

Kimball, Tirey & St. John LLP

Legal News for 2012

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Every year, new laws, regulations and cases affect a residential landlord's business. Therefore, Kimball, Tirey & St. John LLP is happy to assist our clients by providing an annual update.

CALIFORNIA LAW

Signs: Beginning in January 2012, residents may post political signs of up to 6 square feet in the window or on the door of a multifamily unit and on the balcony or outside wall on single-family properties. Landlords can set time restrictions, requiring that the signs not be displayed earlier than 90 days before, or later than 15 days after, a vote to which the sign refers.

Recycling: Starting in July 2012, landlords of properties with 5 or more units must provide recycling services and require participation by residents. Several cities have passed recycling legislation which could further affect a landlord's duties.

Smoking: Effective January 1, 2012, California law provides that a landlord has the right, but not the duty, to establish smoking restrictions in all or part of a residential property. This right applies to leases "entered into" on or after the effective date of the law. Any new smoking restrictions applied to lease renewals, or month-to-month agreements entered into prior to January 1st must be made in compliance with state law. (Numerous cities have passed legislation requiring that landlords establish smoking restrictions. Landlords should make sure they are aware of, and are complying with, any local restrictions).

Domestic Violence: Victims of domestic violence previously had the right to terminate a lease without being subject to a penalty, upon service of a written 30 day notice to the landlord, accompanied by a police report or restraining order. The existing law provided that the police report or restraining order had to be dated within 60 days of the service of notice. That time period has now been extended to 180 days.

Gender identity/expression: The protection against discrimination based on sex or gender has been clarified to include gender-related appearance and expression without regard to whether it is stereotypically associated with the person's sex as assigned at birth.

Carbon monoxide detectors: Single-family properties with fossil fuel burning appliances, heaters, fireplaces or with an attached garage must now be equipped with a

carbon monoxide detector. Multi-family properties will be required to have detectors by January 1, 2013.

Water conservation: For properties built before January 1, 1994, single family residences must contain water-conserving fixtures by 2017 and multi-family residences must contain such fixtures by 2019.

Security breach: If a security breach of computerized data occurs, consumers and the state Attorney General must be notified. If a social security number or ID number was compromised, the letter to the consumer must also explain how to contact major credit agencies.

Small claims limit increase: As of January 2012, individuals can sue for up to \$10,000 in small claims court unless they are suing guarantors (or if their claim is for personal injury). An individual can sue a guarantor for \$4,000 if the guarantor receives no fee for co-signing. If the guarantor receives a fee, an individual can sue for up to \$6,500. Entities (corporations, LLCs, partnerships, etc.) are limited to claims of \$5,000 in small claims court, except with regard to guarantors. The limit on guarantors in that case is still \$2,500 for a guarantor who does not receive a fee and \$4,000 if the guarantor is paid a fee.

HOA restrictions on rentals: As of January 1, 2012, there will be more restrictions on a homeowner association's attempts to restrict owners from renting their units.

Credit reports for employees: Unless an employee has access to privileged information or is in a management position, employers may no longer use a consumer credit report as a basis for employment decisions.

Commissions: By January 1, 2013, if an employer agrees to pay commissions to an employee, the agreement must be in writing and a signed copy provided to the employee. The employer must retain a copy of the employee's acknowledgment of receipt of the copy. Commissions are defined as proportionate compensation based on the value of the employer's property or services.

Independent Contractors: Beginning in January 2012, penalties of \$5,000-\$25,000 per violation can be assessed for misclassifying employees as independent contractors.

FEDERAL LAWS AND REGULATIONS

Adverse action: A credit denial or a conditional approval is an adverse action. When an adverse action occurs, it triggers a duty to provide a report to the affected consumer. As of July 2011, if a credit score was relied upon in making the decision, the report must include a credit score, the range of possible scores under the model used, the key

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factors that adversely affected the credit score, the date on which the credit score was created, and the name of the person or entity providing the credit score.

Labor relations signs: Effective January 31, 2012, most employers must post an “11X17” sign outlining employee rights unless such posting is not physically feasible, in which case the employee should be provided a hard copy of the notice. If a hard copy is provided, the employee should sign an acknowledgment of receipt. If employers post policies on-line, a link to the notice should be included. See <https://www.nlr.gov/poster> for more information.

Red flags: Creditors are required to establish and apply written policies and procedures for 1) identifying “red flags” which could lead to identity theft and 2) protecting against such fraudulent practices. Pursuant to a 2010 amendment, landlords are included in the definition of creditors for the purposes of the application of this law.

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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