CALIFORNIA PRACTICE GUIDE
LANDLORD-TENANT
2023 UPDATE

This year's Update completely replaces all pages in the two volumes. *DO NOT DISCARD THE EXISTING TAB DIVIDERS*. Insert the enclosed replacement contents under the appropriate tabs.

These Highlights summarize the most significant developments. The paragraph numbers are keyed to the 2023 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was September 1, 2023. Some of the new cases cited were not final as of that date, so be sure to check the subsequent histories before citing or relying on them.

LOCAL RENT CONTROL ORDINANCES: Our discussion of local rent control ordinances in this Practice Guide has been revised to focus on California's largest rent control jurisdictions—Los Angeles, Oakland, San Francisco and San Jose.

NEW LEGISLATIVE DEVELOPMENTS: As this Update was going to press, the Governor approved multiple bills that relate to this Practice Guide. The most significant bills are summarized beginning on page 2 of these Highlights and reference chapters impacted by this legislation. These bills go into effect on January 1, 2024, unless otherwise noted. *Please carefully review these bills and consider their impact on the related discussions in this Practice Guide.*

Thank You! Your comments and suggestions are greatly appreciated. *Please keep them coming!*

TERRY B. FRIEDMAN (Ret.)	DAVID A. GARCIA (Ret.)	VALENTINE S. HOY
Judge	Judge	Allen Matkins
Superior Court	Superior Court	San Diego, CA
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NEW LEGISLATIVE DEVELOPMENTS

Termination of tenancy: no-fault just causes: gross rental rates (2023 Cal. Legis. Serv. Ch. 290 (S.B. 567))

SB 567 amends, repeals and adds Civ.C. §§1946.2 and 1947.12 (Tenant Protection Act of 2019). It amends the existing versions of these statutes to "sunset" on 4/1/24. The added versions of these statutes are operative 4/1/24 and will "sunset" on 1/1/30. There are significant new provisions to the added statutes, noted below, and some existing subdivisions will be relettered upon the operative date.

As to Civ.C. §1946.2, with respect to the no-fault just cause related to an eviction based on an intent to occupy the residential real property, it now requires, among other things, that the owner, as defined, or the owner's spouse, domestic partner, children, grandchildren, parents, or grandparents occupy the residential real property for a minimum of 12 continuous months as the person's primary residence, as provided. With respect to the no-fault just cause related to withdrawal of the residential real property from the rental market, the statute requires the rental units at the rental property be withdrawn from the rental market, as prescribed. An owner who displaces a tenant to substantially remodel or demolish a unit must provide the tenant with written notice providing the tenant with specified information, including a description of the substantial remodel to be completed and the expected duration of the repairs, or the expected date by which the property will be demolished, and a copy of permits required to undertake the substantial remodel or demolition, as specified. This statute also prescribes new enforcement mechanisms, including making an owner who attempts to recover possession of a rental unit in material violation of those provisions liable to the tenant in a civil action for damages of up to three times the actual damages, in addition to punitive damages. The Attorney General and the city attorney or county counsel is authorized, within whose jurisdiction the rental unit is located, to bring actions for injunctive relief against the owner, as specified.

As to Civ.C. §1947.12, an owner who demands, accepts, receives, or retains any payment of rent in excess of the maximum rent increase allowed, as prescribed, is liable in a civil action to the tenant from whom those payments are demanded, accepted, received, or retained for certain relief, including, upon a showing that the owner has acted willfully or with oppression, fraud, or malice, damages up to three times the amount by which any payment demanded, accepted, received, or retained exceeds the maximum allowable rent. The Attorney General and the city attorney or county counsel is authorized, within whose jurisdiction the residential property is located, to enforce the statute's provisions and bring an action for injunctive relief, as specified.

Impacts detailed discussions in Chapters 5 and 7 and is referenced in Chapters 2A, 2B, 2D, 2F, 4, 8, 9, 11 and 12.

Jurisdiction; small claims and limited civil case (2023 Cal. Legis. Serv. Ch. 861 (S.B. 71))

Among other statutes, SB 71 amends CCP §§85, 86, 116.220 and 116.221 and raises the jurisdictional limits for small claims and limited civil actions.

Impacts discussions in Chapters 2C, 2E, 3, 4, 7, 8 and 9.

Tenancy: security deposits
(2023 Cal. Legis. Serv. Ch. 733 (A.B. 12))

AB 12 amends, repeals and adds Civ.C. §1950.5. This bill, beginning July 1, 2024, prohibits a landlord from demanding or receiving security for a rental agreement for residential property in an amount or value in excess of an amount equal to one month's rent, regardless of whether the residential property is unfurnished or furnished, in addition to any rent for the first month paid on or before initial occupancy. The bill, unless the prospective tenant is a service member, as defined, prohibits a landlord from demanding or receiving security for a rental agreement for residential property in an amount or value in excess of two months' rent, in addition to any rent for the first month, if the landlord (1) is a natural person or a limited liability corporation in which all members are natural persons and (2) owns no more than two residential rental properties that collectively include no more than four dwelling units offered for rent.

Impacts discussions in Chapters 2B and 2E.

Credit history of persons receiving government rent subsidies
(2023 Cal. Legis. Serv. Ch. 776 (S.B. 267))

This bill amends Gov.C. §12955 to prohibit the use of a person's credit history as part of the application process for a rental housing accommodation without offering the applicant the option of providing lawful, verifiable alternative evidence of the applicant's reasonable ability to pay the portion of the rent to be paid by the tenant, including, but not limited to, government benefit payments, pay records, and bank statements, in instances in which there is a government rent subsidy. If the applicant elects to provide lawful, verifiable alternative evidence of the applicant's reasonable ability to pay, the housing provider is required to provide the applicant reasonable time to respond with that alternative evidence and reasonably consider that alternative evidence in lieu of the person's credit history in determining whether to offer the rental accommodation to the applicant.

Impacts discussions in Chapters 2C and 12.

Committee on Judiciary: judiciary omnibus (2023 Cal. Legis. Serv. Ch. 478 (A.B. 1756))

AB 1756 adds and amends multiple statutes, including amending CCP §430.41 (meet and confer prior to filing a demurrer), amending, repealing and adding CCP §664.6 (entry of judgment pursuant to terms of stipulation) and amending CCP §1161.3 (termination of lease prohibited based upon acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of elder or dependent adult). Amended CCP §430.41 permits a party who is required to meet and confer to do so by video conference in addition to in person or by telephone. Amendments to CCP §664.6 clarify that an insurer may only sign a stipulated agreement under this provision if the insurer is defending and indemnifying a party to the action and the person signing has been authorized in writing to do so by the party. Beginning January 1, 2025, CCP §664.6 will permit a court to enter judgment pursuant to the terms of a settlement as specified and will permit a court, where it has received notice of a conditional settlement from the party seeking affirmative relief, to set an order to show cause as to why the action should not be dismissed. It will also authorize the

court to retain jurisdiction over the matter after entering judgment based on the settlement under specified circumstances and requires the Judicial Council to make corresponding changes to its forms. Amended CCP §1161.3 clarifies its provision that a defendant in an unlawful detainer action arising from a landlord's termination of a tenancy or failure to renew a tenancy based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member may raise an affirmative defense.

Impacts discussions in Chapters 4, 7 and 8.

Tenancy: local regulations: contact with law enforcement or criminal convictions (2023 Cal. Legis. Serv. Ch. 476 (A.B. 1418))

AB 1418 adds Gov.C. §53165.1, which prohibits a local government from, among other things, imposing a penalty against a resident, owner, tenant, landlord, or other person as a consequence of contact with a law enforcement agency, as specified. It similarly prohibits a local government from requiring or encouraging a landlord to evict or penalize a tenant because of the tenant's association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction or to perform a criminal background check of a tenant or a prospective tenant. The bill preempts inconsistent local ordinances, rules, policies, programs, or regulations and prescribes remedies for violations. The bill includes findings that the changes address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Impacts discussion in Chapter 7.

Mobilehome parks: water utility charges (2023 Cal. Legis. Serv. Ch. 807 (A.B. 604))

AB 604 amends Civ.C. §798.40. This bill provides that the limitations on charges and fees in connection with water utility service apply to all management that elects to separately bill water utility service to homeowners, including where the water purveyor or the mobilehome park is subject to the jurisdiction, control, or regulation of the Public Utilities Commission.

Impacts discussion in Chapter 11.

Unbundled parking (2023 Cal. Legis. Serv. Ch. 757 (A.B. 1317))

AB 1317 adds Civ.C. §1947.1, which requires the owner of "qualifying residential property," as defined, that provides parking with the property to unbundle parking from the price of rent, as specified. The bill defines "unbundled parking" as the practice of selling or leasing parking spaces separate from the lease of the residential use. "Qualifying residential property" is defined as any dwelling or unit that is intended for human habitation that (1) is issued a certificate of occupancy on or after January 1, 2025, (2) consists of 16 or more residential units, and (3) is located within the County of Alameda, Fresno, Los Angeles, Riverside, Sacramento, San Bernardino, San Joaquin, Santa Clara, Shasta or Ventura. The bill provides a tenant of a qualifying residential property with a right of first refusal to parking spaces built for their unit, as specified. The bill prohibits a tenant's failure to pay the parking fee of a separately leased parking agreement from forming the basis of any unlawful detainer action against the tenant.

The bill authorizes a property owner, if a tenant fails to pay by the 45th day following the date payment is owed for a separately leased parking space, to revoke that tenant's right to lease that parking spot. The bill exempts certain properties from these provisions, including residential properties with individual garages that are functionally a part of the property and housing developments where 100% of the units, exclusive of any manager's unit or units, are restricted as affordable housing for persons and families of low or moderate income.

Impacts discussion in Chapter 4.

Tenancy: personal micromobility devices (2023 Cal. Legis. Serv. Ch. 630 (S.B. 712))

SB 712 adds Civ.C. §1940.41, which prohibits a landlord from prohibiting a tenant from owning personal micromobility devices or from storing and recharging up to one personal micromobility device in their dwelling unit for each person occupying the unit, subject to certain conditions and exceptions. "Personal micromobility device" is defined as a device that is powered by the physical exertion of the rider or an electric motor and is designed to transport one individual or one adult accompanied by up to three minors.

Impacts discussion in Chapter 4.

Local ordinances: fines and penalties: cannabis (2023 Cal. Legis. Serv. Ch. 477 (A.B. 1684))

AB 1684 amends Gov.C. §53069.4 to expand the authorization for an ordinance providing for the immediate imposition of administrative fines or penalties to include all unlicensed commercial cannabis activity, including cultivation, manufacturing, processing, distribution, or retail sale of cannabis, and would authorize the ordinance to declare unlicensed commercial cannabis activity a public nuisance. The bill prohibits the ordinance from imposing an administrative fine or penalty exceeding $1,000 per violation or $10,000 per day. The bill authorizes the ordinance to impose the administrative fine or penalty on the property owner and each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and to hold them jointly and severally liable. The bill authorizes a local agency that adopts an ordinance authorized by this provision to refer a case involving unlicensed commercial cannabis activity to the Attorney General, as specified.

Impacts discussion in Chapter 5.

2023 UPDATE HIGHLIGHTS

CHAPTER 1

PRELIMINARY CONSIDERATIONS: ACCEPTING THE CASE; INITIAL COUNSELING AND NEGOTIATIONS

Litigation Privilege

[1:246.23] **Overlap with CCP §425.16 (anti-SLAPP motions):** See *Alfaro v. Waterhouse Mgmt. Corp.* (2022) 82 CA5th 26, 34-35, 297 CR3d 797, 803-804—trial court properly denied anti-SLAPP motion brought by property manager and owner of long-term ground lease of mobilehome park, even though their filing of malicious prosecution action and subsequent settlement negotiations were protected activities, where lessees' cause of action alleged unlawful retaliation under Civ.C. §1942.5(d), which did not arise from protected, litigation-related activity.

CHAPTER 2A

TENANCIES VS. OTHER RELATIONSHIPS

Tenancy at Will

[2:12.1] **Exception under Tenant Protection Act of 2019:** See *Borden v. Stiles* (2023) 92 CA5th 337, 347-350, 309 CR3d 483, 491-493—triable issue of fact whether tenant, who lived on property without rent provision while working for now deceased owner, was in "lawful occupation of residential real property" under Civ.C. §1946.2(i)(3), precluding summary judgment in favor of either party (*also discussed at ¶7:326 of these Highlights Summaries*).

CHAPTER 2B

RENTAL AGREEMENTS

Introductory Considerations

[2:76.6-76.9] **Civ.C. §1950.1 "reusable tenant screening report":** New Civ.C. §1950.1 provides for the use of a "reusable tenant screening report" relating to residential rental property. The report must contain specified information. Landlords may, but are not required to, accept these reports. If accepted, the landlord may not charge the applicant a fee to access the report or an application screening fee. [New Civ.C. §1950.1]

Standard Provisions

[2:123] **Identification of manager:** See *Group XIII Properties LP v. Stockman* (2022) 85 CA5th Supp. 1, 12-15, 300 CR3d 913, 923-925—change of management notice on which manager handwrote her name and telephone number did not comply with Civ.C. §1962(a)(1) and (c) where nothing explained her connection to property, there was no link between manager and street address for purpose of service of process and substantial compliance argument did not apply to these mandatory requirements (*also discussed at ¶7:100.1 of these Highlights Summaries*).

[2:404] **Renewal provisions; time and manner for exercise of option:** See *California Clovis, LLC v. Sierra Vista Realty LLC* (ED CA 2022) 634 F.Supp.3d 881, 888-891—sublessee's notice to exercise option to renew lease sent through regular mail without return receipt did *not* comply with sublease terms where sublease contained clear and explicit language that option must be exercised by giving notice at least 9 months before option period and must be made by personal delivery or by "United States registered or certified mail, return receipt requested with postage fully prepaid."

Enforcing Rental Agreement

[2:507] **Waiver of eviction ground by accepting rent with knowledge of tenant's breach:** Compare *California Clovis, LLC v. Sierra Vista Realty LLC* (ED CA 2022) 634 F.Supp.3d 881, 893-895—sublessors' acceptance of rent check after expiration of deadline to exercise option to extend lease did *not* waive their right to demand exact notice compliance where sublessors explicitly notified sublessee that it did not receive renewal exercise notice and that lease would expire on specific date.

CHAPTER 4

RIGHTS AND OBLIGATIONS DURING THE TENANCY

Assignments

[4:100.10] **Establishing effective assignment:** For an effective assignment, the tenant/lessee must manifest a "clear and positive" intention to transfer to a third party. A third party's occupancy and the landlord's acceptance of rent from that unauthorized occupant yields a permissive inference, *not* a mandatory presumption, of an assignment. [*Sleep E-Z, LLC v. Lopez* (2023) 88 CA5th Supp. 18, 23-26, 305 CR3d 433, 437-439—lessee did not manifest "clear and positive" intent to assign her leasehold to common law husband where she traveled to Mexico to care for ailing brother, did not move her belongings, had no other place to live and was stranded during pandemic due to immigration status]

Tenant Victim Protected from Termination or Nonrenewal Based on Domestic Violence, Sexual Assault, Stalking, or Elder/Dependent Adult Abuse

[4:245-245.1] **Includes tenant, tenant's immediate family member or tenant's household member:** See amended CCP §1161.3(a), (b); *and discussion at ¶7:222.10-222.11a of these Highlights Summaries*.

[4:246] **Exception—circumstances permitting landlord to terminate or decline to renew:** See amended CCP §1161.3(b)(2); *and discussion at ¶7:97.5 of these Highlights Summaries*.

[4:246a] **Landlord's violation constitutes affirmative defense to UD:** See new CCP §§1161.3(d), 1174.27; *and discussion at ¶7:222.10-222.11a and 8:381.8-381.9f of these Highlights Summaries*.

CHAPTER 5

RESIDENTIAL RENT CONTROL AND EVICTION CONTROL

State Law Preemption

[5:10.4] **No rent controls for new construction:** See *NCR Properties, LLC v. City of Berkeley* (2023) 89 CA5th 39, 50-56, 305 CR3d 616, 624-629—where landlords converted former single-family homes, in which rooms were rented, into triplexes, some units were *not* exempted under Civ.C. §1954.52(a)(1); although city issued new certificate of occupancy after landlords' renovations, units at issue had merely converted from one form of residential housing to another.

[5:17.2; 5:205; 5:394.1] **Mobilehome parks—"new construction" and "new mobilehome park construction":** See amended Civ.C. §§798.7 and 798.45; *and discussion at ¶11:99.1 of these Highlights Summaries*.

Eviction Prerequisites

[5:285.1] **Relocation assistance:** See *2710 Sutter Ventures, LLC v. Millis* (2022) 82 CA5th 842, 861-865, 298 CR3d 842, 858-862—landlords failed to fully comply with San Francisco ordinance requiring notice to tenants of right to receive relocation assistance payments where notice contained incomplete explanation and landlords provided inconsistent information with no explanation re discrepancy (*also discussed at ¶5:354, 5:359 and 7:87 of these Highlights Summaries*).

Demolition Controls

[5:354] **Permissible locally-provided tenant protections:** See *2710 Sutter Ventures, LLC v. Millis*, supra, 82 CA5th at 855-856, 298 CR3d at 853-854—Gov.C. §7060.1(c) did not preempt local ordinance requiring landlords to provide tenants with notice of right to receive relocation assistance benefits, which validly served to mitigate adverse impact on displaced persons (*also discussed at ¶5:285.1, 5:359 and 7:87 of these Highlights Summaries*).

[5:358] **Tenant relocation assistance:** See *2710 Sutter Ventures, LLC v. Millis*, supra, 82 CA5th at 855-856, 298 CR3d at 853-854 (*discussed at ¶5:354 of these Highlights Summaries*; *see also discussion at ¶5:285.1, 5:359 and 7:87 of these Highlights Summaries*); see also *640 Octavia, LLC v. Pieper* (2023) 93 CA5th 1181, 1197, 311 CR3d 322, 334-335—San Francisco ordinance requiring first half of relocation payments paid at time of service of notice of termination and other half when tenant vacated unit allowed for concurrent service of first payment and notice of termination (tenants failed to raise triable issue of material fact re landlord's compliance with Act and ordinance) (*also discussed at ¶7:342.1 of these Highlights Summaries*).

[5:359] **Noncompliance as unlawful detainer defense:** See *2710 Sutter Ventures, LLC v. Millis*, supra, 82 CA5th at 857-860, 298 CR3d at 854-857—landlord's alleged failure to comply with local ordinance requiring notice to tenants of right to receive relocation assistance benefits was defense to Ellis Act eviction (defense not limited to landlord's noncompliance with Ellis Act and local ordinances implementing Ellis Act provisions) (*also discussed at ¶5:285.1, 5:354 and 7:87 of these Highlights Summaries*).

Remedies for "Bad Faith" Removals—Removed Units Subsequently Offered for Rent

- [5:360.1] **Rental market "reentry":** "Reentry" into the rental market was found within five years of withdrawal, requiring landlord to rerent to a displaced tenant, where landlord allowed an individual to stay at the apartment building during construction to provide services as a manager and security presence. This individual stayed in different units at different times, including the displaced tenant's former unit, he performed managerial tasks for landlord in exchange for use of the property, rather than monetary compensation, and two leases stated that the individual was authorized to manage the building and listed his address as the displaced tenant's former unit. [*Cameron v. Las Orchidias Properties, LLC* (2022) 82 CA5th 481, 504-506, 298 CR3d 430, 447-449 (*also discussed at ¶5:364, 5:364.3 and 9:429.1 of these Highlights Summaries*)]

- [5:362] **Rent control reattaches—new construction subsequently offered for rent:** See *Hirschfield v. Cohen* (2022) 82 CA5th 648, 667-669, 298 CR3d 561, 574-576—where property owner demolished multiple rental units, erected single-family dwellings in their place and rented one of those dwellings within 5 years of withdrawal from market, Gov.C. §7060.2(d) recontrol provision applied and was construed as exception to Civ.C. §1942.52(a)(3) exemption for single-family dwellings (finding Gov.C. §7060.2(d) applies to replacement of rent-controlled units with single-family dwellings).

Affirmative damages action

- [5:364] **Suit by displaced tenants where unit offered for rent within two years of withdrawal:** See *Cameron v. Las Orchidias Properties, LLC* (2022) 82 CA5th 481, 517-525, 298 CR3d 430, 457-464—where landlord violated local ordinance and financial elder abuse statute (Welf. & Inst.C. §15610.30(a)(1)) by refusing to rerent to displaced elderly tenant (who had lived there for over 50 years) after landlords reentered rental market, tenant was properly awarded nearly $70,000 in economic damages and $250,000 in punitive damages where landlords acted with malice, fraud, gross negligence or oppressiveness (also affirming attorney fees and costs award) (*also discussed at ¶5:360.1, 5:364.3 and 9:429.1 of these Highlights Summaries*).

- [5:364.3] **Unit offered for rent within 10 years of withdrawal:** See *Cameron v. Las Orchidias Properties, LLC* (2022) 82 CA5th 481, 514-516, 298 CR3d 430, 456-457—substantial evidence supported trial court's finding that landlord took displaced elderly tenant's property (where she had resided for over 50 years) "for a wrongful use or with the intent to defraud" in violation of financial elder abuse statute (Welf. & Inst.C. §15610.30(a)(1)) when refusing to rerent apartment to tenant upon return to rental market; Ellis Act did not permit landlord to avoid obligation of rerenting by paying her equivalent of 6 months' rent (*also discussed at ¶5:360.1, 5:364 and 9:429.1 of these Highlights Summaries*).

Mobilehome Park Rent Control

[5:394.1] **"New construction" and "new mobilehome park**

construction": See amended Civ.C. §§798.7 and 798.45; *and discussion at ¶11:99.1 of these Highlights Summaries*.

CHAPTER 6

LANDLORD-TENANT PREMISES LIABILITY

Landlord to Independent Contractor's Employees

[6:9.10a] **Landlord liability where contractor hired by tenant:** Where a commercial tenant hired a contractor to remove an exterior sign pursuant to the terms of the lease and the contractor was injured when he fell through an opening built into the cupola's floor on the shopping center's roof, the landlord was not shielded from direct liability. The *Privette* doctrine did not apply, as landlord did not hire the contractor or tenant and thus did not delegate responsibility for workplace safety, either directly or through the "chain of delegation." The lease did not delegate to tenant the general duty of care re any dangerous conditions on the premises, or the duty to ensure workplace safety, nor did the landlord directly or indirectly pay the tenant to install or remove the sign. [*Ramirez v. PK I Plaza 580 SC LP* (2022) 85 CA5th 252, 265-270, 301 CR3d 193, 203-208 (holding based on *Privette* doctrine only and court recognized "strong possibility" that landlord would prevail under general principles of premises liability)

[6:9.11] **Exercise of retained control affirmatively contributed to employee's injury:** See *Degala v. John Stewart Co.* (2023) 88 CA5th 158, 167-171, 304 CR3d 576, 584-586—where project owner and general contractor voluntarily undertook to provide security at construction site in high crime area where subcontractor's foreman was attacked and seriously injured by unknown assailants, factual issues existed whether owner and general contractor retained control over security and subcontractor's work, whether they actually exercised that control, whether alleged negligent exercise of retained control contributed to harm and whether security measures were reasonable and to what extent alleged unreasonableness contributed to injuries; *Brown v. Beach House Design & Develop.* (2022) 85 CA5th 516, 529-534, 301 CR3d 260, 269-273—where carpenter subcontractor's employee was severely injured by alleged defective scaffolding, there were triable issues of material fact whether general contractor undertook to supply scaffolding for carpenter subcontractor's use, whether general contractor fully delegated to scaffolding subcontractor to provide and maintain scaffolding and, if not, whether general contractor exercised its retained control in manner that affirmatively contributed to carpenter subcontractor's employee's injury.

[6:9.12] **Landlord liability predicated on concealed, preexisting hazardous condition:** See *McCullar v. SMC Contracting, Inc.* (2022) 83 CA5th 1005, 1016-1023, 298 CR3d 785, 793-798—general contractor/hirer not liable for injuries to subcontractor's employee who slipped and fell on icy floor; although general contractor's conduct caused ice to form, it was subcontractor's responsibility to protect its employee from known workplace hazard; *Blaylock v. DMP 250 Newport Center, LLC* (2023) 92 CA5th 863, 872-874, 310 CR3d 1, 7-9—landowner not liable for injuries to independent contractor's employee who fell though plywood access panel on floor of crawl space

where hazardous nature was not concealed from independent contractor; inspection would have revealed panel was different from other portions of floor and employees were trained to check flooring before putting their weight on it.

Landlord and Tenant Negligence Liability to Third Persons

[6:22] **Common area liability:** "[A] residential tenant having no ownership or control over common areas leading to the tenant's dwelling place generally has no duty of care to protect invitees against the dangerous condition of those areas." [*Moses v. Roger-McKeever* (2023) 91 CA5th 172, 186, 308 CR3d 149, 161]

[6:25.1c] **Conditions on adjacent property:** Condominium tenant not liable for guest's injuries occurring on a walkway and steps outside tenant's condominium where tenant did not have control over the walkway and was not responsible for repairing or maintaining the walkway. That tenant invited guests to an event at the condominium and the guests used the walkway to access the condominium did not mean tenant had "control." Nor did the mere possibility of tenant influencing or affecting the condition of the property owned by others constitute "control." [*Moses v. Roger-McKeever*, supra, 91 CA5th at 182-183, 308 CR3d at 157-158]

[6:29e] **"Primary assumption of risk" negating duty:** Primary assumption of risk doctrine applies to golf and "being struck by a carelessly hit ball is an inherent risk of the sport." [*Shin v. Ahn* (2007) 42 C4th 482, 486, 497, 64 CR3d 803, 805, 813-814] Further, the inherent risk of playing golf on an outdoor course also includes risks associated with the topographical features of that course. Thus, stepping or tripping on a small tree root in the grassy area used by golfers to access a tee box falls within that primary assumption of the risk. [*Wellsfry v. Ocean Colony Partners, LLC* (2023) 90 CA5th 1075, 1086-1088, 307 CR3d 689, 697-699]

Limited Liability of Government Entities for "Dangerous Conditions"

[6:93.5] **Substantial risk requirement:** See *Stack v. City of Lemoore* (2023) 91 CA5th 102, 109, 111-123, 308 CR3d 45, 51, 52-63—minimum height differential between sidewalk slabs *not* trivial as a matter of law (modifying prevailing 2-step framework for determining whether sidewalk defect is trivial into "holistic, multi-factor analysis" that considered nature and quality of condition, obstructions, lighting and weather conditions, prior accidents and plaintiff's familiarity with area).

[6:94.5f] **Physical condition increasing risk of third party harmful conduct compared:** City was not liable for a dangerous condition of public property where plaintiff was injured when she tripped and fell on a dockless electric motorized rental scooter that an unknown third party left partially sticking out behind a trash can on a sidewalk. The dangerous condition was not a physical defect of the property, but the public's alleged lack of knowledge about where to park the rental scooters, and the lack of designated parking zones did not increase or contribute to the risk of harm posed by the lack of knowledge. [*Hacala v. Bird Rides, Inc.* (2023) 90 CA5th 292, 308-309, 306 CR3d 900, 912-914 (*also discussed at ¶6:94.5*)]

"Recreational Use" Immunity Exception for Express Invitation to Enter

[6:105.3-105.3a] **Express invitation may be extended by landowner or landowner's authorized agent:** By its terms, Civ.C. §846 does not bar liability for injuries suffered by persons who were "expressly invited" by defendant onto the premises for recreational purposes (rather than "merely permitted" to enter). The express invitation to enter the property may come from the landowner, or the landowner's authorized agent. Agency principles apply to the interpretation of §846, i.e., "an invitation communicated by the landowner's properly authorized agent can activate the section 846(d)(3) exception." [*Hoffmann v. Young* (2022) 13 C5th 1257, 1268-1270, 297 CR3d 607, 614-616]

A plaintiff seeking to rely on an exception to the general rule of Civ.C. §846(a) immunity bears the burden of establishing the §846(d)(3) exception applies. [*Hoffmann v. Young*, supra, 13 C5th at 1270-1271, 297 CR3d at 616]

[6:105.3b] **Landowner's child living on property not necessarily authorized to expressly invite others:** A landowner does not necessarily authorize a child to expressly invite others onto the property for purposes of recreational-use immunity merely by allowing the child to live on the property and failing to prohibit the child from extending the invitation. Thus, the exception to liability does not apply where a live-at-home child acts without the landowner's knowledge or express approval. [*Hoffmann v. Young*, supra, 13 C5th at 1272-1277, 297 CR3d at 618-622—record did not support finding that landowners' 18-year-old son was authorized to invite plaintiff (landowners' son's friend) onto property where son lived and where plaintiff suffered injury while riding motorcycle on motocross track on property (remanded to consider denial of plaintiff's new trial motion on negligence and premises liability grounds)]

CHAPTER 7

TERMINATING THE TENANCY AND RELATED REMEDIES

Ejectment

[7:87] **Defense:** See *2710 Sutter Ventures, LLC v. Millis* (2022) 82 CA5th 842, 866, 298 CR3d 842, 862—landlords properly denied leave to amend UD action to allege ejectment where tenants were not in wrongful possession due to landlords' failure to satisfy local ordinance notice requirement upon Ellis Act eviction (*also discussed at ¶5:285.1, 5:354 and 5:359 of these Highlights Summaries*).

Bases for Terminating Tenancy

[7:97.5] **Tenant victim of domestic violence, sexual assault, stalking, human trafficking or elder/dependent adult abuse:** The landlord may terminate or fail to renew a tenancy based on an act of "abuse or violence" against a tenant, a tenant's immediate family member, or a tenant's household member, even after receiving documentation of abuse or violence if *either;* (1) the perpetrator of abuse or violence is a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member; *or* (2) the perpetrator's words or actions have threatened the physical safety

of other tenants, guests, invitees, or licensees *and*, after expiration of a three-day notice requiring the tenant not to voluntarily permit or consent to the perpetrator's presence on the premises, the tenant continues to do so. [See Amended CCP §1161.3(b)(2)]

Grounds for At-Fault Just Cause Termination Under Tenant Protection Act of 2019

Default in payment of rent

- [7:100] **Force majeure events:** See *SVAP III Poway Crossings, LLC v. Fitness Int'l, LLC* (2023) 87 CA5th 882, 892-893, 303 CR3d 863, 871-872; *West Pueblo Partners, LLC v. Stone Brewing Co., LLC* (2023) 90 CA5th 1179, 1187-1188, 307 CR3d 626, 632-634; *and discussion at ¶8:364.1 of these Highlights Summaries*.

- [7:100.1] **Compliance with Civ.C. §1962 notice requirements:** See *Group XIII Properties LP v. Stockman* (2022) 85 CA5th Supp. 1, 14-16, 300 CR3d 913, 924-926—successor landlord's failure to strictly comply with Civ.C. §1962's notice requirements precluded service of 3-day notice of eviction for nonpayment of rent (substantial compliance doctrine inapplicable) (*also discussed at ¶2:123 of these Highlights Summaries*).

Sublease in breach of rental agreement

- [7:138.1] **Landlord unreasonably withheld approval of tenant's husband as additional tenant:** A landlord unreasonably withheld approval of a tenant's husband as an additional tenant in violation of a local retaliatory eviction ordinance and the landlord's failure to provide tenants with a lease extension offer when effecting a rent increase notice in violation of the local ordinance provided tenants with a complete defense to a UD action. [*Wong v. Makarian* (2022) 82 CA5th Supp. 24, 34-38, 298 CR3d 364, 371-374 (acknowledging that occupancy limit violation would authorize eviction under CCP §1161(3) but that local ordinance exempted certain occupancy-limit evictions)]

15-Day Notice to Terminate Pursuant to COVID-19 Tenant Relief Act

[7:195.32; 7:205] **Local eviction moratoriums:** See *Arche v. Scallon* (2022) 82 CA5th Supp. 12, 19-22, 298 CR3d 375, 380-382—City's COVID-19 eviction moratorium not preempted by COVID-19 Tenant Relief Act (CCP §1179.05), which permits local no fault, just cause ordinances that are more protective than Act, despite that it did not include "binding findings" that it was "more protective," where county board of supervisors stated their intent to enact tenant protections not preempted by state law and later made express finding that moratorium had always been more protective of tenants.

Terminations Involving Crime Victims

Termination by tenant where tenant, household member or immediate family member is crime victim

- [7:222.5c] **Civil penalties for violation:** A landlord, or landlord's agent, who violates Civ.C. §1946.7 is liable to the tenant for actual damages sustained by the tenant *and* statutory damages of not less than $100 and not more than $5,000. However, there is no

statutory liability where the tenant provided documentation of the crime or act to the landlord or agent pursuant to Civ.C. §1946.7(b)(4) (¶*7:222.1*), reasonably verifying the crime or act listed in §1946.7(a) (¶*7:222*). [New Civ.C. §1946.7(k)]

Landlord prohibited from terminating or failing to renew victim's tenancy based on domestic violence, sexual assault, stalking, human trafficking or elder/dependent adult abuse

- [7:222.10-222.11a] **Applies to abuse or violence against tenant, tenant's immediate family member or tenant's household member except in certain circumstances; affirmative defense to UD:** The prohibition against terminating or failing to renew a tenancy now applies to "abuse or violence" against a tenant, a tenant's immediate family member, or a tenant's household member, provided the landlord receives certain specified documentation of the abuse or violence. [New CCP §1161.3(a)(1), (b)(1)] However, the landlord may terminate or fail to renew if *either* (1) the perpetrator is a tenant in residence in the same dwelling unit as the tenant, the tenant's immediate family member, or tenant's household member; *or* (2) the perpetrator's words or actions threatened the physical safety of other tenants, guests, invitees, or licensees *and*, after expiration of a three-day notice requiring tenant not to voluntarily permit or consent to the perpetrator's presence, the tenant continues to do so. [Amended CCP §1161.3(b)(2)] The landlord's violation of CCP §1161.3(b) is an affirmative defense to a UD under certain specified circumstances. [New CCP §1161.3(d)]

Other Bases for Termination

[7:326] **Upon landlord's death:** See *Borden v. Stiles* (2023) 92 CA5th 337, 349-350, 309 CR3d 483, 492-493—triable issue of fact whether tenancy was based on hiring and thus terminated under Civ.C. §1934 at landlord's death, or whether subsequent acts created lawful tenancy within meaning of Tenant Protection Act of 2019 (Civ.C. §1946.2, requiring just cause for termination), thus precluding summary judgment for tenant or landlord's estate (*also discussed at* ¶*2:12.1 of these Highlights Summaries*).

Statutory "Retaliatory Eviction" Protection for Residential Tenants

[7:342.1] **Bona fide Ellis Act eviction overcomes retaliatory eviction defense compared:** See *640 Octavia, LLC v. Pieper* (2023) 93 CA5th 1181, 1190-1194, 311 CR3d 322, 329-332—trial court properly concluded that residential landlord had bona fide intent to remove property from rental market where complaint in landlord's prior federal action to recover lost rent against tenant, landlord's manager's testimony in prior federal action 5 years earlier, and police reports, private investigation reports, surveillance video screenshots and notices to cure of quit, reflecting parties' ongoing conflict, were not relevant to landlord's intent to exit rental market and therefore inadmissible in UD summary judgment (*also discussed at* ¶*5:358 of these Highlights Summaries*).

CHAPTER 8

UNLAWFUL DETAINER LITIGATION: PRETRIAL MATTERS

Basic Eviction Steps

[8:13.1] **Strict adherence to statutory requirements:** See *Group XIII Properties LP v. Stockman* (2022) 85 CA5th Supp. 1, 15-16, 300 CR3d 913, 925-926; *and discussion at ¶2:123 and 7:100.1 of these Highlights Summaries*.

Affirmative Defenses

[8:364.1] **Force majeure:** See *West Pueblo Partners, LLC v. Stone Brewing Co., LLC* (2023) 90 CA5th 1179, 1187-1189, 307 CR3d 626, 632-634—although COVID-19 pandemic and related closure orders were force majeure events, it did not delay, interrupt or prevent commercial tenant from paying rent, thus nonpayment was not excused under lease; compare *SVAP II Poway Crossings, LLC v. Fitness Int'l, LLC* (2023) 87 CA5th 882, 892-894, 303 CR3d 863, 871-872—"restrictive" COVID-19-related closure orders during which fitness center tenant was intermittently unable to operate did *not* constitute force majeure under commercial lease where orders did not delay, hinder or prevent tenant from performing under lease and lease did not require landlord to guarantee unlimited right to use facility; nor did defense of impossibility excuse tenant's obligation to pay rent and closure orders did not make it illegal for tenant to pay rent.

[8:365] **Special defenses in rent control jurisdictions:** See *Roxbury Lane LP v. Harris* (2023) 88 CA5th Supp. 9, 14, 305 CR3d 427, 430-431—landlord's failure to satisfy local eviction requirements (*see ¶5:288*); *Wong v. Markarian* (2022) 82 CA5th Supp. 24, 34-38, 298 CR3d 364, 371-374 (*discussed at ¶7:138.1 of these Highlights Summaries*); compare *Frazier v. Sup.Ct. (Norris)* (2022) 86 CA5th Supp. 1, __, 302 CR3d 646, 653-654—landlord's failure to comply with notice of termination to county department of consumer and business affairs was *not* affirmative defense where ordinance did not specify that failure to submit notice served as complete defense to UD action.

[8:381.8-381.9f] **Termination or nonrenewal of victim's tenancy based on act of "abuse or violence":** A landlord's violation of CCP §1161.3(b) is an affirmative defense to a UD based on an act of "abuse or violence" against a tenant, a tenant's immediate family member, or a tenant's household member, as provided, and depending upon whether the perpetrator of the abuse is a tenant in residence of the same dwelling. Where the perpetrator is a tenant in the same dwelling, the court must determine whether there is documentation evidencing abuse or violence and if the defendant raising the affirmative defense is guilty of UD on other grounds. The court must issue a partial eviction order and change the locks under certain circumstances and has the discretion to permanently bar the perpetrator or make certain orders as an express condition of tenancy to the remaining occupants. [New CCP §1174.27]

[8:382] **Noncompliance with Ellis Act:** See *2710 Sutter Ventures, LLC v. Millis* (2022) 82 CA5th 842, 857-860, 298 CR3d 842, 854-857; *and discussion at ¶5:285.1 and 5:359 of these Highlights Summaries* (*also discussed at ¶5:354 and 7:87 of these Highlights Summaries*).

Judgment by Default

[8:502.5] **Ethical obligation to warn opposing counsel:** See *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.* (2022) 85 CA5th 198, 213-219, 300 CR3d 209, 220-225—trial court abused its discretion in denying commercial tenant's motion to set aside default and default judgment where commercial landlord's counsel breached its ethical and statutory obligation to advise tenant's counsel of intent to seek entry of default and default judgment; tenant's employee was served at inconvenient time, landlord's counsel did not effect service on tenant's registered agent or at corporate headquarters, landlord's counsel did not communicate with tenant's counsel, complaint was mailed to store address but not to tenant's counsel, registered agent or headquarters, there was no prejudice to landlord from setting aside default judgment, and tenant acted quickly once it learned of default judgment.

CHAPTER 9

UNLAWFUL DETAINER LITIGATION: TRIAL, JUDGMENT AND POSTJUDGMENT MATTERS

Motion for New Trial

[9:429.1] **Time-frame; grounds:** The trial court did not abuse its discretion in denying a landlord's motion for a new trial that asserted surprise at the tenant's theories of liability (that landlord evicted the tenant in bad faith and violated the Ellis Act and local ordinance by refusing to rerent to the tenant) where the landlord did not object to the tenant's opening statement re the theories and the landlord argued the reverse in the summation brief, claiming the tenant's complaint was based only on a refusal to rerent. [*Cameron v. Las Orchidias Properties, LLC* (2022) 82 CA5th 481, 501-504, 82 CR3d 430, 445-447 (*also discussed at ¶5:360.1, 5:364 and 364.3 of these Highlights Summaries*)]

Statutory Postjudgment Claim Procedure

[9:543] **Scope of hearing:** In a UD following foreclosure, the trial court erred in denying a claimant's postjudgment claim to right of possession on these undisputed facts: (1) the claimant occupied property when purchased at foreclosure and the UD was filed; (2) before foreclosure, a 2-year rental agreement was signed by the claimant, her real estate agent and the former owner; (3) the claimant was paying rent at the time of foreclosure; (4) the claimant's driver's license showed residence as the subject property; and (5) the claimant's utility bill showed address as residence. Additionally, a postjudgment claimant is entitled to be inserted into a lawsuit where the claimant proves by a preponderance of evidence that the claimant was an occupant when the UD was filed and had colorable right to possession in that the occupancy was not as an invitee, licensee, guest or trespasser. [*Crescent Capital Holdings, LLC v. Motiv8 Investments, LLC* (2022) 75 CA5th Supp. 1, 4, 11-12, 289 CR3d 919, 921, 927]

CHAPTER 10

BANKRUPTCY AFFECTING THE TENANCY

"Curing" Defaults before Assumption and/or Assignment

[10:308] **Cure not limited to "active" or "material" defaults:** A "default" for purposes of triggering the assumption requirements under 11 USC §365(b)(1) is not limited to "active" defaults existing at the time of assumption. I.e., while a default may have been cured, the other two assumption requirements (compensation for pecuniary loss and adequate assurance of future performance) may still apply under the circumstances. [*In re Hawkeye Entertainment, LLC* (9th Cir. 2022) 49 F4th 1232, 1236-1237]

Moreover, a default need not be "material" to trigger the assumption requirements. [*In re Hawkeye Entertainment, LLC*, supra, 49 F4th at 1237-1239 (bankruptcy court erred in narrowly interpreting "default" to refer only to defaults sufficiently material to warrant forfeiture of entire lease under California law); *In re Old Market Group Holdings Corp*. (BC SD NY 2022) 647 BR 104, 113-114 (landlord not required to show pecuniary harm as prerequisite to demand or obtain cure)]

[10:309] **Notice of default not required:** The debtor/trustee's cure requirement is not dependent upon whether a contractual notice of default was previously served. [*In re Old Market Group Holdings Corp*., supra, 647 BR at 114-116]

CHAPTER 11

MOBILEHOME PARK TENANCIES

Mobilehome Park "Management"

[11:21.1] **Appropriate training required:** *By May 1, 2025,* the Department of Housing and Community Development must adopt regulations to require at least one person per park acting as onsite manager or assistant manager to receive "appropriate training" on certain enumerated subjects, including: the Mobilehome Parks Act; the Special Occupancy Parks Act; the Mobilehome Residency Law; the Recreational Vehicle Park Occupancy Law; rights and responsibilities of homeowners and management; management's response to homeowner complaints; emergencies and emergency preparedness and procedures; communications with homeowners; Mobilehome Park and Installations regulations; mobilehome title and registration; applicable Vehicle Code provisions; and any changes to relevant statutory law. [New Health & Saf.C. §18876.1; see new Health & Saf.C. §18876 (definitions)]

Limited Exemptions for Certain MRL Tenancies

[11:99.1] **"New construction" and "new mobilehome park construction" exemptions:** "New construction" is exempt from locally imposed ceilings for a period of 15 years from the date upon which the ceiling is initially held out for rent. A "new construction" is defined as any newly-constructed spaces initially held out for rent after January 1, 1990; it is considered "initially held out for rent" on the date of issuance of a permit or certificate of occupancy by the enforcement

agency in accordance with Health & Saf.C. §§18551 and 18613. [Amended Civ.C. §§798.7(a), amended 798.45(a)] "New mobilehome park construction" is also exempt from locally imposed ceilings for a period of 15 years from the date upon which 50% of the spaces in the new mobilehome park are initially held out for rent, measured by the date of issuance of a permit of certificate of occupancy for that space by the enforcement agency in accordance with Health & Saf.C. §§18551 and 18613. A "new mobilehome construction" is defined as all spaces contained in a newly-constructed mobilehome park for which a permit to operate was issued on or after January 1, 2023. [New Civ.C. §§798.7(b), new 798.45(b)]

Homeowner Meetings With Management

[11:119] **Management's duty to "meet and consult" on certain matters:** The matters on which park management must "meet and consult" with the homeowners is expanded to include, among others, resident concerns regarding utility billing or utility charges and/or common facility hours and availability. [Amended Civ.C. §798.53(a)(1)] The meeting may be conducted either in person or virtually by telephone, audio-video or other audio-only conferencing. [New Civ.C. §798.53(a)(2)]

[11:120.1] **Homeowners represented at meeting; interpreter:** If an individual homeowner or group of homeowners consent(s) to be represented at a meeting, management must meet with either the designated representative or with both the homeowners and the designated representative, as chosen by the homeowners in a written request. [New Civ.C. §798.53(c)] Management must permit language interpreters at any meeting and interpreters may or may not be the homeowner's designated representative. [New Civ.C. §798.53(d)]