

Kimball, Tiley & St. John LLP

Legislative Update

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The California legislature has completed the 2010 session. The following bills have been chaptered and will become law:

SB 183 Carbon Monoxide Detectors: This section requires installation of carbon monoxide detectors. The State Fire Marshall is required to certify and approve carbon monoxide detectors and instructions. By July 1, 2011, certified detectors must be installed in all single family dwellings having a fossil fuel burning heater or appliance (such as a gas stove or oven), fireplace or attached garage. Installation in similar multi-family dwellings will be required as of January 1, 2013. The number of detectors installed must be consistent with new construction guidelines. At least one device must be installed on each floor of a dwelling. The penalty for failure to comply is up to \$200 for each offense, after a 30 day notice to correct. The owner of the dwelling unit must maintain the detector(s). The owner may enter the dwelling unit to install, repair, test or maintain the detector(s). The tenant must notify the owner if he or she becomes aware that a detector isn't working. Upon notification, the owner must repair the detector. Unlike smoke detectors, CO detectors must be replaced every 7 years. Note that hearing-impaired residents may need smoke detectors and CO detectors that emit flashes of light in addition to sounds. The real estate sales disclosure form regarding compliance with smoke detector and water heater requirements has been modified to add a disclosure regarding carbon monoxide detectors.

SB 782 Domestic Violence: Additional protections have been provided for residential tenants who are victims of domestic violence. In last year's session, victims were given the right to terminate a lease without penalty under certain conditions, upon 30 day's notice.

This new law provides protection from eviction and the right to change the locks.

Eviction: A landlord may not evict (or fail to renew a lease) solely on the basis of domestic violence against a tenant or a tenant's household member if the abuser is not a co-tenant unless:

- The tenant lets the abuser visit the property or
- The landlord reasonably believes that the abuser poses a physical threat to others or their right to quiet possession of the property.
- Additionally, the tenant has been given a 3 day notice to cure the violation.

Lock change: This portion of the law applies to leases entered into on or after January 1, 2011.

- A domestic violence victim can request in writing that the landlord change the locks on the dwelling unit. If the landlord fails to make the change within 24 hours, the tenant can change the locks even if the lease prohibits such change. The tenant

- must give the landlord notice that they have made the change within 24 hours and make arrangements to provide the landlord a key. The tenant is required to make the change in a workmanlike manner and use locks of similar or better quality than the original lock.
- If the abuser is a co-tenant, the victim must give the landlord a copy of a court order that excludes the abuser from the dwelling unit. The landlord will not have liability for allowing the abusive tenant to be locked out, and the excluded tenant remains liable under the lease.
 - If the abuser is not a tenant, the victim has the same rights to request and/or change locks but can do so only upon presentation to the landlord of either a temporary restraining order or a police report alleging the domestic violence.

AB 457 Mechanic's Liens: A "Notice of Mechanic's Lien" and the Mechanic's Lien itself must be served on the property owner (or construction lender or contractor if service on the owner is not possible). A proof of service must be completed and signed by the person serving the documents, and the proof must be included as part of the lien. A lis pendens must be filed and served within 20 days after the filing of a lawsuit to foreclose on the lien.

AB 1800 Penalties for Unlawful Rentals: Penalties were increased for renting a unit when one is not the owner or the authorized agent of the owner. These fraudulent actions will be a misdemeanor punishable by imprisonment for up to a year or by a fine of up to \$2,500 or both. Each violation is a separate offense.

SB 1427 Maintaining Foreclosed Properties: Existing law will remain in place, requiring the owner of a vacant foreclosed property to maintain it. Failure to maintain the premises subjects the owner to a fine of up to \$1,000 per day per violation. The new portion of the law requires that the owner be given a notice of violation and an opportunity to cure the violation before a fine is imposed unless the premises' condition is a threat to public health and safety. If the government abates the nuisance, it may recover the costs from the owner.

SB 1149 Foreclosure Notice Contents: Notices served on residential tenants by a landlord within the first year after a foreclosure of the unit must include a specific warning to the tenant of the tenant's legal rights.

This requirement does not apply to

- A notice that relates to a mobile home park tenancy;
- A notice given to regain possession of the premises after the expiration of a fixed term lease or for a default under a lease or rental agreement (for non-payment of rent, nuisance, etc.);
- A notice given under a lease or rental agreement entered into after the foreclosure, by the new owner and a tenant or
- A notice given to a tenant who was not a tenant at the time of the foreclosure.

If the notice must be given and the notice requires compliance in less than 90 days, a cover sheet is required. The cover sheet must state in 12 point type:

"Notice to Any Renters Living At (street address of the unit).

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The attached notice means that your home was recently sold in foreclosure, and the new owner plans to evict you.

You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers, it may hurt your credit if you do not respond and simply move out.

Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.

You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association."

If the notice provides 90 days or longer to comply, the text must be in the notice in at least 10-point type. The notice should omit the caption and the first paragraph required on the cover sheet. The fourth paragraph from the cover sheet should be replaced with the following:

"You may have the right to stay in your home for longer than 90 days. If you have a lease that ends more than 90 days from now, the new owner must honor the lease under many circumstances. Also, in some cases and in some cities with a 'just cause for eviction law,' you may not have to move at all. But you must take the proper legal steps in order to protect your rights."

AB 1263 Service of Notices on Commercial Tenants: Service methods for commercial notices differ from service methods for residential notices. Existing law allows parties to commercial leases to vary from the service methods established by statute.

Code of Civil Procedure §1162 requires service of all notices by attempting to deliver a copy to the tenant personally. If the tenant is absent from his or her residence and usual place of business, the notice may be served by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the rented property. If the residence or business cannot be ascertained or a person of suitable age and discretion cannot be found, the notice can be served by affixing a copy in a conspicuous place and mailing a copy to the rented property.

The new law changes the requirements for commercial tenancies. Service will no longer be required to be attempted at the commercial tenant's "place of residence or usual place of business." It provides for personal service at the rented premises, service to someone of suitable age and discretion (and mailing) to the rented premises or affixing a copy in a conspicuous place (and mailing) to the rented premises. Please note that if the tenant is a corporation, the landlord should also serve notice to the designated agent for service of process

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for the company. Finally, if the lease calls for service other than as provided in the code, the landlord should effect service in compliance with both the code and the lease.

Water conservation: Water-conserving plumbing fixtures are required to be installed in all single-family homes by January 1, 2017, and in multi-family properties by January 1, 2019. Additionally, when a building permit is issued, the builder must install water-conserving plumbing fixtures when a certificate of completion or approval of a final building permit is sought after January 1, 2014.

DRE License Number Disclosure: Effective July 1, 2010, California real estate agents and brokers must disclose their DRE license number on

- all "solicitation materials intended to be the first point of contact with consumers" and
- real property purchase agreements when acting as an agent in those transactions.

An article with additional information about this topic is available in the resource library on Kimball, Tirey & St. John's website at <http://www.kts-law.com>.

Court Filing Fee Increases: Many court filing fees have increased. For current filing fees, check with your local KTS office.

New federal requirements:

Foreclosure Notices: In May 2010, the federal "Protecting Tenants at Foreclosure Act" was signed, establishing that persons who acquire a property through foreclosure are subject to new notice requirements. If the tenancy is month-to-month or the new owner plans to occupy the premises, the tenant must be given 90 days notice of termination. If there is a lease in place and the new owner does not plan to move in, the tenant is allowed to remain on-site until the expiration of the lease or until the new owner decides to occupy the premises (in which case a 90 day notice must be given). The extended notice requirement does not apply to a former owner or his/her relatives or in the event that the rental agreement was not the result of an "arm's length" transaction. A legal alert with additional information about this topic is available in the resource library on Kimball, Tirey & St. John's website at <http://www.kts-law.com>.

Lead regulations: As of April 2010, the Environmental Protection Agency (EPA) requirements regarding lead paint training went into effect. One must be certified to do repairs or maintenance on surfaces that potentially contain lead-based paint. This applies to pre-1978 properties when more than six square feet of interior paint or twenty square feet of exterior paint are disturbed, unless the premises have been certified to be lead-free. Specific work practices must be followed, and there are no longer opt-out provisions regarding the occupants (for instance when there are no children under 6 or pregnant persons present). In addition to the pamphlet required at the beginning of the tenancy, there is now a pamphlet called "Renovate Right," which is required to be distributed prior to qualifying repairs. The rule is available at: www.epa.gov/lead/pubs/renovation.htm.

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“Red Flags” identity theft rule: Prompted by the nearly 10 million Americans that have fallen victim to identity theft, the Fair and Accurate Credit Transactions Act of 2003 (FACTA) amended the Fair Credit Reporting Act (FCRA) and required financial institutions and creditors to develop and implement written identity theft programs aimed to protect businesses and consumers from identity theft. The FACTA establishes new rules referred to as “Red Flags” that require financial institutions and creditors to develop policies and procedures for identifying, detecting and responding to any practice or activity that may indicate potential identity theft. The compliance date for the red flags rule was recently extended to December 31, 2010. After the effective date, financial institutions and creditors must have in place written programs to protect against identity theft. While it is not clear whether the rule applies to landlords, prudent industry professionals are complying with the regulations in order to reduce the risk of harm to debtors and protect themselves from potential future liability.

If you are interested in better understanding the new requirements or for assistance with the development of your written identity theft prevention program, please contact Susan Aguilar at (800) 575-1770.

Cases:

In Sabi v. Sterling, a disabled tenant became eligible for a Section 8 Housing Choice Voucher during a long-term tenancy. The established policy of the landlord was not to participate in such programs. The tenant alleged that the landlord should be forced to accept the voucher and based the allegation on two arguments:

- First, that the voucher was a “source of income.” Therefore, refusal to accept the voucher would constitute discrimination on that basis. The court ruled for the landlord, indicating that source of income was defined as money paid directly to a tenant or the tenant’s representative and that the proceeds of the voucher would be paid directly to the landlord from the housing agency. Therefore, the voucher was not income.
- Second, that acceptance of the voucher should be required as a reasonable accommodation based on disability. An accommodation is designed to allow a tenant with a disability an equal opportunity to use and enjoy the premises. The court found that failure to accept the voucher did not affect the tenant’s use and enjoyment.

The issue of acceptance of vouchers, particularly with regard to disability accommodations, is likely to arise again, either in this case on appeal or in another case based on different facts. It is wise for landlords to seek individualized advice when faced with a decision on this or any other fair housing subject.

In Mendoza v. AVP Screening and Selection Services, Inc., the court decided that a screening service could republish information about a prospective employee’s sex offender history to a prospective employer without liability for “using” the information to deny employment, which would be a violation of Megan’s Law. The prospective employer was not part of the lawsuit, so there was no decision regarding the possible liability associated with determining that a prospective employee is not qualified based on his or her registration as a sex offender.

In a February 2010 California Supreme Court case, registered sex offenders challenged the application of Jessica’s Law to their choice of housing. Jessica’s law provides that a sex offense registrant may not reside within 2,000 feet of a school or park where children gather.

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The court found that the restriction applies to those registrants whose parole or release from prison occurred after Jessica's Law became effective on November 7, 2006. There is no statement in the law regarding any responsibility of a landlord to monitor sex offenders. The issue can be addressed with local law enforcement, but it does not appear to be a basis for denial of housing unless the landlord participates in a HUD project-based housing program and is directed by the agency to refuse housing on that basis.

Trends:

Proposition 19: Although this proposition did not pass, many landlords have expressed concern about the possibility that marijuana may be legalized in California in the future. It does not appear that there would be any significant difference between restrictions on tobacco smoke or marijuana smoke if the general use of marijuana becomes legal. The use or growth of marijuana for medical purposes would not likely be affected by legalizing non-medical use. Currently, landlords must make a determination as to whether such use or growth for medical purposes is a "reasonable" accommodation, given that it is still illegal under federal law.

Surety Bonds in Lieu of a Security Deposit: Insurance companies now offer surety bonds for use by prospective tenants who wish to avoid payment of a security deposit to a landlord. It does not appear that landlords must accept such bonds, but failure to accept should be justifiable or the refusal might be alleged to be an unfair business practice. If accepted, the landlord would make a claim against the bond in the event the tenant incurred damages that would have been covered under the state's security deposit law, Civil Code §1950.5. If damages exceed the limit of the bond, the landlord would retain the right to pursue the former tenant for the amount that was not covered by the bond.

Mandatory Recycling: Many cities have passed mandatory recycling legislation for multi-family properties. Trash diversion plans are well-intentioned but can have negative repercussions for landlords who either do not have room for recycling bins or cannot control use of them.

Mandatory Water Conservation: In response to mandatory water cuts, most water districts in Southern California have implemented mandatory water conservation measures. Many of the measures "penalize" heavy users by charging them considerably more for any water usage that exceeds the water allotment amount assigned to the property.

This puts owners and managers of multi-family properties where the units are not separately metered or sub-metered in a Catch-22 position. Water usage is a subject of controversy because of governmental resistance to support either Ratio Utility Billing Systems (RUBS), which apportions the water bill among non-metered tenants, or in-line meters, which would measure usage to each unit. It is clear that people will have a tendency to use less water if they are responsible for paying for excess usage. Note that the landlord's sewer fees are directly related to the quantity of water that goes through the system as well.

Local Governments in California Address Smoking in Rental Housing: Many cities (including Belmont, Burbank, Calabasas, Dublin, El Cajon, Glendale, Loma Linda, Novato, Pasadena, San Mateo and Temecula) have passed anti-smoking legislation, either allowing or

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requiring landlords to protect residents from secondhand smoke. New smoke free laws are being added rapidly. A database of California smoke free laws is available on the internet at <http://ccap.etr.org/index.cfm?fuseaction=policydb.home>. It is updated monthly. If your property is designated smoke-free, there are marketing opportunities available online through smoke-free housing registries.

To access articles or legal alerts on the medical use of marijuana, red flags, sex offenders and more, see the “resource library” of the Kimball, Tirey and St. John LLP, website: www.kts-law.com.

If you wish to read the cited California bills in their entirety, they can be accessed at www.leginfo.ca.gov under “bill information” for the 2009-2010 session. Enter the designation of the bill (AB stands for Assembly Bill, SB stands for Senate Bill) and then search by bill number.

It is wise to review your leases, policies and procedures to make sure they are in compliance with new laws. Our firm can assist our clients in reviewing leases, policies and procedures. Contact Partner Jamie Sternberg at 800-574-5587 if you are interested in a review.

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