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California Residential Landlord/Tenant Preventive Law Handbook

2026 Edition

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CALIFORNIA RESIDENTIAL LANDLORD/TENANT PREVENTIVE LAW HANDBOOK

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

California Residential Landlord/Tenant Preventive Law Handbook

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This "Preventive Law Handbook" is a resource that may help you avoid costly legal problems that can arise in the landlord/tenant relationship. It is designed to help you make more informed risk management choices in many of the common situations that can occur in your daily rental operations.

The knowledgeable contributors to this handbook include: Attorneys Ted Kimball, Patricia Tirey, Talia Cortese, Mariah Schultz and Adrienne Kelly.

Additional copies can be ordered by contacting the Education Department at *education@kts-law.com* or (619) 234-1690.

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

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- Policy and Procedures reviews
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- Trainings
- Letters

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SECTION A:

COVID-19 Pandemic Related Laws

On March 4, 2020, Governor Gavin Newsom issued a state of emergency related to the COVID-19 pandemic. The State of California essentially shut down in most capacities for the rest of the year and into 2022. The closures statewide impacted the ability for individuals to pay their rent and other financial obligations related to their housing leases. Over the course of the pandemic, federal state and local jurisdiction passed a plethora of laws, rules, and regulations in order to protect residential residents.

This section has been added to this book to provide a discussion of how COVID laws continue to alter how residential managers handle residential tenancies. While this section primarily focuses on state and federal laws, it is important to note that local laws may provide additional protections as permitted by state law. Before you take any action, it is imperative that you seek legal advice based upon the specifics of your situation. The laws created due to the pandemic are complex and require a detailed analysis on every level of government as well as the type of property you manage. In short, what a landlord is permitted to do under state law may be prohibited on the local level.

Review this section first as it provides COVID-19 related changes in the law. Subsequent areas of the book discuss other residential landlord/tenant law so where COVID-19 laws differ, please follow the pandemic laws over the other landlord/tenant sections.

Overview of the beginning of the pandemic legislation

On March 4, 2020, Governor Newsom issued a proclamation declaring a state of emergency throughout California due to the COVID-19 pandemic. Within the declaration the governor also cited Government Code § 8625(c) and 8571 stating local authority is inadequate to cope with the emergency and suspended statutes that hinder, prevent, or delay the mitigation of the effects of the state of emergency. Shortly after the state of emergency ("SOE") came the first of many Executive Orders N-28-20, which provided local jurisdictions with the ability to enact additional protections on evictions in residential and commercial tenancies for the non-payment of rent related to the COVID pandemic through May 31, 2020. The protections under N-28-20 were extended through September 30, 2020, by subsequent Executive Orders N-66-20 and N-71-20. Over a hundred cities and counties rose to the occasion by passing a range of ordinances, resolutions, or other laws in an effort to stabilize housing and prevent evictions. Executive Orders related to residential protections expired on September 30, 2020, after the passage of AB 3088. After AB 3088, there were several extensions including SB 91, AB 81, AB 832, and finally AB 2179 which provided protection through June 30, 2022. All state-level eviction protections related to COVID-19 rental debt have expired, but there are several provisions of the COVID-19 related legislation that remain in effect indefinitely. Statewide protections against COVID rental debt do not prevent local jurisdictions from enacting just cause provisions.

AB 3088, SB 91, and AB 832 also known as the COVID Tenant Relief Act "CTRA"

On August 31, 2020, the governor signed the COVID-19 Tenant Relief Act (AB 3088) into law. AB 3088 was originally introduced as a bill designed to make minor changes and corrections to AB 1482 (including important changes regarding how to calculate CPI). However, in addition to these changes

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related to AB 1482, the law also provided residential tenants with a financial hardship related to COVID-19 from being evicted until 2021, under certain circumstances. On January 29, 2021, SB 91 extended the transition period to June 30, 2021, and provided additional protections to tenants. SB 91 also codified the State Rental Relief Program known as "Housing is Key" which was a program designed to provide direct assistance to tenants to pay their rental arrearages in an effort to stabilize housing and prevent evictions. Finally, AB 832 provided one last extension of CTRA by extending the transition period through September 30, 2021. Following the final extension, the legislature passed AB 2179, a stop gap measure to protect those tenants who had applied for rental assistance but not yet received a response on their application. Applications for Housing is Key were accepted through April 1, 2022, and the protections against evictions for those with pending applications extended through June 30, 2022.

It is important to discuss fact specific issues with an attorney before acting. For full details regarding CTRA, protected time periods, transitional time periods, and other protections under CTRA, please review the 2021 or 2022 versions of this book. The remainder of this section is dedicated to the lingering protections for COVID.

I. Small Claims No Longer Available for COVID Rental Debt

As a result of the transmuted debt from the protected and transition time period, the state legislature provided a cost-effective procedure for landlords to seek recovery of COVID rental debt through the small claims process. This process was available until October 1, 2025. If a landlord did not file a small claims case on or before that date, COVID rental debt is no longer recoverable through small claims but may be still recoverable via non-judgment collections. Consult with an attorney to determine whether you may have other options to recover unpaid COVID rental debt.

II. Local Ordinances

CTRA did not completely supersede local ordinances. If a local ordinance was in effect as of August 19, 2020, the terms of the ordinance in place on that date will remain in effect, including the expiration of the ordinance as of that date. Any amendments, reenactments, extensions, or other changes made after August 19, 2020, would not take effect until July 1, 2022. However, a repayment period for COVID rental debt (if any) included in a local ordinance must allow for rent repayment to commence no later than August 1, 2022, and cannot allow the repayment period to stretch beyond August 31, 2023. Local ordinances that provided rental protections beyond September 30, 2021, may have a different repayment period for rent that became due outside the protected or transition periods. Where a local ordinance may have extended the repayment date for unpaid rent due to a COVID financial hardship, for purposes of determining whether you are able to seek legal action to recover those amounts, landlords need to be conscious of the statute of limitations for recovery of debt which is 2 years for an oral contract and 4 years for a written contract. Consult an attorney to discuss specifics of your case.

There was also an exception to CTRA's prohibition on new local ordinances, where CTRA permitted a city, county, or city and county's authority to extend, expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination of a residential tenancy. Several local jurisdictions have proposed and/or enacted these just cause measures, so it is advisable to check with an attorney to see if just cause has been adopted in your area.

III. Other Protections

In addition to notices and eviction protections for non-payment of COVID rental debt, SB91 also provided other protections. These protections either had no expiration date or had an expiration date that went beyond the end of the transition period. These protections have survived the expiration of the COVID eviction protections and are listed here below.

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a. COVID Rental Debt – Effect on Applications/Screening

If a prospective tenant or applicant otherwise qualifies for an available unit, they cannot be denied housing as a result of having unpaid COVID rental debt. In addition, the COVID-related rental debt cannot be used as a negative factor in evaluating the application. The law also prohibits tenant screening companies from reporting COVID rental debt as a negative on a screening report. This applies to any financial obligation under the lease that became due between March 1, 2020, and September 30, 2021, regardless of whether the person submitted a declaration of hardship. If the debt was incurred during the above time period, it cannot be used as a basis to deny housing or a negative factor in evaluating the application.

b. Sale or Assignment of COVID Rental Debt

For residents whose household income is above 80% Area Median Income (AMI), landlords were prohibited from selling or assigning COVID rental debt until October 1, 2021. CTRA permanently prohibits a landlord from selling or assigning unpaid COVID rental debt that accrued from March 1, 2020, to September 30, 2021, for residents whose household income is at or below 80% of the AMI where the property is located, based on the 2020 or 2021 calendar year. This prohibition on the sale or assignment affects the previous practice of owners who assign the rights of unpaid rent to a purchaser of a property. Cautious buyers may want to seek assurances that the debts the seller is offering are debts that can legally be assigned, and therefore, collected. Different collection agencies may have different requirements or practices on the collection of COVID rental debt, so it would be advisable to shop around if your chosen collection agency chooses not to collect COVID rental debt. KTS does collect on these debts as permitted under law under certain conditions.

c. Late Fee or Increased Fees Prohibition

If a tenant provided the landlord with at least one declaration of hardship due to the COVID pandemic, a landlord may not charge a late fee for rent or other financial obligation that became due from March 1, 2020, to September 30, 2021. For rent or other financial obligations becoming due on or after October 1, 2021, a landlord was able to resume charging late fees in accordance with the terms of the lease and applicable law.

If a tenant provided the landlord with at least one COVID hardship declaration, CTRA continues to prevent a landlord from charging that tenant a new fee for services previously provided by the landlord for free, or from increasing existing fees for services which have already been established. There is no termination date listed for this provision, and this will remain in effect indefinitely unless the legislature removes the law. For any late fees charged, it is imperative that you confirm they are limited to the estimated actual cost for processing the late payment and that you have the appropriate language in your lease regarding late fees. Finally, review local ordinances for applicable repayment periods so that you can confirm the rent is actually late prior to assessing a fee. It is wise to reach out to an attorney if you would like to charge late fees.

d. Rental Payment Allocation

CTRA also provided some direction on where to allocate rental payments made during the pandemic. It states that a landlord is prohibited from applying rental payments to any COVID rental debt other than that month's rent unless a tenant has agreed to such an application of payment in writing. Landlords should take caution prior to filing an eviction to ensure that any rental payments were not improperly applied to COVID rental debt. This may require review of the property management software and the ledger balance. Landlords who wish to apply payments to an older outstanding debt should only do so for financial obligations that became due on or after October 1, 2021. Payments should not be allocated

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to COVID rental debt unless the payment was made in that month, it is a payment from a rental assistance program which specifies the period, the resident expressly states in writing it is for that period, or there is no other period to apply the payment.

e. No Rent Credit for Amenity Closure

One clarification in favor of the landlord was the provision that protects landlords who temporarily reduced hours or closed an amenity or service in order to comply with federal, state, or local public health orders or guidelines. This applies to *any* federal, state or local public health orders or guidelines, not only those related to COVID. This provision protects a landlord from claims that there was any illegal rent increase due to reduced services for purposes of complying with any local rent control ordinance or other claims of violations of the lease.

f. Security Deposit

Prior to the passing of SB 91, landlords were uncertain of rights related to a security deposit and its availability to cover unpaid rent during the pandemic. This issue was resolved with SB 91. While a residential tenant remains in possession of the unit, their deposit may not be used to satisfy COVID rental debt unless they agree to it in writing. Once the tenant vacates the premises, the landlord can apply the security deposit to cover unpaid COVID rental debt, subject to local ordinance restrictions.

g. Remaining Rental Assistance Requirements

In residential unlawful detainer actions, a default judgment or a judgment after trial will not be entered unless the plaintiff provides a declaration to the court to state that the damages sought in the judgment were not recovered from any rental assistance or financial compensation from another source, nor is there a pending application for payment of the damages sought. This declaration requires the plaintiff to declare that the judgment will not result in a double award of damages.

IV. CARES Act

On March 27, 2020, Congress enacted the Federal CARES Act which prohibited landlords from filing an unlawful detainer for 120 days after the Act was passed. While several sections of this Act expired as of July 25, 2020, there are ambiguities that have not been clarified by Congress. Section 4024 states that a person in a covered dwelling should not be evicted for the non-payment of rent or other financial obligations unless they have been provided thirty (30) days' notice to vacate. Covered dwellings are units/tenancies that trigger protections under the Violence Against Woman Act (VAWA) or property with a federally backed mortgage. Courts throughout California have interpreted the 30-day notice requirements of the CARES Act to remain intact, unless the United States Congress enacts law that changes this requirement. Please note if your property is subject to the CARES Act and ask your attorney what kind of notice you should be serving.

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SECTION ONE:

New Landlord/Tenant Laws and Issues For 2026

Our state Legislators were very busy this year, passing a record number of new laws, including many which impact the rental housing industry. Additionally, local governments have also continued to pass their own ordinances which specifically impact those jurisdictions (which are not covered herein). For your convenience, new legislation has been organized by category: Lease Terms; Pricing; Habitability; Residential Evictions; Security Deposits; Short-Term Lodging; Mobilehomes; Affordable Housing; and Service and Court Procedures. This section contains a summary of each law. However, a link to the full text of each law is also included below.

Lease Terms

AB 1529

AB 1529 was a Housing Omnibus Bill that made changes to several existing laws, including a minor amendment to the Tenant Protection Act of 2019 (commonly referred to as AB 1482). AB 1482 requires the owner of residential property covered by the law to provide tenants with a notice of their rights under AB 1482 through an addendum to the lease or as a written notice signed by the tenant. As of January 1, 2026, AB 1529 clarifies that the notice may be provided in the lease or rental agreement. AB 1529 also made amendments to other existing housing-related laws, including notification requirements when affordable housing restrictions for assisted housing developments are set to expire, and updates related to how rental rates are set for certain affordable housing communities (discussed in more detail below in the Affordable Housing section of this article).

AB 1414

For tenancies commenced, renewed, or continuing on a month-to-month or other periodic basis on or after January 1, 2026, landlords must allow residential tenants the opportunity to opt out of paying for any subscription from a third-party internet service provider for wired or wireless internet, cellular or satellite service offered in connection with the tenancy. If landlords do not allow a tenant to opt out or if they charge the tenant the fee after they have opted out, the tenant would be entitled to deduct the cost of the subscription from the rent. Landlords also cannot retaliate against tenants who opt out.

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

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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, and 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.

Habitability

AB 628

AB 628 adds appliance requirements in a residential unit in order for the premises to be considered legally habitable. For all residential rental units with leases entered into, amended or extended on or after January 1, 2026, the unit must have:

- A stove maintained in good working order and capable of safely generating heat for cooking purposes; and
- A refrigerator maintained in good working order and capable of safely storing food.

If a stove or refrigerator is subject to recall by the manufacturer or public entity, the landlord must repair or replace the appliance within 30 days of the notice of recall. The landlord and tenant may agree when the lease is signed that the tenant is choosing to provide and maintain their own refrigerator, if specific statutory language is included in the lease and as long as the tenant is not required to provide a refrigerator as a condition of the tenancy. Residential rental units in permanent supportive housing, single-room occupancy units, units in a residential hotel or dwelling units within a housing facility that offers shared or communal kitchen spaces, including, but not limited to, those in an assisted living facility are exempt from this requirement. Landlords should keep in mind that because AB 628 amends California law related to habitability, the tenant can utilize the repair and deduct remedy or vacate without penalty remedy if the landlord neglects to perform repairs within a reasonable amount of time to a stove or fridge provided by the landlord.

SB 610

SB 610 establishes new responsibilities for landlords when a rental unit or building is damaged by a natural or manmade disaster. (SB 610 also made several changes to Mobilehome Residency Law addressed below in the Mobilehome section of this article). After a disaster, landlords are required to remove debris and to mitigate hazards including, but not limited to mold, smoke, ash, asbestos, and water damage, and must also follow any cleanup protocols required by government agencies. Landlords must notify tenants when cleanup is completed and make testing or environmental reports available upon request. A rental unit is not considered habitable until a local public health agency or official determines that debris does not contain toxic substances. The tenant has the right to return to the rental unit at the same rental rate they were paying once it becomes safe unless the tenancy is otherwise terminated in accordance with California law. SB 610 also clarifies that rent is not owed during mandatory evacuation periods.

SB 655

Currently, California building standards require that a minimum indoor temperature of 68 degrees be able to be maintained in a residential unit, but there is no maximum indoor air temperature. SB 655

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establishes a policy that all dwelling units shall be able to attain and maintain a safe maximum indoor temperature and requires that relevant state agencies consider this policy when revising, adopting or establishing policies, programs and criteria beginning January 1, 2027. This mandate effectively requires that the relevant state agencies determine what a safe maximum indoor temperature should be and implement building standards to ensure residential units are able to attain and maintain that temperature. This is indicative of the Legislature's position that cooling systems are an important element of safety and habitability.

Residential Evictions

AB 246

As of January 1, 2026, the Social Security Tenant Protection Act of 2025 (AB 246) creates an eviction defense for tenants whose Social Security benefits are delayed, reduced, or terminated through no fault of their own. If the tenant proves this to the court at trial, the court must issue a stay of the eviction proceedings. The stay can last up to 14 days after benefits resume or for a maximum of six months. Within 14 days of the tenant's social security benefits being restored, the tenant must either pay all past due rent or enter into a mutually agreed upon payment plan with the landlord. This law applies to residential properties, including mobilehomes.

AB 238

Among other protections, a foreclosure-related eviction may not be initiated against a borrower who has been granted a forbearance due to financial hardship that prevents the borrower from making timely payments on a residential mortgage loan due directly to the Eaton or Palisades Fires in January of 2025. Borrowers may request forbearance until six months after termination of the Governor's state of emergency issued on January 7, 2025, or January 5, 2027, whichever is earlier, and a granted forbearance may be 90 days, with additional 90-day extensions, up to one year.

Security Deposits

AB 414

AB 414 changes how landlords must send move-out statements and security deposit refunds starting January 1, 2026. The landlord and the tenant can mutually agree at any time that the move-out statement can be sent either by email or by first-class mail to the email or address provided by the tenant. Without an agreement, the move-out statement must be sent by first-class mail to an address provided by the tenant.

If there is only one adult tenant and the tenant did not pay the deposit or any rent electronically, the refund must be delivered in person or mailed as a check.

If there are multiple adult tenants, the landlord and all the adult tenants can choose to enter into a mutual written agreement at any time indicating how any security deposit refund will be returned, whether to one tenant or divided (including allocation percentages), how it will be sent, and whether the landlord will send the move-out statement by email or first-class mail. Without such an agreement, the refund must be made payable to all adult tenants and must be sent by personal delivery or first-class mail to any one of the adult tenants.

If a household with a single adult tenant paid electronically and no written agreement exists as to how the deposit will be returned (such as a provision in the lease, addendum to the lease or separate agreement), the landlord must provide written notice informing the tenants of their right to receive the refund electronically at any time before the end of the lease term or at the time either party gives notice that that tenancy is being terminated. However, such notice is not required when the landlord is terminating the tenancy pursuant to subdivision (2), (3) or (4) of Civil Code Section 1161 (when the

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landlord serves a notice due to non-payment of rent, breach of lease, nuisance, waste or illegal activity). The notice of right to receive the deposit electronically should notify the tenant(s) that they will need to specify the bank account or other financial institution where the tenant(s) would like the refund deposited if they choose to receive the refund electronically.

If one tenant terminates the lease early pursuant to California Civil Code Section 1946.7 (due to domestic violence or other enumerated crimes therein), and there is no mutual written agreement between the landlord and the multiple tenants, the landlord may return the security deposit refund in a manner other than by check made payable to all adult tenants if the tenant who terminated the lease early requests that the landlord do so. However, this law does not require a landlord to refund any portion of the security deposit prior to all tenants fully vacating the premises.

Short-Term Lodging

AB 299

Generally, an unlawful detainer is required to remove an occupant from a hotel, motel or other short-term lodging if the occupant has been in possession of the premises for more than 30 days. Starting October 10, 2025, however, guests who are staying in short-term lodging because their home was destroyed or made uninhabitable by a declared disaster will not become tenants until they have stayed 270 days or more. If the lodging operator believes the occupant may be disaster-displaced, the lodging operator must provide a disclosure and confirmation form at check-in. If the occupant does not physically or electronically indicate whether this law applies to them on the confirmation form, the operator may use other reasonable information to decide if the law applies, can refuse to provide accommodations or limit the duration of stay. For guests who are subject to AB 299 who have stayed at least 30 days, the operator must provide 72 hours written notice to vacate, except in cases of nonpayment, interference with quiet enjoyment of other guests, property damage, or safety concerns.

SB 346

The Short-Term Rental Facilitator Act of 2025 (SB 346) allows a city and/or county to require short-term rental facilitators like Airbnb or VRBO, for example, to report, among other things, the physical address and zip code of each short-term rental and the license number and/or transient occupancy tax certification associated with the short-term rental. Failure to report the requested information within the reporting period may result in an administrative fine or penalty. The city/county may also perform an audit of the short-term rental facilitator. SB 346 does not preempt the ability of a local government from adopting a separate ordinance that regulates short-term rental facilitators or short-term rentals.

Mobilehomes

AB 391

Notices required by the Mobilehome Residency Law (including a copy of the mobilehome park's rules and regulations and a copy of Civil Code Section 798.15) must now be delivered to both the homeowner and the resident of the mobilehome. The notices required to be sent annually by February 1st may be combined into one notice and delivered electronically if the homeowner or resident has provided affirmative, written consent. Within five days of the homeowner or resident providing consent to receive notices electronically, the landlord must deliver a notice personally or via mail to the homeowner and resident containing statutory language about the agreement to receive notices electronically and the right to revoke said agreement and the name and address of the entity to whom the homeowner or resident may contact to revoke consent.

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AB 456

When a mobilehome is being sold but the home will remain in the park, management can make specific demands upon the seller and buyer of the home. This law changes some of those requirements. If repairs are required by the mobilehome park, AB 456 requires management to provide the homeowner with a written summary of repairs or improvements necessary no later than 15 days following receipt of a request instead of 10 days. AB 456 also deems management to have approved the application of the prospective purchaser for tenancy in the park if management fails or refuses to notify the seller and the prospective purchaser within 15 days of receiving the application. Additionally, the law requires a homeowner to provide a copy of the Manufactured Home and Mobilehome Transfer Disclosure Statement to management in the case of a sale or transfer of a mobilehome that would remain in the park.

SB 610

Owners of mobilehome parks who choose to convert the park to another use must now follow certain guidelines, including, but not limited to, filing a report with the Department of Housing and Community Development (HCD) regarding the impact of the conversion or closure of the park. The report must also include a relocation plan that mitigates the impact of the park closure on tenants. A proposed closure of the park due to damage or destruction caused by a disaster must include a "technical service inspection report" from HCD identifying conditions within the park. This law also requires landlords, under specified circumstances, to pay displaced tenants the value of the tenant's mobilehome if that tenant is unable to obtain "adequate housing in another mobilehome park."

AB 806

This law prohibits any covenant, restriction, or condition contained in any rental agreement or other instrument affecting the tenancy of a homeowner or resident in a mobilehome park, in a subdivision, cooperative, or condominium for mobilehomes, or in a resident-owned mobilehome park which prohibits or restricts the installation, upgrade, replacement, or use of a cooling system. In addition, a mobilehome tenancy cannot be terminated for the installation, upgrade, replacement, or use of a cooling system. Willful violation of these provisions exposes the violator to liability for actual damages and for a civil penalty up to $2,000.00.

Affordable Housing
Low Income Housing Tax Credit Program Changes:

There have been significant changes to Affordable Housing regulations as of 2025 which owners and operators need to be familiar with, including the Low Income Housing Tax Credit (LIHTC) Program.

On December 11, 2024, The California Tax Credit Allocation Committee (CTCAC) published new regulations which took effect on January 1, 2025, and apply to all LIHTC properties. Any rent increases that take effect on or after January 1, 2025, are capped at 5% + CPI (or 10%- whichever is lower) even if it results in a lower rental rate being charged than the maximum amount under the CTCAC regulations (based on AMI designation of the unit). There are some exceptions to the 5% + CPI rent cap included in the new regulations, however. For more information on changes made to the LIHTC program, you can view our Legal Alert here.

AB 1529

AB 1529 further amends Health and Safety Code 50053 which addresses affordable rents. Properties that meet the following criteria will be required to comply with the maximum rent levels published by CTCAC:

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- At least 80% of the units are designated for lower-income households; and
- The development was awarded federal or state low-income tax credits, tax exempt private activity or general obligation bonds, or local, state or federal loans or grants on or after January 1, 2025.

Changes Announced by the Department of Housing and Community Development:

In addition, on October 10, 2025, the Department of Housing and Community Development (HCD) published a memo entitled, "Rent Increase Limit Policy and Waiver" which states that for properties that meet the above criteria, rent increases are limited in accordance with CTCAC's new regulations.

HCD also announced in this same memo that the agency is adopting similar regulations to those adopted by CTCAC which will apply to any housing developments co-funded by HCD and CTCAC and properties utilizing HCD's MHP Guidelines. HCD has also adopted a Rent Increase Waiver policy which mirrors the CTCAC rent increase limit waiver policy. A copy of the HCD memo can be found here for more detailed information. Owners can contact their HCD representative with any questions related to rent restrictions related to specific HCD properties.

Service and Court Procedures

AB 1384

Currently, a defendant in an unlawful detainer action may respond to a Complaint by filing a Demurrer or Motion to Strike. At that point the judge is required to schedule the hearing within 5 to 7 court days after it is filed, unless the court finds there is good cause to allow the hearing to occur on a later date. Effective January 1, 2026, the court may also set a later hearing if the parties reach a written stipulation regarding a later hearing date.

AB 747

The Service of Process Accountability, Reform and Equity (SPARE) Act (AB 747) was passed to create more accountability and transparency related to process service. Starting January 1, 2027, unlawful detainer filings must include more detailed information to show that the termination notice which is the basis for the unlawful detainer was properly served, including the date, time and location of service of the termination notice. Landlords will need to update their proof of service form in order to capture this information.

In addition, the process server's Proof of Service of the Summons and Complaint must include extensive information and evidence of proof of service, such as a photo of the unit's door (or an explanation if a photograph would be unsafe or not possible), GPS-stamped coordinates indicating the date, time and location of service; and if no GPS or cellular signal, a detailed statement about the lack thereof.

Tenants who claim they were not properly served may bring a Motion to Set Aside or Vacate a Default or Default Judgment. In those cases, a landlord will need to prove that is it more likely than not that service was lawful. Even if service technically complied with the rules, a tenant may still be able to challenge a default judgment if they did not actually receive notice.

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SECTION TWO: PRE-TENANCY ISSUES

California Lease and Rental Agreement Requirements

To ensure legal compliance with landlord/tenant law and to protect yourself and your property, make sure your California leases and rental agreements include the following information required by California law:

Authorized Managers: The owner or manager must disclose to the tenant the name, street address and telephone number of the person authorized to manage the premises, the person to whom rent payments can be made and either the (1) property owner or (2) the person authorized to manage the premises, accept service of notices, demands, and service of process for the landlord. Residents must be notified within 15 days of any change in this information. (Alternatively, a landlord may comply with this obligation by posting the information on the property in the elevator and one more conspicuous place. If there is no elevator, then it must be posted in two conspicuous places). This notification must meet specific requirements of Civil Code § 1962.

The law prohibits a successor owner or manager from serving a Three-Day Notice to Pay Rent or Quit or otherwise evicting a tenant for non-payment of rent for any period of time when the successor owner or manager is out of compliance with the notification requirements of Civil Code § 1962. (However, the law does not relieve the resident of liability for unpaid rent if the notice is not provided when required).

If the required information is not provided, the person who enters into the rental agreement for the owner will be deemed the owner's agent for purposes of (1) service of process and receiving notices and demands and (2) performing the owner's legal obligations under law and under the rental agreement.

If the address provided does not allow for personal delivery, the resident may serve any notice or demand on the owner by mail. The notice will be considered received by the owner on the date posted by the resident.

Rent Payments: Landlords must give payment instructions to residents in the lease, using one or more of the following methods:

1. The lease may identify the name, telephone number and address of the person or entity where rent payments are to be made. If rent payments may be made in person, the lease must identify the usual days and hours the person will be available to receive the payments. Providing a twenty-four (24) hour drop box does not relieve landlords from this requirement. If the address disclosed by the landlord does not allow for personal delivery, the resident may mail the rent to the landlord.

2. Alternatively, the lease may instead disclose 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. The financial institution must be within five miles of the rental property.

3. The lease may provide information necessary to establish an electronic transfer procedure for paying the rent.

If this information is not provided, the resident may pay rent to the person who entered into the lease on behalf of the owner.

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If the address provided by the owner does not allow for personal delivery, the resident will be considered to have paid their rent at the time that the resident mails the rent to the name and address provided by the owner (rather than the date received by the owner).

This information must be kept up to date. If the information is not updated within fifteen (15) days after a change in ownership or management, the successor owner or manager may not serve a notice on the tenant or evict for non-payment of rent that accrued during the period of noncompliance by the successor owner or manager. This means the rent accrued during the period of non-compliance may not be listed in any subsequent rent notice.

A landlord cannot insist on cash or electronic payment as the only form of payment of the rent or security deposit. The landlord must allow other forms of payment, such as check, cashier's check or money order. Additionally, as of January 1, 2025, landlords are not permitted to charge a fee for accepting payment by check. Exceptions allow landlords to require a cash payment if a tenant has stopped payment on a check or had it returned for non-sufficient funds within the previous three (3) months. A landlord must inform the tenant, in writing, that they are electing the cash payment and may only do so for the next three (3) months.

As of August 2018, a landlord must accept a rent payment from a third party, if certain conditions are met. (For more information, see Section 3, Third Party Payments.)

Rent Caps and Just Cause: Under The Tenant Protection Act (TPA) also known as AB 1482 effective in 2020, a landlord must provide written disclosure to all residents, using specific language as provided by statute, indicating whether or not the property is subject to California's rent increase limits and just cause restrictions. Also, in order to reserve the right to evict based upon owner occupancy, the reservation of right must be in the lease or addenda on or after July 1, 2020. The TPA is a complex piece of legislation which required landlords with properties subject to AB 1482 to make significant changes to their current business practices, changes to their lease agreements and other forms and notices. Additionally, there are landlords who are exempt from the TPA, but are required to provide a disclosure to the tenant advising them that they are not subject to the ordinance. This disclosure requirement will be required where the landlord bases the exemption on the separately alienable exemption.

- KTS has several forms available for purchase related to this legislation. Additionally, your documents could be reviewed. To see the forms available or to review your documents, please contact *KTSLease@kts-law.com*.

Megan's Law: The language referencing the California Department of Justice website, in at least 8-point type, must be included in all leases. See the section on Megan's Law for exact wording.

Bed Bugs: Civil Code § 1954.603 requires tenants be provided specific written information about bed bug identification and behavior and the procedure to report a suspected bed bug infestation. This information must be provided in at least 10-point type. An article with more information is available by request.

Other Disclosures: Numerous other disclosures may be required depending on the property's characteristics. These may include (but are not limited to) disclosures relating to Proposition 65 chemicals water submeters (lead, asbestos, pest control, death on the premises, condo conversions, methamphetamine/fentanyl contamination, notice of emergency procedures and information, notice of default (if one has been recorded against the property), auto-renewal (if the lease automatically continues for another term, or automatically rolls over to a month-to-month tenancy at the end of the stated term), flood risk, and a mold pamphlet.

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Additional disclosures or provisions may be required under local laws.

If a lease is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean, the landlord must provide a copy of the agreement in that language to the prospective tenant or any other signatory to the lease unless the prospective tenant provides an interpreter. KTS has additional information on this topic by request.

Use the Appropriate Forms: We recommend that property owners and managers use well-crafted rental forms, such as the California Apartment Association forms or the Kimball, Tirey & St. John LLP Residential Lease/Rental Agreement and addenda.

- Custom form users should have their forms reviewed annually to ensure continued compliance with applicable laws.

Copy of the Lease or Rental Agreement: California Civil Code § 1962(a)(4)(b) requires that landlords provide tenants with a copy of the lease or rental agreement within 15 days after it is signed. The landlord is also required to provide an additional copy, if requested, each calendar year.

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:_____

Additional Resources: For information about fictitious business name requirements, please request from *info@kts-law.com*.

Processing Applications

Application fees are governed by Civil Code § 1950.6 and have been the subject of several lawsuits.

Application Requirements Imposed on Owners and Managers: When Civil Code § 1950.6 was first enacted, owners and managers could not charge more than $30 per applicant for an application fee. The

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law allows the landlord to adjust the $30 limit upwards according to the consumer price index (CPI). In 2025 and as of the date of this publication, the maximum amount is $63.90. The allowable in increase for 2026 is calculated based upon annual average CPI that has not yet been published. To avoid unfair business practice claims, conservative property owners and managers set their application fees at their actual screening costs, or only if lower than their actual screening costs, the statutory maximum.

1. Unless the applicant agrees in writing, owners and managers cannot charge a fee at all if they do not have a current vacancy or do not anticipate vacancies becoming available within a reasonable period of time.

2. An application fee may not be charged when no credit report is run or if the owner or manager did not perform a personal reference check or other processing.

3. If requested, a copy of the credit report used must be provided to the applicant.

4. The applicant must be given an itemized receipt showing the actual charge for the credit report and the "soft costs" for the time and expense incurred by the owner/manager for obtaining, processing and verifying the application. If the total cost is less than the fee collected, the remaining sum should be returned to the applicant. Beginning in 2024, the receipt may be provided to the applicant via electronic mail upon agreement between the applicant and the landlord.

Application Fee Changes in 2025: Beginning January 1, 2025, a landlord must conform their application policy with the updated Civil Code §1950.6 that only permits an application fee if your policy meets one of two options. Option 1: First, a landlord can only charge an application fee when the landlord processes applications on a first come, first qualified, first approved process, and when applicants are provided with written rental criteria together with the application form. Option 2: The alternative option is that a landlord may charge a fee to applicants as long as the landlord returns the fee to any applicant who is not selected for the tenancy, regardless of the reason, within seven (7) days of selecting an application for tenancy or thirty (30) days from the date the application was submitted, whichever occurs first.

Reusable Tenant Screening Reports: Beginning in January 2023, California law permits a landlord to use a reusable tenant screening report. This report is optional for landlords but if accepted, the landlord is not permitted to charge an application fee to the applicant. These reports must have been created within thirty (30) days of the application, provided by a third-party consumer reporting agency, free of charge to the landlord. The report shall have the date through which it is valid, name, contact information, verification of employment, last known address, results of eviction history check and the applicant must attest that there has been no material change since the report was created.

Providing a Copy of the Credit Report to the Applicant: In the past, many credit reporting agencies prohibited their customers from providing a copy to the applicant. As of January 1, 2025, the landlord will be required to provide a copy of the credit report within seven (7) days of receiving the report. Landlords may elect to send the report by personal delivery, mail, or email. This amendment places an automatic requirement to send the report regardless of whether the tenant requests one, which is an obligation under the Investigative Consumer Reporting Agencies Act (ICRAA). If a tenant requests the report under the ICRAA, then the timeline for providing the report will be shortened under that law to three (3) days.

Disputing the Information on the Credit Report: The landlord must provide the name, address, and telephone number of the credit reporting agency to the applicant. If the applicant disputes the information on the report, do not negotiate. Let the applicant deal directly with the agency. If the

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applicant claims the information is wrong and can resolve the dispute with the credit reporting agency, he or she should be invited to resubmit an application for reconsideration.

Charging Application Fees for Applicants on a Waiting List: The intent of the law is to prohibit any owner or manager from charging application fees when there are no units currently available to rent. But, if the applicant agrees in writing to have the report run when there are no current vacancies or no vacancies available within a reasonable period of time, an application fee may be charged. Otherwise, your alternatives are to run credit reports and process the application at your own expense or wait to charge the fee and process the application when the applicant is at the top of the waiting list.

Charging Application Fees for Husband and Wife: Treating married couples differently than single people is discriminatory in California. Each adult applicant should complete a rental application and should be charged the same fee. The monetary limit is per person regardless of the relationship between the parties.

Information to Include on the Receipt for the Application Fee: The receipt must state the actual cost of running the credit report. The balance of the fee should be identified as the expense incurred to obtain, process and verify the application, including past rental history, current employment, bank accounts, etc.

If You Accept an Application Fee but Decline the Application Before You Run the Credit Report: Return the portion of the application fee not used. Note: If it is your practice to stop the screening process at the point at which disqualifying information is obtained, this policy should be in writing and applied equally. To avoid a potential fair housing violation, always go through the same screening process for every applicant.

Alternate Option for Applicants with Housing Subsidies: Beginning in 2024, where an applicant receives a government subsidy, it would be unlawful to use a credit history as part of the application process without also offering the option to the applicant to provide lawful, verifiable alternative evidence of the ability to pay their portion of the rent.

IMPORTANT NOTE: CRIMINAL BACKGROUND CHECKS: The California Department of Fair Employment and Housing Regulations were changed in 2020 significantly affecting the parameters of criminal backgrounds. Criminal background checks involve difficult issues with potential civil rights, privacy and fair housing implications. Additionally, local ordinances may provide further protection by limiting or prohibiting criminal backgrounds. Oakland and Berkley were the first to pass these restrictions in 2020. Prudent landlords would be wise to seek counsel of a knowledgeable fair housing attorney before implementing criminal background checks or continuing the use of pre-existing criminal background checks as part of their application.

Additionally, if You Use a Screening Company: Landlords who order reports conducted by third parties to screen an applicant's credit, unlawful detainer history, criminal background or other background information should be familiar with laws that apply. California's Consumer Credit Reporting Agencies Act (CCRAA) and the Federal Fair Credit Reporting Act (FRCA) apply to credit reports (which can include judgments and unpaid debts relating to unlawful detainers). California's Investigative Consumer Credit Reporting Agencies Act (ICRAA) applies to investigative consumer reports (reports that reflect on a consumer's reputation, general character or mode of living), which includes unlawful detainer history, criminal background, and other background information. Conservative landlords include ICRAA disclosures in the application process and comply with FCRA, CCRA and ICRAA requirements if adverse action is taken based on that report. Landlords should also make sure that the third-party screening company utilizes the written criteria of the landlord and not its own determination.

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- To have your rental application, rental criteria or other lease documents reviewed for fair housing compliance, contact the Fair Housing Practice Group at *KTSFairHousing@kts-law.com* or (800) 338-6039.

Use of Guarantors or Co-signers

Often landlords require a third party to guarantee the performance of the resident. This third party is often referred to as a "co-signer" or "guarantor." Usually, the co-signer is not a proposed occupant of the premises and is often a parent, guardian or other relative of the resident. If the resident does not perform a lease obligation (normally non-payment of rent), the landlord may bring legal action against both the resident and the guarantor or co-signer to ensure performance. For this reason, it may be wise to require that the co-signer must be a resident of California. Even if a landlord has a "no co-signer" policy, they may need to make an exception to the policy as part of a reasonable accommodation. For more information about reasonable accommodations, please see Kimball Tirey & St. John LLP's *Fair Housing Encyclopedia.*

The Guaranty Agreement: Use a well-drafted comprehensive guaranty form to maximize the landlord's rights against guarantors.

California Civil Code § 2819 provides that when a lease obligation is "altered in any respect" without the consent of the co-signer, the co-signer is exonerated. This may cause an unintentional release of the guarantor if the tenant's lease is modified without the guarantor's consent, for example, when a term lease is extended, or converts to a month-to-month tenancy, if the landlord increases the rent, or when a tenant moves to a different unit. A well-drafted guaranty form will allow modifications and extensions to the lease agreement without the guarantor's consent.

California law requires that the landlord bring legal action against the resident first. Only after legal action has been brought against the resident can a later action be brought against the guarantor. This legal requirement can, however, be waived by the guarantor in the guaranty form so a single action can be filed against both the resident and the guarantor simultaneously. A well-drafted guaranty form will allow a single action to be filed against both the resident and guarantor simultaneously, or against the guarantor alone, at the landlord's option.

Risks of Naming a Guarantor as an Additional Resident: Another practice is to name the guarantor as an additional resident or to designate the person as "guarantor" on the lease rather than using a separate guaranty. However, naming the guarantor as a resident entitles the guarantor to occupy the premises. It then may require the landlord to name the person, by virtue of his or her tenancy status, in any unlawful detainer action arising out of a failure to comply with the lease.

There are drawbacks to this method. The parties know the guarantor is not residing in the premises, so service of any notice(s) and the lawsuit (e.g., unlawful detainer) must be accomplished at both the premises and the known address for the guarantor. If this is not done, the landlord risks challenges to the validity of the service of the notices/lawsuit and to the enforceability of the guarantor's obligations under the lease.

In conclusion, guaranty forms should be carefully crafted to fully protect the landlord if the resident defaults and litigation is necessary to enforce the agreement.

Holding Deposits

If a holding deposit is collected, the proposed use of the deposit should be specified in writing in a separate holding deposit agreement. The applicant pays the owner/manager a deposit so the unit will

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not be rented to someone else. If the applicant does not qualify, the deposit is returned. If the applicant qualifies, but changes their mind about the apartment, the landlord can recover losses from the deposit depending upon the terms of the agreement. Unless your actual losses are approximately the amount of the deposit, the court may refuse to enforce a complete forfeiture of the deposit. The safest method deducts the daily rental amount from the deposit for as many days as the unit was held off the market and other expenses, such as additional advertising or broker fees, if called for in the agreement.

Make sure you do not label this deposit a security deposit. Security deposits are for residents; holding deposits are for applicants.

- KTS has a Holding Deposit form available for purchase. To order it, contact *info@kts-law.com*.

Megan's Law Requirements

The federal Megan's Law was named after the child who was sexually assaulted and murdered by a sex offender who lived across the street. The law, which created a registry of sex offenders, was promptly implemented in California, allowing information to be provided to anyone who believes a child is at risk.

The California Department of Justice manages California's sex offender website (*www.meganslaw.ca.gov*).

Cannot Deny Housing: California landlords who deny housing to registered sex offenders based on their registration could be subject to up to $25,000 in fines. If an offender is identified by your residents, please contact us before you take any further steps. Note: If you operate project-based HUD subsidized housing in California, your program requirements may require you to exclude sex offenders.

Harassment of Offenders Living on Your Property: The internet has made information about offenders living in California readily available to everyone, including residents. While it is natural for them to be concerned about an offender living in their midst, the information allows the residents to protect themselves and their families. If residents demand that management evict an offender, they should be advised of the law and penalties. They also need to know that persons who use the information from the internet registry against the offender may be subject to serious penalties, up to $50,000 in fines and up to five years in prison, depending upon the severity and type of actions taken against the offender.

Required Sex Offender Lease Language. The following language must be included in all residential leases (in a minimum font size of 8 points):

> **Registered Sex Offenders Notice:** Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an internet website (*www.meganslaw.ca.gov*) maintained by the Department of Justice. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and zip code in which he or she resides.

Owner's and Manager's Guide Through the Leasing Process

Thorough screening of applicants is a major key to avoiding problems down the line, such as disturbances, non-payment of rent and evictions. These basic steps will help owners and managers make the most of their screening process.

Remember that you cannot make rental decisions based on an applicant's protected class: race, color, religion, national origin, sex, familial status, handicap or disability,

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marital status, age, sexual orientation, ancestry, source of income, gender, gender expression, gender identity, medical condition, genetic information, citizenship, primary language, immigration status, or veteran or military status.

Use an Application Form

Always use rental applications as a screening tool to help ensure you are getting qualified, responsible residents. Here are some helpful pointers to make sure you use the applications effectively:

1. Use a form provided by a reliable source, to ensure you do not ask questions that can get you into trouble, such as asking about the marital status (or spouse/relationship) or nationality of applicants. Be sure you use the most current version of the application; discard outdated ones. A good application form should also authorize the landlord to verify information on the applicant through credit checks, consumer reports or other means. Beginning in 2024, under SB 267 there should be an alternate option to the credit history for applicants who have a housing subsidy.

> ➢ *KTS has an application form available for purchase. To purchase it, contact KTS's Business Real Estate Practice Group at breginfo@kts-law or (800) 574-5587.*

2. Make sure every person who will be living on the property who is 18 years of age or older (without regard for marital status), or is an emancipated minor, completes an application.

3. Let applicants know that to be considered, the application should be completely filled out. If something does not apply to them, they should insert "N/A." You should state in writing that incomplete applications will not be considered.

4. Make sure the information is fully legible. Match the information on the application to the information on the applicant's photo ID.

5. The application must be signed by the applicant to authorize credit/reference checks.

Set Reasonable, Non-Discriminatory, Eligibility Standards

1. All residents should meet some minimum eligibility standards in order to live on the property. This may include such criteria as credit standards, verifiable income, income-to-rent ratios, eviction history, and rental history.

- Note regarding eviction records: It is difficult to obtain unlawful detainer records. California Code of Civil Procedure § 1161.2 automatically and permanently seals all Unlawful Detainer actions, unless (1) the plaintiff (landlord) prevails within 60 days of filing or (2) after 60 days but only if judgment against all defendants has been entered for the plaintiff after a trial and the court issues an order allowing public access to the record. Additionally, the court has the discretion to keep the record sealed even if the plaintiff is successful at trial. The court must issue an order to unseal the record as it is no longer automatic. Cases related to the non-payment of COVID rental debt will be sealed as required under SB 91.

  The law also allows a court to issue an order barring access to the court record if the parties so stipulate. As a result, during settlement negotiations, tenants may request that access to the court record be barred. By keeping more Unlawful Detainer records sealed, landlords may not be able to obtain a complete eviction history of their applicants.

- Note regarding COVID rental debt: Under SB 91 a landlord may not use unpaid COVID rental debt as a negative factor in determining eligibility for a tenancy, or as basis to deny an application. This applies to any unpaid debt regardless of whether declaration of hardship was previously provided. COVID rental debt is any money that became due under the lease

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between March 1, 2020, and September 30, 2021. See Section A on laws related to the pandemic.

2. Have the standards posted or provided upfront to all applicants in writing so they know your requirements.

- *KTS offers a workbook, "Establishing Your Rental Criteria," to help you create or revise your standards. Order online at: https://www.kts-law.com/product/establishing-rental-criteria/ or contact KTS's Fair Housing Practice Group for more information at KTSFairHousing@kts-law.com or (800) 338-6039.*

3. You may not discriminate based on the source of the applicant's income as long as the income is legal and verifiable and paid directly to the resident or the resident's representative or to the owner of landlord. This means you cannot require applicants to be employed, either currently or in the past, as long as they can prove they have the ability to pay the rent using other financial resources. Acceptable evidence of financial responsibility might include bank account information, tax returns or pay stubs. As of January 1, 2020, the definition of source of income now includes and protects legal verifiable income paid to a landlord on behalf of a tenant, including federal, state, or local public assistance or federal, state, or local housing subsidies (such as Section 8 or VASH vouchers). An article with more information is available at upon request at *info@kts-law.com*. As of January 1, 2022, source of income will be interpreted by the fair housing council to also include income or payments on behalf of a non-profit organization.

- *Under SB 267, Where an applicant receives a government subsidy it is unlawful to use a person's credit history as part of the application process without offering the applicant the option to provide lawful, verifiable alternative evidence of the applicant's ability to pay the portion of the rent to paid by the tenant. This could include, but is not limited to, government benefit payment, payment record, or bank statements. Where an applicant elects to provide alternative verification of ability to pay the rent instead of allowing the landlord to run a credit report, the landlord shall provide the applicant time to provide the information and reasonably consider that information in lieu of credit history. For more information on source of income and other fair housing protections, please contact KTS's Fair Housing Practice Group at KTSFairHousing@kts-law.com or (800) 338-6039.*

4. Apply the same standards to all applicants, whether married or single.

5. When applying your rent to gross income ratio, consider the aggregate (combined) household income of all persons who will be residing together. When considering an applicant with a subsidy or assistance, you may only use the portion the applicant will be responsible for paying in the ratio. Meaning if the tenant's portion will be $350 out of the $1,000 rent, your rent ratio will be the multiplier of the $350 not the total $1,000. Also, you must consider the subsidy or assistance as income when determining qualifications. Meaning that if their voucher pays $650 of the $1,000 rent, you must include this as monthly income in addition to whatever funds the tenant will present.

6. Occupancy limits or standards should be reasonable and non-discriminatory. Federal regulations provide for an occupancy guideline of two persons per bedroom. If your property is subject to specific written restrictions for federally subsidized housing, you may be required to follow federal or specific

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program guidelines. However, be aware that since California has a different occupancy guideline, you may wish to obtain legal advice before setting your standards. In the rare situation where a subsidized program has any gender-based occupancy requirements (such as mandating that children of different genders cannot share a bedroom), get legal guidance.

Historically, the general guideline (not law) applied in California by the Civil Rights Department (CRD) is two persons per bedroom plus one additional person for the unit (three persons per one-bedroom unit and five per two-bedroom unit—or more if the dwelling could reasonably house a higher number of occupants). Lesser occupancy policies could trigger a discrimination complaint based upon familial status. However, there can be other factors that warrant a higher occupancy standard. Additionally, an unborn child of an applicant should not be included in the occupancy limit. For more information on when higher occupancy standards may be necessary, contact the KTS Fair Housing Practice Group at: *KTSFairHousing@kts-law.com.*

In some areas, local ordinances, health and safety codes, or building code standards may be used to determine occupancy limits. In those laws, the maximum number of people permitted is usually based on the square footage of the potential sleeping areas of the dwelling. An example is the City of San Francisco, which has an ordinance making it unlawful to refuse to rent to a family with children due to the number of occupants, as long as that number does not exceed the maximums established by the local Housing Code (which are higher than the state guideline). The ordinance also states that children under six cannot be counted when determining the size of the household.

7. A co-signer/guarantor may be required, or the security deposit may be increased for those who don't fully meet your eligibility standards (conditional acceptance), such as for young adults or foreign nationals. Have a written policy that explains who qualifies for this "second tier" standard and apply it to all applicants. You must provide the written "adverse action" form to conditionally accepted applicants so they can clear up any negative credit or references—just as you would with a denied applicant. Co-signers/guarantors should also meet specific, required financial standards, which may be higher than for applicants (since they may need to pay their own rent/mortgage and the resident's rent).

8. You must rent to applicants with disabilities who meet your standards even if you don't have an accessible unit available. In non-subsidized properties, the person may make reasonable modifications to the unit to make it accessible at their own expense, returning it to its original state when moving out if the modifications would bother the next resident. Because units can be modified, theoretically almost any unit can be made accessible. See Kimball Tirey & St. John LLP's *Fair Housing Encyclopedia* for additional information.

9. You must also permit applicants with disabilities to have an assistance or (service or support) animal even if you have a no pet policy. You may not charge a pet deposit or pet rent for such an animal, and you may not increase the security deposit. These rules also apply to a trainer of assistance animals who has an animal in training. You may not apply your normal type, size, or breed restrictions to assistance animals. There is a similar mandate to permit at least one common household pet in properties with state affordable layers. For information on pets in affordable properties contact our affordable housing department at *info@kts-law.com.*

- *For more information on disability and other fair housing requirements, please contact KTS's Fair Housing Practice Group at KTSFairHousing@kts-law.com or (800) 338-6039.*

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10. You may establish a non-smoking property, units, or buildings. Rather than say, "No smokers," focus on the activity (no smoking). Note that many cities in California have also passed no smoking ordinances that may affect multi-family dwellings.

- *KTS has a "smoke-free package" available for purchase. The package includes a smoke-free addendum and instructions on implementing smoke-free policies. For information about the package, contact info@kts-law.com.*

11. In California, it is a violation of the law to inquire about the citizenship or immigration status of any applicant or resident (unless your property is project-based HUD-subsidized, in which case you must verify citizenship status to comply with the federal government's regulations). Therefore, your rental criteria should not include any references or requirements regarding such status. Additionally, the law prohibits disclosing a tenant's immigration or citizenship status. For these reasons, you can ask for a Social Security number on the application, but you should not require one. There is no requirement to obtain a Social Security number in order to live in the U.S. and requiring an applicant to have one can lead to potential fair housing liability.

Screening the Applicants

Reminder: for fair housing purposes, always be as consistent as possible in your screening process for ALL applicants. Inconsistent procedures increase your risk of discrimination claims.

1. **Application Fees**

Apply your application fees following the guidelines in the "Proper Use of Application Fees" section.

2. **The Screening Checklist**

a. Thoroughly check out each applicant. Never go by a "gut" instinct that someone will or won't be a good resident.

b. You may use an outside screening service that does it all. This ensures that you won't miss any steps in the procedure. They may also have resources for information to which you don't have access. Other companies may perform limited services, such as credit reports only or credit reports and eviction check only.

c. If you do all or any part of the checking yourself or in-house, use a checklist form that documents the sources used, the people you contacted, the dates and times and the results. Make sure you do the screening in the same order each time. This also provides information for the required itemized receipt you must give the applicant for the application fee. If a security alert has been placed on the applicant's credit file, management must try to verify the person's identity, including, but not limited to contacting the consumer using any specified telephone number listed on the security alert. These alerts may be placed at the consumer's request in situations of identity theft problems.

d. Use the same screening procedure for all applicants. Don't take shortcuts.

e. The most common screening tools include credit checks, eviction histories, employment verifications, bank verifications and rental histories. Credit reports have specific requirements and restrictions. This information would also be available in a reusable tenant screening report as mentioned in the processing applications section of this book above.

f. Criminal background screening involves difficult issues with potential civil rights, privacy and fair housing implications. HUD guidance (published in 2016) and Fair Housing Council regulations (effective 2020) include some very specific limitations as to how and what types of

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criminal background information may be used. Additionally, some local jurisdictions have limited or prohibited criminal background checks. Oakland and Berkeley were the first two to pass ordinances in 2020 completely banning the use of criminal background checks in almost all circumstances. Prudent landlords would be wise to seek counsel of a knowledgeable fair housing attorney before implementing criminal background screening or continuing the use of their current criminal background screening as part of their application process. Additionally, criminal background checks may be investigative consumer reports governed by the ICRAA (Investigative Consumer Reports Act, California Civil Code § 1786 et seq.). Its purpose is to help avoid identity theft and to ensure the accuracy of investigative consumer reports used for employment, insurance, and rental housing. If you are utilizing the services of a third-party supplier to obtain criminal background searches on applicants, familiarize yourself with ICRAA and its requirements. Additionally, the criminal background check should be considered only if the applicant passes all other rental criteria in order to comply with the HUD Guidance and the CRD Regulations.

- *For more ICRAA information or assistance, contact breginfo@kts-law.com. For more information or assistance regarding the use of criminal background checks as a screening tool, contact the KTS Fair Housing Practice Group at: KTSFairHousing@kts-law.com.*

g. Remember that in California, the resident has the "Right of Privacy" concerning their screening information. Never leave confidential information lying around or up on a computer screen where unauthorized people can see it. All resident and applicant files should be kept in a locked file to protect against identity theft. Confidential information stored on computers should be password protected (and passwords should be changed periodically) for the same reason. Any discarded personal information must be shredded as required by California law.

h. When checking rental history references, check with at least two former owners or managers. Ask only questions that are objective and related to the lease performance, such as when the person lived there, how much rent he/she paid or if the person broke any covenants of the lease or house rules. Be sure the "manager" isn't a friend of the applicant posing as a manager. Make sure to check with at least one previous landlord that does not currently have the tenant on their property.

i. Check bank references to verify the bank account is open.

j. Verify the employment information if the applicant is employed. Be sure the "supervisor" isn't a friend of the resident posing as a supervisor. If the applicant is not employed, verify other source(s) of income. Make sure the income is both legal and verifiable.

k. Check the applicant's driver's license or other government-issued photo ID (such as military ID, US or foreign passport, California or other state ID or any other government-issued photo ID). Compare the photo and information with the information on the application. Note any deviations. To reduce fair housing risk, do not make a copy of the person's ID or attach it to the application before the applicant is approved. Doing so could subject you to a charge of discrimination. You may, however, make a file copy after the person is approved as a resident. Do not make a copy of a military ID; that is prohibited under Title 18, U.S. Code Part I, Chapter 33, Section 701.

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3. **Accepting or Rejecting Applicants**

- All accepted residents should meet all your eligibility standards. Beware of the applicant who is in a hurry and has lots of cash.
- If you deny an applicant, be sure it is not for a discriminatory reason, for example, because the person is from a protected class. Deny an application only for objective, legal, valid, or business reasons, such as being incomplete, containing false information or unverifiable information, revealing poor credit, or not meeting your other eligibility standards.
    - The Federal Fair Credit Reporting Act and other applicable laws require you to provide specific information to denied applicants (or if you conditionally accept the applicant but, based on little or poor credit or rental history, require a higher security deposit or co-signer). This is called an "adverse action." If any part or the whole of the denial is based on information from a credit report, you are required to:
        - provide written notice of the denial to the applicant;
        - furnish the name, address and phone number of the agency providing the report;
        - provide a statement that the denial was based, in whole or in part, on information in the report;
        - provide written notice of the applicant's right to obtain a free copy of the credit report within 60 days and the right to dispute the accuracy or completeness of any information in the report;
        - provide a copy of the credit report if requested by the applicant (California law); and
        - include a statement that says the credit agency did not participate in the decision whether or not to rent to the applicant.
- The adverse action notice must include any numerical credit score used in making the credit decision, the range of possible scores under the model used, the key factors that adversely affected the credit score, the date on which the credit score was created, and the name of the person or entity that provided the credit score. If the applicant disputes the credit report, you have the option of letting the applicant know that if they can correct the information on the credit report, you will reconsider them.
- If the information for the decision came from sources other than a credit reporting agency, you must let the applicant know they have 60 days to make a written request for your reasons for denial. You then have a reasonable time (generally 30 days) to disclose the reason(s) for denial.
- As a side note, landlords' policies may include providing a copy of the report regardless of an adverse action due to the new application fee requirements beginning in 2025. See the section on application fees above for more information.

Fair Housing Enforcement

Look for continued federal and state fair housing enforcement, particularly in light of the Fair Housing Regulations that became effective January 1, 2020. These regulations include some very significant changes that affect how CRD investigates and prosecutes fair housing complaints.

Disability complaints are the most common category in California and at the federal level, surpassing race/color (second) and familial status (third) complaints. For more information on fair

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housing issues and the Regulations, please see the most current edition of the KTS *California Fair Housing Encyclopedia*.

Federal Enforcement
The primary federal laws regarding Fair Housing are found in the Civil Rights Act of 1866 (pertaining to racial discrimination) and the Civil Rights Act of 1968, Title VIII (known as the Federal Fair Housing Act), amended by the Federal Fair Housing Amendments Act of 1988. The Fair Housing Equal Opportunity (FHEO) office of the U.S. Department of Housing and Urban Development (HUD) is the primary agency charged with enforcement of fair housing laws. The U.S. Department of Justice (DOJ) also prosecutes pattern or practice discrimination cases.

California Enforcement
In California, the laws are primarily found in the Fair Employment and Housing Act of 1980 (in the Government Code), the Unruh Civil Rights Act, and the Disabled Persons Act (in the Civil Code). The Civil Rights Department (CRD) is charged with enforcement of California fair housing laws. As of January 1, 2020, CRD uses the Fair Housing Regulations, as codified in the California Code of Regulations § 12005 et seq., to guide their investigation and prosecution of fair housing complaints. These Regulations were further amended as of January 1, 2022. The State Attorney General's office may also prosecute cases. Whenever there is a difference between local, state, or federal laws, usually, the more restrictive law governs. The laws also provide the state of California with the right to pursue civil claims in the courts.

Other Enforcement
Complainants may also contact private fair housing organizations, who often attempt to resolve the case through mediation or settlement, or fair housing attorneys who must file cases in state or federal court.

Protected Classes
State and federal laws outlaw discrimination based upon race, religion, national origin, ancestry, color, sex, marital status, familial status, age, physical or mental disability, source of income, medical condition, sexual orientation, gender, gender identity, gender expression, genetic information, primary language, citizenship, immigration status, and veteran and military status. Some municipalities have added other classes, such as body size in San Francisco and Santa Cruz and students in Berkeley.

Other protections include:

1) Arbitrary discrimination against any person or group based on personal characteristics, as interpreted by the Unruh Act, which governs discrimination in businesses, is also illegal in California. This form of discrimination exists where a class of people (such as persons who have long hair or tattoos or are overweight) is treated differently without objective business reasons. This means if you take any adverse action against someone, you should have a legitimate business reason for doing so and have it documented.

2) Perception (discriminating because of a misperception that a person is from a protected class but isn't.)

3) Association (discriminating against someone because they associate with someone from a protected class.)

Complaint Procedure
HUD, the federal agency, commonly refers residential discrimination complaints to CRD, the state agency, if the complaint involves one of the federal protected classes. Complaints filed with HUD are frequently referred to CRD because California's laws are substantially equivalent to federal law. The agency will notify you that a complaint has been filed, after which you generally have twenty (20) days

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to respond. A process of conciliation, investigation, and settlements or court hearings may follow if there is reasonable cause to believe discrimination has occurred.

If CRD intends to pursue a discrimination case after the investigation is complete, the parties will be required to participate in mandatory dispute resolution. If the case is not resolved through the dispute resolution process, then CRD must file a complaint in Superior Court. Damages available in Superior Court are unlimited and CRD has the right to recover its attorney's fees and court costs if it wins the case.

Usually, a separate civil action can also be filed by the complainant in state and/or federal court.

You are encouraged to immediately obtain legal counsel if you receive a complaint notice from an enforcing agency to avoid the real potential of making a bad situation worse. Most cases can be resolved more favorably and quickly when handled early in the process by experienced fair housing attorneys.

Statute of Limitations
The statute of limitations for someone to file a fair housing complaint is one year for both HUD and CRD. The U.S. Department of Justice has an 18-month statute of limitations except in cases involving failure to comply with new construction accessibility requirements. For cases filed in state court by CRD or in state or federal court with private fair housing attorneys, the statute of limitations extends to two years and, in some cases, three (3) years.

These lengthy time periods demonstrate how important it is to have a thorough documentation program. Without records, it is difficult to prove something did or did not occur months or even years ago regarding a specific situation. Historical documentation is also crucial because of the potential for employee turnover on the property being investigated.

Complainants
Complaints may be filed by existing or prospective residents, guests of residents, employees of the management company or owner, testers, agencies, or anyone who believes they have been injured or will be injured by someone's discriminatory practices. In California, over three-quarters of all complaints were filed by current residents.

Damages and Penalties
Depending on the venue, the person alleging discrimination can seek a restraining order, injunction, affirmative relief (e.g., landlord must rent to the complaining party), punitive damages, emotional distress damages, compensatory damages, costs, and attorneys' fees. Some settlements and punitive damages awarded in California have exceeded $1 million.

Respondents
All personnel, including on-site managers, supervisors, property managers, leasing agents and administrative and maintenance personnel should know they can be individually sued for their actions and named as respondents along with the owners of the property and/or company. Anyone who is involved in the overall housing process can be sued, even newspaper publishers, architects, realtors, lenders, and appraisers. Being individually named in a complaint or lawsuit means that you personally may have to pay a portion of the judgment or settlement.

Reduce Your Fair Housing Risks
What is the bottom line? Practice "preventive law" by:

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1. Becoming familiar with the state and federal fair housing laws through workshops, research, printed publications, review of the statutes and contacting our KTS fair housing practice group or local fair housing agencies.

2. Reviewing all your practices to ensure you are not doing anything that is discriminatory or that might be construed as discriminatory, particularly in your advertising, leasing and screening processes, and when establishing and enforcing community policies.

3. Establishing a thorough documentation program, such as routinely logging business phone conversations and noting reasons why a prospective resident was turned down or why a current resident was treated differently than others. Whenever you must deviate from a normal routine or practice, document what, when, and why you did it. Retain your records for at least three, preferably four years.

4. Providing the same equal housing opportunity to all prospective residents and providing the same level of service and amenities for all existing residents. Remember you will have to permit persons with disabilities to make reasonable modifications to the property at their own expense so they can have full enjoyment of their unit. You may also have to make reasonable accommodations for them by modifying your rules, policies, practices, and services. For example, you may have to designate special parking spaces for them or permit them to have assistance animals even though you have a “no pet” policy.

5. Being certain you are doing the right thing before you act. If you are unsure, call us and we will assist you in making the best decision for your particular situation.

Criminal Background Checks/Risks

Criminal background checks involve difficult issues with potential civil rights, privacy, and fair housing implications. In 2016, HUD issued guidance for all housing providers regarding how the use of criminal background checks could potentially violate Fair Housing laws. In 2019, the then California Fair Employment & Housing Council went further by approving new Fair Housing Regulations that became effective on January 1, 2020. These regulations are used by the Civil Rights Department (CRD) to guide their investigation and prosecution of fair housing complaints. The Regulations included significant changes that landlords need to be aware of, including regulations concerning the use of criminal background information. In addition to the CRD Regulations, local ordinances have enacted more rigid rules on running criminal background checks. Oakland and Berkeley were the first two local jurisdictions to pass ordinances in 2020 completely banning the use of criminal background checks in almost all circumstances. Additionally in 2024, AB 1418 further limits local government from requiring landlords to conduct a criminal background check.

In light of the continuing changing legal climate with regard to the inquiry and use of criminal background information, prudent landlords would be wise to seek counsel of a knowledgeable attorney before implementing criminal background screening or continuing the use of pre-existing criminal background screening as part of their application process.

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SECTION THREE: TENANCY ISSUES

Dealing with Tough Residents

Apartment communities often endure the destructive effects of undesirable residents because they don't have an effective resident screening process. New owners and managers of the property step into the shoes of the previous managers and may not even know the terms of the lease or the names of all the occupants. They face a multitude of day-to-day management challenges—especially if there also are drug and gang problems.

Below is a legal checklist that can help you resolve this type of challenge:

1. Call the police (and encourage residents to call the police) to report suspected illegal activity at the property. If the police respond, get the names of the officers, the incident report number, and a business card from the officer for your records.

2. Try to ascertain the names of all adult occupants residing in each unit. This can be done several different ways, such as a) the direct approach of asking or b) viewing the mailboxes for names on the receptacle.

3. Document all phone calls made to residents, the police, and anyone else regarding the problem residents.

4. Document all incidents, complaints from other residents, or suspicious activities at the property—anything that would provide evidence if it were needed.

5. Clearly announce in writing to the residents your specific goals and plan for improving the property. Also announce the change of management, if applicable.

6. Serve appropriate notices for any breach of lease as soon as it occurs. Name every occupant 18 years of age or older (if known). The notice language should include all other known or unknown occupants, so they are also subject to the notice provisions. If you don't have all occupants' names, list the unknown residents as "Does 1 - 10."

7. Proceed with the eviction as quickly as the law allows. Time is on the side of the undesirable residents. It is your challenge to show the other residents that you are establishing a fast eviction process so they, in turn, will not attempt to follow the evicted resident's course of action.

8. Become familiar with the notices available to you. Use the correct one to avoid having to start over. (See the section on Notices for more information.)

9. Beef up your resident screening process. Make sure every applicant is fully screened and meets your eligibility standards before turning over the keys.

10. If tenants are reluctant to come forward think about ways to have evidence whether it is security cameras or security on site. Talk to attorneys about legalities of these extra efforts.

Protection from Abuse and Harassment

When someone is abused or harassed, they need to decide on the best way to get legal protection from the abuse or harassment. Management has a responsibility to prevent harassment based upon any federally protected class status (race, color, religion, sex, national origin, familial status, or disability). To do that, several things must be considered, such as: what type of relationship there is between the

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person being abused or harassed and the person doing the abuse/harassment; the age of the person being abused or harassed; and the type of abuse or harassment. Then, the law says what type of protection someone can ask for and what must be established to obtain it.

There are 5 types of abuse or harassment cases:

1. Civil Harassment
2. Workplace Violence
3. Domestic Violence
4. Elder or Dependent Adult Abuse
5. Victims of Human Trafficking

When a resident is abusing or harassing someone they are living with, or with whom they have a close relationship, a domestic violence restraining order may be in order. When a resident is abusing or harassing neighbors or property management staff, a civil harassment or workplace violence restraining order is more likely to be involved.

Civil Harassment
Civil harassment is harassment by:

1. Unlawful violence, like assault or battery or stalking; OR
2. A credible threat of violence. "Credible threat of violence" means intentionally saying something or acting in a way that would make a reasonable person afraid for their safety or the safety of their family. A "credible threat of violence" includes following or stalking someone or making harassing calls or sending harassing messages (by phone, mail, or email) over a period of time (even if it is a short time); AND
3. The violence or threats seriously scare, annoy, or harass someone and there is no valid reason for it.

The harassment must be by someone the victim has not dated and does NOT have a close family relationship with, like a neighbor, a roommate, or a friend (that they have never dated). It is also civil harassment if the abuse is from a family member that is not included in the list under domestic violence.

Workplace Violence
For a workplace violence situation, the harassment is defined in the same way as for civil harassment. The difference is that the harassment happens primarily at work AND it is the employer of the harassed employee who asks for protection for the employee (and, if necessary, for the employee's family).

For an employer to get a workplace violence restraining order on behalf of an employee, there needs to be reasonable proof that:

1. The employee has suffered unlawful violence (like assault, battery, or stalking) or a credible threat of violence;
2. The unlawful violence or the threat of violence can reasonably be construed to be carried out or to have been carried out at the workplace;
3. The conduct is not allowable as part of a legitimate labor dispute; and
4. The person accused is not engaged in constitutionally protected activity.

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A person being abused or harassed who meets the criteria above can seek a restraining order to prevent further abuse or harassment. Self-help resources are available at the California Judicial Council website at http://www.courts.ca.gov/selfhelp-abuse.htm. Alternatively (or additionally) a victim may seek the assistance of an attorney. If a corporation or LLC is seeking the restraining order, it must be represented by an attorney.

(The above section has been edited from the "Understanding Abuse & Harassment Laws" page of the California Courts website, used by permission of the Administrative Office of the Courts)

Responsibilities of Management in Domestic Violence Situations

Owners/Agents should be aware of the laws regarding domestic violence on rental property.

Civil Code § 1946.8, enacted in 2018, declares void any provision in a rental or lease agreement that limits or prohibits, or threatens to limit or prohibit, a tenant's, resident's, or other person's right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency. It also prohibits a landlord from imposing, or threatening to impose, penalties in this context as well. A waiver of these provisions is contrary to public policy and is void and unenforceable. These protections have also recently been extended to all residential tenants regardless of property funding under federal law through the 2022 reauthorization of the Violence Against Women Act (VAWA).

Civil Code § 1946.7 allows a resident to terminate their tenancy in the event that the resident or an immediate family member is a victim of domestic violence, sexual assault or stalking, human trafficking, abuse of an elder or dependent adult, crimes that include bodily injury or death, crimes that involve the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or crimes involving the use of force or threat of force. An immediate family member is defined as a parent, stepparent, spouse, child, child-in-law, stepchild, or sibling. Under this law, a resident may be released from contractual responsibilities by giving the housing provider a written notice of the desire to terminate the tenancy accompanied by:

- A copy of a lawfully issued temporary restraining order or emergency protective order that protects the resident from further domestic violence, sexual assault, stalking, elder abuse, dependent adult abuse or human trafficking, crimes that include bodily injury or death, crimes that involve the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or crimes involving the use of force or threat of force; or
- A copy of a written report by a peace officer employed by a state or local law enforcement agency acting in their official capacity, stating the resident or household member has filed a report alleging he or she is a victim of domestic violence, sexual assault stalking, elder abuse, abuse of a dependent adult or is a victim of human trafficking, crimes that include bodily injury or death, crime that involves the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime involving the use of force or threat of force;
- Documentation from a qualified third party based on information received by that third party while acting in their professional capacity to indicate that the resident or household member is seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, elder abuse or dependent adult abuse, a crime that include bodily injury or death, a crime that involve the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime involving the use of force or threat of force; or

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- Any form of documentation that reasonably verifies that the crime or act occurred.

The "qualified third party" must be a physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed professional clinical counselor, or violent crime advocate. Alternatively, a sexual assault counselor, domestic violence counselor or human trafficking case worker can sign the documentation but only if the documentation displays the letterhead of the office, hospital, institution, center or organization that engages or employs the counselor or caseworker.

The orders or reports must have been issued within 180 days of the notice to terminate tenancy. In 2016, an amendment to the code reduced the time limit required for a notice to vacate for a tenant who is a victim of, or who has a household member who is, a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult from thirty (30) days to fourteen (14) days. The resident must pay rent for the 14-day period following the notice unless complete possession of the premises is returned to the housing provider prior to that time and the unit is re-rented prior to the expiration of the 14-day period. The rent for the 14-day period must be pro-rated. If possession of the premises is not returned to the landlord, the remaining occupants are responsible to fulfill the contract or for any default in its terms. This termination will not be a violation of the contract and there should be no fee or penalty assessed. The security deposit accounting and distribution continue to be controlled by existing law. As of January 1, 2023, landlords who fail to permit a tenant to terminate their tenancy under this provision may be liable for a civil lawsuit for actual damages and a potential penalty between $100 and $5,000. It also permits a tenant to raise an affirmative defense to an unlawful detainer and request a bifurcation of the case.

Starting January 1, 2026, if one tenant terminates the lease early pursuant to California Civil Code Section 1946.7 (due to domestic violence or other enumerated crimes therein), and there is no mutual written agreement between the landlord and the multiple tenants, the landlord may return the security deposit refund in a manner other than by check made payable to all adult tenants if the tenant who terminated the lease early requests that the landlord do so. However, this law does not require a landlord to refund any portion of the security deposit prior to all tenants fully vacating the premises.

Code of Civil Procedure § 1161.3 prohibits a landlord from terminating a tenancy or refusing to renew a lease based on an act of domestic violence, stalking or sexual assault against a protected resident or a protected resident's household member where the act is documented with the police or the victim has obtained a restraining order and the perpetrator is not a resident in the same unit. However, the landlord may terminate the tenancy of a protected resident if the protected resident has allowed the perpetrator back into the unit or the landlord reasonably believes that the perpetrator's presence poses a physical threat to others or poses a threat to a resident's right to quiet enjoyment and the landlord has previously given at least three (3) days' notice to the resident to correct the violation.

Civil Code § 1946.8, enacted in 2018, allows a defendant to raise, as an affirmative defense, that a landlord is attempting to evict them for exercising their right to summon law enforcement or emergency assistance. The law also creates a rebuttable presumption that may be raised by the defendant when the landlord files an unlawful detainer within thirty (30) days of a resident or other person summoning law enforcement or emergency assistance and the complaint is based on a notice that alleges the act of summoning said assistance constitutes a violation of the lease or a nuisance. AB 1418 also limits a local government from enacting or enforcing a penalty against a landlord or tenant for summoning law enforcement.

Civil Code § 1941.5 and § 1941.6 require a landlord to change the locks within 24 hours of a protected resident's request when the perpetrator is not a resident in the same unit and the resident

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has provided the landlord with a copy of a restraining order against the perpetrator. The landlord must provide the protected resident with a key to the new locks. As of January 1, 2025, landlord will be responsible for the cost on the change of the locks.

The landlord must also change the locks within 24 hours of a protected resident's request when the perpetrator is a resident in the same unit, but the protected resident has obtained a restraining order that excludes the perpetrator from the residence. Keys to the new locks must be provided to the protected resident. The landlord cannot be held liable to the perpetrator for changing the locks, and the perpetrator remains financially liable under any existing lease. If a landlord fails or refuses to change the locks under either of the above circumstances, the protected resident has the right to change the locks and must provide the landlord with a key to the new lock. Landlord is still responsible for the cost of the lock and must reimburse the tenant within 21 days. The lock must be of similar or better quality.

A protected resident or protected household member is defined as someone who has obtained a restraining order or has a police report against the perpetrator that alleges the protected person is a victim of domestic violence, stalking, or sexual assault.

VAWA

In addition to protections afforded by state laws, the federal Violence Against Women Act ("VAWA"), prohibits denial of admission to, assistance under, termination from participation in, or eviction (under most circumstances) of victims of domestic violence, sexual assault or stalking from public housing, project, and voucher-based Section 8 housing, all federally subsidized housing, Low-Income Housing Tax Credit Program and US Rural Development Program. The 2013 amendments also provide programs and resources for Native American women, Lesbian/Gay/Bisexual/Transgender victims, college students and youth, and male victims. VAWA was reauthorized by the federal government in 2022 for an extension of funding provisions through 2027.

Generally, the VAWA provides that an incident of actual or threated domestic violence, dating violence, sexual assault or stalking cannot be construed as a serious or repeated violation of the lease or good cause for terminating the assistance, tenancy or occupancy rights to housing. The prohibition against eviction exists even if the perpetrator continues to come onto the property and cause disturbances for other residents and even if there is criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking that is engaged in by a member of the household or any guest or other person under the control of the tenant if the tenant or other person associated with the tenant is a victim or threatened victim of domestic violence, dating violence, sexual assault or stalking.

Tenancy can only be terminated if the housing provider can demonstrate that an actual or imminent threat to other tenants or individuals employed at or providing services to the property would be present if the resident is not evicted.

In 2016, HUD published Final Rule 5720-F-03 updating the Code of Federal Regulations to implement the requirements of the VAWA reauthorized in 2013 for federally subsidized "covered housing providers". "Covered housing providers" include Section 8 project-based and tenant-based programs, as well as Section 202, Section 811, HOPWA, HOME, Homeless Programs, Section 221, Section 236, and the Housing Trust Fund. On June 30, 2017, HUD released Notice H 2017-05, providing additional guidance to owners and management agents with regard to the implementation of VAWA and HUD's Final Rule.

Among other provisions, the rule requires applicants and tenants of covered housing providers be provided with a "Notice of Occupancy Rights under the Violence Against Women Act" and certification under the following circumstances: (1) upon denial of assistance or admission to the

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housing program; (2) at the time the individual is provided assistance or admission; (3) with any notification of eviction or termination of assistance; and (4) once during the 12-month period immediately following December 16, 2016.

Additionally, the law requires covered housing providers to develop and adopt an emergency transfer plan, based on HUD's model emergency transfer plan. The emergency transfer plan must outline a procedure which allows for the transfer of a victim of domestic violence, dating violence, sexual assault, or stalking upon request. Housing providers may, but are not required to, request specified documentation from tenants seeking emergency transfers under this rule.

Lastly, the rule adds a completed HUD certification form or a self-statement to the acceptable forms of documentation to seek protection under the VAWA. In addition to the previously authorized forms of documentation under the law, victims of domestic violence may self-certify the occurrence of domestic violence, dating violence, sexual assault, or stalking.

On March 7, 2025, HUD published new VAWA forms to be used in these instances. The forms are available at https://www.hud.gov/vawa#VAWA-Forms. Assistance with properly filling out the forms is available by request to *info@kts-law.com*.

While HUD's Final Rule only explicitly applies to the "covered housing providers", VAWA also covers the LIHTC and Rural Housing programs. On January 18, 2017, the United States Department of Agriculture released Administrative Notice RD AN No. 4814 (1944-N) to provide direction to Rural Development (RD) Multi-Family Housing (MFH) programs affected by VAWA. On December 22, 2017, the California Tax Credit Allocation Committee (CTCAC) issued Low Income Housing Tax Credit ("LIHTC") Violence Against Women Act ("VAWA") Guidance to all property owners and management agents of LIHTC (Low Income Housing Tax Credit) properties to implement the Violence Against Women Reauthorization Act of 2013 (VAWA).

Unauthorized Occupants

Often our clients suspect there may be additional, unknown persons residing in a rental unit without permission. We often call this the "revolving door syndrome." This may occur in several forms: when the original resident appears to have been replaced by a new resident or a new resident appears to have moved in with the original resident.

New Residents. Most rental agreements have a provision that prohibits the subletting or assignment of the lease without the owner's or manager's prior written consent. Make sure this provision is in your agreement. If not, the resident has the right to sublet or assign the rental unit.

Extra Residents. When questioned about extra residents living in the unit, a common response from the resident is that the occupant is merely a visitor or an overnight guest. This creates a situation where the owner or manager must prove, by direct or circumstantial evidence, that the occupant is a resident of the premises and not merely a visitor or an overnight guest within the allowable overnight guest policy in the rental agreement.

Circumstantial Evidence. There are several ways to provide circumstantial evidence:

1. If the owner or manager can competently testify that the "guest" receives mail at the rental unit,
2. If the "guest" moved more than just an overnight bag into the unit,
3. If the "guest" comes and goes from the unit regularly,
4. If the "guest" appears to have a key, and/or

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5. If the "guest" is seen regularly in the unit or at the community amenities.

6. If the "guest" makes requests or communicates with management.

Using this circumstantial evidence, a court could determine the occupant is a resident of the rented property.

Direct Evidence. Direct evidence is always preferable to circumstantial evidence. One method successfully used by our clients inviting the "guest" to fill out an application form. If the "guest" is willing, this is tantamount to an admission that he or she resides in the property. If the "guest" has contacted the owner or manager concerning the unit, a judge could also consider this as an admission that the occupant is a resident.

Serving Notice. If you have sufficient circumstantial or direct evidence, the appropriate notice to serve is the "Three-Day Notice to Perform Covenants or Quit." This notice requires the resident to remedy the breach within three court days or surrender possession of the property. Failure to comply will subject the resident and the unauthorized occupant to termination and eviction. It is very important to establish evidence of the occupant's residency in the premises before and after the three-day notice has expired.

> Effective September 1, 2019, the three-day period under notices to pay rent or quit or notices to perform covenant or quit does not include Saturdays, Sundays, or judicial holidays.

> If your property is subject to The TPA aka AB 1482, you will be required to serve the additional three day quit notice after the non-compliance of the perform or quit notice. This requirement is also in some local just cause ordinances.

Third Party Claim of Right to Possession. If you file for unlawful detainer based on the breach of the lease or agreement, you are well advised to file and serve a "Prejudgment Claim of Right to Possession" to avoid a possible Third-Party Claim of Right to Possession, also known as an *Arrieta* Claim, which could delay the return of possession of your property for an additional three to four weeks. (For more information, see the section on Prejudgment Claim of Possession.)

Short-Term Rentals. Tenants renting out their house or apartment online for short terms (such as on Airbnb) can create headaches for landlords. For more information on this topic email *info@kts-law.com* for an article about vacation subleasing.

Landlord's Right to Enter

Under California law, the resident is entitled to exclusive possession of the premises, even to the exclusion of the owner or property manager of the premises. The California legislature has limited the right of entry by a landlord to five categories.

Emergency. This entry is only permitted when a true emergency affects the health or safety of the resident or to protect the premises from damage. Entry under this category does not require that a notice of intent to enter be given to the resident prior to entry.

Repairs/Services/Show. Entry is permitted to make necessary or agreed upon repairs, decorations, alterations, or improvements, supply necessary or agreed services, to test smoke detectors, carbon monoxide detectors, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors, or for purposes relating to water conservation and submetered water (Civil Code § 1954.201 et seq.). Entry for general inspection purposes is not, however,

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permitted under current California law (unless there is a HUD subsidy involved, in which case an annual inspection is required by HUD).

Generally, a "Notice of Intent to Enter" must first be delivered to the resident, giving the resident "reasonable notice" of the date and time of the proposed entry. Notice of entry must be in writing. It may be personally delivered to the resident, left with someone of a suitable age and discretion at the premises or left on, near or under the usual entry door of the premises in a manner in which a reasonable person would discover it. A Notice of Intent to Enter is not necessary if:

- Entry is due to an emergency, surrender or abandonment of the unit, or
- The resident and landlord agree orally to an entry to make agreed repairs or supply agreed services at an approximate day and time within one week of the oral agreement, or
- The resident is present and consents to entry at the time of entry, or
- To exhibit the unit to prospective or actual purchasers of the property, if the landlord has notified the resident in writing within 120 days of the oral notice that the property is for sale and that the resident may be contacted to allow for an inspection. At the time of the entry, the landlord or agent must leave written evidence of the entry inside the unit.

The law presumes 24 hours is reasonable notice or 48 hours for pest control purposes. However, if mailed, the law presumes six days prior to an intended entry is reasonable. Time of entry, unless in an emergency, is limited to normal business hours. Many judges construe "business hours" to mean between 8:00 a.m. and 5:00 p.m., Monday through Friday. Some weekend hours may be considered normal business hours when the purpose of the entry is to show the unit to prospective purchasers.

Abandonment. Entry is permitted "when the resident has abandoned or surrendered the premises." We suggest you obtain legal advice if you believe the premises have been abandoned.

Initial (Pre-Termination) Inspection. Note that 48-hours' notice is required prior to entry to conduct an "initial" (pre-termination) inspection.

Court Order. The fifth and final category allows entry by the owner when the entry is under a court order, most commonly following an unlawful detainer action.

Smoking on the Property

Many California municipalities have passed anti-smoking legislation requiring landlords to protect residents from secondhand smoke. Many have adopted smoke-free outdoor common areas policies and/or ordinances that prohibit smoking within a certain percentage of multi-unit housing units. Many California housing authorities have adopted smoke-free policies as well. On November 30, 2015, HUD published a new final rule banning smoking in all public housing, including in units, all indoor common areas, and all outdoor common areas located within 25 feet of the units. At present, the rule only applies to Public Housing Authorities who operate public housing. New smoke-free laws are being added rapidly. As of February 2019, 101 jurisdictions have smoke-free housing policies. Be sure you know what smoking laws are in effect or may go into effect wherever your properties are located. You may also be required to post Prop 65 signs in your common areas if smoking is permitted there.

California law allows landlords to make a property or any part of the property smoke-free. A smoke-free building can be an attractive option for residents because only about 13-14 percent of Californians smoke. However, it is important to remember to focus on the activity of smoking, not smokers. If you already have a smoke-free property or are considering converting to smoke-free, it is

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recommended that you have the appropriate documentation. Smoking has become an even greater issue due to Proposition 64, which legalized recreational marijuana in California.

- *KTS has a smoke-free forms package, which includes: a Smoke-Free Addendum; a Notice of Change of Terms of Tenancy to implement the Smoke-Free Addendum and instructions about how to implement a smoke free policy. If you are interested in purchasing this package, contact info@kts-law.com.*

Habitability

California Civil Code § 1941 requires that the landlord present the rental property in a condition fit for the tenant to live in, and during the term of the lease, repair all subsequent dilapidations which would render the property untenantable. In other words, the property must be habitable.

Habitability encompasses a number of statutory requirements, including but not limited to Civil Code requirements, Health and Safety Code requirements, building standards, and others. Habitability claims may include alleged pest infestations, nonworking fixtures, and problems with electricity or water/sewer systems and/or mold. Beginning January 1, 2026, AB 628 expands the legal definition of habitability for most residential units to require a working stove and refrigerator, subject to statutory exceptions and lease language requirements. When litigated, some judges deem any problem in the unit as a habitability issue even if it is technically not under the law.

A landlord's failure to maintain the habitability of the premises may result in significant liability. Habitability can be raised as an affirmative defense to an unlawful detainer action for non-payment of rent. Additionally, California Civil Code § 1942 provides specific remedies residents may employ if reported repairs are not corrected within a reasonable amount of time: these remedies include the ability for the resident to repair the outstanding issue and deduct the repair amount from the rent, vacate the unit without liability for the remainder of the lease, or withhold rent. In some cases, habitability allegations may rise to civil claims for damages, rent abatement, and even class actions.

California Civil Code § 1941.2 delineates a resident's affirmative obligations with regard to maintaining the rental unit; however, in some situations, it may be recommended for the landlord to resolve an outstanding issue (even one in which the resident is at fault) and subsequently seek reimbursement from the resident as allowed by law, rather than shift the responsibility of the repair directly to the resident (as when relying on the resident it may be difficult to ensure the repair will be done appropriately and/or in a timely manner, which could negatively impact other residents at the property).

Habitability allegations can be complicated and require an analysis of the specific facts of the issue at hand. If a resident is raising habitability claims (even if a lawsuit has yet to be filed), it is prudent to consult with an attorney to determine how best to proceed.

Notice of Pesticide Use

California Business and Professions Code § 8538 and California Civil Code § 1940.8 require residential landlords to provide new tenants with disclosures from a registered structural pest control company when the property owner and pest control company have entered into a contract for periodic pest control service.

Civil Code § 1940.8.5 (enacted in 2016) requires a landlord or authorized agent of the landlord who applies any pesticide to a dwelling unit or common area without a licensed pest control operator to provide written notice at least 24 hours prior to the treatment to both the residents of the dwelling unit

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as well as the residents of the adjacent dwelling units that could be impacted by the pesticide use prior to the application of the pesticide. (There is an exception if the pest poses an immediate threat to health and safety, in which case the notice would be required to be posted as soon as practical, but no later than one hour after the pesticide is applied.)

The notice must include the pest or pests to be controlled, the name and brand of the pesticide product to be used, the approximate date, time and frequency with which the pesticide will be applied; and written notification and disclosures as provided by the statute. This notice can be delivered personally, by e-mail, or by posting in a conspicuous location.

If the landlord or authorized agent of the landlord plans to treat a common area with pesticide(s), at least 24 hours prior to the application of the pesticide, the landlord must post the notice in a conspicuous place in the common area where the pesticide will be applied. For routine scheduled applications, notification to existing tenants is required before the initial routine application and to new tenants when they sign a lease or rental agreement.

Bed Bugs

If you have not had a problem with bed bugs at your rental property, consider yourself very fortunate. Bed bugs were once thought to be a thing of the past; however, a steady increase in international travel and a ban on the pesticide DDT has allowed them to flourish in the United States once again. Bed bugs do not discriminate. They can invade even the most luxurious homes and apartment communities, and once they make themselves at home, they can be extremely difficult to eradicate, particularly if residents don't fully cooperate with extermination attempts.

In 2017, laws were passed to clarify the existence of bed bugs and treatment obligations for both landlords and residents. The law has several components, as codified Civil Code § 1954.600-1954.605.

Civil Code § 1954.602 prohibits a landlord from showing, renting or leasing a unit that the landlord knows has bed bugs. It does not require a landlord to inspect for bed bugs, but if a bed bug infestation is apparent, the landlord is considered to have knowledge of bed bugs in the unit.

Regardless of how well your community is maintained, there is a good chance you will eventually have an outbreak of bed bugs. Getting rid of them may require several visits from your pest control professional along with the full cooperation of the residents whose homes are infested.

Civil Code § 1954.604 addresses entry into a unit to inspect for and treat bed bugs. Landlords are required to give notice of intent to enter as specified in Civil Code § 1954, and tenants are required to cooperate with inspection and requests for information to facilitate bed bug detection and treatment.

Landlords should also maintain a relationship with a reputable pest control vendor who has experience dealing successfully with these infestations in multi-family housing. When occupied units are inspected by a licensed pest control operator, Civil Code §1954.605 requires landlords to notify tenants within two business days of receiving the pest control operator's findings. When infestations are found in common areas, the landlord must provide the notice to all tenants.

While lease language won't prevent bedbug problems, a good bedbug addendum can give a landlord tools to help manage bedbug problems. Useful are provisions requiring residents to cooperate with pest control efforts and language about tenant responsibility for damage caused by the tenant (such as a tenant who causes a bedbug infestation). Civil Code § 1954.603 requires specific bed bug notifications for new tenants as of June 1, 2017, and for existing tenants as of January 1, 2018.

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- *KTS has developed a bed bug addendum available for purchase. It contains the language required by Civil Code § 1954.603, plus other helpful provisions.*

Third Party Payments

California Civil Code § 1947.3 requires a landlord to accept rent payment through a third party, if the payor provides the landlord a signed acknowledgement stating that they are not currently a tenant of the premises for which the rent payment is being made and that the acceptance of the rent payment does not create a new tenancy with the third party. The landlord may, but is not required to, provide a form for this purpose. The law specifies that this provision is not meant to require a landlord or their agent to enter into a contract with a federal, state, or local housing assistance program (such as Section 8). However, as of January 1, 2020, Section 8 and other assistance and subsidies are protected under the source of income provisions of the Fair Employment & Housing Act so landlords cannot refuse to participate in the Section 8 or other programs that provide rental assistance or subsidies so long as the applicant qualifies for the unit. Landlords are still not allowed to charge a fee if the third party pays by check.

NSF Checks

When a check is returned for insufficient funds (NSF), you may charge the resident $25 for the first check and $35 for later NSF checks. Under California Civil Code § 1719, you may also seek damages of $100 or, if higher, three times the amount of the check—up to $1,500. However, claims under this code section should not be made for any checks that are expected to be the basis for a non-payment of rent eviction.

It is also legal to require that if you receive NSF checks or checks returned for any other reason, the resident must pay future rental payments by money order or cashier's check. You must let them know in writing that you are electing this provision.

You cannot require rent to be paid only in cash for more than three months after receiving a dishonored check. After three months, you must allow alternate forms of payment, such as money order or cashier's check. You are not obligated to accept personal checks however if you do, you cannot charge a fee for any payment by check.

If you establish NSF policies, to be enforceable, the policies must be in writing, preferably as part of the rental agreement.

Don't include an NSF charge in a "Three-Day Notice to Pay Rent." Only actual rent owed should be stated as any other inclusions will void the notice. NSF charges should be stated on a separate "Three-Day Notice to Perform Covenants or Quit."

Late Fees

Late fees may not be charged unless they are specified in the rental agreement or lease. The late fee must be reasonable and should be liquidated damages based on your actual damages suffered as a result of the late payment. The provision of your lease must be drafted specifically and cannot be a penalty. Larger fees or penalties may subject you to a lawsuit. There have been several lawsuits based on unreasonable late charges. The rent must also be late and not deferred for any reason.

If you must serve a Three-Day Notice to Pay Rent, do not include late fees, or the notice will be rejected by the court, and you will have to serve a new notice and start a new lawsuit. NSF or late fee charges should be stated on a separate "Three-Day Notice to Perform Covenants or Quit."

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Late fees should not have been charged for the non-payment of COVID rental debt where the tenant provided a notice of COVID hardship to the landlord.

Rent Caps and Rent Increases

Effective January 1, 2020, The Tenant Protection Act (AB 1482 or TPA) imposes rent caps and just cause eviction restrictions for residential rental property throughout California. It adds new Civil Codes § 1946.2, 1947.12 and 1947.13.

Unless exempt, as defined by the statute, rent increases are capped at 5% plus inflation as measured by the consumer price index (CPI), or a cap of 10%, whichever is lower. All rent increases given from March 15, 2019, will count toward the rent cap, and if the amount exceeds the permissible rent cap, the increase should have been rolled back effective January 1, 2020, so that it did not exceed 5%+CPI. For rent increases that are effective prior to August 1st of any given year, the CPI will be reviewed using the two prior years CPI. If the increase will be effective on or after August 1st, then landlords will refer to the CPI from the current year and the year prior. Landlords may also not raise the rent more than the 5%+CPI or 10%, whichever is lower, and not more than two times in twelve months. If the landlord increases the rent twice in a twelve-month period, the total increase between the increases cannot be greater than the total permitted increase. The law also requires certain written disclosures.

The TPA is a complex piece of legislation which will require landlords with properties subject to the TPA to make significant changes to their current business practices, changes to their lease agreements and other forms and notices.

While the TPA dramatically alters the rental housing landscape by creating a statewide rent cap, it does not negate existing local rent control or just cause ordinances which may further limit rent increases or allowable reasons to terminate a tenancy. Local rent control and just cause ordinances continue to be approved and passed with increasing frequency. It is more important than ever for landlords and management to be acutely aware of local legislation that may impact their properties. The TPA should be reviewed as two distinct provisions: rent limits and just cause because depending on a local ordinance you may apply the one portion of the TPA and not the other.

Additionally, effective January 1, 2020, AB 1110 amended Civil Code § 827(b), requiring a 90-day notice, rather than a 60-day notice, if the landlord serves a residential tenant with a notice of rent increase of more than 10% cumulative of all increases over the last twelve months. If the rent increase is due to a change in a tenant's income or family composition as determined by a recertification, only 30 days' notice is required (unless otherwise specified by state or federal statute or regulation, recorded regulatory agreement, or contract). The length of tenancy no longer impacts the required notice period for rent increases. If the notice is served via mail, landlord should add 5 days for mailing within California and 10 days if mailed outside California.

Important note regarding rent increases: If a state of emergency is declared, California Penal Code § 396 prohibits price gouging (i.e., price increases of more than 10%) for rental housing (in addition to other goods and services identified by statute) for 30 days after the emergency is declared. The time may be extended by order of the governor or local agency that declared the emergency. The price gouging restrictions may be triggered by federal, state, or local officials, boards, or other governing bodies authorized to declare emergencies extend the restrictions. In light of the recurring devastating wildfires, floods, and mudslides impacting areas throughout the state, landlords should seek counsel prior to implementation of any rent increase in excess of 10% for new or existing tenants, including units that tenants voluntarily vacate that would normally be de-controlled.

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Just Cause – Terminations of Tenancy

Effective January 1, 2020, The Tenant Protection Act (AB 1482 or the TPA) imposes rent caps and just cause eviction restrictions for residential rental property throughout California. It adds new Civil Codes §§ 1946.2, 1947.12 and 1947.13.

Unless specifically exempt (as defined by statute), this bill prohibits an owner or their agent of a residential property from terminating a resident's tenancy without just cause after the household has resided in the unit for twelve months, or at least one tenant has resided continuously for twenty-four months. The law identifies 11 tenant-fault and 4 no-fault reasons for termination and requires relocation payments for no-fault tenancy terminations. If a resident's tenancy is terminated for a "no fault" reason, the landlord must pay relocation assistance in the amount of one month's rent. There are additional requirements, disclosures, and exemptions to pay attention to in this piece of legislation.

AB 1482 required landlords with properties subject to AB 1482 to make significant changes to their business practices and changes to their lease agreements and other forms and notices (including notices to qualify for certain AB 1482 exemptions).

AB 1482 does not negate existing just cause ordinances which may further limit rent allowable reasons to terminate a tenancy. Local rent control and just cause ordinances continue to be approved and passed with increasing frequency. It is more important than ever for landlords and management to be acutely aware of local legislation that may impact their properties. A property will not be subject to both a local just cause and the TPA, one will control over the other. It is important to make sure that landlords are aware of which law applies and that they are utilizing the correct disclosures and forms because the disclosures are almost identical, but the slight difference may result in noncompliance.

How to Serve a Notice on a Residential Tenant

Generally, California law requires that residential tenants be served notices by:

1) personal service; or

2) substituted service by delivery to someone of suitable age and discretion and mailing a second copy, normal mail the same day; or

3) posting on the property and mailing a second copy, normal mail the same day.

Personal service should be attempted before resorting to substituted service or posting and mailing. When serving any notice that will be the basis for an eviction, personal service must be attempted at both the resident's unit and their place of business, if known, before resorting to another method of service. Timelines for service have been extended from 8:00 am to 8:00 pm in order to facilitate personal service where possible.

Effective September 1, 2019, AB 2343 amended Code of Civil Procedure § 1161 to extend the waiting period for some notices. California Code of Civil Procedure § 1161 previously allowed weekends and holidays to count towards the three (3) day notice period but prohibited a notice from expiring on a weekend or holiday. The bill amended existing law to specifically exclude "Saturdays and Sundays and other judicial holidays" when calculating the notice period for notices to pay rent or quit or notices to perform covenant or quit. It does not exclude these days when calculating expiration periods for thirty- and sixty-day termination notices (for properties not subject to the new state-wide just cause restrictions) and notices to quit based on unauthorized assignment, subletting, nuisance, and waste.

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Notices for (1) rent increases, (2) entry, and (3) termination of month-to-month tenancies (for properties not subject to the new state-wide just cause restrictions) may be served differently.

Rent Increases. Notices of rent increases may be personally served or sent by first class mail. If sent by mail, an additional five (5) days is added before the service is effective if mailed within the state of California, add ten days for mailing outside California.

Notices of Entry. Notices of entry may also be served differently than other notices. Notices of entry must be in writing in most situations. The notice may be mailed, personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or left on, near or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. The "subservice" and "posting" methods of service for notices of entry do not require that a second copy be mailed.

The tenant must be given "reasonable notice." The law presumes twenty-four (24) hours is reasonable or forty-eight (48) hours for pest control entry. However, if the notice is only mailed, the law presumes six (6) days' notice of intended entry is reasonable. The only exception is in cases of an emergency or when the tenant has abandoned or surrendered the premises, when entry need not be made during normal business hours and no prior notice is necessary.

If the purpose of the entry is to exhibit the unit to prospective or actual purchasers of the property, and the landlord has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the tenant may be contacted to allow for an inspection, the notice may be given orally, in person or by telephone. At the time of the entry, the landlord or agent must leave written evidence of the entry inside the unit.

Emailing Residential Tenants in California

While email use is common and is growing faster than "snail mail," the California legislature does not generally recognize email as a valid delivery method for most formal communications provided by California residential landlords to their tenants. Even if a landlord does not use an authorized service method, sometimes a notice may still be effective if there is proof that a tenant received it. California law requires other delivery methods for most formal California residential landlord communications.

Generally, California law requires that residential tenants be served notices by:

1) personal service; or

2) substituted service by delivery to someone of suitable age and discretion and mailing a second copy, normal mail the same day; or

3) posting on the property and mailing a second copy, normal mail the same day; or

There are a few exceptions for (1) rent increases, (2) entry, and (3) termination of month-to-month tenancies (for properties not subject to the new state-wide just cause restrictions); specific alternate service methods (not including email) are allowed for service of those specific notices.

While email has existed for decades, until recently, the California legislature ignored email as a communication method between California residential landlords and tenants. Finally, beginning in 2023 and 2024 the California legislature authorized emailing four (4) California residential landlord communications: (1) security deposit accountings (but only with the parties' agreement); (2) abandoned personal property notices; (3) receipts for the application fee, upon agreement; and (4) notice of right to positive rent reporting.

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Email can be used:

- for informal landlord/tenant communications (although both federal and state laws prohibit emailed "spam," i.e., unsolicited commercial email advertisements);
- to serve security deposit accountings, if landlord and tenant have agreed (preferably a written agreement) to email delivery after either party gives written notice of termination of the tenancy; or
- as a supplemental method of serving abandoned personal property notices (notifying a resident or other party that when the unit was vacated, personal property was left in the unit);
- to serve Proposition 65 notices;
- to provide a receipt for the application fee, if the landlord and applicant have agreed (also preferably in a written agreement; and
- to serve notices of right to positive rent reporting.

Pre-Termination Inspection Requirements

Under Civil Code § 1950.5 residents are entitled to a pre-termination inspection of the premises in order to maximize the return of the security deposit. Within a reasonable time after notification of either the landlord's or resident's intention to terminate the tenancy or before the end of the lease term, the landlord must notify the resident in writing of the resident's option to request an inspection of the premises and of the resident's right to be present at the inspection.

The notice must contain the following statutory language:

"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".

No inspection is necessary unless the resident requests one. The resident may:

- Request the initial inspection and be present for the inspection.
- Request the initial inspection and not be present for the inspection.

If the resident requests the initial inspection, the landlord and resident must attempt to agree on a mutually acceptable date and time. The inspection must occur within the last two weeks of tenancy, during normal business hours, unless the resident agrees to a different time. A 48-hour written notice of initial inspection must be given before the mutually agreed upon initial inspection date and time, unless waived in writing.

If no mutually acceptable date and time was agreed to and the resident still requests an initial inspection, a 48-hour written notice must be given before the initial inspection. The landlord and resident may sign a written waiver of the 48-hour notice of initial inspection. After meeting all the notice requirements, the landlord may then proceed with the initial inspection. The landlord should proceed with the inspection whether the tenant is present or not unless the tenant withdraws the request for inspection. An itemized statement specifying repairs or cleanings that are the basis for proposed deductions must be presented to the resident at the time of the initial inspection if the resident is

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present, or if the resident is not present, the statement must be left in the rental unit. The statement must also include language from CC § 1950.5 (b) (1-4).

The pre-move-out inspection process is not required when the lease is terminated by a three-day notice.

A Notice of Resident Option to Request Initial Inspection of Rental Unit is located in the Forms section of this handbook.

The Security Deposit

Security deposits are the subject of more disputes between landlords and residents than any other. This is often because of misunderstandings about the law and differences of opinion regarding what constitutes "clean" or "normal wear and tear."

Collecting the Security Deposit.

1. Beginning July 1, 2024, landlords and owners may only demand one month security deposit, regardless of whether the property is furnished or not. A landlord is permitted to have up to two months security deposit, only if they meet both requirements: (1) the landlord is a natural person or a limited liability company in which all members are natural persons and (2) landlord owns no more than two residential rental properties that collectively include no more than four dwelling units offered for rent. Security deposits for service members are always limited to the one-month maximum deposit and service members cannot be discriminated against because of this protection. The month limitation on security deposits will not apply to any deposit collected or demanded prior to the effective date of July 1, 2024.
2. Last month's rent, pet deposits, key deposits, cleaning deposits and any other deposits for potential future losses are all considered to be a part of the security deposit. When totaled, they may not exceed the legal limits. Label all deposits as "security deposit" rather than the categories listed above as this gives you the maximum flexibility in its use.
3. The law does not permit any "nonrefundable" deposits of any kind, such as an automatic deduction for flea spraying when there has been a pet.

Initial Inspection before Move-Out. Landlords generally must provide residents with a notice of the resident's right to a pre-move-out inspection. See the Pre-Termination Inspection Requirements section of this Handbook and the "Notice of Resident Option to Request Initial Inspection of the Rental Unit" in the Forms section.

Returning the Security Deposit.

1. Beginning April 1, 2025, the landlord will be required to take photos of the unit within a reasonable amount of time of possession being returned to the landlord, and prior to any repairs or cleaning. Thereafter, the landlord must take additional photos of the unit after the cleaning and repairs have been completed. If any deductions are made from the security deposit for cleaning or damages, the landlord will need to provide the traditional itemization of deductions but must also include the photos along with a written explanation of the cost of the allowable repairs or cleaning. The photos may be sent by mail, email, computer flash drive or by providing a link where the photos may be reviewed online.

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2. The lease can allow the landlord up to 21 days to provide the resident with the accounting and return the balance of the resident's security deposit. The time period begins when the landlord regains possession of the property.
3. For any security deposit accounting sent on or after January 1, 2026, AB 414 modifies how itemized statements and security deposit refunds may be delivered. The landlord and tenant may mutually agree at any time to have the itemized statement delivered either by email to an email address provided by the tenant, or by first-class mail to a mailing address provided by the tenant. Absent such an agreement, the itemized statement must be delivered by personal delivery or first-class mail.
4. If there is only one adult tenant and the tenant did not pay any rent or the security deposit electronically, the remaining security deposit must be returned by check through personal delivery or first-class mail.
5. If there is only one adult tenant and the tenant paid the security deposit or any rent electronically, the landlord must provide a Notification of their Right to Receive Refund Electronically, unless there is a previous written agreement as to how the security deposit will be refunded (such as a provision in the lease) and/or if the tenant's tenancy is being terminated pursuant to a notice to pay or quit, cure or quit, or for nuisance/illegal activity. Any remaining portion of the security deposit may be refunded by depositing electronically into a bank account or other financial institution that the tenant designates in writing; any electronic or virtual method available to the landlord if the tenant agrees in writing; or another method of return, including, but not limited to, personal delivery or check made payable to the tenant and mailed by first-class mail, to an address provided by the tenant, if agreed upon in writing by the landlord and the tenant.
6. If multiple adult tenants reside in the unit, the law provides several options for landlords. The default method of refunding the security deposit in the case of multiple tenants is via paper check with all tenants' names listed on it and sent to an address provided by the landlord. If the adult tenants provide more than one forwarding address, the landlord can choose which address to use. the landlord and all adult tenants may, at the commencement of the tenancy or at any time during or after the tenancy, enter into a mutual written agreement specifying how any security deposit refund will be returned (including whether it will be paid to one tenant or divided among tenants, including allocation percentages), the method of delivery, and whether the itemized statement will be delivered by email or by first-class mail. There is an exception for tenants who terminate the tenancy early due to California's domestic violence law. Refer to the Responsibilities of Management in Domestic Violence Situations section for more information.
    - A security deposit disposition addendum and Notice of Right to Receive Electronic Refund form are available. Contact *info@kts-law.com* for more information.

Security Deposit Accounting Requirements.

1. Owners and managers must provide their residents with written receipts showing the charges incurred to repair or clean the apartment if the total amount is $125 or more. The receipts must be attached to the final security deposit accounting.

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2. If the landlord did the work personally, they must reasonably describe the work performed and must include the time spent and the reasonable hourly rate charged. Arguments about what is reasonable are common, so a conservative approach is highly recommended.

3. If a contractor or other third party does the work, the owner or manager must provide the resident with a copy of the bill, invoice, or receipt supplied, including the business's name, address, and telephone number.

4. Owners and managers must also provide receipts for materials if the resident is being charged for them. Property owners or managers who purchase materials on an on-going basis or in bulk may provide the resident with a copy of a vendor price list or any other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

5. If a repair cannot be made, or receipts are not available within the 21-day period, the owner or manager may deduct only a good faith estimate of the deduction amounts and must provide an estimated accounting to the resident within the 21-day period.

6. If the owner or manager doesn't have the receipts within the 21-day period because they are still with the contractor, the owner or manager must provide the name, address and telephone number of the contractor along with the estimate. When the final figures and receipts are available, the owner or manager must provide a final statement within 14 days from the date the repair is completed or from the date the owner or manager receives the receipt documents from the vendor.

7. The resident has 14 days after receiving the final itemized statement to request additional receipts from the owner or manager. If receipts are requested, the owner or manager has another 14 days to provide the additional receipts.

8. If any deductions are made from the security deposit for cleaning or damages, the landlord will need to provide the traditional itemization of deductions but must also include the photos along with a written explanation of the cost of the allowable repairs or cleaning. The photos may be sent by mail, email, computer flash drive or by providing a link where the photos may be reviewed online.

The only exception to this law exists if the repairs or cleaning do not exceed $125 total or if the resident signs a written waiver of their right to receive the receipts. The waiver can only be signed after the termination notice is given, including 3-day notices, or within 60 days of the expiration of a fixed term lease. If the waiver is signed, the resident can still request receipts within 14 days after receiving the final security deposit statement.

We recommend that you use a well-drafted comprehensive security deposit accounting form, such as the California Apartment Association form, to help you comply with the law.

Uses of the Security Deposit. The security deposit may be expressly used

1. For unpaid rent;

2. To repair damages to the premises, not including ordinary wear and tear, caused by the resident or by a guest or licensee of the resident;

3. To clean the premises to return it to the same level of cleanliness it was in when the resident moved in and

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4. To restore, replace or return personal property or appurtenances, exclusive of ordinary wear and tear, if the rental agreement authorizes this use of the security deposit.

The express terms of the security deposit law do not specifically list other items but does indicate that this list may not be complete. It remains unsettled whether it is appropriate to use the deposit for other purposes such as late charges, unpaid utility charges and NSF check charges.

The Penalties. The damages for the bad faith retention of a security deposit by a landlord are up to two times the amount of the security deposit. They may be awarded in a lawsuit even if the resident did not ask for those damages.

Resolving Security Deposit Disputes. If you cannot reach an amicable agreement with the resident over a security deposit dispute, the resident may sue in Small Claims Court.

Small claims jurisdictional limits are $12,500 for "natural persons" in most situations. The jurisdictional limit is $6,250 for plaintiffs who are corporations, partnerships, unincorporated associations, governmental entities, LLCs or other entities. See California Code of Civil Procedure § 116.220, 116.221, 116.224 and 116.231 for a complete overview of small claims jurisdictional limitations, including additional limitations against guarantors, and actions brought by "natural persons" for bodily injury claims arising out of automobile accidents.

Actions brought by natural persons against guarantors or co-signers of the lease are limited to $8,125 per claim or $3,125 if the guarantor does not charge a fee for the service. There are also webinars on the small claims process.

A Trap for the Unwary Landlord: Family Childcare Homes

A property manager is approached by a resident who advises you that they are planning to operate a childcare business in their rental unit. Management's initial thought may be to deny permission to the resident.

- The unit may be small, and/or not well-suited for a childcare business, or
- Management may have concerns about potential liability or
- The lease may prohibit use of the unit for business use or
- Restrictive covenants (such as CC&Rs) may prohibit use of the property for nonresidential use or
- The property's zoning may prohibit commercial businesses.

Even if all the facts above are true, none of them will prevent operation of a family childcare business. Under California law, a family childcare home can be operated in all residential properties (whether apartments, condominiums, or single-family residences), provided certain conditions are met. Beginning in 2020, both small and large family childcare homes are considered "residential" uses of the property.

Maximum Number of Children. There are two types of family childcare homes: "small family childcare homes" and "large family childcare homes." A small family childcare home provides care for up to six-eight children. A large family childcare home provides care for up to twelve-fourteen children.

To operate legally in residential rental property without the permission or consent of the property owner, a small family childcare home must be limited to six children or less, including the operator's children. The number can be increased up to a total of eight children, but only if the property owner provides written consent.

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To operate legally in residential rental property without the permission or consent of the property owner, a large family childcare home must be limited to twelve children or less, including the operator's children. The number can be increased up to a total of fourteen children, but only if the property owner provides written consent.

Licensing. Family childcare homes must generally be licensed by the California Department of Social Services. A business license is not required. There are requirements for the home (which requires a home inspection) and for the care providers (e.g., at least fifteen hours of health practices training).

Notice to the Property Owner. The childcare provider must provide the property owner with thirty (30) days advance written notice of their intent to operate the childcare business on the property. However, because the operator is generally not required to obtain the landlord's "consent," the failure of an existing resident to provide prior notice will not give the property owner a basis to shut down the childcare business.

Security Deposit Increase. The property owner can require the childcare provider to increase the security deposit to the maximum allowed by law, which currently is One month unless exempt from the limit in which case it would be two months. See Security Deposit above for more information.

Insurance or a Bond. Health & Safety Code § 1597.531 requires licensed operators to:

- carry liability insurance of $100,000 per individual/$300,000 aggregate; or
- hold a $300,000 bond; or
- inform each parent that they do not carry liability insurance or a bond. The operator must obtain affidavits signed by each parent acknowledging that the parents are aware of the lack of insurance or bond. Operators must also inform parents that it is possible that the property owner may not carry insurance coverage for losses "arising out of, or in connection with, the operation of the family childcare home," except if the losses are "caused by, or result from, an action or omission by owner for which they would normally be liable under the law."

To minimize risk of premises liability claims, once notified of the intent to operate a family childcare home, a property owner may wish to take extra precautions to inspect the property and minimize any dangerous conditions on the property.

If the operator carries insurance or a bond, the property owner can request to be named as an additional insured, as long as it does not result in cancellation or non-renewal. If adding the property owner increases the insurance or bond premium, the cost increase must be paid by the property owner.

Compliance with Property Rules and Regulations. The same reasonable rules that apply to other residents may be enforced against a family childcare operator. For example, the childcare business may not cause excessive noise that disrupts the peaceful and quiet enjoyment of other residents, nor can the property be damaged beyond normal wear and tear. If there is excessive noise, damage, etc., the property owner can provide warnings or notices in a manner consistent with any other property rule violation.

- *Landlords may wish to use a Childcare Addendum with their lease or rental agreement for residents operating family childcare businesses. Kimball, Tirey & St. John LLP has a Childcare Addendum available. Contact KTSLease@kts-law.com if you are interested.*

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Residents Who Hoard

Resident hoarding can cause significant health and safety problems, both in the hoarder's unit and in neighboring units. Hoarding can be the source of pest infestations, mold problems, increased fire risk, interference with entrance or exit of the unit, or exceed maximum load bearing floor capacity. It is rarely self-reported by the hoarder. Instead, it is often discovered by maintenance staff making a repair in the hoarder's unit or in a neighboring unit, or by complaining neighbors. Hoarding can create a problem for surrounding units, such as water intrusion, mold, or a pest invasion in a neighboring unit.

Hoarding is not just a matter of poor housekeeping. Hoarding is listed as a specific mental disorder in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and is considered a disability. Depression and other disorders such as Attention Deficit Disorder, Attention Deficit Hyperactivity Disorder, or Bi-Polar Disorder can also be present (known as "co-morbid disorders"). Hoarding is loosely defined as:

- The acquisition of, and failure to discard, a large number of possessions;
- Persistent difficulty discarding or parting with possessions, regardless of their actual value;
- Living spaces that are sufficiently cluttered so as to substantially compromise activities for which those spaces were designed.

Hoarded items may be valuable collectibles, trash, or anything in between. Units can be literally packed, floor to ceiling and wall-to-wall, with just a small path or no path for movement in the unit.

Federal and state fair housing laws protect people with mental health disorders like hoarding. Before a landlord may evict a resident whose disability (hoarding) is causing the person to violate the terms of the lease/rules (health and safety or nuisance), good faith efforts must be made to accommodate the resident's disability. This generally requires that the resident be given an opportunity to come into compliance in order to remain a resident. Examples of potential accommodations include:

- Setting scheduled unit re-inspections and establishing goals (outlined in a written agreement) that the resident must meet.
- Providing a reasonable amount of time to accomplish those goals.
- Providing the resident with a list of community resources that can assist.
- Working with a fair housing and/or mental health advocacy group assisting the resident to develop a plan to bring the unit into compliance.

When dealing with a hoarding situation, the focus should be only on solving legitimate health and safety issues rather than attempting to achieve ideal housekeeping habits. It should be recognized that even if the resident meets minimum health and safety standards, the unit may not be in an "optimal condition."

People who hoard may not recognize the severity of the problem or be equipped to resolve the problem on their own. They may believe their hoarding is beneficial because they are savers, not wasters while others may deny that any problem exists. As a result, it may be helpful to involve a neutral third party such as a fire department, code enforcement, or a health inspector who can inspect the unit and identify code or health and safety violations. There may be additional success if the tenant utilizes the services of a professional organizer and/or therapist.

Accommodation may not be required, and termination of the tenancy may be possible, if:

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- The person is a clear, direct and immediate threat to the health and safety of other community residents and no reasonable accommodation will eliminate or sufficiently mitigate the threat;
- There are serious health and safety issues that cannot be mitigated through accommodation;
- The resident has caused serious monetary damage to the unit and will not reimburse the landlord for the cost to repair the unit; or
- The hoarder will not engage in the accommodation process or cooperate to bring the unit back into compliance.

Even if health and safety issues are initially resolved, a hoarding resident may "slip" and re-hoard again in the future. Therefore, a written "Accommodation Agreement" should be considered, providing periodic unit inspections and a specified time period for correction of future health and safety issues.

No two situations are alike. Each hoarding situation requires analysis based on the facts of the particular case. You should seek legal advice before taking any action to terminate a tenancy if compulsive hoarding may be involved. The legal advice should include a review by a fair housing attorney due to the protections related to the disability.

- *If you encounter a hoarding situation, contact KTS's Fair Housing Practice Group at KTSFairHousing@kts-law.com or (800) 338-6039 for guidance. We also have an in-depth online "Hoarding" webinar available for further training on this important issue.*

What Happens When Elderly Residents Can No Longer Care for Themselves?

What are a housing provider's duties and rights when it becomes apparent that an elderly resident can no longer care for themself? This is a frequently asked question and, unfortunately, one that has no simple answers.

Discovering the potential problem. Often, management learns of the situation because a maintenance person goes into the unit to do a repair and comes back with a report regarding the condition of the unit and/or the resident. For example, the elderly resident may not be maintaining the apartment in a healthful, safe, and sanitary condition or may not appear to be bathing. There may be a strong smell of urine, or the apartment is cluttered with food containers and trash.

Other times, the situation can be brought to management's attention by other residents. Perhaps the resident in question repeatedly asked his neighbors to help him with daily living tasks that he can no longer perform, or the neighbors have been in the resident's unit and noticed he has no food in his kitchen. Still other times, it may be the resident's behavior that puts management on notice that something isn't right. Management may become aware that the resident is wandering around the community unable to find their unit, repeatedly falling asleep with food cooking on the stove, or tripping in their apartment or in the common areas and asking management to assist them in getting up.

The above scenarios are just a few examples of indications that a resident may no longer be able to care for themself. Management may be tempted to deal with such situations by telling the resident (or the resident's family members) that the resident needs to move to assisted living or a nursing home. Owners and management should be aware that such a response could subject management, the property, and the company to potential fair housing liability. A resident who is unable to properly care for themself likely qualifies as a disabled person.

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Under fair housing law. California law defines a disability as any impairment that limits one or more of life's major activities or makes it difficult. The impairment can be physical, mental/psychological, or result of a medical condition. Since disability is a protected class under fair housing laws, a disabled person cannot legally be forced by a housing provider to move from an apartment setting into assisted living, a group home, or a nursing home—even in situations where it seems clear that the resident would be better off in such an environment.

What can (or should) management do? If there are health and safety issues—either for the resident themself or for other residents and/or the asset—it is recommended that management contact the county's Adult Protective Services office and make a report. Be prepared to give specifics on why you feel the resident constitutes a health and safety threat to themself or the property. Document the date and time of the conversation and the name of the person who took the report. After receiving a report, the agency will usually send a team out to talk with the resident. Follow up with the agency to find out the results of this visit (and document the conversation).

Don't be surprised if you are told that the resident would not open the door or would not agree to get help. (These types of agencies are very limited in their ability to force their services on a person. Additionally, it is not uncommon for the resident to be lucid at the time of the visit and therefore able to convince the APS team that he is not a risk to himself or others.)

Contacting family members. Another potential avenue for resolution of the problem would be to contact the resident's family members (or other emergency contact person) to see if there is something they can do to help. When doing so, be careful to guard the resident's privacy. Rather than telling the family members that, for instance, their mother's apartment is filthy, and she is not bathing and seems to be unable to care for herself, a better approach would be to say that you are concerned about their mother's welfare and wondered if the family members could check on her and possibly be of assistance to her. Also do not ask about or disclose any disability to the emergency contact, even if it is a family member and you believe they already know. If there are issues that constitute a lease violation—such as acting out towards other residents or failing to maintain the unit in a healthful, safe, and sanitary condition, you might also add that you are trying to see if there is a way for the resident to retain the tenancy. Be sure to document the conversations.

If there are no lease violations and the resident is not a direct threat to the health and safety of others or the property, there may be nothing that management can do, particularly if social service agencies, family members and/or friends cannot help. If you are faced with this type of situation, seek legal advice before attempting to address the issues with the resident and/or take legal action so you do not accidentally say or do something that could create potential fair housing liability.

Towing

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 that specific conditions exist, and certain procedures are followed.

Within one hour of notifying the local traffic enforcement agency, 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 and the name

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and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner. 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.

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.

If there are 16 or more units with an on-site owner or manager, the property owner or manager must authorize the tow in writing and be on-site when the tow takes place (although the owner or manager does not have to be physically present at the place where the vehicle is being towed – they must simply be present at the property).

For properties with 15 or fewer units that do not have an on-site owner or manager, the owner or owner's manager is not required to be present nor verify the parking violation; the resident may verify the violation and request the tow from the resident's assigned parking space by signed request, email or by calling and providing a signed request or email to the property owner or manager within 24 hours. The signed request or email must contain the name and address of the resident and the date and time the resident requested the tow. The owner or manager must provide the resident's verification and authorization to the towing company within 48 hours of the tow.

The vehicle's owner or their 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 one-half 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. Once the vehicle is removed from the property, the company may charge the full fee.

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 (known as "patrol" or "contract" towing) except when a vehicle is unlawfully parked within 15 feet of a fire hydrant or in a

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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.

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's 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.

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.

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.

When a Resident Dies on the Property

This section discusses and answers the frequently asked questions regarding rights and responsibilities raised by property managers when a resident dies on the property.

What is the effect of death on rental obligations?
Death does not terminate term lease obligations. The resident's estate remains responsible through the end of the lease term.

Month-to-month residential tenancies terminate thirty (30) days after the last rental payment by the deceased tenant (Civil Code § 1934). A thirty-day notice is not required in this situation.

The estate will remain liable for unpaid amounts (subject to the landlord's obligation to mitigate). The deceased's family member and heirs are not personally liable if the estate does not have enough money to pay all claims. The estate may or may not have assets from which to collect. Any security deposit can be used to pay amounts due.

What should management do upon the tenant's death?

- Notify authorities (911, police, etc.) if a body is found by the landlord. In cases of homicide, suicide, accidents, and sudden/unexpected natural deaths, the coroner will generally take custody of the body and notify the next of kin.
- If death occurs off-premises (in a hospital or otherwise), and the landlord is notified, the landlord should request contact information for a responsible party.

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- If any pets are in the unit, contact animal control. Under California law, if an animal is "involuntarily deposited" with someone, the person with whom the animal is "involuntarily deposited" must immediately notify animal control officers.
- If there is no ascertainable next of kin or a responsible party, notify the Public Administrator duty officer. The Public Administrator will secure the unit and search for the next of kin or a responsible party. If no one can be located, the Public Administrator will either take contents to county warehouse for disposition/auction or, if low value, will turn it over to the landlord for disposition as abandoned property. In that case, the landlord should follow statutory abandoned property procedures to the extent possible.
- To avoid the appearance of improper actions, search the unit only with permission and presence of next of kin or officials. Avoid self-help to prevent theft claims.
- To avoid potential liability, provide access and possession only to authorized persons (described in more detail below).
- If a unit is relinquished with biological waste in it (blood, etc.), for liability purposes, compliance with labor laws, etc., hire appropriately trained people or companies to clean the biological waste. This is also true when there is biological waste on the property regardless of the reason.
- The landlord must name the proper party (Executor/Administrator/Trustee) if litigation is necessary to regain possession of the unit or to recover unpaid amounts.

When can the landlord retake possession of the unit?
To avoid potential liability, a landlord should not retake possession of a unit because a resident died unless:

- An authorized person (see below) returns possession of the property to the landlord; or
- No family member, representative of the deceased or some other person claims right of possession and the tenancy has terminated because (a) the end of the lease term has expired or (b) more than thirty (30) days have passed since the last rental payment was made on a month-to-month residential tenancy.
- The landlord has gone through an unlawful detainer action or the belief of abandoned real property procedure described in Civil Code § 1951.3.

Who should be given access to the unit, its contents & security deposit?
California law establishes who may act after someone has died. Allow access only to police, coroners and other government officials or an authorized person described below. It can often be difficult to determine who is an "authorized person."

- An "executor" is named in a will and is appointed by a court. An "administrator" is appointed by a court when the deceased does not have a will. Both are "personal representatives" appointed by a Probate Court Judge, and "Letters" issued by a court document the person's authority. However, probates are not opened for every deceased person, and opening probate can take weeks or months.
- If the deceased had a trust, the successor trustee may be authorized to act under the trust. You can verify authority by asking to see a copy of the trust and verifying that the person is named as the trustee or successor trustee under the trust.

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- If no probate is required because the "probate estate" (meaning items not in a trust or in beneficiary form) is less than $150,000.00, authority to deal with the deceased's personal property can be established through the "40-day procedure" that is outlined in the California Probate Code § 13100 et seq. If this procedure is used, at least 40 days must elapse from the date of death and a "40-Day Statutory Declaration to Receive Tangible Personal Property" would be provided to the landlord. During the 40+ day period, the landlord should store the personal property.
- While it is safest to wait for Letters to be ordered by the court, or for the "40-Day Statutory Declaration to Receive Tangible Personal Property," this is often impractical, due to a lack of storage space, relatives from out-of-town who need to resolve things quickly, etc. If a landlord feels comfortable with the people claiming the property, believes there will not be a fight about it, and is willing to accept some risk, the landlord may choose to (but is not required to) release the personal property earlier, to the apparently authorized person. The landlord can reduce risk in this situation by requiring the apparently authorized person to sign a document in which the apparently authorized person certifies to the landlord he or she is authorized and agrees to indemnify the landlord in case of any issue regarding the person's authority. Attorney assistance drafting this document (which Kimball, Tirey & St. John LLP refers to as a "Declaration to Provisionally Receive Tangible Personal Property from Residence of Decedent Without Court Administration") is recommended.

A landlord is under no legal obligation to turn the property over until the landlord is given proof of authority, so if someone is unwilling to sign the provisional document or if the landlord has doubts about the authority of the person claiming the property, the landlord should use caution and insist on the more formal procedure.

A power of attorney does not establish that someone is authorized to act after a death, as a power of attorney expires at death.

If a landlord has questions about whether someone is an authorized person, or if there are conflicting claims regarding possession of the unit or its contents, or if a landlord feels uncomfortable because of the possibility there may be disputes, consultation with an attorney may help avoid potential liability.

- Within 21 days after retaking possession of the unit, the landlord should provide the security deposit accounting and refund to the authorized person. If the landlord cannot determine the authorized person within the 21-day period after regaining possession of the property, the security deposit accounting and deposit should be sent to the deceased at the deceased's last known address (probably the property address), and let the heirs, court, public administrator or others determine who is entitled to it.

Disclosures to future residents

In California, if a death occurs in a unit, for three years the landlord must disclose the death to any new prospective tenants. This disclosure should be in writing. A landlord has no obligation to disclose that an occupant of the unit suffered from or died from HIV/AIDS.

After three years, the landlord is not required to volunteer the information but if asked a direct question can't give incorrect information. A landlord can respond by giving correct information or by stating that the landlord declines to provide any information.

These situations can be complicated; you would be wise to obtain legal counsel before proceeding to avoid problems regarding the disposition of the property.

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SECTION FOUR: EVICTION ISSUES

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

Our clients face a potentially expensive situation when a resident fails to comply with the lease or rental agreement. Other clients may face the legal problem of gaining possession of property acquired through foreclosure or sale. In both situations, a resident eviction, legally known as an unlawful detainer action, may be necessary to gain possession of the property.

Importance of Prevention. It is imperative for owners and managers to practice "preventive law." Preventive law starts with a basic understanding of landlord/tenant law and the eviction process. Since many of our staff have property management experience, we understand the critical need for our clients to gain possession of the property quickly to minimize the expense, time and frustration caused by this type of lawsuit.

Caution: Approximately twenty-five percent of discrimination complaints in California are based on a notice to terminate a tenancy/eviction. Many of those involve accommodations for persons with disabilities. Be sure that disability has been ruled out before starting the eviction process. If you suspect there may be a disability (such as a mental disability that may be the reason for a resident's bad behavior), contact our Fair Housing Practice Group for guidance. Do not ask the tenant if they have a disability.

Avoiding Other Delays. Time is of the essence in an unlawful detainer action. The time it takes to process a resident eviction varies from court to court. Besides the current court delays, two other major reasons for time delays are 1) the inability to personally serve the defendants with the unlawful detainer lawsuit and 2) the filing of motions, answers, removals, or bankruptcy. These tactics are commonly filed for purposes of delay and require responsive pleadings and court appearances.

> Due to budget reductions throughout California, courts have been closed and consolidated with other courts (sharply increasing the caseloads); they have cut back on court hours, laid off court personnel, and made deep cuts in the Sheriffs' Departments. As a result, there may be delays in the unlawful detainer process. At Kimball, Tirey and St. John LLP, we expedite the process for our clients, including using e-filing and other technological advances to assist landlords.

There may be multiple layers of analysis regarding termination of tenancies.

- The parties' lease or rental agreement
- AB 1482 or the TPA (Civil Code § 1946.2)
- COVID related issues
- Penal Code § 396 (the price gouging law)
- Other California state law
- Local ordinances
- Affordable housing program requirements (if applicable)

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Just Cause – Terminations of Tenancy

Effective January 1, 2020, The Tenant Protection Act (AB 1482 or TPA) imposes rent caps and just cause eviction restrictions for residential rental property throughout California. It added new Civil Codes §§ 1946.2, 1947.12 and 1947.13.

Unless specifically exempt (as defined by statute), the TPA requires that an owner or landlord have a legal reason to terminate the tenancy after the household has resided in the unit for twelve months or at least one tenant is in possession of the property for twenty-four months consecutively. The law identifies ”tenant-fault” and “no-fault” reasons for termination and requires relocation payments for no-fault tenancy terminations. If a resident’s tenancy is terminated for a no-fault reason, the landlord must pay relocation assistance or waive the equivalent of one month’s rent. There are specific requirements for the termination notice of a no-fault termination notice. Failure to follow the relocation requirements may render your termination notice defective. You must state one of the allowable reasons in your notice.

The TPA is a complex piece of legislation which will require landlords with properties subject to statewide just cause to make significant changes to their current business practices, changes to their lease agreements and other forms and notices. Even if a landlord is specifically exempt under the TPA, some exemptions require a disclosure stating that the landlord is exempt.

The TPA does not negate local just cause ordinances which may further limit allowable reasons to terminate a tenancy. Local rent control and just cause ordinances continue to be approved and passed with increasing frequency. It is more important than ever for landlords and management to be aware of local legislation that may impact their properties. Further, it is imperative that landlords discern whether the local ordinance or the TPA applies and utilize the correct disclosures and forms. The forms appear to be identical but cite to different laws; serving the incorrect form could be non-compliance with the law and a defense to an eviction.

The Rental Agreement

Provisions of the Rental Contract

Whether long or short term, all rental agreements should be in writing. You may want to add an attorneys’ fee provision, provisions for late charges, and NSF charges to the rental agreement. Without a written attorneys’ fee provision, the court cannot grant an attorneys’ fee award as part of the judgment unless they are provided for under a specific law. The downside is that if you lose the case, you will have to pay the resident’s attorney’s fees. It may therefore be advisable to cap fees in the contract to something that is acceptable to the owner or landlord if they were to lose. Contact KTS if you would like more information about attorney fee provisions in California residential leases.

Breach of the Rental Agreement

When a resident breaches a provision of the rental agreement, the owner or manager must determine whether the breach is substantial or material. Our attorneys can advise our clients whether or not a particular breach constitutes a substantial or material breach. If it is substantial and can be proved through evidence, the owner or manager may serve the appropriate three-day notice. A longer notice may be required for some affordable programs or due to local just cause ordinances.

If the breach is not substantial or would be difficult to prove, an eviction may still commence by serving a thirty-day or sixty-day notice, only if the rental is not subject to state or local just cause restrictions or affordable housing rules and regulations. Analyzing whether just cause restrictions apply and the correct notice to serve can be complex, and you may want to seek legal advice.

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Note: If your property participates in a government subsidy program or is located in an area that has local rent control or a "just cause" eviction ordinance, be sure to follow those requirements in addition to any state requirements.

STEP ONE: **Choosing the Correct Notice**

Selecting the correct notice, filling it out correctly, and serving it properly are the three most critical tasks in successfully prosecuting the unlawful detainer action. If a mistake is made when filling out or serving the notice, it is usually fatal to the case. That means you will have to start the process over from the beginning, losing additional time and money. The type of notice served depends on the type of breach. As of January 1, 2025, landlords are not permitted to charge any kind of fee to serve any of these notices.

Non-payment of Rent

If the breach is failure to pay rent, a "Three-Day Notice to Pay Rent or Quit" should be served. Include only the rent currently owed that became due in the last twelve months. Remember that the rent is owed for the entire month—do not prorate it. For example, if the rent was due on the first of June, the notice should read that it was due and unpaid for the period of June 1 through June 30. If a partial payment was made, list the balance of the rent due from the full month of June 1 through June 30. (There may be an exception if a thirty-day or sixty-day notice was previously served. In this case, check with one of our attorneys to make sure the stated amount is correct.) You must also wait for the rent to be due prior to serving this notice. If the rent is due on a day other than the first, you must wait for that date to pass prior to serving a notice. Additionally, if the rent due date is a weekend or holiday, the due date becomes the first business day after the weekend or holiday, and you will need to wait for the day after the first business day before serving a notice. Do not include NSF charges, late fees, utility charges or other non-rent charges on a Three-Day Notice to Pay Rent or Quit. These amounts may be demanded on a Three-Day Notice to Perform Covenants or Quit and both notices may be served concurrently.

Refer to the sample three-day notice in the supplement section of this handbook, which includes the required information regarding location, days of the week and hours when rent may be paid. A recent appellate court case has been interpreted to require notices to pay rent or quit to include the date of service to be expressly identified on the notice. Additionally, review any local ordinances, affordable housing rules and regulations or regulatory agreements that require additional time, language, or other requirements before serving. The form at the back of the book looks only to basic state requirements and you would then need to add local or affordable requirements. The CARES Act 30-day notice requirement for non-payment notices also remains in effect indefinitely, unless the United States Congress amends the requirement.

Non-payment notices may not state all of the ledger balance. State law will only permit a notice that is the basis for an eviction to go back twelve months. The landlord is still entitled to the unpaid balance for the tenant, but it cannot be the subject of an eviction.

Breach of the Agreement

If the breach is a substantial breach other than non-payment of rent, a "Three-Day Notice to Perform Covenant or Quit" would normally be used. A Notice to Perform Covenant or Quit should include the provision of the lease or addenda that the parties agreed to, the acts that create the breach, and a description of how the tenant can cure the breach. For non-substantial breaches, a warning notice or lease violations notice may be preferred on a first violation prior to serving a Perform or Quit notice. Letting a tenant know they are violating the lease and giving them a chance to come into compliance. Only after repeated violations of the lease should a landlord serve a Perform or Quit notice.

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As of January 1, 2020, if you are subject to the statewide just cause provisions under the TPA, landlords must also serve a second notice (a Three-Day Notice to Quit) on the tenant after the expiration of the Notice to Perform Covenant or Quit. This second notice to quit is only served if the tenant fails to cure the breach after the expiration of the initial three day perform covenant or quit notice. The notice to quit states that the tenant failed to comply with the perform or quit notice and therefore has three days to vacate only, with no further opportunity to cure. Thereafter, the lawsuit would have both the perform or quit notice and the notice to quit as exhibits to the lawsuit.

Other notices available under the law include:

1. "Three-Day Notice to Quit for Waste," used when the resident is committing waste and

2. "Three-Day Notice to Quit for Nuisance," used when the resident is carrying on activity that creates a legal nuisance.

No Stated Cause

The "Thirty- or Sixty-Day Notice Terminating Tenancy" does not require a stated reason, but it cannot be served for the wrong reasons, such as discrimination or retaliation. This notice can only be served in a tenancy that is currently month-to-month and in a property that is not subject to either the statewide just cause, a local just cause ordinance or affordable housing good cause requirements. In rent control jurisdictions, cities with "just cause" ordinances or in government-subsidized programs, you are generally required to state the legal reasons to evict based on that program or ordinance on the notice. If a term lease expires in a just cause jurisdiction, a landlord would be obligated to offer a lease extension for similar terms and duration or permit the tenancy to roll month-to-month and a thirty-day or sixty-day notice would not be permitted.

Foreclosures

In foreclosure situations, a special three-day or ninety-day notice must be used to create a legal foundation for the unlawful detainer lawsuit. Tenants in possession of a month-to-month lease or periodic tenancy will continue to be entitled to ninety-day notice before their tenancy can be terminated if a landlord loses rental property to foreclosure. Tenants in possession under a fixed-term lease may have their tenancy terminated upon service of a ninety-day written notice only under limited conditions as defined by statute. If the tenant rents a property in just cause jurisdictions, they cannot be evicted due to a foreclosure and just cause must be stated. If you find yourself in this situation, contact one of our attorneys for assistance. As of January 1, 2021, under SB 1079, the state requires any purchaser at the foreclosure sale to comply with regulations regarding the removal of tenants including notice requirements, right of return, relocation requirements, and just cause.

Filling Out Notices Correctly

The notice should include the names of all adults, 18 years of age or older, residing on the premises. Always also add the words "and all others in possession" after the named residents. Names must be spelled correctly and include any other name the tenant is known as (AKAs) should be used when known. Addresses must be accurate and specific as this will be the basis of any Writ provided by the court. If the property is not adequately defined it could delay or even prevent the sheriff from executing the writ to return possession of the property.

The street and unit address must be accurate, and an accurate description of the breach or correct amount of rent owed must appear on the notice. If there is a separately numbered detached garage and/or storage unit, include those on the notice as well. For example: "123 ABC Street, Unit #5 and Garage #101."

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In notices where a breach is involved, other than non-payment of rent, it is important to be very specific and detailed in stating the facts of the breach or the undesirable or illegal activity. Identify the specific provision(s) of the agreement that have been violated. Also provide facts specific enough to allow the tenants to be able to prepare a defense to the claims. The notice also requires that the method to cure the breach be contained within the notice. There may be additional local or affordable requirements on the notice, so it is advisable that you have someone review the notice for errors before you serve it.

Service of the Notice

Any adult who is 18 years of age or older may serve these notices. Service of the notice may be accomplished by one of three methods:

- Personal service. This is the most desirable method of service and the one preferred by the courts. This means the notice is given directly to the named resident at the place of residence or employment. Remember to keep the original and serve a copy. One copy should be given to each adult occupant, although personal service of a resident who signed the rental agreement is deemed service on all residents who also signed the rental agreement. If one resident signed the rental agreement and an additional adult occupant is named in the notice, each of those individuals must be served separately. You must attempt personal service before resorting to another method of service. Service may be effectuated between the hours of 8:00 am and 8:00 pm.
- Substitute service. Service by substitution is complete when a person of "suitable age and discretion" is given a copy of the notice at the residence or place of business and an additional copy for each resident to be served is sent to the resident's home address by regular mail. If the resident cannot be personally served (as described above), you must attempt substitute service before resorting to service by post and mail. Suitable age and discretion is typically someone at or over the age of 18.
- Post and Mail service. This method of service is the least desirable and should be used as a last resort and only after both personal and substitute services have been unsuccessfully attempted. Under the "nail and mail" procedure, the notice must be posted in a conspicuous place on the residence, such as the front door, and another copy mailed the same day by regular mail. If these actions happen on different days, the date of service starts on the later of the two events.

Counting the days

When counting the days in the notice period, do not count the day it was served. The next day is considered Day 1, unless that day is a weekend or holiday (as further detailed below).

> **Effective September 1, 2019**, AB 2343 amended Code of Civil Procedure § 1161 to extend the waiting period for some notices. California Code of Civil Procedure § 1161 previously allowed weekends and holidays to count towards the three (3) day notice period but prohibited a notice from expiring on a weekend or holiday. The amended law specifically excludes "Saturdays and Sundays and other judicial holidays" when calculating the notice period for notices to pay rent or quit or notices to perform covenant or quit. Accordingly, beginning September 1, 2019, a landlord may not count any weekend days or judicial holidays as part of the three-day notice period for these two curable notices.

When calculating expiration periods for thirty-day and sixty-day termination notices and notices to quit based on unauthorized assignment, subletting, nuisance, and waste, weekends and holidays may be

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counted because those notices are not considered curable notices. However, if the last day lands on a weekend or judicial holiday, these notices must still expire on the next court day.

Note: If you accept any payment from the resident after the notice period has expired, the notice will be voided.

- *If you have any questions about which notice to use, how to fill it out, if the service was proper or any other issues, please contact our office.*

STEP TWO: **Filing for Unlawful Detainer**

If the resident has failed to comply with the notice (by paying the rent, curing the violation or vacating the property) within the specified time period, the owner or manager may sue the resident for unlawful detainer. This action is known as a summary proceeding and has priority over all other types of civil cases filed in court (except Temporary Restraining Orders). This is because it is the summarization of a civil action that normally could take a very long time (years) to litigate. Because the legislature has set up shorter time periods for the resident to respond than they would have received in any other type of civil case, the court will not hesitate to dismiss the case for a technical defect.

In Which Court Should You File?

The proper court to file and hear the unlawful detainer action is the Superior Court for the judicial district that handles cases in which the property is located. Small Claims Court does not have the jurisdiction to process unlawful detainer actions and will not award possession of the property.

Filing the Summons and Complaint

The first step in the eviction lawsuit is filing the Summons and Complaint.

1. The "Summons" is a document that informs the resident that they are being sued. It states that unless a response is filed by the resident within ten days, the court could grant a default judgment and rule against the resident without being heard. Beginning September 1, 2019, this ten day period will not include judicial holidays or Saturdays and Sundays. You would also need to add an additional ten days if the lawsuit is not personally served on a defendant.

2. The "Complaint" documents and informs the resident of the facts underlying 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.

Service of the Summons and Complaint

Weeks can be lost in an unlawful detainer action if the defendants (occupants) are not all served personally with the lawsuit for unlawful detainer as discussed in the procedural rules below. Therefore, it is crucial to provide the process server or Sheriff with as much information as possible to help achieve personal service on all defendants as soon as possible. For this reason, our firm uses licensed process servers. We have provided a form, "Process Server Worksheet" at the end of Section 7. Please use this form and complete it for the best results on your case.

Procedural Rules

Courts require that three different attempts be made to personally serve the lawsuit on each named defendant. Those attempts must be at three different times on three separate days before serving via substitute service or asking the court for an Order to Post. If a defendant was served by substitute service or an Order to Post, an additional ten business days is added to the process. If no one can be found to receive substitute service, the server must apply to the court for an order allowing the lawsuit to be served by posting and then mailing a copy by certified mail, also known as an Order to Post. Once the attempts are made, the server will provide a declaration of attempts to a judge who will review and then issue an Order to Post. Only with this signed order from the judge may the plaintiff serve the

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lawsuit by posting a copy on the property and thereafter mailing a certified copy to the property address. Delays also occur when an Order is submitted to the court, but the judge takes a while to sign the Order.

The information provided by clients in the "Process Serving Worksheet" form greatly assists process servers to successfully achieve personal service. Our clients are contacted if there is difficulty achieving personal service. The best time to provide the information is at the time the unlawful detainer action is started as attempts will be made as soon as the Complaint is issued by the court. Although service of a notice may be done by the owner or manager, the Summons and Complaint cannot be served by the Plaintiff and should be served by an attorney, Sheriff, or licensed process server. A process server can often serve faster than the Sheriff; however, some of our clients prefer the Sheriff because of the "official effect" they carry with their service. Due to budget cuts, some Sheriff's Departments have stopped service for civil cases.

STEP THREE: **Getting the Judgment**

If the Resident Responds to the Complaint

After the resident has been served with the Summons and Complaint, the resident has either ten or twenty days to respond, depending on the type of service.

There are areas covered by the Shriver Act's program of free legal representation to low-income Californians in evictions. As a result, expect more contested cases, more trials, more pre-trial discovery requests, and more jury demands, which translates to more delays and more costs to process an eviction. While this pilot program was originally set to expire in 2017, legislation was passed to extend the Sargent Shriver Civil Counsel Act indefinitely. Additionally, similar programs are funded by an increase in court fees relating to Writs and collections starting in 2020.

To contest the case, the resident must file and serve a responsive pleading. The most typical response is an "Answer." In addition to the Answer, there are a number of motions that may be filed before the Answer. If one of these motions are filed, the case is delayed further because the court will need to decide on the motion before the defendant is required to file an Answer. Often the resident fails to send a copy of the Answer to the plaintiff or plaintiff's attorney, so a copy must be picked up at the courthouse.

The Answer lists all the reasons the resident thinks they should legally continue living in the property. Some Answers are filed purely for the purpose of delay. Others, however, raise legitimate legal defenses that, if proved, would prevent the owner or manager from recovering possession. Some common defenses include but are not limited to:

1. Breach of the warranty of habitability
2. Retaliatory eviction
3. Discrimination
4. Waiver

While the burden of proving the defense lies with the defendants, the owner or manager should produce witnesses and/or documentary evidence to refute the affirmative defenses. Landlords who have documentation that records significant events as they occur have a greater chance of prevailing at trial as compared to those who must rely solely on their memory and verbal testimony.

Every party to a case must either respond to the case, be defaulted for failure to respond, or be dismissed from the lawsuit. If one party files an Answer early, the case must still wait for the remaining parties' response time to expire before taking any action. If there are parties that fail to respond, the plaintiff or their attorney will file the request for entry of default as to those defendant(s) as mentioned below. Once all of the defendants have either been defaulted, dismissed, or responded, if at least one

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defendant has filed an Answer, the case is determined to be "at issue," which permits the case to proceed to the trial stage of the lawsuit. The court will set the case for trial within twenty days of either party filing a request to set the case for trial.

Right to a Jury Trial

California's Constitution guarantees the right to a jury trial. This right extends to both residential and commercial tenants subject to an unlawful detainer action (eviction). Recent case law has clarified that a right to a jury trial cannot be waived before the lawsuit is filed. This means that jury trial waivers in both commercial and residential leases are not enforceable.

While tenants have a right to demand a jury trial, unfortunately, some attorneys and tenants demand jury trials merely to delay the unlawful detainer because a jury trial typically takes much longer to set, longer to prepare for, and longer to try to verdict, making them far more expensive to prosecute. Some tenant's attorneys and eviction defense firms also use the demand of a jury trial as leverage to make unreasonable settlement demands that have no legal basis.

The frequently asked question presented to plaintiff's counsel is what can be done when a defendant/tenant demands a jury trial during the eviction process. The first thing to do is determine whether or not the defendant/tenant met the conditions to demand trial by jury. The defendant must timely and properly demand a jury trial. The defendant must also post the required jury fees. Even if the tenant failed to pay or properly demand the jury trial, a court may relieve the tenant of the jury trial waiver by accepting an untimely request or by waiving the jury fees based upon their financial status.

The next step is to determine whether or not it is prudent to file a Motion for Summary Judgment. Motions for Summary Judgment are reserved for cases where the parties agree on the facts of the case. Since there are no issues of fact to bring to a jury, the case can be decided by a judge on the basis of the law alone. If the judge is able to decide the case on the law, there is no need for a trial at all. The issue with summary judgment motions is that the costs to prepare and file the motion are expensive and do not always resolve the case. If a summary judgment motion is not advisable, then a motion can be made requesting that the court limit the scope of the jury to a short, specific set of facts. If granted, this strategy can reduce the number of days of a jury trial and the risk of an undesirable decision based on extraneous evidence.

Attorney's fees and costs are an important consideration when facing a jury trial. If the defendant/tenant is the prevailing party, the landlord may be responsible for paying the tenant's attorney's fees and costs in addition to their own fees and costs. As a result, many landlords are limiting the amount of attorney's fees to be awarded to the prevailing party through their lease. The limit is typically $500 to $2,000. It is also important to note that while a lease may place a cap on attorney's fees, if there is language in statute or law that permits "reasonable attorney's fees" then tenants may utilize that statute to obtain a greater judgment because a fee cap will not apply in those circumstances.

It is also very important to be represented by a firm or attorney experienced in conducting jury trials. KTS has attorneys that are experienced and skilled in conducting jury trials.

Settlements

When clients request our assistance with an eviction, we take an aggressive approach and, in most cases, serve legal notice or file suit for unlawful detainer shortly after we are contacted. We continue to process the eviction as fast as the law allows. However, there are times when the facts of the case, costs, the current court calendar, and other outside factors would dictate that settling a case is advisable to the victory of trial. A settlement usually involves compromise by both sides and can be creative, and could involve behavioral agreements, pay and stay agreements, or a pay and vacate agreement. If a settlement is reached, we strongly recommend that it be reduced to a signed writing as

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legal protection in case the terms of the settlement are not carried out by the resident. We also recommend that it be reviewed by an attorney to make sure that the provisions are legal and enforceable as intended by the parties.

A "Stipulation for Judgment" is the recommended document that embodies the agreement that was reached. The Stipulation becomes the Judgment of the court. Failure by the resident to comply with the terms of the Stipulation would allow plaintiff to file paperwork with the court to enforce the judgment.

Default Judgments

In some cases, the resident(s) doesn't respond to the Summons and Complaint. When there is no response by a specific party, the plaintiff may request the court to enter a Clerk's "Entry of Default." If no one responds to the Summons, then a request for default and "Judgment for Possession" against the non-responding party may be entered by the court. If the Court Clerk enters the default and default judgment, the plaintiff avoids trial altogether and a Writ may be issued. This judgment will be for possession only with no monetary damages at this time. The Writ the Sheriff will execute will also be for possession only.

Default judgments for cases based upon non-payment of rent or other financial obligations will only be entered after the court determines that there is no pending application for rental assistance that has covered or will cover any amount in the complaint. Defaults have continued to be delayed for this and clogged court system for these reasons. See Appendix A for additional information.

Later, after the resident has been removed from the premises by the Sheriff, a money judgment should be entered against the resident for the lost rent, court costs and attorneys' fees. Securing the money judgment is the most effective way for you to recover your eviction losses. The money judgment is entered by filing additional documentation to the court.

Anti-Forfeiture Statute

Part of any judgment for possession of the property will also entail a determination that the lease upon which the tenant occupies the property is forfeited and therefore their right of possession is also forfeited. Residents may ask to be relieved from the forfeiture of their rental agreements, even after a judgment in the unlawful detainer action has been entered against them. The resident may make a motion to the court to restore the rental agreement at any time before the premises are returned to the landlord. The motion will include an application for hardship relief which must be in writing and must be verified by the resident. The landlord must be served with the application five days before any hearing at which the landlord may appear to contest the motion. If the resident does not have an attorney, the application may be made orally. A court also has the discretion to relieve a resident from forfeiture on its own motion. The possibility that a motion like this may be made or granted should be a factor in settling or proceeding with an eviction lawsuit.

STEP FOUR: **The Lockout**

To make the "Judgment for Possession" effective, a "Writ of Possession" must be issued by the court. The Writ is an order from the court to the Sheriff giving the Sheriff the power and authority to carry out the terms of the Judgment. This document is certified by the Court Clerk and must be delivered to the Sheriff for enforcement. The Sheriff's office requires written and signed instructions providing the information they need to physically remove the resident. As of January 2023, the Sheriff's Office must accept electronic copies of the Writ and cannot require "wet ink" original Writs.

A Deputy Sheriff will first go out to the leased premises and post a notice of eviction on the resident's door giving the resident a final five days in which to move. This is done after receiving the Writ of Possession. In the past, this was normally done within 48 hours of receiving the Writ. However,

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because of budget cuts and the resulting reduction in Sheriff personnel and court services, this process can take much longer than it used to from a few weeks to even months depending on the Sheriff's office.

On or after the sixth day after the Writ has been served, the Sheriff will make arrangements with the owner or manager to meet at the property, unless the day falls on a weekend or holiday or on a day of the week that the Sheriff doesn't perform lockouts. If that is the case, the lockout will be on the next business day or on the next weekday when the Sheriff does perform lockouts. The date provided by the Sheriff may be after the sixth day due to budget cuts and the owner or manager sometimes only receives 24-hour notice. It is therefore important for you to have someone ready to be present at the lockout with a locksmith to change the locks. The Sheriff sometimes shows up early or late to a lockout and you must still be ready for them. If you are not present at the time the Sheriff arrives, the Sheriff normally will not wait for you and you must reschedule the lockout, which may add to your costs.

If the resident is still inside when the Sheriff arrives, the resident will be physically removed. During the lockout, a locksmith should be present (to provide access to the unit if the owner or manager doesn't have a key and to change the locks to prevent unauthorized entry). At that time, the owner or manager will be issued a "Receipt for Possession" giving authorization to take back the subject property. The Sheriff will then return the Writ of Possession back to the court as "satisfied" meaning that it was lawfully and successfully executed. You are then permitted to seek a Writ of Execution in order to seek your monetary damages. The court will only issue one Writ at a time and each Writ is valid for 180 days.

If the former resident returns to the unit after a lockout without permission, the local law enforcement agency should be contacted, and the former resident may be arrested for trespassing under Penal Code §§ 419 & 602.5. Keep your Receipt for Possession provided by the Sheriff and present it to law enforcement. Reentry after judgment is entered is also contempt of court under Code of Civil Procedure § 1210.

If the Resident Vacates Before the Lockout but Keeps the Keys

Before a lockout, a resident will often vacate the premises without notice and without returning the keys, creating a question about possession. In these situations, our clients are counseled with a variety of alternative actions. To reduce the risks of a wrongful eviction, each case must be carefully considered to make the best judgment call.

Risks of Retaking Possession Before the Lockout

Those who elect to retake possession of the premises before a lockout risk having their residents return and sue for wrongful eviction. Such lawsuits often include a claim for the alleged loss or destruction of personal property. If the court found it was unreasonable to believe the resident had abandoned the property, the owner or manager could be fined an additional $100 per day for each day the resident was "locked out." In this high-risk situation, the owner or manager is well advised to post a "Twenty-Four-Hour Notice of Intent to Enter Dwelling" on the resident's door to determine if the premises have been abandoned. If the resident did not intend to abandon the unit, at least the resident was given the opportunity to respond to the notice, which can lessen the liability for wrongful eviction.

Third Party Claims of Right to Possession

If an adult occupant of the premises was not named in the unlawful detainer lawsuit and alleges to the Sheriff under penalty of perjury that they were residing in the property before the date the Complaint was filed, the unnamed resident may file a "Third Party Claim of Right to Possession" before the lockout. The Sheriff cannot proceed with the lockout until a hearing has been held on this claim of right to possession.

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If the claimant files the claim and pays into court the equivalent of fifteen days rent, the hearing on the claim will be heard between five and fifteen days from the date of the claim. Otherwise, the hearing must be held on the fifth day after the third-party claim was filed. The claimant will have to prove at the hearing that they resided in the unit and that they did not know about the lawsuit. If the claim is denied, the owner or manager may receive the posted rent for the number of days the lockout was delayed. If the claim is upheld, however, the claimant is entitled to either add themselves to the lawsuit or receive a new opportunity to cure the breach, depending on the type of notice initially served. Once added to the lawsuit, the claimant must file a response. When the claim is denied, the delay is approximately two weeks; when the claim is upheld, it is the equivalent of starting over in the eviction process.

Owners and managers can lessen the likelihood of the filing of a third-party claim by investigating the property thoroughly before the eviction takes place to identify each adult occupant. Each adult should be named in the lawsuit for eviction whether or not they are an actual resident or on the rental agreement.

Prejudgment Claim of Right to Possession

The delay caused by a third-party claim can be avoided entirely by following an alternative prejudgment claim procedure. The plaintiff (owner/manager) can elect to give notice at the time of the service of the unlawful detainer to all persons who claim a right to occupy the premises through the Prejudgment Claim of Right to Possession. By doing so, a third-party claim can be avoided at the end of the case. Note that this process will not protect against a person making a post judgment claim in the case of a post foreclosure eviction.

The Prejudgment Claim of Right to Possession

Once you have filed an unlawful detainer lawsuit, it may be wise to file and serve a Prejudgment Claim of Right to Possession.

This procedure is especially important in the following cases:

1. Where there are unauthorized occupants residing in the premises or there is a suspicion that unknown occupants may be residing in the premises,
2. When the resident has a history of Third Party (*Arrieta*) Claims being filed on past evictions,
3. In nuisance-based lawsuits,
4. For commercial tenant evictions and
5. In foreclosures. *

Benefits of Using the "Claim"

This legal document puts everyone on notice that a lawsuit has been filed for possession of the premises. If the unknown occupant claims a right of possession to the property, and they were not named in the unlawful detainer lawsuit, they must fill out the claim form that was served with the Summons and Complaint and promptly file it with the Clerk of the court in order to protect their rights. If the form is filed with the Court Clerk, the claimant is automatically named as an additional defendant to the lawsuit which means they are also added to the future potential judgment. Once the occupant is added to the lawsuit they will have five days to file a responsive pleading. If no responsive pleading is filed, the added defendant may be defaulted. If the prejudgment claim is properly served and no claimant comes forward, the plaintiff will default all unknown occupants, thereby forfeiting the right to claim they were residents.

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This important procedure reduces the risk of unnamed occupants from using the "Third-Party Claim of Right to Possession," also known as the *Arrieta* Claim, as discussed below.

The Third-Party Claim of Right to Possession

If you do not use the prejudgment claim to get a judgment for all unknown occupants, the law requires the Sheriff to post 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 postponed*, 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 the equivalent of fifteen days rent, the hearing on the claim will be heard between five and fifteen days from the date of the claim. Otherwise, the hearing must be held on the fifth day after filing the claim.

1. If the claim is denied, the owner or manager may receive the posted rent, if any, for the days the lockout was delayed. The remainder, if any, will go to the claimant.

2. If the claim is upheld, however, the claimant is entitled to either add themselves to the lawsuit or receive a new notice to cure the breach, depending on the type of notice initially served. They will then need to file a responsive pleading before the court. If the claim is upheld, it is the equivalent of starting over in the eviction process, delaying the case three weeks or longer.

Possible Disadvantage

What is the downside of using the prejudgment claim procedure? Some clients use it because they consider it to be an inexpensive insurance policy; however, there is a ten-day waiting period for the claimants to come forward before the next step of the eviction process can take place. Only after the additional ten days will a default for all unknown occupants be permitted by the court. This means that if the named defendants (residents) in the unlawful detainer action were served personally, an additional ten days would be added to the defendants' ten-day response time to contest the case. If the defendants were not served personally, however, there would be no additional time added because the time period for the named defendants to respond has already been extended. In short, the prejudgment claim may add time to the front end of your lawsuit, but if effective, will prevent a delay of three weeks or more at the end of the lawsuit.

* A person may still file a post judgment claim of right to possession in post foreclosure evictions through the date possession is restored to the owner via lockout even if there is a judgment against all unknown occupants. This change in the law stemmed from the foreclosure crisis in the early 2010's. We still recommend the prejudgment claim because it provides notice to the tenants in possession and may cause them to respond earlier. It also helps the landlord's argument that the tenant should have come forward sooner since they were served with the unlawful detainer lawsuit.

Stipulated Agreements in Eviction

Stipulations for Judgment take several forms. A Stipulation for Judgment is a way that the parties to the lawsuit can agree on the terms for the outcome of the case, without having the judge or jury decide for them. Once approved and signed by the court, a Stipulation has the same force and effect as if the judge made the decision. A judge must sign the Stipulation as a judgment of the court for it to be enforceable.

Most judges require the parties to negotiate in the hallway immediately before going to trial as a last opportunity to voluntarily end the dispute. This is also a chance for everyone to get at least something beneficial for each side. Courts appreciate when parties resolve lawsuits without taking up valuable court time. There are two distinct types of stipulations:

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1. A Stipulation for Judgment – a judgment is entered immediately.

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

If the parties agree that the resident 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, or the choice will depend upon the parties' negotiations.

When to Use a Stipulation
The decision to use this procedure is not always easy to make. Factors to consider:

Advantages

1. Some clients want to end the case quickly and prefer an amicable resolution. Avoiding the time, additional expense, uncertainty, and anxiety of a trial are frequently strong incentives to put an early end to the litigation.

2. Settlement may produce voluntary payments and surrender of possession by the resident.

3. There may be less risk of retaliatory damage to the premises.

4. The judgment can be enforced immediately (with a Stipulation for Judgment) or within a short period of time (with a Stipulation for Entry of Judgment) by the court if the resident fails to comply with the terms. For example, many Stipulations require the resident to pay the overdue rent, court costs and attorney's fees according to a payment schedule. If the resident fails to make timely payments, the owner/manager may immediately enforce the "Judgment for Possession" and formal collection procedures, such as a wage garnishment and bank levies, could then be used to collect the judgment. This is possible without a trial if provided in the stipulation.

5. Sometimes our clients are able to negotiate a Stipulation that would include losses not normally recoverable in an unlawful detainer action. Most courts are lenient in their interpretation of the scope of stipulations, allowing one additional month's rent to be part of the stipulated amount owed. Also, late charges otherwise not enforceable may also be included in the stipulated amount as long as both the landlord and resident agree. Stipulations also tend to limit a court's ability to exercise discretion over the case; The court should enforce the agreed terms.

6. A Stipulation for Entry of Judgment may be the only way to allow a resident to remain in possession but still allow the landlord to recover possession quickly if the resident breaches the agreement.

7. Behavioral agreements may keep a rent paying resident in possession of the property but cure the breach. This may be required as part of a reasonable accommodation for a resident's disability.

8. 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.

9. Residents may be more willing to make an agreement when they feel their concerns are also met.

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Disadvantages

There is, however, an obvious, major disadvantage to a formal settlement of the case. Other residents may be aware of the litigation and learn the case was settled. They may be more likely to follow the same path as the defendant/resident if they think a favorable settlement was reached with the landlord. For instance, many times the resident is given an extended time to remain in possession of the property or the landlord may waive some of the rent owed, which could give the wrong message to other residents in the apartment community.

A resident may not comply with the terms of the Stipulation, requiring a landlord to enforce the judgment against the resident involuntarily. However, a resident's voluntary compliance is much more likely with a Stipulation than with a judgment after trial.

It's Your Decision

Stipulations have a role in unlawful detainer actions but should only be used after close examination of the pros and cons in your particular case. Our firm processes unlawful detainer actions aggressively, believing our clients have already attempted to work out resolutions with the residents. We know clients are in the business of filling vacancies, not creating them. If an offer is tendered by the resident, our clients have the opportunity to decide whether or not a settlement is in their best interest. If they decide it is, we will assist them in obtaining a stipulation. Settlements can be detailed and creative.

Servicemember Protections

Veteran and military servicemembers are a protected class in California. Landlords may not refuse to rent to or otherwise discriminate against a potential resident based upon their veteran or military status. Additionally, landlords must accept Veterans Affairs Supportive Housing (VASH) vouchers (administered by the Housing Authority similar to Section 8 vouchers) from those applicants who otherwise meet a landlord's rental criteria.

Beginning July 1, 2024, landlords and owners may only demand one month security deposit, regardless of whether the property is furnished or not. While there is an exception to the one month limit for some landlords, security deposits for servicemembers is always limited to the one-month maximum deposit regardless of this exception and service members cannot be discriminated against because of this protection. Effective April 1, 2025, if the landlord charges an additional deposit to a servicemember tenant who will be residing in the premises as a result of the credit report, credit history, credit score, or other housing factor, the landlord will be required to provide the servicemember tenant a written statement on or before the date the lease is signed outlining the additional deposit amount charged and why the additional amount was charged. If the tenant is not in arrears for any rent in the first six (6) months of the tenancy, the landlord will be required to return the amount of the additional deposit after no more than six (6) months of the tenancy. The date of the return of the additional deposit shall be included in the lease agreement.

Additionally, both Federal (the Servicemember's Civil Relief Act) as well as State (California Military and Veteran's Code) law protections can affect the resident rental housing rights and obligations of military service personnel and their dependents.

Servicemembers' Civil Relief Act (SCRA)

The Servicemembers' Civil Relief Act can affect the residential rental housing rights and obligations of military service personnel and their dependents. There are two separate areas of change that all residential property owners and managers should know: the first regarding evictions and the second regarding lease terminations.

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Evictions

The law applies to any residential unlawful detainer action where the rent does not exceed $2,400 per month. The servicemembers and their dependents may request a stay to stop proceedings for 90 days or more if they can show that their ability to pay the rent is materially affected by their military service. However, if a stay is granted, the court may grant the landlord "such relief as equity may require." This would allow the court to "balance the equities" of the landlord and the residents and order appropriate relief. For instance, if the rent has not been paid but there are also behavior issues or illegal activity, the court may allow the eviction to continue.

If the landlord prevails, the law also specifies that there can be an involuntary allotment made from the servicemember's pay directly to the landlord. The eviction process must also allow for a court-appointed attorney who may also seek a stay if he or she cannot contact the servicemember or if the attorney has contacted the defendant, but the defense would require the servicemember's appearance in court. It is important to note that the violation of these provisions is a misdemeanor punishable by up to one year in jail.

Lease Termination

The Federal Servicemembers' Civil Relief Act allows servicemembers to terminate leases under certain situations. If a tenant becomes a servicemember after entering into a fixed term lease, the servicemember can terminate the lease by serving a notice on the landlord. If the tenant is in the military when the lease is signed and then after the lease is signed the tenant receives "military orders" for a permanent change of station or, if he or she receives "military orders" to deploy for at least 90 days, the tenant can also terminate the lease before its expiration date. The notice of termination can be personally delivered or mailed. A landlord who interferes with the termination of the lease or uses the security deposit for rent owed after the lease termination date is committing a misdemeanor.

A written waiver of these rights is possible, but only from a tenant already in the military service. The waiver must be in an agreement separate from the lease. The waiver must specifically reference the lease. The waiver must be in at least 12-point font. The waiver will not be valid after a member enters into military service, if the waiver was signed before the tenant entered into military service.

If a servicemember takes advantage of any of these rights, this fact cannot be used against the servicemember to deny an application to rent based upon credit worthiness and cannot even be mentioned in any credit report or applicant screening report.

These laws protect the dependents of military servicemembers as well. Some military advocates argue that the laws protect non-dependent roommates, particularly because the SCRA is to be "liberally construed" in favor of the military. However, no statute explicitly protects non-dependent roommates.

Under the Federal law, a "servicemember" includes:

- a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty; or
- a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than thirty (30) consecutive days under section 502(f) of title 32, United States Code, to respond to a national emergency declared by the President and supported by Federal funds; or
- a member of the commissioned corps of the Public Health Service on active service; or
- commissioned members of the National Oceanic and Atmospheric Administration on active service.

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The Federal Servicemembers' Civil Relief Act applies to any servicemember:

- who is on active duty or active service; or
- during any period when the servicemember is absent from duty because of sickness, wounds, leave, or other lawful cause.

Military orders are any official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status. This means a letter from the commanding officer regarding a deployment or permanent change of station is an "order."

It applies to any dwelling, professional, business, agricultural, or similar lease executed by or for the servicemember and occupied for those purposes by the servicemember or his dependents.

A certificate signed by an authorized officer of the military may be used as proof of the servicemember's military service and dates of service, the time and place where the person entered military service, the servicemember's residence, rank, branch and unit, the servicemember's monthly pay, the time and place where the servicemember died or was discharged from the service.

Some landlords include lease language about military members' rights to terminate the lease, but it is not required to include language in the lease.

The following provision complies with the Federal Servicemembers' Civil Relief Act:

"Military personnel on active duty may terminate this lease under Federal law if:

(i) Resident becomes a member of the Armed Forces of the United States after Resident enters into the lease; or

(ii) Resident is or becomes a member of the Armed Forces of the United States and receives:

a. Orders for a permanent change of station; or

b. Orders to deploy for a period of at least 90 days.

Resident must provide written notice of termination, and the new termination date must be at least thirty days after the first date on which the next rental payment is due and payable. (For example, if Resident served the notice on September 15th, Resident's tenancy would terminate on October 31.) Resident must furnish Owner with proof to establish that Resident qualifies for this limited exception. Proof may consist of any official military orders, or any notification, certification, or verification from the servicemember's commanding officer, regarding the servicemember's current or future military duty status. Military permission for base housing does not constitute a permanent change-of-station order."

Before inserting this suggested language into a lease, the terminology should be **made consistent with the terminology used in the lease**.

A tenant receiving an honorable discharge from the military is entitled to terminate a lease. It is questionable whether a tenant receiving a dishonorable discharge from the military is entitled to terminate a lease.

Landlords may, but are not required to, grant military members rights in addition to those specified under applicable law. Examples are provisions allowing a military member to terminate a lease with less notice than that required by law, when a military member becomes eligible for base housing, or in situations other than those specified by law.

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Additional rights granted to military members may increase the chances that local military housing assistance offices will recommend a community. Landlords who choose to grant additional rights may want to advise the local military housing assistance offices that the community is "military friendly" and ask that the community be added to the military housing assistance office's referral list.

Violation of the SCRA can expose a landlord to criminal and civil liability and prosecution by the Attorney General is authorized. A damaged military member can also bring a private cause of action for violation of the SCRA. Liability can include consequential damages, punitive damages, attorney's fees and costs.

California Military and Veterans Code

California has its own version of the Civil Servicemember's Relief Act at Military & Veterans Code § 400 et seq. Servicemembers under the California law are National Guard officers and enlisted members called or ordered into active state service by the Governor or into active federal service by the President of the United States pursuant to Title 10 or 32 of the United States Code, or United States Military Reserve reservists who are called to full-time active duty, and their dependents. Full time active duty for a reservist is more than seven days in any 14-day period. For servicemembers called to active service or duty since September 11, 2001, to engage in homeland defense against terrorism, the reservist's days of service before June 21, 2002, will be credited toward the seven-day period. As of January 1, 2025, the California code was amended to also include a period "following active duty" to its protections as well.

If the property is occupied primarily for dwelling purposes by the servicemember, or the servicemember's spouse, children, or other dependents, California Military & Veterans Code § 406 prohibits evictions during active military service periods and until 120 days after the servicemember is released from active service or duty unless the court grants leave of court after an application by the landlord.

Military & Veterans Code § 409 applies to leases used for dwelling, professional, business, or agricultural purposes by the military member or a dependent when the lease was executed by a person who later entered into active military service, or while in the military, signs the lease then receives military orders for a permanent change of station or to deploy, or as an individual in support of a military operation for at least 90 days. It allows the active military member to terminate a lease by giving written notice of termination to the landlord, with a copy of the servicemember's military orders. If rent is due monthly, the termination will be effective on thirty days after the next rent payment is due (after delivery of the notice to the landlord by hand delivery, private business carrier, or US Mail, return receipt requested), but not more than forty-five days after the notice is provided to the landlord. If rent is payable other than monthly, the termination will be effective on the last day of the month following the month in which the notice is delivered. If rent has not been paid for a period before the termination, the rent will be prorated. If rent has been paid for a period after the termination date, the landlord must refund the overpaid amount within thirty days. Landlords cannot impose early termination charges to lessees exercising their early termination rights under this law.

If a landlord receives a good faith request from a servicemember for relief under the California law, but the landlord believes the request is incomplete or otherwise not legally sufficient, or if the landlord believes the servicemember is not entitled to the relief requested, California Military & Veterans Code § 409.15 requires the landlord within thirty days to provide a written response acknowledging the request and explaining why the request is incomplete or not legally sufficient. The response must clearly identify the specific information or materials missing from the request and that would be required to grant the requested relief. It must also provide contact information, including the mailing address and telephone number that the servicemember can use to contact the person. A

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landlord who fails to provide this response waives any objections to the servicemember's request, and the servicemember will be entitled to the relief requested by the servicemember.

When Your Resident Files for Bankruptcy

A bankruptcy filed by a residential tenant generally will not stop the eviction if judgment for unlawful detainer has been entered for more than thirty days unless the resident files a "right to cure" certificate stating there are circumstances that permit him to pay the "entire monetary default" due the landlord. (Note, however, that in post-foreclosure eviction cases, the Sheriff's Department in several jurisdictions will not conduct a lockout unless the landlord has obtained an Order for Relief from Stay from the Bankruptcy Court.)

If the resident files the "certificate of right to cure," the landlord may object to the certification if he wants to continue with the eviction, and if so, the Bankruptcy Court is required to hold a hearing within ten days to determine if the certification is true.

In the case of a pending eviction for endangerment to the property (waste) or illegal use of controlled substances, the stay will not apply if the landlord files with the court a certification that the resident has endangered the property or illegally used or allowed to be used a controlled substance on the property.

Types of Bankruptcy

Individual residents typically file either a Chapter 7 or Chapter 13 bankruptcy action.

1. A Chapter 7 bankruptcy is a liquidation bankruptcy which, if completed, will cause the discharge of the resident's previous debts incurred before the bankruptcy filing date, including past delinquent rent and other charges owed under a lease.

2. A Chapter 13 filing, otherwise known as a "wage earners plan," involves restructuring the resident's debts to be paid off through an approved schedule of payments.

When a business entity files for bankruptcy, it is filed under Chapter 7 (as a liquidation) or under Chapter 11, which is similar to Chapter 13, reorganizing the business debt, and has the goal of full payment to all creditors over time.

Whether the bankruptcy filing was under Chapter 7, 11, or 13, the owner or manager of the property is entitled to rent accrued after the filing. This rent is considered an administrative expense that, in theory, must be given a high priority of payment. Under some situations, a landlord may also recover rent or other amounts that became due before the bankruptcy was filed. However, a claim must be filed with the Bankruptcy Court in a timely manner to ensure payment.

Unfortunately, some residents who file a bankruptcy action use it as a delaying tactic because once a bankruptcy is filed it creates an automatic stay of the eviction action. In fact, some residents file the bankruptcy on the day of trial in order to prevent it from moving forward. Even if a bankruptcy filing by a resident is incomplete, it may still temporarily delay a notice or eviction until the bankruptcy court dismisses the action for failure to file information. This abuse of a federal right may circumvent the resident's financial liability, which is its desired purpose. However, after a bankruptcy dismissal, the owner may pursue remedies in state court. If the court does not dismiss the bankruptcy, the plaintiff must go to the Bankruptcy Court and seek a motion for relief of the automatic stay. If granted, the relief tends to allow the plaintiff to seek possession of the property, but likely will only permit possession only as the financial liability of rent and damages will remain with the bankruptcy court.

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SECTION FIVE: POST-TENANCY ISSUES

Abandoned Personal Property

Residents frequently leave personal property behind when they move out. It may be as simple as a box of trash or as complex as a house full of belongings. The first step for a residential landlord is to determine if the property is worth less or more than $700. If you are unsure about the value, consider asking a second-hand dealer to give you an estimate.

- Note that, according to California Civil Code § 1815 and § 1816, if a former tenant abandons an animal, the landlord must immediately notify animal control officials.

If There Was a Lockout Conducted by a Sheriff
Step One: Part of the documentation from the Sheriff provides notification of the abandoned property. Keep the property in a reasonably safe place (either the unit or another safe location) for fifteen calendar days starting the day after the Sheriff's lockout. If you move the personal property, you must do so carefully and keep it in a secure location.

Step Two: The owner of the personal property (usually the former resident, but occasionally someone else) has a right to collect the property during the fifteen days following the lockout. You must allow reasonable access, but you can require that the personal property owner pay reasonable storage costs as a condition of returning the property to them, unless the owner claims the items within two days after vacating. If the owner claims the personal property within two days, you cannot charge reasonable storage costs. You cannot insist that any past due rent be paid in order for the former resident to get the property back.

Step Three: If you are not contacted about the personal property, you may dispose of the property any way you see fit as long as the total value of the property taken together is less than $700.

Step Four: If the value of the property is at least $700 or more, a public auction is necessary. Before the auction, you must publish a notice of the sale, describing the abandoned property, once per week for two consecutive weeks in a newspaper of general circulation. The sale must be held at least five days after the last notice was published in the newspaper.

Step Five: You may want to employ the services of a professional auctioneer experienced with this type of sale. The sale proceeds can be used only to reimburse you for the storage and auction costs. The balance must be given to the former resident, or if the resident cannot be located, the county treasurer's office within thirty days from the date of the sale.

If There Was no Lockout
You must mail a "Notice of Right to Reclaim Abandoned Personal Property", in a statutorily prescribed form, to the personal property owner's last known address. The notice must contain language notices letting residents/former residents know they have rights to reclaim abandoned personal property under certain conditions, that they may or may not be able to reclaim the property without incurring additional costs and that the sooner they act to reclaim the property, the less the costs are likely to be. Keep the property reasonably safe for 18 days after the date of the mailing. Follow Step 2 from the section above if someone comes to retrieve the property. If you do not hear from owner of the personal property during the notice period, you may dispose of the property as described in Steps 3-5 above.

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Residential Tenant Collection Checklist

The collection process starts when a prospective resident fills out an application. Complete and accurate data is essential in all cases. Please use the information below as a guide.

1. **Make sure all the blanks on the rental application are completely filled in**. Any items left blank could be something the individual is attempting to hide. If the person does not have all the necessary information available, have the applicant get it. Do not accept any references, jobs, previous addresses, etc., that do not have complete names, addresses and telephone numbers.

2. **Verify everything**. Check as many telephone numbers as possible against the directory; often the previous landlord or the supervisor who gives a glowing reference turns out to be a friend or relative posing as a prior landlord or supervisor. If the resident is self-employed, get copies of tax statements, business license and name of the debtor's accountant.

3. **Compare all information provided**. Compare the photo ID or driver's license to the applicant. Compare information on the license, social security number, address, and other information to the application. Note expiration dates and write down any discrepancies. Also make note of the bank name, address, and account number. Keep all of this information secured as it is personal information. After the application has been approved, you may make a copy of the driver's license and keep it in the resident's file for photo ID purposes.

4. **Screen thoroughly**. The more screening you do, the better. Running a credit check will reveal past addresses, credit status, other names the person may be using, creditor inquiries and other useful information. Compare this information against the application. If the person has a poor payment history, you may be next in line. *Note* You may not treat the non-payment of COVID rental debt (rent that became due between 3/1/2020-9/30/2021) as a negative factor when screening a tenant for occupancy.

5. **Follow-up during tenancy**. Make note of any significant changes in the residents' information. Has the resident changed jobs recently? Bought a new car? Changed banks? Is there a new telephone number? If they have started paying rent late, find out why.

6. **Send it all to the KTS Collection Practice Group**. When a case must be sent to collections, make sure we have all available information. We need to know everything you know about this person. Send a copy of the final move-out statement (security deposit disposition) to us as soon as it is ready. (Be sure it is also sent to the former resident within twenty-one days after the resident moved out.) Always make KTS aware of any pending disputes, bankruptcy filings, rental assistance applications and payments, or if the tenant is represented by an attorney.

7. **Communicate ONLY with KTS to comply with debt collection laws**. After a case has been turned over for collection, do not have any further contact with the debtor. To avoid violation of collection laws, it is imperative we speak to the debtors with "one voice." If they call or write you, notify us immediately.

If we require further information on a case, we will request it either by mail, phone, or email. Please respond as quickly as possible so we may resume work on the case.

Owner's and Manager's Guide through the Collection Process

It is frustrating when a resident moves out owing you rent, damages the unit, or creates other monetary losses. We recommend you obtain a money judgment against a former resident or occupant to facilitate the collection of what is due to you. This is especially true given the amended rules for small claims as it relates to COVID rental debt.

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Deciding whether to initiate collection proceedings against a former resident should be an easy decision to make.

1. It may be your only hope of recovering payment. Few former residents pay voluntarily.
2. Our Collection Practice Group does not require you to pay any out-of-pocket expenses.
3. If you decide not to collect, it is likely these residents will take advantage of their next owner or manager.

It is in your best interest to attempt collection quickly, whether or not you have a judgment.

KTS Collection Process

Judgment debtors and "skips" are common. Therefore, it's important to be familiar with the basics of the collection process.

Our Collection Practice Group focuses exclusively on accounts against defendants to unlawful detainer actions or where the tenant has voluntarily vacated but left behind unpaid rent and/or damages to the rental unit. In the collection industry, debtors with unlawful detainer judgments and residential "skips" are considered among the most difficult debtors to pursue. This is because, usually, the debtor was evicted for non-payment of rent, and their new residence is unknown. Because of extensive training and the effective use of the latest technology, KTS consistently out-performs our competitors in collecting on these difficult debts.

Unless you have a judgment, we will use the art of persuasion, letters, and phone calls to the debtor. KTS will also report the debt to credit reporting agencies. These are effective ways to recover our clients' money.

Our Collection Practice Group is assertive, professional, and effective. Our fee is a percentage of whatever is collected, with no out-of-pocket expense to our clients. We keep our clients updated with verbal and written collection reports. Clients can access our website portal to log in and view individual case status as well as access a variety of collection status reports.

The purpose of this guide is to introduce you, as a creditor, to the intricate world of debt collection and its procedures. This information is for general knowledge, so please do not rely on it in any specific case without first receiving legal advice. If you have any additional questions after reading this guide, please call us.

- Note on COVID Collections – The laws related to collection on COVID rental debt are fluid causing the process and ability to collect to be equally fluid. Please contact *newcollectioncase@kts-law.com* if you would like to discuss the ability to collect on COVID rental debt.

THE APPLICATION PROCESS

The first opportunity to minimize potential losses is when a prospective resident applies for your rental unit. Owners and managers who conduct a thorough application process will eliminate potentially undesirable residents and increase the likelihood of collection, should there be a problem. Credit checks, verification of employment or other income, research of former evictions and references from past managers are essential steps that should be taken to protect the rental property investment.

It is better to leave a property vacant for a few extra days or weeks than to rent to a resident who has not been systematically screened and approved. A prospective resident who is overly anxious to move in, offers unverifiable cash, or does not have a former manager available for reference is an invitation for trouble.

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We find a consistent thread in our collection cases: poorly screened applicants. Managers don't always screen thoroughly. Sometimes they accept incomplete applications, applications with suspect information, or overlook persons with poor credit histories.

We counsel our clients in the practice of preventive law and strongly advise thorough credit and reference checking through the local apartment association or a professional tenant screening company.

DURING THE TENANCY

During the tenancy, it is important to keep up-to-date records on all residents.

1. Make copies of rent checks so you can stay current on the location of the resident's bank accounts.

2. Write down license plate numbers of new automobiles acquired during the tenancy.

3. Periodically ascertain whether the resident is still employed at the same place of business.

4. Finally, ask for complete applications from any new roommates who move into the unit, and thoroughly screen them.

AFTER THE TENANCY

Once a defaulting resident has vacated the property, collectors must locate the former resident or an asset to enforce collection. This is where the application is most valuable.

1. Social Security or Individual Taxpayer Identification (ITIN) Numbers, drivers' licenses or other government-issued ID numbers, and license plate numbers all give our collectors an opportunity to locate your former residents.

2. Asking former neighbors of the whereabouts of the resident, using the Post Office for the forwarding address, or calling the telephone information service are other methods available to locate the debtor.

3. Identification of the resident's bank account number and place of employment can lead directly to an asset recovery even if the resident's whereabouts are unknown.

4. KTS' Collection Practice Group employs strong investigative skills, access to multiple databases, and the latest technology to help locate debtors.

COLLECTION OPTIONS

Without a judgment, the only way to receive payment is to induce the former resident to make voluntary payment.

If a money judgment has been entered against a former resident and their new residence or place of employment is known or specific assets can be located, there are several methods to collect. Judgment debtor examinations, wage garnishments, bank levies, till taps, attachment of personal property, and abstracts are the most common and effective means for enforcing judgments against uncooperative debtors.

Judgment Debtor Examinations. If there are no known assets, wages, or bank accounts to attach, we may utilize a "judgment debtor examination." Most collection agencies or law firms do not use this procedure because it requires either an attorney or the judgment creditor themself to conduct the examination, which is therefore cost prohibitive. Our law firm is unique in its specialties in unlawful detainer and collection cases, and our attorneys appear in most courts daily. That way, we can afford to give our clients the added benefit of conducting judgment debtor examinations.

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A judgment debtor examination is the equivalent of post-judgment discovery. The debtor, under oath and in open court, must answer questions concerning the debtor's assets. The process is uncomfortable for most debtors and often encourages settlement negotiation. It is possible to come away from a judgment debtor examination with full, or at least partial, payment. It is also the perfect opportunity to agree with the debtor on a payment plan.

Effectively conducting a judgment debtor examination is an art form. Skilled lawyers come to court after investigating the debtor's assets through independent means. Courts allow a very broad scope of questioning. A subpoena for documentation can be served with the order to appear which requires the debtor to bring documentation to court related to the debtor's assets (pay stubs, bank statements, and automobile registrations, for example.)

Once the assets are identified, the normal collection process can proceed. If the debtor fails to appear, a bench warrant for the debtor's arrest may be issued by the judge.

Writ of Execution. To collect a judgment, the Sheriff must be given an appropriate Writ of Execution to either garnish wages or levy on a bank account. A Writ of Execution is a legal document that explains to the Sheriff how much money the Sheriff must collect to satisfy the judgment. The Writ of Execution may be used for one of several collection processes:

1. **Wage Garnishment**. If you know where the debtor works, a wage garnishment is simple, inexpensive, and provides relatively quick results. With a wage garnishment, the Sheriff serves the employer with an "Earnings Withholding Order." This order instructs the employer to withhold a certain percentage of the debtor's paycheck. The employer is further instructed to continue to withhold that percentage each pay period until the judgment is completely satisfied. Wage garnishments are effective only against "employees" of a business. An "employee" is someone who "performs services subject to the control of the employer." For independent contractors, other collection methods are available.

Federal employees

If the debtor is a federal employee, the creditor may not be able to garnish his wages. Although the federal law has changed to allow the garnishment of wages of a federal employee, the federal bureaucracy continues to drag its feet in implementation. Three exceptions are the U.S. Postal Service, the Federal Housing Administration and Veterans Administration Hospitals.

There is an alternative method to reach a debtor's federal wages. The creditor may avoid restrictions on garnishment through a "Wage Assignment Order." This procedure results in a Court Order assigning a portion of the debtor's future wages to the creditor. This process will ensure the creditor is not left empty-handed merely because his resident was a federal employee.

While the process for wage garnishments and wage assignment orders is straightforward, there are obstacles that could jeopardize the collection.

1. First, some employers fail to voluntarily comply with the garnishment. This can occur when the employer is a friend or family member of the debtor. It is surprising how often an employer will seek to "cover" for the debtor by denying that the debtor is an employee or by paying the debtor "under the table." In these instances, a lawsuit can be filed against the employer. It is the creditor's responsibility to enforce compliance.

2. Second, the debtor's wages may already be garnished by another creditor. You may not garnish the wages of a debtor who is currently being garnished by another creditor. Some debtors have garnishments that go on for years making it a challenge for other creditors to

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collect. Garnishments for unpaid taxes and child or spousal support take priority over other garnishments.

3. Third, the debtor may quit or be terminated from employment.

2. **Bank Levy**. To levy a bank account, a writ of execution is required for the county where the account is located. Once the writ is issued by the court, the creditor can use either the County Sheriff or a registered process server to serve bank levies.

Bank levies are a "double-edged sword" for creditors in that they are the fastest way to collect a judgment but also tip debtors off, which causes some debtors to hide or transfer remaining assets. Bank levies are often a one-shot deal since debtors usually close their bank accounts once levies have been served.

Asset location is the key to bank levies. Creditors must know where debtors bank. Levies must be served at the branch where the account is held or at a centralized location designated by the bank. Most law firms that specialize in debt collection have sophisticated techniques for discovering banking information. Checking and savings accounts can be seized as well as property held in safe deposit boxes. To seize property in safe deposit boxes, a special Court Order is required. Many times, boxes contain valuable property that can be sold at public auction. Other times, personal papers inside the box (deeds and insurance policies, for instance) can lead to the seizure of other assets.

Once the levy is served, the bank cannot allow an account holder to withdraw levied funds or access the contents of a safe deposit box because the account is now frozen. The bank also cannot honor any check drawn on the levied monies.

3. **"Till Taps" and "Keepers" for Self-Employed**. If the debtor is self-employed, the creditor may instruct the Sheriff to conduct a "till tap." This means that the Sheriff will appear at the place of business, in uniform, during regular business hours and empty the cash registers (or "tills") on the premises. If the judgment is substantial, it is worthwhile placing a "keeper" in the store to take money all day long as it is received by the business.

"Claim of Exemption" by the Debtor

Once the Sheriff receives the money, it must be set aside in a special account, allowing the account holder sufficient time to oppose the levy by making a "Claim of Exemption." The Sheriff holds the funds one to three months. If the Sheriff does not receive a Claim of Exemption from the debtor, the funds are released to the County Auditor. The Auditor will then issue a check to the judgment creditor.

If the debtor files a "Claim of Exemption," the judgment creditor must file opposition papers and appear at a hearing to determine the validity of the claim. Judgment debtors are entitled to many exemptions from collection. For example, worker's compensation benefits, public assistance, and life insurance benefits are all exempt from collection, as are pension plans and disability payments.

4. **Attachment of Personal Property**. If the debtor has valuable personal property that is not exempt from attachment, the creditor may, through the Sheriff's office, attach the property for judicial sale. The proceeds of the sale pay for the Sheriff's costs and for the outstanding judgment. Automobiles, jewelry, and luxury items are available for attachment but often are difficult to identify and locate. Also, the Sheriff's charges are high and payable whether or not the sale of the items takes place, so personal property attachment is appropriate only in certain situations where the value of the item will cover these fees.

5. **Abstract of Judgment**. A creditor can file an Abstract of Judgment in the County Recorder's office in the county or counties in which the debtor will most likely own real property within the next ten years.

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This Abstract creates an automatic lien on any property owned or purchased. The Judgment must be satisfied before the property can be sold or mortgaged.

- *How we can help you. KTS is unique because we are a debt collection law firm, not a collection agency, and because our Collection Practice Group specializes in collections against former residents or occupants of property. As a law firm, we routinely utilize formal legal procedures to get your money back and don't have to rely on the art of persuasion alone. These procedures routinely include bank levies, wage garnishments, Judgment Debtor Exams, and bench warrants. Sometimes we will drill safety deposit boxes, seize automobiles, or use other extraordinary methods for effective collections. We also stay updated on legal changes specific to California that nationwide organizations may fail to consider.*

  Our specialized practice gives us the experience and knowledge to successfully collect from your former resident. For more information, contact us at (800) 575-1770.

Commonly Asked Questions about Collections

KTS has an outstanding rate of collection for accounts against defendants in unlawful detainer actions and where the residential or commercial tenant has voluntarily vacated but left behind unpaid rent and/or damages to the rental unit.

1. How is a Case Started?

When an eviction case is closed, you may send it directly to the Collection Practice Group. If you use our auto-money program, we will automatically attempt to obtain a money judgment in unlawful detainer cases that KTS files for you. If you also use our auto-collection program, we will automatically start collection immediately after KTS obtains a money judgment for you. You can also send in a collection case electronically through the KTS website at www.kts-law.com or by email to *newcollectioncase@kts-law.com*. Our Collection Practice Group is also integrated with Yardi, such that you may upload documents from Yardi directly to KTS. When a collection case is received, it is entered into our computer system, given a file reference number, and assigned to a collector. At this point, any required documents not in the file are requested from the client or from the court.

2. What Documents are Required When a Case is Started?

- Copy of any judgment (We can also collect in cases without money judgments.)
- Rental application
- Itemization of security deposit

3. Once a Case is Started, What is the Collection Process?

- First, we must locate the resident and/or the resident's assets. We employ a variety of techniques to locate the debtor. Documents provided by the client are thoroughly reviewed and all leads are followed.
- If information is available regarding the debtor's place of employment or bank account information, a garnishment or bank levy is started immediately after a judgment has been entered.
- If a mailing address and/or telephone number for the debtor is available, we will contact the debtor directly to demand payment.

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4. How Do You Convince a Debtor to Pay When There is No Judgment?

Negotiation techniques are used when contacting the debtor. Once we have located the debtor, we will thoroughly review the charges with the debtor if requested. Our bilingual collection staff is trained to discuss tenant landlord issues and overcome objections. We will provide additional information to support the claim, such as Civil Code sections or lease agreements. If, after talking to the resident and reviewing the documents, the collector cannot substantiate the claim, they will discuss the account with the client.

5. When There is No Judgment, What Happens if Negotiations are Not Effective and the Debtor Refuses to Pay?

The debt is reported to all three credit bureaus as an unpaid collection account. We report to Experian, TransUnion and Equifax. Both written and verbal contact continues until the expiration of the statute of limitations. The account is also reviewed for recommendation regarding filing a small claims case to establish a judgment. The recommendation is based on the amount of the debt and the likelihood of collection once judgment is obtained. Our office will assist with the paperwork if the client requests it.

Small Claims Court

An article with information about Small Claims Court is available upon request by emailing *info@kts-law.com*. There are also two different small claims trainings available either in person or by previously recorded webinar by emailing *education@kts-law.com* or visiting the education tab on the KTS website, www.kts-law.com.

Additional information about California Small Claims Court is available at:

- The California Judicial Counsel's Small Claims Self Help resources: https://www.courts.ca.gov/selfhelp-smallclaims.htm

FOR FURTHER INFORMATION ABOUT SMALL CLAIMS COURT

1. Contact the court where you will be filing the Plaintiff's Claim.
2. Contact your local Small Claims Advisors Office.

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SECTION SIX: KTS RESOURCES

At Kimball, Tirey & St. John LLP, we recognize the value of preventing problems before they develop. In addition to this Preventive Law Handbook, we also offer other resources to assist our clients with their residential rental housing needs.

EDUCATIONAL OPPORTUNITIES

We train thousands of owners and managers every year through live and virtual trainings for clients, apartment associations and other organizations.

Now, it's easier than ever. You can train your management team and still keep the office open by training online.

Online Training
Anyone can register for one of our online trainings through our KTS website. We also partner with many companies to train their new hires online in "Fair Housing Fundamentals". This course also serves as a valuable, annual refresher for seasoned personnel to keep them up to date on current fair housing issues.

Live Webinars
Our live webinars are offered periodically and cover topics of greatest and most current interest to clients from fair housing to employment law to landlord/tenant issues.

Webinar Recordings
These one to three hour webinar recordings include some of our most popular past live webinars such as hoarding, death of a resident, domestic violence, preparing, and serving notices, legal updates, small claims, COVID related laws, collections, and other important legal topics.

If you are interested in KTS legal trainings, please contact *education@kts-law.com* or (800) 338-6039. To access online training or find an upcoming webinar or past webinar recording, please visit the "Shop" page on our website at www.kts-law.com.

FAIR HOUSING FORMS

Kimball, Tirey & St. John LLP offers its clients a wide variety of fair housing forms.

Disability and Assistance Animal Forms Packet
We have packets for disability situations. The basic packet contains approximately 10 forms covering rules of conduct for assistance animals, verification of disability, and need for an accommodation/modification, modification and accommodation request, procedures, approval/denial, and others forms for both conventional and subsidized housing. We also have a packet of forms specific to requests for assistance animals. Forms are not sold separately.

Other Forms/Addenda
We also offer separately: caregiver forms which includes three types of caregiver agreements between the parties, depending on the property type; a motorized scooter agreement; and an agreement regarding oxygen use and smoking as well as age-restricted lease addenda for senior housing (55+ or 62+).

- *If you are interested in any of these fair housing forms, please contact the Fair Housing Practice Group at KTSFairHousing@kts-law.com for more information and a fee quote*.

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LANDLORD/TENANT INFORMATIONAL PACKAGES AND FORMS

Arbitration Provisions in Residential Leases
Are they legal? What are their limitations? Are there any alternatives to arbitration?

Contests, Drawings, Prizes, Lotteries, and Sweepstakes
Real estate agents, property managers or property owners considering using prizes as marketing tools (whether for property leasing, property sales or otherwise) should know legal restrictions.

Renter's Insurance Programs
Can you require the resident to have insurance? What are the legal risks involved? Renter's insurance issues and risks are outlined, and a renter's insurance addendum form is provided.

Security Cameras
How does the right of privacy affect your ability to install security cameras? What legal risks do you take when installing a security camera? Information is provided about the issues that can arise with security camera use, and guidelines are provided to reduce risk. Suggested language for leases and signs to help reduce risk to property owners and managers are provided.

Utility Cost Recovery from Residents
Do you charge back utilities to your residents without a meter? What are your legal risks? What are your legal responsibilities when you have a sub-meter? Information is provided, identifying and discussing issues, restrictions, areas of uncertainty, risks and available options. A sample utility addendum, designed to help reduce risk to property owners and managers, is included in this information package.

- *If you are interested in any of these materials, or lease forms, addenda, or amendments, please contact info@kts-law.com or (800) 338-6039 for more information and a fee quote.*

COLLECTION INFORMATIONAL PACKAGES

Duty to Investigate Guidelines
Federal law requires creditors to investigate and verify any debt they are attempting to collect when a consumer claims the debt results from identity theft. Information is provided about a creditor's duty to investigate upon receiving notice of a valid dispute by a debtor. Guidelines are provided for conducting a reasonable investigation and the required actions upon completing an investigation. California law also dictates a stiff penalty for the pursuit of a collection action against a legitimate victim of identity theft. Does the potential risk involved outweigh the potential collection reward?

Identity Theft Prevention Program - Red Flag Guidelines
The Red Flag rules require financial institutions and creditors that have one or more covered account to develop and implement a written Identity Theft Prevention Program to detect, prevent and mitigate identity theft in connection with opening new covered accounts or activity related to existing covered accounts. The materials will provide information about the laws and recommended practices. Additional training and seminars are available for a fee.

Safeguards
The Fair and Accurate Credit Transactions Act's (FACTA) Disposal Rule requires the proper disposal of sensitive information derived from consumer reports. The rule applies to individuals and organizations and to landlords and debt collectors. What are the proper disposal methods? What is considered sensitive information? What are the risks and penalties involved for non-compliance?

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- *If you are interested in any of these opinion letters or informational packages, please contact Collections at (800) 575-1770 for more information and a fee quote.*

EMPLOYMENT PACKAGES

Employee Occupancy Agreement
Property owners should have a written agreement with resident managers or other employees occupying rental units. It is advisable to limit the rights of an employee to the greatest extent possible to avoid putting the landlord or property manager in the position of having to deal with a holdover, disgruntled former employee. Kimball, Tirey & St. John LLP has created an Employee Occupancy Agreement that maximizes the employer's rights to control use of employee housing. It also meets legal requirements necessary if a lodging credit is being applied against minimum wage.

Employment Agreement
Kimball, Tirey & St. John LLP can assist with employment agreements.

- *If you are interested in employment materials, please contact our Employment Law Group at (800) 564-6611 for more information and a fee quote.*

OTHER IMPORTANT LEGAL RESOURCES

California Codes
Search for California Codes at https://leginfo.legislature.ca.gov/faces/home.xhtml.

New laws (both proposed and passed) can be searched at https://leginfo.legislature.ca.gov/faces/home.xhtml.

Lease and Document Reviews
Annual reviews of lease documents, rental criteria, applications, etc. are an important part of the risk management programs of landlords and property managers. Kimball, Tirey & St. John LLP can provide lease reviews for a reasonable charge. To request a review, contact us at *KTSLease@kts-law.com*.

Preventive Law Classes
Kimball, Tirey & St. John LLP offers private classes on various legal subjects geared to the needs of residential owners and managers that can be provided at your designated location. These courses will help you comply with today's complex landlord/tenant, fair housing, and other laws. Contact Client Education at *education@kts-law.com* or (800) 338-6039.

Website Information
We have a large library of articles that are useful to property owners and managers that can be found at our website at https://www.kts-law.com/resources/.

Books and Publications
Kimball, Tirey & St. John LLP offers publications, including the:

- California Fair Housing Encyclopedia
- Residential Preventive Law Handbook
- Commercial Preventive Law Handbook
- Establishing Your Rental Criteria Workbook
- DRE Compliance Handbook for California Property Managers

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These materials, as well as additional copies of this Residential Preventive Law Handbook, can be ordered online at https://www.kts-law.com/education/educationeducational-materials/ or by contacting Client Education at *education@kts-law.com* or (800) 338-6039.

Email Alert System

Get personalized, current legal information so you operate your businesses more effectively and in accordance with the law by joining our email alert system. Clients who wish to receive alerts should send us an email at *info@kts-law.com*. This service is offered without charge to Kimball, Tirey & St. John LLP clients.

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SECTION SEVEN: COMMON CODE SECTIONS AND FORMS

Common Codes

Application Screening Fees - § 1950.6

Bed Bugs - § 1954.600, § 1954.601, § 1954.602, § 1954.603, § 1954.604, § 1954.605

Cash and Third-Party Payments - § 1947.3

Habitability - § 1941.1, § 1942.3

Landlord's Right of Entry - § 1954

Landlord Disclosures - § 1962

Lease Disclosure Requirements - § 1962

Notice of Rent Increase - § 827

Retaliatory Evictions - § 1942.5

Security Deposits - § 1950.5

Tenant's affirmative obligations - § 1941.2

The Tenant Protection Act of 2019 - § 1646.2, § 1947.12, & § 1947.13

Notes about the forms included in this book

The forms in this book do not have applicable forms under the CARES Act. These forms are also not approved for local jurisdictions with additional requirements under just cause or other laws. Please contact an attorney to determine what kind of notice you will need for your particular case.

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Forms

Notice to Pay Rent or Quit

To: _____(1)_____

AND ALL OTHERS IN POSSESSION:

WITHIN THREE DAYS, excluding Saturdays and Sundays and other judicial holidays, after the service on you of this notice, you are hereby required to pay the delinquent rent of the premises hereinafter described of which you now hold possession, as follows:

$_____(2)_____ From:_____ To:_____

Or you are required to deliver up possession of the premises, within three days, excluding Saturdays and Sundays and other judicial holidays, after service on you of this notice, to the undersigned or _____(3)_____ 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 herein below described property and to recover possession of said premises, to recover all rent past due, court costs, and attorney's fees as permitted by law.

The premises referred to are in the City of_____

County of _____, State of California, designated by the number, street and

zip code as: _____(4)_____

You are further notified that if you fail to perform or otherwise comply, Owner/Agent does hereby elect to declare the forfeiture of your Rental Agreement under which you hold possession of the above-described premises.

- Payments must be made to Owner/Agent at the following address: _____(5)_____.
- Telephone number for the above address: _____
- Payments made in person shall be delivered to owner/agent between the hours of_____ and _____ on the following days of the week: _____

  [ ] Sunday [ ] Monday [ ] Tuesday [ ] Wednesday [ ] Thursday [ ] Friday [ ] Saturday

  <<Y/N>> There is a 24-hour drop box available at said location for your convenience.

Date of Service: _____(6)_____ day of _____, 202_____ _____.

_____(7)_____

Landlord/Agent

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Instructions for Notice to Pay Rent or Quit

1. Names of adult occupants. It is important to list the names EXACTLY as they appear on the rental agreement/tenant application. Include all known adults (18 years of age or older) on the notice and make one original and serve copies to each named adult.

2. This section describes the rent owed. Do not prorate rent to the time of the service of the notice. If the rent is due on the first of the month, list the rent for each month owed after deducting any partial payments. DO NOT include late charges, interest or any other charges owed other than rent. You can use a separate notice for other amounts owed and serve it at the same time as the non-payment of rent notice.

3. The name of the property management company, owner or other authorized representative of the owner should appear here.

4. The address of the property should be completely listed here. Make sure to include apartment and building number. The street designation must also be exact: such as avenue, street, boulevard, circle, etc. If there is a garage as part of the rental agreement, identify “and garage” with any appropriate garage number or separate address.

5. The law requires this specific information be provided to the tenant. Conservative landlords may include the name of an actual person whom the payment can be delivered to rather than just an entity as this has been a defense raised by defendants in California. Although there have been recent appellate court decisions stating it is not necessary.

6. This is the date you served the notice form. If served by substitute service or posting and mailing, be sure to mail it on the same day it is handed to the person of suitable age and discretion or posted in a conspicuous place. It is wise to have someone double check the notice for accuracy.

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.” Please also print the name of the person signing the form.

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Declaration of Service of Notice to Tenant

I, the undersigned, declare that at the time of service of the papers referred to 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

[ ] Thirty-Day Notice of Termination of Tenancy

[ ] Sixty-Day Notice of Termination of Tenancy

[ ] Other:_____

on the following tenants:[2]_____

_____

on the _____day of_____, 202_____

at the following time:_____

[ ] BY DELIVERING PERSONALLY a copy of the Notice to the following tenants: _____

_____

_____

[ ] BY LEAVING a copy of the Notice for _____

_____

with _____
being a person of suitable age and discretion, at the residence or usual place of business of the tenants, being absent thereof;
AND MAILING by first class mail on said date a copy to each tenant by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named tenants at their place of residence.

[ ] BY POSTING a copy for each of the above-named tenants in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said tenants;

AND MAILING by first class mail on the same day as posted, a copy to each tenant by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the tenants at the place where the property is situated.
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.

[3] By _____

[1] Check the type of notice or notices served. Keep in mind, 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 residents served exactly as they appear on the notice.
[3] To be signed ONLY by the person who served the notice.

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Notice to Perform Covenant or Quit

TO: _____(1)_____

AND ALL OTHERS IN POSSESSION:

NOTICE IS HEREBY GIVEN that within **three (3) days**, excluding Saturdays and Sundays and other judicial holidays, after service upon you of this Notice, you must either cure the breach as stated below or you must 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, court costs, attorney's fees as permitted by law, as a result of your failure to comply with the terms of this notice UNLESS YOU PERFORM SAID COVENANT WITHIN THREE DAYS, EXCLUDING SATURDAYS AND SUNDAYS AND OTHER JUDICIAL HOLIDAYS.

You are further notified that if you fail to perform or otherwise comply, Owner/Agent does hereby elect to declare the forfeiture of your Rental Agreement under which you hold possession of the above-described premises.

You are being served with this Notice by reason of the fact that you have breached a covenant contained 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)_____

_____

YOU MUST COMPLY WITH THE ABOVE COVENANT WITHIN THE NEXT THREE (3) DAYS, EXCLUDING SATURDAYS AND SUNDAYS AND OTHER JUDICIAL HOLIDAYS, BY DOING THE FOLLOWING:

_____**(4)**_____

_____.

The premises referred to are in the City of_____, County of_____, STATE OF CALIFORNIA, designated by the number, street and zip code as_____(5)_____

_____

Dated this_____(6)_____day of _____, 202_____.

_____(7)_____

Landlord/Agent for Landlord/Owner

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Instructions for Notice to Perform Covenant or Quit

1. **Names of adult occupants**. It is important to list the names EXACTLY as they appear on the rental agreement/tenant application. Include all known adults (18 years of age or older) on the notice and make one original and serve copies to each named adult. If there has been a name change you can put aka the name change.

2. The name of the property management company, owner or other authorized representative of the owner should appear here.

3. The law requires that notices be 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 and exact language of the specific lease provision(s) violated. The more detailed, the better. Some rent control jurisdictions also require names of witnesses to the breach. Answer all of the "who, what, when and where" questions. At the end of this section, you should have stated the following: 1) the provisions of the lease that were breached (all of them); and 2) the conduct or omission that breached the lease.

4. In this section, you should state specifically what the tenant needs to do in order to cure the breach. For example, state something like remove all unauthorized occupants or cease and desist creating noise disturbances. Tailor it to the lease provision and specific conduct in violation of the lease provision.

5. The address of the property should be completely listed here. Make sure to include apartment and building number. The street designation must also be exact; make sure you know the property designation (avenue, street, boulevard, etc.). If there is a garage as part of the rental agreement, identify "and garage" with any appropriate garage number or separate address. This is ultimately the address that will be locked out so if it is incorrect, you will not be able to lockout the property.

6. This is the date you filled out the notice form. It is wise to have someone double check the notice for accuracy. Serve it as soon as possible after filling it out.

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." If signature is not legible, consider printing the name as well under.

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30-Day Notice to Terminate Tenancy

TO:_____(1)_____

AND ALL OTHERS IN POSSESSION:

TAKE NOTICE that your month-to-month tenancy of the premises described below is hereby terminated as of the date **thirty (30) days** after the service of this NOTICE upon you and that you are required to quit and surrender possession to the undersigned or to (2) who/which is authorized to receive the same on or before 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_____(3)_____, County of _____, STATE OF CALIFORNIA, designated by the number and street as_____

_____

This is intended as a **thirty-day (30) day** legal notice for the purpose of terminating your tenancy afore-said under 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 hereinabove described property and 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.

You have the right to request an initial inspection of your unit and be present during that inspection, which shall occur no earlier than two weeks before the termination of the tenancy and during normal business hours. (4)

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_____(5)_____ day of_____, 202_____

_____(6)_____

Landlord/Agent for Owner/Landlord

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60-Day Notice to Terminate Tenancy

TO: (1)

AND ALL OTHERS IN POSSESSION:

TAKE NOTICE that your month-to-month tenancy of the premises described below is hereby terminated as of the date **sixty (60) days** after the service of this NOTICE upon you and that you are required to quit and surrender possession to the undersigned or to (2) who/which is authorized to receive the same by the date **sixty (60) days** after the service of this NOTICE upon you.

The premises of which you must surrender possession are in the City of (3), County of , STATE OF CALIFORNIA, designated by the number and street as .

This is intended as a **sixty- (60) day** legal notice to terminate your tenancy under 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 hereinabove described property and 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.

You have the right to request an initial inspection of your unit and be present during that inspection, which shall occur no earlier than two weeks before the termination of the tenancy and during normal business hours. (4)

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 (5) day of , 202

(6)

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Instructions for the 30- or 60-Day Notice to Terminate Tenancy

1. Names of adult occupants. It is important to list the names EXACTLY as they appear on the rental agreement/tenant application. Include all known adults (18 years of age or older) on the notice and make one original and serve copies to each named adult.

2. The name of the property management company, owner or other authorized representative of the owner should appear here.

3. The address of the property should be completely listed here. Make sure to include apartment and building number. The street designation must also be exact; make sure you know the property designation (avenue, street, boulevard, etc.). If there is a garage as part of the rental agreement, identify "and garage" with any appropriate garage number or separate address.

4. The "pre-inspection" or "initial inspection" has been required since January 2003. Please refer to the section on Service of Notices for more information.

5. This is the date you filled out the notice form. It is wise to have someone double check the notice for accuracy. Serve it as soon as possible after filling it out.

6. 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."

*****REMINDER***:**

You cannot serve a 30-day or 60-day Notice to Quit to a tenant that is currently in a term lease, in a jurisdiction subject to just cause requirements or a property covered under AB 1482 (Civil Code §§ 1946.2, 1947.12 and 1947.13).

A 60-day notice is only required for month-to-month tenancies where all the tenants of the unit have been in possession of the unit for a year or longer.

A 90-day notice is required for any attempt to evict tenants after a foreclosure. If the tenant is in a fixed term lease, they may be able to remain in the property until the expiration of the lease under certain circumstances.

Contact an attorney before sending these notices as there may be local limitations on your ability to serve the document.

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Notice of Resident Option to Request Initial Inspection of the Rental Unit

TO:_____

All residents (tenants and subtenants) in possession (full name) and all others in possession of the premises at:_____ , Unit # (if applicable)_____

_____, CA _____(Zip)_____(City)_____

1. You have the right to request an initial inspection of your unit, and you have the right to be present during that inspection.
2. Upon your request, the Owner/Agent will make an initial inspection of your unit at a reasonable time, but no earlier than two weeks before the termination of the tenancy or the end of the lease date.
3. The purpose of this inspection is to allow you the opportunity to correct any deficiencies in the unit to avoid deductions from the security deposit.
4. You may not make any repairs to the unit prohibited by the rental agreement or lease.
5. After the initial inspection, the Owner/Agent will provide you with an itemized statement specifying the repairs or cleaning that will be the basis for any deductions to the security deposit. This will not be a final accounting of deductions from the security deposit.
6. You may make the corrections (that are not prohibited by the rental agreement or by law) after the inspection, before the termination of the tenancy to avoid deductions from the security deposit.
7. You have the right to be present during the inspection; however, the inspection may take place in your absence with your consent.
8. Within three weeks (21 days) after Owner/Agent has regained possession of the premises, Owner/Agent will provide you with an itemized disposition of security deposit, indicating the basis for, and the amount of, any security received and the disposition of the security, and Owner/Agent will return the remaining portion of the security deposit to you.
9. 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.

_____ _____

Date ***Owner Agent***

_____

(Owner/Agent's address for return of this form)

Resident(s): Please check the appropriate boxes below, sign the form, and return it to the Owner/Agent at the address listed above. Please return this form to Owner/Agent within 3 days of receipt.

(Check only one option below)

☐ I decline the initial inspection.

☐ I request the initial inspection of my unit, and I wish to be present.

☐ I request the initial inspection of my unit, but I will not be present.

Resident's phone number to contact to arrange for the inspection:_____

(If requesting initial inspection, check only one option below)

☐ I waive my right to 48-hour notice by the Owner/Agent before they enter the unit to perform the initial inspection, as allowed by Civil Code section 1950.5(f)(l)

☐ I want Owner/Agent to provide 48-hour notice before their entry of the unit to perform the initial inspection.

_____ _____

Date ***Resident***

_____ _____

Date ***Resident***

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Notice Of Right To Reclaim Abandoned Property

(FORMER RESIDENT)

TO: (Name)

(Address)

When _____ you vacated the premises at (*Address of premises, including room or apartment number, if any*), the following personal property remained:

(*Insert description of the personal property*)

. If you own any of this property, you may claim it at *(Address where property may be claimed)*.

If you claim this property by *(Insert date not less than 2 days after the former tenant vacated the premises)*, you may minimize the cost of storage.

You may claim this property at *(address where property may be claimed)*.

If you claim this property by *(insert date not less than 2 days after the former tenant vacated the premises)*, you may minimize the cost of storage.

If you fail to claim this property by *(insert date not less than 2 days after the former tenant vacated the premises)*, unless you pay the landlord's 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 § 1988.

❑ (Value of property $700.00 or more). 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.

❑ (Value of property less than $700.00). Because this property is believed to be worth less than $700.00, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above.

Date: _____

_____
(Signature of landlord)

_____
(Type or print name of landlord)

_____
(Telephone number)

_____
(Address)

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LAW OFFICES OF **Kimball, Tirey & St. John LLP**

NEW CASE EXPRESS WORKSHEET

San Diego: sdneweviction@kts-law.com | (619) 234-1690

Los Angeles: laneweviction@kts-law.com | (213) 337-0050

Orange County: ocneweviction@kts-law.com | (949) 476-5585

Northern California: ncneweviction@kts-law.com | (925) 942-1690

Date	Management Company
Case contact/Trial witness	Title
Complex	Complex Address
Phone	After hours contact and phone number (for process service)
Email	Owner
Billing Party (Who should receive invoices?)	Billing Address (If different than complex address)

Please complete the information above in its entirety. The person listed should be the primary contact for the case, as well as the person who will appear at trial should the case be contested.

Tenant/Occupant Information (one sheet per rental unit only)

Address of property:			Unit #:
Garage #:	City:	Zip:	Entry/Gate code:
Year the property was built:			
All persons 18 and over currently residing at the rental unit (do not name co-signers not in possession of the premises or those persons who have been released from the rental agreement and are no longer in possession).			
Name #1:		Name #3:	
Name #2:		Name #4:	

****Are any of the above-named persons in any branch of the military or have they been discharged within the last 120 days?** ☐ **Yes** ☐ **No** ☐ **Unknown**

If yes, please fill out a military worksheet for each person in the military. (Please contact our office if you need this worksheet)

Type of tenancy: ☐ Residential ☐ Commercial ☐ Mobile Home ☐ Subsidized/Affordable

If Subsidized/Affordable, please state name of program, i.e. Section 8, tax credit, etc.: _____

Are you aware of any recent bankruptcy filings by any tenant? ☐ Yes ☐ No

Type of case: ☐ Non-payment of rent ☐ 30-day or 60-day ☐ Lease Termination ☐ Covenant or Quit
☐ Nuisance/Illegal Activity ☐ Termination of Subsidized Housing for Cause
☐ Other _____

Do you have any reason to believe that an unauthorized occupant may be residing in the unit? If so, we recommend a prejudgment claim. Do you want KTS to file a prejudgment claim in your case? ☐ Yes ☐ No

I will be providing the following documents to KTS:
(all documents may not be applicable to your particular case)

- ☐ Notice (3 Day / 30 Day / 60 Day)
- ☐ Proof of Service/Declaration of Service
- ☐ Lease and all addenda/AB1482 notices
- ☐ Resident Ledger
- ☐ Most recent rent increase notice and proof of service
- ☐ Proof/Dec of Service to Section 8 worker
- ☐ Receipt of LAHD upload (Los Angeles Only)
- ☐ Purchase Order # (if required by mgmt. company)_____

***Please contact our office if you have not received a case confirmation within 24 hours.**

KIMBALL, TIREY & ST. JOHN LLP PROCESS SERVER WORKSHEET

PLEASE NOTE: To expedite the eviction process, personal service of the lawsuit on each adult tenant is ideal. Depending on how your tenant(s) is/are served (i.e. personally, sub-serve or court order to post) the eviction process can be reduced by as many as thirteen to twenty one days or longer. Often a tenant will be away from the premises, or evade the process server, not answer the door or send their children to the door. At KTS we continually strive to achieve the fastest legal service of process on your tenant. By taking a few minutes to complete this form, you will be providing the registered process servers with valuable information to enable them to serve your tenant(s) in the most expedient manner possible.

Name on signage of Apartment Community

Is the property open access: ☐ Yes ☐ No (If no, please complete access information below)

Is a fob required: ☐Yes ☐ No	Is an access code required: ☐ Yes - Access code:_____ ☐ No
Is a key required: ☐Yes ☐ No	Is there a specific number to call for access: ☐ Yes - #:_____ ☐ No

Is there anything else the process server should know in order to access the property:

Do you want the process server to call you if they have trouble serving your tenant(s)? ☐ Yes ☐ No
(If yes, please provide name and phone number)

Name: _____ Phone #: _____

Is the Tenant dangerous? ☐Yes ☐ No (If yes, please explain)

Does the Tenant have a dangerous dog? ☐ Yes ☐ No (If yes, please explain)

Tenant's Name:					Current Place of Employment: ☐ Unknown	
Sex	Race	Age	Height	Weight	Work Address:	
Make of Car	Color	License #	Parking space #		Work telephone number:	Home telephone number:

When is the best time to find your tenant at home?
☐ a.m. ☐ p.m. ☐ Other _____

Tenant's Name:					Current Place of Employment: ☐ Unknown	
Sex	Race	Age	Height	Weight	Work Address:	
Make of Car	Color	License #	Parking space #		Work telephone number:	Home telephone number:

When is the best time to find your tenant at home?
☐ a.m. ☐ p.m. ☐ Other _____

Tenant's Name:					Current Place of Employment: ☐ Unknown	
Sex	Race	Age	Height	Weight	Work Address:	
Make of Car	Color	License #	Parking space #		Work telephone number:	Home telephone number:

When is the best time to find your tenant at home?
☐ a.m. ☐ p.m. ☐ Other _____

Rev. 3/2020

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 rental housing 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:

Extensive Update of the Newest Laws and Issues

Pre-Tenancy Issues, such as:

- Lease/Application Requirements
- Application Fees
- Megan's Law Requirements
- Fair Housing Enforcement
- Criminal Background Checks/Rules

Tenancy Issues, such as:

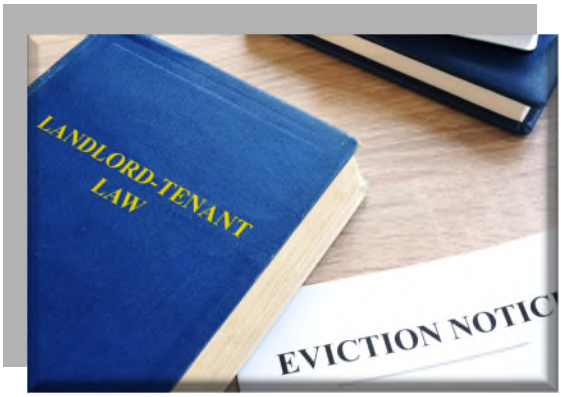
- Dealing with Tough Residents
- Unauthorized Occupants
- Smoking on the Property
- Bed Bugs
- Security Deposits
- When a Resident Dies

Evictions Issues, such as:

- Guide Through the Eviction Process
- Rental Agreement
- Path of an Eviction Chart
- Stipulated Agreements
- Servicemembers Civil Relief Act

Post-Tenancy Issues, such as:

- Abandoned Personal Property
- Collection Checklist
- Guide Through the Collection Process
- Commonly Asked Questions



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$27.95
ISBN 979-8-9924810-4-4
52795>
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