

MEMORANDUM 2024-8

Landlord and Tenant Terminology: Discussion of Issues and Proposed Timeline

This memorandum¹ continues the Commission’s study of the establishment of consistent and appropriate terminology to describe parties to a residential real property rental agreement across all California codes, as directed by the Legislature.²

The memorandum presents the results of the staff’s research to identify and assess the terms currently used to describe those parties. In addition, based on that research, the memorandum offers a tentative staff recommendation for next steps in the study.

LEGISLATIVE ASSIGNMENT

AB 2503 directs the Commission to deliver to the Legislature, on or before December 31, 2024, a report evaluating whether it would be “prudent and practicable” for the Legislature to adopt a comprehensive statutory scheme that would simultaneously do both of the following:

- (1) Establish the use of consistent terminology across all California codes to describe parties to an agreement for the rental of residential real property.³
- (2) Preserve existing legal distinctions between the terms currently used to describe those parties.⁴

If the Commission concludes that adopting a statutory scheme meeting those criteria would be “prudent and practicable,” the Commission is then directed to recommend the needed comprehensive statutory reforms,⁵ as well as identify regulations that would require conforming amendment.⁶

A second aspect of the study directs the Commission to consider whether the terms

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See 2022 Cal. Stat ch. 462 (AB 2503).

3. *Id.* § (1)(c)(1).

4. See *id.* § (1)(c)(1)(A).

5. See *id.* § (1)(d)(1).

6. See *id.* § (1)(d)(2).

“landlord” and “tenant,” including related terms, remain “useful and appropriate in code provisions that involve the rental of residential real property,” and if not, to suggest reasonably concise replacement terms.⁷

The study also directs the Commission to consider other related subjects, including terminology used in the laws of other states, and the effect the comprehensive statutory scheme described above would have on existing case law and contracts.⁸

SUMMARY OF RESEARCH TO DATE

The staff has completed a substantial review of the terminology used in the California codes to refer to parties involved in a rental of residential real property. The staff has identified five distinct terms that are primarily, but not exclusively, used to refer to these parties. A party with some type of entitlement to either use or occupy residential real property, despite lack of ownership, is typically, but not always, referred to as either a “tenant” or a “lessee.”⁹ A party who either owns or has been charged with managing a residential real property rental is typically referred to as either a “landlord,” a “lessor,” or an “owner.”

Of these five primary terms, “tenant” is the term that appears in provisions that govern residential rentals far more than any of the others. Specifically, looking at the uses of the terms in codes involving residential real property rentals, the staff estimates that:

- “Tenant” is used in over 700 code sections, across 20 different codes.
- “Lessee” is used in approximately 100 code sections.
- “Owner” is used in approximately 300 code sections.
- “Landlord” is used in approximately 220 sections.
- “Lessor” is used in approximately 50 sections.

Identifying Intended Legal Meaning of Currently Used Terms

To standardize terminology used to identify parties involved in the rental of residential real property, while at the same time preserving existing legal distinctions relating to those terms, the staff must first identify the intended meaning of the terms as currently used in the code sections.

As described below, the staff has encountered significant challenges in trying to make

7. See *id.* § (1)(c)(1)(B), (C).

8. See *id.* § (1)(c)(2)-(4).

9. The staff found several other terms that are also used to identify this person, including “renter” (see, e.g., Health & Safety Code § 78705), “boarder” (see, e.g., Civ. Code § 1940, Pen. Code. § 507), “lodger” (see, e.g., Civ. Code § 1861.5), “resident” (see, e.g., Civ. Code § 1946.8, Health & Safety Code § 17980.6), and “roomer” (see, e.g., Gov’t Code § 12927).

those necessary determinations. In short, the staff’s research indicates that these terms are often used without an applicable statutory definition, the applicable statutory definitions that do exist differ in their particulars, and the terms are often used within particular code sections in ways that further obscure their intended meaning.

Sporadic and Inconsistent Statutory Definitions

As indicated above, the existing code sections refer to parties involved in the rental of residential real property using multiple different terms. However, in most instances in which those terms appear in existing code sections, they are not defined.¹⁰

Moreover, the definitions of terms that do exist are either inconsistent or confusing. For instance, while various existing code sections define the term “tenant,” they do so in different ways, and in any event apply only to a small number of existing code sections (as indicated in accompanying footnotes below):

- “Tenant” means the owner or operator of a recreational vehicle who has occupied a lot in a park for more than 30 consecutive days.¹¹
- “Tenant” means tenant, subtenant, lessee, or sublessee.¹²
- “Tenant” includes any paying guest, lessee, or sublessee of any premises for hire.¹³
- “Tenant” means any natural person who hires real property except any of the following:
 - (1) Tenants of commercial property, as defined in subdivision (c) of Section 1162 of the Civil Code.
 - (2) Those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.¹⁴
- “Tenant” means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.¹⁵
- “Tenant” means a person lawfully residing in rental housing provided by or

10. The staff has not found any statutory definitions in the existing codes for the term “lessee” or “lessor” as used in the context of rental of residential real property.

11. Civ. Code § 799.32. This definition governs only the construction of Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code, relating to recreational vehicle park occupancy, a subject specifically called out for inclusion in this study.

12. Civ. Code §§ 1941.5(d)(5), 1941.6(f)(4); Code Civ. Proc. § 1161.3(a)(7); and Gov’t Code § 53165(a)(6). This definition governs only the construction of these sections.

13. Civ. Code § 1980(f). This definition governs only the construction of Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3 of the Civil Code, relating to the disposition of personal property remaining on premises at termination of tenancy.

14. Code Civ. Proc. § 1179.02(h). This definition governs only the construction of Chapter 5 (commencing with Section 1179.01) of Title 3 of Part 3 of the Code of Civil Procedure, the COVID Tenant Relief Act.

15. Gov’t Code § 65863(a)(3). This definition governs only the construction of this section.

through an authority, including persons residing in leased housing.¹⁶

- “Tenant” means a person entitled by written or oral agreement, subtenancy approved by the owner, or sufferance, to occupy a unit to the exclusion of others.¹⁷
- “Tenant” includes a resident shareholder of a cooperative housing development.¹⁸
- “Tenant” means an occupant pursuant to a lease of ... a dwelling unit, other than an owner.¹⁹
- “Tenant” means an occupant pursuant to a lease or a rental agreement of ... a dwelling unit, other than an owner.²⁰

In the remaining and substantial majority of code sections that refer to a “tenant,” the term does not appear to be governed by any definition, meaning the term could be understood to be defined by any of multiple varying dictionary definitions.²¹

Turning to the term “landlord,” the existing codes include only a few definitions for that term. These definitions also somewhat differ, and apply to an even smaller subset of code sections than do the definitions of the term “tenant”:

- “Landlord” means an owner of residential rental property.²²
- “Landlord” means an owner of residential rental property or the owner’s agent.²³
- “Landlord” means an owner of residential real property containing five or more dwelling units.²⁴
- “Landlord” means an owner of residential rental property.²⁵

16. Health & Safety Code § 34213.5. This definition governs only the construction of Chapter 1 (commencing with Section 34200) of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code, relating to housing authority law in community developments.

17. Health & Safety Code § 50852(h). This definition governs only the construction of Chapter 14 (commencing with Section 50850) of Part 2 of Division 31 of the Health and Safety Code, relating to the Housing Preservation and Information Service.

18. Health & Safety Code § 51066. This definition governs only the construction of this section.

19. Sts. & Hy. Code § 36616. The application of this particular provision does not appear to be expressly stated in the relevant statute.

20. Sts. & Hy. Code § 36705(m). This definition governs only the construction of Part 8 (commencing with Section 36700) of Division 18 of the Streets and Highways Code, relating to multifamily improvement districts.

21. While various dictionary definitions of the term “tenant” all refer to having some consensual right relating to the real property of another, the definitions sometimes diverge regarding whether the tenant’s right is one of possession, use, or occupancy, whether the right must be temporary, whether the right is held for a specified or agreed upon period of time, and whether contractual consideration is an element.

22. Civ. Code §§ 1940.8.5, 1950.6. This definition governs only the construction of these sections.

23. Civ. Code § 1950.1. This definition governs only the construction of this section.

24. Civ. Code § 1954.06. This definition governs only the construction of this section.

25. Civ. Code § 1954.202. This definition governs only the construction of Chapter 2.5 (commencing with Section 1954.201) of Title 5 of Part 4 of Division 3 of the Civil Code, relating to provision of water service.

- “Landlord” means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his or her agent or successor in interest.²⁶

Confusing Usage of Terms

The staff also found that existing code sections frequently use two or more of these terms in combination with one another, in confusing ways. For example, a great number of existing code sections contain references to *both* a “tenant” and a “lessee,” with no explanation apparent in the text as to whether the two terms are intended to have distinct meanings.²⁷

What legal distinction did the Legislature intend to draw when including references to both terms in some sections, and references to only one in other sections? Certainly, when both references appear in the same code section, one *possible* distinction might be that a “lessee” is intended to refer to a signatory on a lease agreement, while a “tenant” is intended to be a person with some other relationship with the rental property.²⁸

But is that distinction intended for *all* uses of those two terms throughout all the codes? If so, why do many code sections refer to only one of these two terms in contexts that seem to have nothing to do with that distinction?²⁹ The staff has noted that at times even sequential code sections, addressing the same general subject matter, will refer to one of the two terms in the first section, and the second in the following section.³⁰ This type of usage strongly suggests that in at least some existing code sections, the two terms are considered synonyms, and used interchangeably.

Also, the codes leave unclear precisely what relationship a person must have with a rental property to be characterized as a “tenant,” as opposed to a “renter” or “resident,” or any of the other terms used in the law seemingly intended to refer to a person using or occupying the rental space. Without statutory definitions, the staff can only propose standardization of these terms based on educated guesses.

26. Civ. Code § 1980(a). This definition governs only the construction of Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3 of the Civil Code, relating to the disposition of personal property remaining on premises at termination of tenancy.

27. See, e.g., Civ. Code §§ 846.2, 1940.5, 1942.4, 1942.6, 1954.05, and 4740; Gov’t Code §§ 7060.2, 7060.4, 7060.6, 37615.4, and 62207; Health and Safety Code §§ 17031.6, 25400.28, and 33436; and many others.

28. As an illustration, consider a parent who is required by a landlord to execute a lease for their child, who is moving into a college apartment.

29. As indicated above, far more code sections contain references to “tenants” than contain references to “lessees,” necessarily establishing that many code sections contain references only to “tenants” and not “lessees.” And the same is true with regard to references to “landlords” and “lessors.” But although less common, it is also the case that many code sections refer only to “lessees” and *not* “tenants,” and only to “lessors” and not “landlords.” See, e.g., Civ. Code §§ 1945, 1945.5, and 1952, Health & Safety Code § 17980.6, and Pen. Code § 25135 (referring to “lessee” and not tenant). See also Civ. Code §§ 1941, 1945, 1952, and 1952.3, and Health & Saf. Code § 17980.6 (referring to “lessor” and not “landlord”). see also Pub. Util. Code § 788 (referring to “lessor” and “tenant”).

30. See, e.g., Civ. Code §§ 1942 and 1942.1, 1946 and 1946.1.

Similar interpretation challenges arise for the terms “landlord,” “lessor,” and “owner.” A “lessor” *might* be understood as a person contractually obligated and protected pursuant to a lease. But what is the intended meaning of a statutory reference to a “landlord”? Does “landlord” refer to only an “owner” of leased property, or might “landlord” also include a management company, or an agent of the owner?

Resolution of each of the questions above is essential before terms in these sections can be standardized, because each code section grants specific protections to, and/or imposes specific obligations on, *only those persons intended to be referenced in the particular code section*. Without answers to those questions, particularly given the very significant number of code sections involved, any attempted standardization of terms would almost certainly contravene the bill’s mandate requiring the Commission to preserve existing legal distinctions between the terms currently used to describe those parties.

Conclusion

Given the significant number of terms that are currently undefined, the staff believes it would be impractical, if not impossible, to identify all or even most of the legal distinctions between these terms intended by the Legislature. And absent the ability to identify those legal distinctions, attempting to propose a nonsubstantive standardization of this terminology, as the study directs the Commission to evaluate,³¹ would not appear to be either “prudent” or “practicable.”³²

The Commission has previously undertaken several nonsubstantive law reform projects, and in all such projects, the Commission has taken a very cautious approach in favor of preserving existing language. The staff does not see a way for the Commission to propose the nonsubstantive standardization of terminology that is requested in this study, while exercising its usual caution when proposing nonsubstantive reforms.

NEXT STEPS AND PROPOSED TIMELINE

For the reasons articulated in this memorandum, the staff does not believe it would be prudent or practicable for the Commission to propose the comprehensive statutory reform

31. The Senate Floor Analysis of the bill assigning this work to the Commission, following the bill’s last amendment, explains what it characterizes as an important aspect of the assignment as follows:

*“No changes to substantive law. This bill underscores that the task assigned to the CLRC is purely semantic. If the CLRC recommends any changes in terminology after studying the issue, **this bill directs the CLRC to make certain that those changes will not alter the nature of any contractual relationships or the substance of the laws that govern residential rental housing in California.**”*

Senate Floor Analysis of AB 2503 (Aug. 1, 2022), p. 4 (emphasis in bold added).

32. See 2022 Cal. Stat. ch. 462, § (1)(d).

of terminology as described by the study, while preserving the existing legal distinctions relating to those terms.

If the Commission agrees, the staff suggests that it move forward and begin work on an independent component of the study, evaluating whether continued use of the terms “landlord,” “tenant,” and related terms remains useful and appropriate in code sections relating to the rental of residential real property, and if not, suggesting reasonably concise replacement terms.³³

The staff expects it would be able to present a memorandum addressing that issue at the Commission’s March meeting.

In advance of the March meeting, the staff will also evaluate any public comment the Commission receives relating to how the Commission might propose the comprehensive statutory revision requested, without risking the possibility of substantively changing existing law. If some workable method was offered that was thereafter approved by the Commission, the staff could resume its work on the comprehensive terminology standardization.

Otherwise, following the March meeting, the staff suggests that it begin work on a tentative report to the Legislature that includes the following:

- (1) An explanation as to why the Commission concluded that the adoption by the Legislature of the comprehensive but nonsubstantive statutory scheme contemplated in the study would not be “prudent and practicable.”
- (2) An analysis of the usefulness and appropriateness of continued use of the terms “landlord” and “tenant,” along with recommended replacement terms if called for.
- (3) A discussion of terminology relating to this subject matter used in the laws of other states, as requested in the study.

The staff believes it should be able to present a draft of that tentative report to the Commission at its June meeting. Depending on the extent of public comment received on that report, the staff anticipates presenting a draft final report to the Commission for its approval at its September or October meeting.

How does the Commission wish to proceed?

Respectfully submitted,

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33. See *id.* § (1)(c)(1)(B), (C).