

# Kimball, Tirey & St. John LLP

## Governmental Agencies and Private Individuals Rights to Tenant Information and Rights of Entry

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### Introduction

Third parties may ask a property owner or manager to provide information about a tenant, or access to a tenant's unit. For example:

- a police officer may request access to a unit or a copy of a tenant lease;
- a property management company may request tenant information in connection with a rental application a tenant submitted to another property;
- a census taker may request information about the residents in a unit after being unable to contact the residents; or
- tenant records may be subpoenaed in litigation in which the landlord is not a party.

### Entry into the Unit

Annual Subsidized Unit Inspections. Some subsidized housing programs administered by the U.S. Department of Housing and Urban Development (HUD) require annual unit inspections. As a condition of qualifying for the subsidy, the tenant is contractually required to grant access to the premises for the annual inspection.

Law Enforcement with a Search Warrant. Law enforcement officials can enter a unit with a valid search warrant.

Law Enforcement without a Search Warrant. Law enforcement officials may enter a unit without a search warrant:

- when in "hot pursuit" of a fleeing criminal;
- in emergency situations involving immediate hazards to life and limb or serious damage to property (i.e. generally in situations involving fire, smoke, odors of gas or hazardous chemicals, indications of physical distress such as cries of pain); or
- to prevent the imminent destruction, removal, or concealment of evidence.

In the absence of one of the situations above, a cautious landlord may not want to provide law enforcement with access to a unit, as the law allows a landlord to enter a unit only in specified situations, none of which will apply to a law enforcement offer desiring access.

Entry by Property Owners, Managers and Residents. For information about right of entry rules for residential property owners, managers and residents, see the article, [Clearing up the Confusion: Right of Entry Rules for Owners, Managers and Residents.](#)

### Privacy Rights Generally

Public disclosure of private facts about a party can give rise to civil liability for invasion of privacy. To be actionable, the disclosure must be "highly offensive to a reasonable

person,” considering, among other things, “the degree of the intrusion, the context, conduct and circumstances surrounding the intrusion, as well as the intruder’s motives and objectives, the setting into which he [or she] intrudes, and the expectations of those whose privacy is invaded.”

## **Responding to Document Requests**

Taxing Authorities. In some instances, taxing authorities may be entitled to view records without a subpoena for purposes of tax administration, provided that the tenant, as the taxpayer, is given prior notice of the inspection. Title 26, United States Code §7602 allows the IRS to “examine any books, papers, records, or other data which may be relevant...for the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax...of any transferee or fiduciary, or collecting any such liability.” This power is subject to giving the taxpayer “reasonable notice in advance” that contacts with the lessor/manager will be made for these purposes. There is no requirement of subpoena contained within this statute.

The Franchise Tax Board has similar powers.

The California State Board of Equalization has similar powers under Government Code §15618.

Census Takers. Title 12, United States Code §223 requires third parties to assist census takers seeking information about residents in apartment buildings. The owner or manager must “furnish the names of the occupants of such premises, or ... give free ingress thereto and egress therefrom.” Refusal or willful neglect to comply with this inquiry subjects the lessor/manager to a fine of \$500.00. The census taker is entitled to general access to the entryways of individual units and not the units themselves.

Subpoenas Issued in Lawsuits. When the tenant is a party to a lawsuit, the other party may have the right to compel property owners and managers to provide information concerning their tenancy through a subpoena. Materials to be produced by the property owner or manager will be described in the subpoena; they may include the lease, rental application, payment records, correspondence and other written material in the tenant file. Generally the opposing party will have given the tenant or their attorney notice of the material being sought. Cautious owners and managers refrain from responding to the subpoena until the date specified for the production of the documents to deal with the subpoena if they believe the request is inappropriate. For more information about responding to subpoenas, see the Kimball, Tirey & St. John LLP article, *You’ve Been Served with a Subpoena*.

Subpoenas Issued by Governmental Agencies. Some governmental agencies, such as the DEA, have subpoena powers. The subpoena will describe the documents to be provided to the agency.

Tenant Authorizations. A landlord may provide tenant information when authorized by the tenant. Cautious landlords require written authorizations. Authorizations are most commonly found in rental applications, but are sometimes found in other documents.

Law Enforcement. In light of tenant privacy rights, cautious landlords may decline to provide law enforcement officers with direct information or documents about tenants (particularly name, social security number, signature, physical characteristics or description, address, telephone number, passport number, insurance policy number, education, employment history, bank account number, credit card number, debit card number, driver license number, state id card number, or any other financial account number or medical information unless the officer provides a subpoena.

Owners or managers who want to assist law enforcement officers without creating potential liability for themselves may be able to assist law enforcement officers indirectly, by suggesting

that officers speak to others who can provide the information and who are not acting under the same constraints as the property owner or manager. For example, assume an officer wants to know if a particular person signed a lease in a residential complex, but the officer doesn't have a subpoena. The risk-averse property owner or manager may not want to create risk by telling the officer that the person that they are looking for signed a lease for unit 303. However, the owner or manager may want to suggest that the officer speak to the residents in units 302 and 304 to determine if they can identify their neighbors.

### **Landlord Right to Report Crimes**

A landlord or property manager has the absolute privilege to report suspected criminal activity to the police. This privilege bars all tort actions against the person making the report, as well as actions for defamation, infliction of emotional distress, and invasion of privacy. Landlords and property managers may choose to take advantage of this privilege, as a landlord may be held liable for criminal activity on leased premises in certain circumstances.

### **Special Restrictions Applying to Lodging Operators**

Civil Code §53.5 prohibits owners/operators of hotels, motels, inn, lodging houses, and places of similar accommodations, from communicating (through disclosure, transfer, or other means) all or any part of a guest record to a third party absent a court-issued subpoena, warrant, or court order. "Guest records" are any records that identifies an individual guest, boarder, occupant, lodger, customer, or invitee, including (but not limited to) their name, social security number or other unique identifying number, date of birth, address, telephone number, driver's license number, other official form of identification, credit card number, or automobile license plate number.

### **Access to Process Servers**

Effective January 1, 2020, if a process server or someone else requests access to a gated multi-family property (an apartment building with 3 or more units) to serve a legal document, Code of Civil Procedure §415.21 requires that access be provided.

### **Conclusion**

Rental property owners and managers who don't want to risk breach of privacy claims adopt policies of not providing tenant information, or access to tenant units, unless the person requesting the information or access has the legal right to the information or access. If a property owner or manager is not certain whether he or she should provide information or access, consultation with an attorney is recommended.

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