

# Kimball, Tirey & St. John LLP

## Corporate Rentals for California Residential Landlords

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*Corporate rentals can be lucrative, but require specific knowledge, procedures and documentation.*

Most residential units are rented to individuals. However, sometimes an entity, (a corporation, or a LLC), may apply to rent a residential unit. What should a residential landlord do differently when the applicant is a corporation or LLC?

**1. Use an Entity Rental Application and Verify the Submitted Information's Accuracy.** Property owners or managers may think a corporation or LLC (an “entity”) is more financially responsible than an individual, but that’s not always the case. Entities can become insolvent, and once an entity becomes insolvent, it is rarely resurrected by its owners. [In contrast, individuals may be motivated to clean up their credit to buy or rent property in the future, and may financially “get back on their feet” in the future.]

Landlords should gather enough information from the entity applicant to make a good business decision about (1) whether to accept the application and (2) to help identify assets in CA that will help collect from the entity involuntarily if it doesn’t pay voluntarily. [It can be difficult and expensive to use involuntary collection efforts on assets outside of California].

The usual process used by a residential landlord or property manager to screen a typical (individual) applicant won’t work well when the applicant is an entity.

- To gather the different information needed from an entity applicant, a landlord will need a different application form for entity application. (KTS has an entity application form) available for \$250. The typical application doesn’t work well for an entity. Typically an entity application is different than an individual’s application – the goal is the same, but many of questions are different.
- Most residential landlords who do credit checks are set up to check credit only individuals, and not on entities. Credit checks on entities, if available, may be more expensive than the maximum application fee allowed under California law. Typically credit checks are not done on entity applicants, and instead financial information is requested as part of the application. It can be very difficult or impossible to verify the accuracy of the financial information received (unless the entity is publicly traded).

Check the California Secretary of State’s website at <http://kepler.sos.ca.gov/> to verify the entity’s name is correct (frequently the name on the application doesn’t match the name on the application).

Don’t waive financial screening and verification because an entity tenant will be renting many units. Renting a large number of units doesn’t ensure financial stability, and it can result in significant financial harm to landlords if the corporate tenant becomes insolvent. At Kimball, Tirey & St. John, we have seen corporate tenants renting 50+ units in a single complex fail.

**2. Consider Requiring a Guaranty, a Larger Security Deposit, or 6 Months or More of Prepaid Rent.** Unless the entity is publicly traded, or you can otherwise be assured of their financial strength and longevity (and remember it can be difficult or impossible to verify the

accuracy of the financial information received from an entity applicant), consider one of the following to provide a source for recovery if the lease is breached:

- Require a personal guaranty from a financially responsible guarantor.
  - Require an application from the guarantor and verify the information on the guaranty.
  - If approved as a guarantor, have the guarantor sign a separate guaranty form.
- Increase the security deposit. Security deposits for residential tenancies are limited to 2x the monthly rent, 3x for a furnished unit, plus ½ month's rent for a water bed.
- Require prepayment of rent (6 months or more). The limitations on maximum security deposits do not bar a landlord from seeking advance rent payments of 6 months or more.

**3. Develop Rental Criteria for Entity Applicants.** Because it can be difficult to verify entity finances, the rental criteria may focus heavily on a required guarantor's finances.

**4. Use a Corporate Lease Form or a Corporate Lease Addendum.** Portions of a property owner's standard residential lease form should be modified for entity tenants. Modifications are advisable to identify the authorized occupants (and possibly to modify the no assignment/subletting language in the lease), identify how new occupants will become authorized, prohibit hotel type use (if desired), obligate the entity tenant to indemnify the landlord for the actions of the occupant, require the entity tenant to maintain insurance, specify how notice will be given (because the entity tenant may not actually receive a notice delivered to the unit), and hold the entity tenant responsible for unauthorized holdovers by an occupant.

Kimball, Tirey & St. John has two different corporate lease forms.

- One is a lease addendum that is used when an entity is leasing a single unit. The Corporate Lease Addendum (used for single units) is \$500.
- The other is a corporate "master lease" that is used for "bulk leasing" situations, when multiple units are leased by an entity. It avoids having to prepare separate leases for each unit; there is just a single "master" lease between the parties. The landlord's usual lease is attached as an exhibit, and is incorporated into the master lease, so that most of the typical lease remains effective, but the master lease modifies it as needed for entity rentals. There is another exhibit attached that identifies particular units, start dates, end dates, rental rates, etc. That exhibit is updated and initialed each time a unit is added or dropped. The corporate master lease (used for multiple units) is \$750.

**5. Authorized Signatories.** Ensure that the person signing the lease on behalf of the entity has authority to do so.

For corporations:

Require an officer from each of the following two categories to sign the contract:

- (1) Chairman of the board, president or vice president; and
- (2) Secretary, assistant secretary, chief financial officer or assistant treasurer

If the corporation doesn't intend to have two officers sign the lease (and instead intends to have a single officer, or a director or employee sign), require that the corporation provide board minutes or a corporate resolution signed by the corporate secretary authorizing the individual to sign on behalf of the corporation. The minutes or resolution should be maintained to show that the individual had authority to bind the corporation.

An example of signature lines for a corporation with a fictitious business name is below.

*Broadway, Inc., a California corporation, dba Skip-My-Lease*

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Barney B. Tenant, [Chairman of the Board, President or Vice President]

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Cecelia B. Tenant, [Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer]

For LLCs:

The LLC's operating agreement specifies who has authority to sign contracts on behalf of the LLC. (Typically the manager of the LLC has authority to sign). To verify authority, request a copy of the operating agreement and review it.

A sample of a signature line by an LLC with a fictitious business name is below.

*Broadway, LLC, a California limited liability company, dba Skip-My-Lease*

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*By: Barney B. Tenant, Managing Member*

**6. Occupant Issues.** Occupants (as opposed to a named tenant under the lease), live in rental property but are not financially responsible. Because they are not financially responsible, their credit history is not relevant. However, their rental history and eviction information is relevant, so careful landlords require applications from occupants that requests nonfinancial information.

Because occupants are not financially responsible under the lease, they do not sign the lease agreement, but they are identified as authorized occupants in the lease.

If an unlawful detainer is necessary, and if they are still in possession, occupants should be named on the notice (if their name is known), and named as a defendant in the unlawful detainer action.

**7. Termination of Tenancy Issues.** If a termination notice served, the entity's agent for service of process should be served (as well as the occupant, and any other party specified in the lease). If an unlawful detainer is filed, and if the entity is in possession or claims a possessory right, the entity should be named as a defendant in the unlawful detainer.

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