lease or Rental Agreement, in that you have, contrary to said Lease or Rental Agreement, done or omitted to do the following: _____ (3)

To comply with this notice you must: _____ (4)

YOU MUST COMPLY WITH THE ABOVE COVENANT WITHIN THE TIME SPECIFIED ABOVE.

The premises referred to are in the City of _____, County of _____, State of California, designated by the number and street as (5) _____

_____

You are further notified that the undersigned elects to declare the forfeiture of your lease or rental agreement under which you hold possession of the above-described premises.

Dated: _____ (6) By: _____ (7)

Agent/Landlord

Print Name: _____

If this demand is monetary: Please be advised that owner/owner's agent reserves any and all rights to accept partial payments without waiving the right to seek possession of the premises based on this Notice. Further, acceptance of partial payments will not be deemed a waiver of any and/or all rights incident to the rental agreement/lease between the parties. (California Code of Civil Procedure § 1161.1(b) et seq.). Further, any amount demanded will be deemed "estimated" per California Code of Civil Procedure § 1161.1(a).

Kimball, Tirey & St. John LLP © 1997-2026

Instructions for Notice to Perform Covenant or Quit

1. Names of all occupants. It is important to list the names EXACTLY as they appear on the rental agreement/tenant application. Include all known entities and/or persons on the notice and make one original and serve copies to each named adult.

2. Insert the name of the property management company, owner or other authorized representative of the owner here.

3. The law requires that notices are specific and clear. Incomplete or vague information will cause a notice to fail for uncertainty. State all of the relevant details of the breach, including reference to the specific lease provision(s) violated. The more detailed, the better. Answer all of the "who, what, when and where" questions.

4. Specify what the tenant must do to cure the notice.

5. The address of the property should be completely listed here. Include the unit and building number. The street designation must also be exact; make sure you know the property designation (avenue, street, boulevard, etc.).

6. Insert the date you filled out the notice form and confirm the lease does not require an additional period (see, for example, the lease "Defaults" provision).

7. The notice should be signed by either the owner or an authorized agent of the owner, preferably by the same person who filled out the notice. Identify the signature by either "agent" or "owner."

Kimball, Tirey & St. John LLP © 1997-2026

30-Day Notice to Terminate Tenancy

TO: _____

AND ALL OTHERS IN POSSESSION:

TAKE NOTICE that your month-to-month tenancy of the property described below is terminated as of the date **thirty (30) days** after the service of this NOTICE upon you and that you must quit and surrender possession to the undersigned or to _____who/which is authorized to receive the same by the date **thirty (30) days** after the service of this NOTICE upon you.

The premises of which you must surrender possession are in the City of_____, County of _____, STATE OF CALIFORNIA, designated by the number and street as _____.

This is intended as a **thirty (30) day** legal notice to terminate your tenancy in accordance with the California Civil Code section 1946.

If you fail to comply with this notice, legal proceedings will be instituted against you to declare the forfeiture of the lease or rental agreement under which you occupy the property and to recover possession of the property to recover court costs, attorney's fees as permitted by law, because of your failure to comply with this notice.

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

DATED this _____day of _____, 202_____

_____

Agent/ Landlord

Print Name:_____

Kimball, Tirey & St. John LLP © 1997-2026

Notice of Termination of Tenancy and Non-Renewal of Lease (Qualified Commercial Tenant)

TO: [INSERT NAME OF TENANT]

AND ALL OTHERS IN POSSESSION:

TAKE NOTICE that your tenancy of the hereinafter described premises is hereby terminated effective sixty (60) days from the date of service of this Notice upon you and that you are hereby required to quit and surrender possession thereof to the undersigned or to **[insert name of Landlord contact, title and name of property management company]**, who may be contacted at **[insert telephone number for landlord contact]**, as agent for **[insert name of landlord/owner/plaintiff]**, who/which is authorized to receive the same.

The premises of which you are required to surrender possession are situated in the City of **[____]**, County of **[_____]**, State of California, designated by the number and street as: **[_____]**

This is intended as a legal notice for the purpose of terminating your tenancy, which was created by virtue of that certain written lease agreement, dated **[_____]**, ("Lease Agreement"), as amended, by and between **[_____]**, **[***if applicable*: by and through its predecessors-in-interest,**]** as Landlord, and **[_____]**, as Tenant, in accordance with California Civil Code section 1946.1. Pursuant to Civil Code section 1946.1(j), attached is information on the provisions of this section.

If you fail to comply with the terms of this notice, legal proceedings will be instituted against you to declare the forfeiture of the tenancy under which you occupy the hereinabove described property and to recover possession of said premises, to recover court costs, attorney's fees as permitted by law, as a result of your failure to comply with the terms of this notice.

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.

Kimball, Tirey & St. John LLP © 1997-2026

STATE OF CALIFORNIA

§ 1946.1

(a) Notwithstanding Section 1946, a hiring of residential real property or commercial real property by a qualified commercial tenant for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of the party's intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling or commercial real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) Notwithstanding subdivision (b), an owner of a residential dwelling or commercial real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if a tenant or resident has resided in the dwelling or occupied the property for less than one year.

(d) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if all of the following apply:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.
(2) The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a title insurer or an underwritten title company, as defined in Sections 12340.4 and 12340.5 of the Insurance Code, respectively, a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.
(3) The purchaser is a natural person or persons.
(4) The notice is given no more than 120 days after the escrow has been established.
(5) Notice was not previously given to the tenant pursuant to this section.
(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(e) After an owner has given notice of the owner's intention to terminate the tenancy pursuant to this section, a tenant may also give notice of the tenant's intention to terminate the tenancy pursuant to this section, provided that the tenant's notice is for a period at least as long as the term of the periodic tenancy and the proposed date of termination occurs before the owner's proposed date of termination.

(f) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(g) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

(h) A notice given by an owner pursuant to this section shall contain, in substantially the same form, the following:

Kimball, Tirey & St. John LLP © 1997-2026

"State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out."

(i) A landlord or its agent shall not charge a tenant a fee for serving, posting, or otherwise delivering any notice, as described in this section.

(j) A landlord of a commercial real property shall include in the notice required by this section information on the provisions of this section.

(k) For the purposes of this section, the following definitions apply:

(1) "Commercial real property" means all real property in this state, except dwelling units subject to this chapter, mobilehomes as defined in Section 798.3, and recreational vehicles as defined in Section 799.29.

(2) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(3) "Nonprofit organization" means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986.

(4) "Qualified commercial tenant" means a tenant of commercial real property that meets both of the following requirements:

(A) The tenant is a microenterprise, a restaurant with fewer than 10 employees, or a nonprofit organization with fewer than 20 employees.

(B) (i) Subject to clause (ii), the tenant has provided the landlord, within the previous 12 months, a written notice that the tenant is a qualified commercial tenant and a self-attestation regarding the number of employees, at such time the protections under this section come into place.

(ii) Unless the tenancy is from week to week, month to month, or other period less than a month, the tenant provided the notice and self-attestation described in clause (i) before or upon execution of the lease, and annually thereafter, at such time the protections under this section come into place.

(Amended by Stats. 2024, Ch. 1015, Sec. 3.5. (SB 1103) Effective January 1, 2025)

Kimball, Tirey & St. John LLP © 1997-2026

Notice of Right to Reclaim Abandoned Property

(Commercial - Former Tenant)

TO: _____

(Name of Former Tenant)

_____

(Address of Former Tenant)

When you vacated the premises at: _____

(Address of Premises, including room, if any)

the following personal property remained: _____

_____

You may reclaim this property at _____

(Address where property may be claimed)

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim, no later than _____(***insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail***), this property may be disposed of pursuant to Civil Code Section 1993.07.

(Check one):

❑ 1. If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money

❑ 2. Because you were a commercial tenant and this property is believed to be worth less than either two thousand five hundred dollars ($2,500) or an amount equal to one month's rent for the premises you occupied, whichever is greater, it may be kept, sold or destroyed without further notice if you fail to reclaim it within the time indicated above.

_____ _____

Date ***Owner/Agent/Landlord-Signature***

_____

Print Name Here

_____

Telephone Number & Address

Kimball, Tirey & St. John LLP © 1997-2026

Notice of Right to Reclaim Abandoned Property

(Commercial - Person Other Than Former Tenant)

TO:_____

(Name)

_____

(Address of Former Tenant)

When _____ Name of former tenant _____vacated the

premises at:_____

(Address of Premises, including room, if any)

the following personal property remained:_____

_____

You may reclaim this property at_____

(Address where property may be claimed)

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim, not later than _____ (***insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail***), this property may be disposed of pursuant to Civil Code Section 1993.07.

❑ 1. If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money.

❑ 2. Because you were a commercial tenant and this property is believed to be worth less than either two thousand five hundred dollars ($2,500) or an amount equal to one month's rent for the premises you occupied, whichever is greater, it may be kept, sold or destroyed without further notice if you fail to reclaim it within the time indicated above.

_____ _____

Date ***Owner/Agent/Landlord-Signature***

_____

Print Name Here

_____

Telephone Number & Address

Kimball, Tirey & St. John LLP © 1997-2026

LAW OFFICES OF **Kimball, Tirey & St. John LLP**

Kimball, Tirey & St. John LLP has been the law firm of choice for professional managers and owners of residential and commercial property in California since 1977. This handbook is a valuable resource that provides commercial operators step-by-step guidance in making informed risk management choices for common situations arising in daily rental operations. It has been written as a collaborative effort by KTS' experienced attorneys.

Some of the subjects covered include:

Update of the Newest Laws

Pre-Tenancy Issues, such as:

- Lease Negotiations & Drafting
- Lease Parties & Signatories
- Exclusive Use Provisions
- ADA Litigation

Tenancy Issues, such as:

- NSF Checks
- The Eviction Process
- Path of an Eviction
- Jury Waivers
- Animals on Commercial Property
- When Your Tenant Files for Bankruptcy
- CPI Increases

Post-Tenancy Issues, such as:

- Abandoned Personal Property
- Commercial Tenant Improvements
- Checklist for Improving Collections
- Asset Searches
- Seizing Accounts Receivable
- Business Record Retention

California Codes

Forms



Kimball, Tirey & St. John LLP
7676 Hazard Center Drive, Ste. 900
San Diego, CA 92108
800-338-6039
www.kts-law.com
education@kts-law.com

$27.95
ISBN 979-8-9924810-5-1
52795>
9 798992 481051