

# Kimball, Tirey & St. John LLP

## Legal Alert

November, 2011

### **Residential Landlords can Avoid Liability in Noncore Areas of their Property**

A surprising November 10, 2011 decision by the Fourth District Court of Appeal, Division 2 may cause residential landlords to add exculpatory clauses in their leases for “noncore” amenities, such as workout gyms, recreation rooms and entertainment facilities.

In Lewis Operating Corporation v. Superior Court, a tenant was injured while using an apartment complex’s gym. The injury was allegedly due to the negligence of the property owner’s employee or agent. The tenant’s lease contained a release and waiver of all claims relating to the health and recreation facilities, even if caused by the landlord’s negligence. The tenant argued that the release was void under California Civil Code §1953(a)(5). The court ruled that the release was effective as it applied to a “noncore” amenity. The court ruled that §1953(a)(5) applies to prohibit releases only to the rental unit, and “basic and essential” amenities such as parking areas, lawns, walkways or corridors. This decision reflects a significant change in the law.

This decision could be subject to change if the case is appealed to the California Supreme Court, or if another Court of Appeal district or division rules differently in another case. If the decision is appealed to the California Supreme Court, the appeal will be watched carefully by landlords. The full decision is available at

<http://www.courtinfo.ca.gov/opinions/documents/E052317.PDF>

Landlords thinking of adding exculpatory provisions to leases should take care in doing so by limiting the releases to “noncore” amenities, and perhaps by adding a “to the extent allowed by law” qualifier, as an unenforceable exculpatory provision could expose residential landlords to unfair business practice claims.

*KTS conducts lease and document reviews for our clientele and has created the “KTS Lease” which is currently used in more than 100,000 rental units in California. If you have questions about this Legal Alert, please contact partner Jamie Sternberg at 619-744-0863.*

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