

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

Matthew Bender[®] Practice Guide: California Landlord- Tenant Litigation

Publication 1295

Release 29

May 2018

HIGHLIGHTS

Legislative Updating

- This release includes updates reflecting 2017 California landlord-tenant legislation.

Case Updating

- Recent landlord-tenant cases have been added.

Creation of Tenancy

Lease Must Include Disclosure of Flood Hazards. 2017 Cal. Stats., ch 502 (AB 646), requires that in every lease or rental agreement for residential property entered into on or after July 1, 2018, the owner or person offering the property for rent must disclose to a tenant specified information surrounding flood hazards. *See* Ch. 2, Creation of Tenancy, 2.07[1][g].

Short-Term Rentals by Tenant. New coverage has been added addressing the increasing practice of tenants who offer

short-term rentals of the property. While standard terms prohibiting subleases without prior approval may suffice to prevent the practice, if a landlord wishes to preclude a tenant from renting all or part of a property to transient occupants (*e.g.*, by listing the property on a short-term rental platform such as Airbnb or VRBO), the landlord should include explicit limitations in the lease. *See* Ch. 2, Creation of Tenancy, 2.07[2][f].

Determining Whether Landlord Has Unlawfully Discriminated Against Tenant—Prohibition of Actions Based on Immigration Status. 2017 Cal. Stats., ch 489 (AB 291), makes it unlawful for a landlord to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of, or with the intent of, harassing

or intimidating a tenant or occupant, retaliating against a tenant or occupant for the exercise of his or her rights, influencing a tenant or occupant to vacate a dwelling, or recovering possession of the dwelling, irrespective of whether the tenant or occupant currently resides in the dwelling. For coverage, including what the court must do if it finds a statutory violation has occurred, see Ch. 2, Creation of Tenancy, 2.13[3][d].

Rights and Duties of Landlord and Tenant During Tenancy

Lease May Restrict Tenant's Use of Property to Host Short-Term Rentals.

New coverage has been added addressing a landlord's inclusion in the lease of terms restricting a tenant's use of the property to host short-term rentals. See Ch. 3, Rights and Duties of Landlord and Tenant During Tenancy, 3.25[3][d].

Termination of Tenancy

Prohibition of Termination by Landlord Based on Immigration or Citizenship Status. 2017 Cal. Stats., ch 489 (AB 291), makes it unlawful for a landlord to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant, occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of, or with the intent of, recovering possession of the dwelling, irrespective of whether the tenant or occupant currently resides in the dwelling. See Ch. 4, Termination of Tenancy, 4.20C.

Unlawful Use of Premises Constitutes Unlawful Detainer. The section on the unlawful use of premises as constituting unlawful detainer has been updated with new coverage of hosting short-term rentals. See Ch. 4, Termination of Tenancy, 4.23[3][c][ii].

Retaliatory Eviction by Landlord. 2017 Cal. Stats., ch. 489 (AB 291), provides that it is a form of prohibited retaliatory conduct for a landlord to report, or threaten to report, the tenant or individuals known to the landlord to be associated with the tenant, to immigration authorities. However, a landlord does not violate this prohibition by complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant. See Ch. 4, Termination of Tenancy, 4.47[3].

Unlawful Detainer

Affirmative Defense That Eviction Is Based on Immigration Status. 2017 Cal. Stats., ch 489 (AB 291), enacted CCP § 1161.4, which provides that a landlord may not cause a tenant or occupant to quit involuntarily or bring an action to recover possession because of the immigration or citizenship status of the tenant, occupant, or other person known to the landlord to be associated with the tenant or occupant, unless the landlord is complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant. A tenant or occupant may raise, as an affirmative defense, that the landlord violated this prohibition. See Ch. 5, Unlawful Detainer, 5.21[13].

Tenant's Demand for Jury Trial. In *Guttman v. Chiazor* (2017) 15 CA5th Supp 57, the court found that depriving a defendant of the statutory right to trial by jury of defense of breach of warranty of habitability is reversible per se. See Ch. 5, Unlawful Detainer, 5.24[3][c].

Rent Control

Local Control Over Short-Term Rentals. This release includes new coverage of local control over short-term rentals, typi-

cally defined as less than 31 consecutive days) The new sections cover the authority of local jurisdictions to regulate short-term tenancies; procedures that landlords wishing to rent exclusively to short-term occupants must review; the issues tenants who

want to sublease to short-term occupants may face (i.e., violation of the lease or local law); and a sampling of the extensive local regulations of short-term tenancies. *See* Ch. 8, Local Rent and Eviction Controls, 8.43A–8.43D.

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May 2018

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<input type="checkbox"/>	Title page thru xxvii.	Title page thru xxvii
<input type="checkbox"/>	2-3 thru 2-11	2-3 thru 2-11
<input type="checkbox"/>	2-51 thru 2-103	2-51 thru 2-104.13
<input type="checkbox"/>	3-4.1 thru 3-7	3-5 thru 3-7
<input type="checkbox"/>	3-53 thru 3-63	3-53 thru 3-63
<input type="checkbox"/>	4-3 thru 4-6.1	4-3 thru 4-6.1
<input type="checkbox"/>	4-15 thru 4-21	4-15 thru 4-22.1
<input type="checkbox"/>	4-65 thru 4-80.5.	4-65 thru 4-80.7
<input type="checkbox"/>	4-109 thru 4-117	4-109 thru 4-118.1
<input type="checkbox"/>	5-5 thru 5-7.	5-5 thru 5-7
<input type="checkbox"/>	5-15 thru 5-19	5-15 thru 5-20.1
<input type="checkbox"/>	5-57 thru 5-113	5-57 thru 5-114.13
<input type="checkbox"/>	5-145 thru 5-147	5-145 thru 5-148.1
<input type="checkbox"/>	5-155 thru 5-159	5-155 thru 5-160.1
<input type="checkbox"/>	5-169 thru 5-205	5-169 thru 5-205
<input type="checkbox"/>	6-13 thru 6-59	6-13 thru 6-57
<input type="checkbox"/>	6-103 thru 6-105	6-103 thru 6-105
<input type="checkbox"/>	7-7 thru 7-9.	7-7
<input type="checkbox"/>	8-4.1 thru 8-9	8-5 thru 8-9
<input type="checkbox"/>	8-59 thru 8-69	8-59 thru 8-70.3
<input type="checkbox"/>	TC-1 thru TC-15	TC-1 thru TC-15
<input type="checkbox"/>	TS-1 thru TS-19	TS-1 thru TS-19
<input type="checkbox"/>	I-1 thru I-55	I-1 thru I-57

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