

Kimball, Tirey & St. John LLP

Legislative Update 2019 for Commercial Landlords and Property Managers

January 2019

The legislative session for 2018 has come to a close, and many new laws were passed which will directly impact California landlords. Below is information about new laws for 2019 along with other significant trends which may affect California commercial landlords.

For your convenience, the new laws and trends are divided into three sections: Landlord/Tenant, Disability Access, and Real Estate License Laws.

Landlord/Tenant Laws and Trends

AB 565 Live Work Building Codes: The Department of Housing and Community Development will develop clarifications in the California Building Code and the California Residential Code for live/work units.

AB 802 Energy Disclosures: Passed in 2015, this bill directed the California Energy Commission to create a statewide building energy use benchmarking and public disclosure program for buildings larger than 50,000 square feet. The Commission's regulations require building owners to report building information and energy use data to the Commission by June 1 annually:

- beginning June 1, 2018 for buildings with no residential utility accounts, and
- beginning June 1, 2019 for buildings with 17 or more residential utility accounts).

An article with more information about AB 802 is available at <https://www.kts-law.com/california-energy-commissions-building-use-benchmarking-and-public-disclosure-program-ab-802>.

AB 1108 (2017) Self-Service Storage Facility Act Amendments: Through 2020 lien notices may be served by email if the rental agreement provides for email service. It also allows auctions to be either in-person or through an internet auction website.

AB 2164 Violation of local codes resulting from illegal marijuana cultivation: This bill allows local agencies to impose immediate fines and penalties for building related and/or health and safety code violations which exist as a result of the illegal cultivation of marijuana. However, if the violations are the result of a tenant in possession of the premises, the underlying lease prohibits the cultivation of marijuana, and the landlord had no knowledge that the tenant was illegally cultivating marijuana, then the local agencies must provide a reasonable time to correct the violation(s) before fines may be imposed.

AB 2173 Abandoned Personal Property at Commercial Property: This bill increased the threshold amount for personal property abandoned at commercial property, effective July 9, 2018. Previously, if the abandoned personal property was worth less than \$750, or \$1 per square foot of the premises, (whichever is less), the property could be kept, sold, or destroyed if the former tenant failed to reclaim it within 18 days from the date the notice of abandonment was served to the former tenant. If the abandoned property was worth \$750, or \$1 per square

foot of the premises occupied by the former tenant, or more, then the property was required be sold through public auction. AB 2173 increased the threshold amount to the greater of (1) \$2,500 or (2) one month's rent. This bill does not change existing law with regard to the valuation of residential abandoned personal property, which remains unchanged. An article with information about abandoned personal property in commercial property is available at http://clientportal.kts-law.com/resource_library/breg/documents/AbandonedPersonalPropertyCommercial.pdf.

AB 2219 Third Party Payments: This bill amends Civil Code §1947.3 to require a landlord accept rent payments through a third party, if the payor provides the landlord a signed acknowledgement stating that they are not currently a tenant of the premises for which the rent payment is being made and that the acceptance of the rent payment does not create a new tenancy with the third party. The landlord may, but is not required to, provide a form for this purpose. The law specifies that this provision is not meant to require a landlord or his/her agent to enter into a contract with a federal, state, or local housing assistance program (such as Section 8). An article with more information is available at: <https://www.kts-law.com/third-party-payments-to-california-residential-landlords>.

AB 2286 Service of Court Documents: This bill extends the time frame in which court mandated notices may be served to a private residence to 8:00 am to 8:00 pm (previously 8:00 am to 6:00 pm).

AB 2343 Calculations of 3-Day Notices and Summons: This bill amends Code of Civil Procedure Sections 1161 and 1167 to extend the waiting periods for Notices and Summons.

California Code of Civil Procedure §1161 previously allowed weekends and holidays to count towards the three (3) day Notice period, but prohibited a notice from expiring on a weekend or holiday. The law, as amended, specifically excludes "Saturdays and Sundays and other judicial holidays" when calculating the 3-day notice period.

Similarly, Code of Civil Procedure §1167 is amended so that the five day period an unlawful detainer defendant has to respond to a notice of summons will not include judicial holidays, including Saturday and Sunday.

An article with more information is available at <https://www.kts-law.com/response-time-extended-for-california-tenants>. This law will become operative on September 1, 2019.

AB 2485: Prohibition on Financially Interested Individuals in Local Inspections: This bill is intended to prevent possible conflicts of interest by a code enforcement officer and an independent contractor. The law provides that, during an inspection of a commercial property or business for compliance with state or local law, the local official (or their designated agent/inspector) may not be accompanied by a person with a potential financial interest in the outcome of the inspection.

A person with a potential financial interest in the outcome of the inspection includes:

1. a person who offers to physically remediate for compensation potential violations found during an inspection;

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2. a person who offers to compensate the local official for recommending a specific person to cure the violations; or
3. a person who offers to compensate the local official for providing the name of the owner (or their representative) to the owner/person who offers remediation services.

The law allows the business or property owner and their chosen agents and representatives to accompany the local official during the inspection. Additionally, the law allows a person who has, or operates under, a specified existing contract with the local government and has been directed to perform services at that particular property or business, or a contractor or consultant that is on a publicly available list of qualified bidders that may provide inspection, abatement, or remediation services to, and receive compensation for those services from, the local government.

Finally, the law prohibits a person who has entered into a contract with a local government for inspection, abatement, or remediation services, who inspects a commercial property or business for compliance with a state statute or regulation or local ordinance without the presence of a local official, from soliciting or receiving compensation from the owner to remediate any potential violations of a state statute or regulation or local ordinance found in the course of the inspection.

AB 2598 Fines and Penalties for Building and Safety Code Infractions: This bill allows local cities and counties to increase the maximum amount fined for building and safety code infractions. Fines may be increased to \$130 for a first violation (previously \$100), \$700 for a second violation of the same ordinance within one year of the first violation (previously \$200), and \$1,300 for each additional violation of the same ordinance within one year of the initial violation. For commercial properties, this bill allows for an additional fine of \$2,500 for additional violations of the same ordinance within 2 years if the infraction is due to failure of the owner to remove visible refuse or failure to prohibit unauthorized use of the property. The bill requires that the city or county establish a process to grant hardship waivers for second and third violations if the owner can establish a bona fide effort to comply with the initial infraction and that payment of the full fine would impose an undue financial burden.

AB 2664 Court Reporters: This bill allows, if an official court reporter is not available, a party to arrange, at his/her own expense, for a certified shorthand reporter to serve as an official pro tempore reporter unless there is good cause shown for the court to refuse the appointment. The fees and charges of the temporary reporter are costs recoverable by the prevailing party as otherwise provided by law.

AB 2847 Abandoned Commercial Property: creates new law regarding abandoned commercial property. Previously, the law specified that rent had to be unpaid for 14 days before a Notice of Belief of Abandonment could be served on the tenant. Effective July 16, 2018, new California Civil Code §1951.35 changes the 14 day period to the time period specified in the lease for the landlord to declare a rent default (if the lease is silent, it is a 3 day period. Leases sometimes provide for other time periods, such as 3 business days, 5 days or 10 days). **AB 2847** also slightly modified the residential Notice of Belief of Abandonment form.

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AB 3212 Service Member Protections: This bill adds and amends sections of the Military and Veterans Code to expand consumer protections for service members.

Similar to the Federal Service Members Civil Relief Act (SCRA), §409 of the California Military and Veterans Code allows a service member to, at his or her option, terminate a lease without penalty upon enlisting in the military, receiving orders for a permanent change of station, or deployment for a period of not less than 90 days. The bill specifies that these provisions apply to a lease of premises occupied, or intended to be occupied, by a service member or a service member's dependents for a residential, professional, business, agricultural, or similar purpose.

The law provides that any person who receives a good faith request from a service member and believes the request is incomplete, not legally sufficient, or that the service member is not entitled to the relief requested, must, within 30 days of the request, provide a written response to the service member acknowledging the request, setting forth the basis for the belief that the request is incomplete or insufficient, or that the service member is not entitled to the relief requested. The response must also identify the specific information or materials that are missing from the request and that would be required to grant the relief requested, and provide contact information, including a mailing address and telephone number, which the service member can use to contact the person. A person's failure to object to the service member's request in writing within 30 days effectively waives any objections the person may have had, and the service member will be entitled to the relief requested.

Additionally, AB 3212 expands the protections of service members named as defendants in civil actions. This bill mandates that a court grant a stay of proceedings for a minimum of 90 days in any action or proceeding in which the defendant is in military service or 120 days thereafter (previously protections only extended to 60 days after a person's military service was completed), if the court determines that there may be a defense to the action which cannot be presented without the presence of the defendant, or that counsel has been unable to contact the defendant, or otherwise determine if a meritorious defense exists.

AB 3212 prohibits people who collect debts from contacting a military member's military unit or chain of command without the written consent of the member after the debt became due.

An article about military lease termination is available at http://ClientPortal.kts-law.com/resource_library/docs/Articles/MilitaryLeaseTerminations.pdf.

SB 745 Water Conserving Plumbing Fixture Replacement (2014): Originally passed in 2014, and codified in Civil Code §1101.5, it requires water conserving plumbing fixtures be installed in property constructed before January 1, 1994. To be compliant, plumbing fixtures may not use more than the following amounts of water:

- (1) Toilets - 1.6 gallons per flush
- (2) Urinals - 1 gallon per flush
- (3) Showerheads - 2.5 gallons per minute
- (4) Interior faucets - 2.2 gallons per minute

Beginning on January 1, 2014, noncompliant plumbing in multifamily and commercial property were required to be replaced in certain situations.

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By January 1, 2019, multifamily and commercial properties must be in full compliance.

An article with information about water conserving plumbing fixtures required in California is available at <https://www.kts-law.com/water-conserving-plumbing-fixtures-required-in-california/>.

SB 954 Mediation Confidentiality Disclosures: This bill requires additional disclosures to parties engaging in mediation. It adds new Evidence Code §1129 and expands Evidence Code §1120. An article with more information is available at <https://www.kts-law.com/mediation-law-changes-in-california/>.

SB 1155 Small Claims Court Interpreters: Previous law authorized a small claims court to permit an individual, other than an attorney, to provide translation assistance during small claims proceedings. This bill repeals this provision, limiting translation services during small claims proceedings to certified court interpreters.

SB 1194 Lodging Disclosure of Personal Information: This bill 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.

SB 1397 Automated External Defibrillators: Health and Safety Code §19300 previously required automated external defibrillators (AED) be installed in properties constructed on or after January 1, 2017. The law will now require that specific residential and commercial properties built before January 1, 2017 to install automated external defibrillators if the structure is modified, renovated or tenant improved, as specified, on or after January 1, 2020. An article about AEDs in commercial properties is available at <https://www.kts-law.com/aed-devices-in-commercial-properties/>.

E-filing for Unlawful Detainers: Throughout the state, courts are moving towards e-filing civil actions (including unlawful detainers). As the name implies, e-filing allows parties to transmit documents directly to a court electronically. The system is being utilized by an increasing number of courts seeking to create a faster, paperless system. Passed in September, [AB 1531](#) addresses the collection and reimbursement of electronic filing fees for civil cases, reflecting the legislative focus on shifting California courts to electronic filing. As of October 2018, 19 counties have implemented electronic filing programs. Most recently and notably, Los Angeles Superior Court initiated voluntary e-filing as of November 13, 2018, will require e-filing for all limited civil cases as of December 3, 2018, and will require e-filing for all unlimited (non-complex) civil cases as of January 2, 2019.

Sidewalk Vendors: [SB 946](#) prohibits local municipalities from prohibiting or regulating sidewalk vendors except for limited reasons as specified by law. The passage of this bill may lead to increased vendor activity in areas adjacent to residents or businesses.

Electric Scooters: The popularity of electric-powered scooters available to rent at multiple locations throughout California has led to concern over increased congestion, safety, and the aesthetics of communities in which scooters are left abandoned on city sidewalks and blocking

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property entrances. In response, some cities, such as San Francisco, Santa Monica and West Hollywood, have passed local legislation to limit, electric-scooter rentals in their cities. Notably, the ban on rental motorized scooters in the City of Beverly Hills is currently being challenged by Bird (an electric-powered scooter rental company) in Court. Landlords may want to consider adding language to their leases to restrict on property use of these devices. However, if someone needs to use the device for mobility reasons, they should be allowed as an accommodation for disability.

Privacy: Amidst increased reliance on the collection and use of personal digital data, and with continued reported incidents of large breaches and misuse of personal digital data, we are seeing increased legislative focus on privacy. [AB 375](#) enacts the California Consumer Privacy Act, which will apply to specific businesses, based on size of information collected by the business, the business's gross revenue, and how the personal information collected is used by the business. The Act creates specific consumer protections, including the right of a consumer to request the deletion of their personal information, with some exceptions. The law will go into effect as of January 1, 2020. Also passed as part of this year's legislative session, [AB 2769](#) prohibits all businesses from using information scanned or swiped from a driver's license or identification card for any purpose other than those explicitly proscribed by law.

Proposition 65: Proposition 65 requires businesses with 10 or more employees to provide warnings when they cause significant exposure to specific chemicals. Proposition 65 requires disclosures by employers who have 10 or more employees and who may expose their employees or the public to specific listed chemicals. There are more than 850 chemicals listed. Some of the environmental hazards are contained in items common in commercial, such as building materials, cleaning materials, car exhaust, and tobacco smoke.

For some time, landlords have been uncertain about how to comply with their Proposition 65 obligations. "Clear and reasonable" warnings must be given. Generally, in an effort to comply with Proposition 65, landlords have posted signage on their properties. Some also have also included Proposition 65 warnings in their leases.

Effective August 30, 2018, a new regulation changes the safe harbor warnings. Use of the new warnings is not required, but using the safe harbor warnings is an effective way for businesses to protect themselves from Proposition 65 claims. Businesses that use the safe harbor warnings will be deemed to have provided "clear and reasonable" warnings.

The new warnings say the product "can expose you to" a Proposition 65 chemical rather than saying the product "contains" the chemical. They also include:

- The name of at least one listed chemical that prompted the warning,
- The Internet address for OEHHA's new Proposition 65 warnings website, <https://www.p65warnings.ca.gov>, which includes additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them,
- A triangular yellow warning symbol  on most warnings.
- New "tailored" warnings that provide more specific information for certain kinds of exposures, products, and places. The specifically tailored warnings most likely to affect commercial property owners are the "enclosed parking facilities" warning (available at

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<https://www.p65warnings.ca.gov/places/enclosed-parking-facilities>) and “designated smoking areas” warning (available at <https://www.p65warnings.ca.gov/places/designated-smoking-areas>).

For more information about the new Proposition 65 warnings, see <https://www.p65warnings.ca.gov/new-proposition-65-warnings>.

SB 179 Gender Recognition Act – Third Nonbinary Gender: This bill creates a third nonbinary gender for California state identification documents. The law, parts of which will go into effect on September 1, 2018 and on January 1, 2019, provides for the following:

- (1) Ensures that intersex, transgender, and nonbinary people have state-issued identification documents (drivers’ licenses, birth certificates, identity cards, and gender change court orders) that provide full legal recognition of their accurate gender identity.
- (2) Requires the state to provide three equally recognized gender options on state-issued identification documents: female, male, and nonbinary. The State must also provide an efficient and fair process for individuals to amend their gender designation on state-issued identification documents and the identification documents must legally recognize a person’s gender identification.
- (3) Streamlines the legal process for one to change their gender marker. The law deletes the requirement that a person have undergone treatment to seek a court judgment to recognize their change in gender and would permit the individual to attest, under penalty of perjury, that their request is to conform their legal gender to their gender identity. The law also provides for modified procedures to obtain a court order for a change of name to conform to the person’s gender identity and a court judgment to recognize a change in the person’s gender. Lastly, a separate procedure is provided for those under 18 years of age to petition for a court judgment to recognize a change of gender to male, female, or nonbinary.

The new law also defines the terms “intersex”, “binary” and “transgender” and recognizes the frequent discrimination, harassment, and violence faced by these individuals in housing, education, employment, health care and law enforcement.

Assistive Animals: Many commercial landlords have noted an increase in the number of animals brought to properties, with tenants, employees and customers claiming that they are service animals or assistive animals. When these animals create noise, waste or allergy issues for others at the property, the landlord may receive complaints about the animals. If you need help in this area, contact Kimball, Tirey & St. John’s Fair Housing Practice Group at FairHousing@kts-law.com for assistance.

SB 1300 Discrimination and Harassment: This bill makes substantive changes to the existing FEHA (Fair Employment and Housing Act), which prohibits employers (and their employees) from engaging in sexual harassment or other harassment of an employee or other protected person. The FEHA previously stated that employers may also be responsible for acts of sexual harassment of employees or other protected persons by nonemployees, if the employer knew or should have known about the conduct and failed to take prompt corrective action. This bill expands the scope of employer liability to include acts of other types of harassment of

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employees or other protected persons by nonemployees, if the employer knew or should have known about the conduct and failed to take prompt corrective action. Additionally, SB 1300 authorizes (but does not require) employers to provide bystander intervention training to their employees in order to provide information and guidance on how to recognize and intervene when faced with potentially problematic behaviors. This optional training is distinct from the sexual harassment education and training required by California Government Code §12950.1 (see [SB 1343](#)).

[SB 1343 Sexual Harassment Prevention Training and Education:](#) By January 1, 2020, employers with five (5) or more employees must provide at least two (2) hours of training and education regarding sexual harassment to all supervisory employees, and at least one hour of training and education to all nonsupervisory employees within 6 months of hire and once every 2 (two) years thereafter. (Previous law required employers with 50 or more employees provide sexual harassment training to supervisory employees and did not mandate sexual harassment training for nonsupervisory personnel.)

Disability Access

[AB 3002 Disability Access Information:](#) In an effort to increase ADA (Americans with Disabilities Act) compliance, [AB 3002](#) mandates that, upon submission of an application for a business license or building permit, the county/city must provide the applicant an informational pamphlet with general information of the ADA requirements; an advisory that the applicant strongly consider consult with a certified access specialist (CAsp); information on how to locate CAsp inspectors, including an internet link; a notice of the federal and state programs available to assist small businesses with ADA compliance; and an internet link to the homepage and resource page of the California Commission on Disability Access.

Real Estate License Laws

[AB 1289 Property Disclosure Requirements:](#) This bill makes non-substantive changes to several provisions of the Civil Code to conform to the Real Estate Law definitions contained in the California Business and Professions Code. [AB 1289](#) also extends the time frame to terminate an offer subsequent to the providing of material disclosures or material amendment of any disclosure by electronic delivery to five (5) days and removes the previous requirements applicable to when the seller and selling agent do not deal “face-to-face”. Lastly, this bill expands existing law, which prohibited specific disclosures with regard to price when performing duties as a dual agent, to now prohibit disclosure of any “confidential information” obtained from the seller/buyer without express permission of the party from whom the information was obtained. An article with information about AB 1289 and AB 2884 is available at http://clientportal.kts-law.com/resource_library/breq/documents/RealEstateProfessionalsLawGetsaCleanup.pdf.

[AB 2138 Denial, Revocation or Suspension of Licensure for Criminal Convictions:](#) This bill limits the ability of the DRE (and other license boards) to deny an admittee or discipline a licensee based upon their criminal history.

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AB 2884 Real Estate “Clean-Up” Bill: In conjunction with AB 1289, this “clean-up” bill makes multiple changes and additions to the California Business and Professions Code. The law consolidates the definitions of various real estate terms to conform to the definitions. An article with information about AB 1289 and AB 2884 is available at http://clientportal.kts-law.com/resource_library/breg/documents/RealEstateProfessionalsLawGetsaCleanup.pdf.

SB 224 Sexual Harassment Liability: This bill augments existing sexual harassment liability in situations in which there is a business, service, or professional relationship between the plaintiff and defendant (such as between an individual and real estate agent) by extending liability to prospective, rather than only existing, professional relationships. Additionally, SB 224 removes the requirement that the plaintiff prove an inability to easily terminate the relationship as an element of a sexual harassment claim.

SB 695 Prohibited Inquiry of Citizenship Status: This law, as amended, prohibits the Department of Real Estate from requiring an individual to disclose his/her citizenship status or denying licensure to an otherwise eligible candidate based solely on his/her citizenship status. However, the law does allow the Department of Real estate to continue to require either an individual taxpayer identification number or social security number from an individual for a license.

Any questions regarding new legislation can be directed to Jamie Sternberg at (800)574-5587 or jamie.sternberg@kts-law.com.

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