#H-113

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First Supplement to Memorandum 90-68

Subject: Study H-113 - Assignment and Sublease (Reconsideration of Kendall Legislation--comments on proposal)

We have received two letters commenting on the proposal of Ernest E. Johnson that the Commission reconsider the Kendall legislation enacted last session on Commission recommendation.

Exhibit 1 is a letter from Ronald P. Denitz of Tishman West Companies. Mr. Denitz opposes reconsideration on the bases that reconsideration would undermine the confidence of practitioners in the stability of the law, that reconsideration would undermine the credibility of the Commission, that Mr. Johnson presents no new matters that were not already taken into account by the Commission, that it would hopelessly confuse the applicability of the law depending on the time of execution of a lease, and that the legislation deals fairly with the parties.

Exhibit 2 is the relevant portion of a letter from the Commission's consultant on this matter, William G. Coskran. Professor Coskran rebuts Mr. Johnson's suggestions that the legislation is landlord-oriented and fails to take into account the tenant's perspective; he also summarizes the arguments that compelled the Commission to the conclusion that the parties to a lease should be allowed to agree on enforceable assignment and sublease restrictions and that the rule in Kendall should be codified but should have limited retroactivity.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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May 11, 1990

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
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Re: Study H-111 - Assignment and Subletting Reconsideration of Kendall Legislation (Memorandum 90-68)

Gentlemen:

Although earliest Study Number, this letter is directed as my third in order letter to you regarding the upcoming May 31, 1990 Commission meeting and, in particular, the letter from Ernest E. Johnson, Esq. requesting "reconsideration" of the Kendall legislation enacted last session on the Commission's recommendation (Civil Code §§1995.010 through 1995.270).

Regardless of Mr. Johnson's blandishments, they are basically an entirely tenant-oriented appeal that presently existing statute law of California be repealed, not "codified". As stated by the Staff in its memorandum 90-68, and in particular the second partial paragraph beginning on page 2 of the Staff's memorandum, any action by the Commission to propose a change in the laws which the Commission itself recommended and which were enacted would undermine the confidence of those who rely upon existing statutes and also undermine the confidence of the legislature and the public in the judgment and ability of the Commission to make meaningful Recommendations that the Commission is willing to stand behind.

No new matters are presented by Mr. Johnson; not even the matter of " ... an acquisition of the tenant by a larger company without any change in the operation of the business on the lease premises, other than that the new tenant is now a larger, more solvent company ... " is "new" although not specifically considered by the Commission. In truth and in fact the Supreme Court of California itself intimated, and the Commission in its earlier Recommendation underscored, that contracts made before September 23, 1983 (decision date in the Cohen case) should be permitted to stand because the parties thereto had relied upon the earlier law before the California Supreme Court "discovered" the Cohen/Kendall doctrine.

It would truly play havoc with those earlier-executed lease contracts as well as entirely confusing all of us in the business community (and especially in the office building commercial leasing field) if doubt were thrown by you on your own

recommended legislation after the same has been enacted by the legislature and signed by the Governor. Moreover all of us have relied upon the Civil Code §§1995.010 through 1995.270 and, as succinctly put by Mr. Sterling, if you " ... do another flip-flop ... [you] ... will need different sets of rules for leases executed and actions taken under the law in effect between legislative revisions".

Mr. Johnson is, I submit, asking for a rehearing before the wrong forum: He should go directly to the Legislature if he wishes to change the recently-enacted statute law of California.

You as a Commission should be justly proud of the work you did on Study H-111: It codified the Kendall decision, thereby protecting tenants against possible subsequent conservative Supreme Court majorities' overruling. It gave to Landlords continue integrity of earlier-executed contracts (although, I must admit, extended the retroactivity of Kendall much backwards beyond the date when I myself recognized a "change" in the California law [namely the decision date of Kendall itself]) and assured to both Landlords and tenants that they could confidently now and in the future negotiate new leases in reliance upon fixed and fair principles clearly and unmistakably enunciated.

Hopefully Mr. Johnson will attend future Commission meetings and follow future Commission Studies because, although he represents a view considerably different from my own, he does present to you as a Commission a constituency for the views of tenants which is worthy of fair and open consideration, provided it does not come before you at a time when you yourself recognize that the matter is beyond your continued jurisdiction.

With many thanks for this opportunity to be heard on the subject and looking forward to attending your meeting on May 31, 1990 in Sacramento, California, I am

Sincerely,

RONALD P. DENITZ
Vice President and
General Counsel
Tishman West Companies

RPD:hm

cc: W. Coskran, Esq.

LOYOLA LAW SCHOOL

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RE RECONSIDERATION OF ASSIGNMENT/SUBLEASE RESTRICTION LEGIS.; REMEDIES FOR BREACH OF ASSIGNMENT/SUBLEASE CLAUSE; USE RESTRICTIONS.

Thank you for copies of the correspondence concerning the above matters.

If the Commission is going to address reconsideration of the Assignment/Sublease Restriction legislation that went into effect January 1st, I think that issue should be resolved before going into the proposals on Remedies and Use Restrictions. The existing legislation is the product of a considerable amount of review, discussion and compromise. If there are going to be proposals to change the it, it seems the process begins anew. The issues of Remedies and Use Restrictions are closely related to the existing legislation. If the Commission reopens the existing legislation and makes changes, the changes will most likely have an effect on the recommendations regarding Remedies and Use Restrictions.

A summary of my comments is attached.
(Note: Citations to principal cases and treatises referred to in this memo are in the background study and not repeated here; page references to the study refer to the published version.)

Respectfully submitted,

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RECONSIDERATION OF

ASSIGNMENT/SUBLEASE RESTRICTIONS (S.B. 536)

Mr. Johnson seems to raise 3 arguments against the S.B. 536 legislation which resulted from the Commission's recommendations on assignment and sublease restrictions. First, he argues that the lessor should be subject to a mandatory commercial reasonableness standard that could not be altered by contract. Second, he argues that the implied reasonableness standard adopted by C.C. 1995.260 should have unlimited retroactivity. Third, he charges that the legislation is "orientated" in favor of lessors.

The issues raised by his first and second arguments were discussed and debated extensively during Commission hearings and during the legislative process. A variety of views, tenant as well as lessor, were considered at length. I have summarized below my recollection of some of the factors that went into the final recommendations.

Mr. Johnson's charge that the legislation is "oriented" in favor of lessors, and his belief that the "tenant's side" was not adequately presented, do not accurately reflect the many views presented and considered. I have summarized below my recollection of some of the tenant factors that ended up in the Commission recommendations and the legislation.

1. BASIC PRINCIPLES.

Mr. Johnson argues that the lessor should be subject to a mandatory reasonableness standard, and that the lessor should not be able to deviate from this by contract provisions. This position was clearly and considered in the deliberations leading to the legislation.

The Assignment/Sublease legislation reflects the basic principle that freedom of contract is allowed unless there is a compelling contrary public policy. The legislation also adopts a principle requiring express language to create an enforceable restriction. This enhances the prospects that the restriction will become a known part of the negotiations, or that it will at least be a known part of the deal.

A. RESTRAINTS ON ALIENATION.

The policy against restraints on alienation does not prohibit freedom to contract for an express absolute restriction or other express restrictions. The policy does not make a reasonableness standard mandatory. This part of the common-law view has not been changed by Kendall or the cases relied upon in Kendall. The holding in Kendall only applies to a clause which requires the lessor's consent but which does not expressly state a standard. In that case, a reasonableness standard will be implied. This change in the common-law was adopted by the legislation. As discussed below on the retroactivity issue, the cases referred to by Mr. Johnson do not compel a different result. Also, the Restatement (Second) of Property Sec. 15.1, cited by

Mr. Johnson, expressly allows an express "absolute right to withhold consent."

B. GOOD FAITH & FAIR DEALING.

The policy behind the implied covenant of good faith and fair dealing focuses on the bargain of the parties and their expectations flowing from that bargain. Basically, the covenant requires that neither party do anything to deprive the other of the contemplated benefits of the agreement. The policy does not prevent enforcement of express contractual provisions, and it does not compel a party to perform something that is in direct conflict with an express provision. It protects reasonable expectations; it does not compel reformation.

The background study (pages 459-461) refers to statements which support the view that the covenant of good faith and fair dealing does not prevent enforcement of an express provision in accordance with its terms. "Good faith performance...occurs when a party's discretion is exercised for any purpose within the reasonable contemplation of the parties at the time of formation---to capture opportunities that were preserved upon entering the contract, interpreted objectively." (Burton, Breach of Contract and the Common Law Duty to Perform in Good Faith, 94 Harv. L. Rev. 369, 373 [1980].) The extent of the duty of good faith and fair dealing depends upon the nature of the bargain struck and the legitimate expectations of the parties arising from the contract. (Commercial Union Assurance Companies v. Safeway Stores,

Inc., 26 Cal.3d 912, 164 Cal.Rptr. 709 [1980].) A very clear explanation of the relationship between the covenant of good faith and fair dealing and express provisions is contained in VTR, Inc. v. Goodyear Tire & Rubber Co., 303 F. Supp. 773 (S.D.N.Y. 1969). The court stated:

> The general rule (regarding the covenant of good faith and fair dealing)...is plainly subject to the exception that the parties may, by express provisions of the contract, grant the right to engage in the very acts and conduct which would otherwise have been forbidden by an implied covenant of good faith and fair dealing.
>
> ....
>
> No case has been cited and I know of none which holds that there is a breach of an implied covenant of good faith and fair dealing where a party to a contract has done what the provisions of the contract expressly give him the right to do....As to acts and conduct authorized by the express provisions of the contract, no covenant of good faith and fair dealing can be implied which forbids such acts and conduct.
>
> ....
>
> The allegations that the defendants acted in bad faith are mere characterizations by the plaintiffs

and add nothing to their claim for relief. Whether or not the acts and conduct of the defendants are in bad faith is to be determined here by whether or not they had the right to engage in them under the contract. Since they had such right, defendants cannot be said to have acted in bad faith.

The court also said that merely because a party agreed to a bad bargain does not change the result.

If the lessor bargains for and gets an express absolute prohibition clause, the tenant is put on notice that a reasonableness standard is not one of the tenant's contractual expectations.

Neither Kendall nor the cases relied upon in Kendall require a mandatory reasonableness standard or prevent enforcement of an express clause in accordance with its terms. The holding in Kendall only applies to a clause which requires the lessor's consent but which does not expressly state a standard. In that case, a reasonableness standard will be implied. This change in the common-law was adopted by the legislation.

C. EXPANSION OF GOOD FAITH & FAIR DEALING.

It is certainly tempting to adopt a view that parties to a contract should "do the right (and reasonable) thing" despite the express terms of the contract. The result might be to leave the parties to litigation, and leave it to the court to determine the right and reasonable thing and modify the contract accordingly.

There would also be a major change in basic contract law. Presently, each party to a contract has the absolute right to refuse an amendment proposed by the other party.

If the policy of good faith and fair dealing is to be expanded beyond protection of reasonable contractual expectations, the requirements and ramifications of the expansion should be considered. Would it be expanded to a policy of modifying express terms, and a policy of prohibiting certain express terms? If so, when and under what conditions would it be applied?

If the policy is changed to allow modifications of express provisions, why should the modifications be limited to the transfer clause or a use clause? For example, suppose the lease has a fixed term which is about to expire and the tenant wants a two year extension. If the lessor refuses to amend the lease, can the tenant force the two year extension by showing that it is commercially reasonable to do so? Suppose due to various circumstances, the agreed rent is higher than the fair market rental. Can the tenant force an amendment of the rent clause by showing that a lower amount is commercially reasonable?

Since the covenant of good faith and fair dealing is implied in every contract in California, a change should not be limited to situations where it is raised by a tenant.

Lessors can also be the victims of bad bargains. For example, assume the following situation. A group of small investors pool their resources to own and operate a neighborhood shopping center. A major grocery store tenant in the center, with several

years to go on its lease, elects to move to a different location in a new shopping center nearby, and to transfer its premises to a third party. The grocery store tenant is making a good profit at its present location, but it wants to make an even greater profit at the new center. The transferee admittedly will not produce the same percentage rentals for the lessor, and more importantly, will not be a drawing power for other businesses in the center. Also, the departing tenant will be relocating close enough to the old center to draw customers from the old center. After the move, the small businesses in the center start having troubles because of the lack of drawing power and a domino effect of failures starts to occur. Unless the departing tenant's lease has express clauses preventing what has occurred, or has "no substantial minimum" rent, the lessor is unable to prevent the move or collect damages from the departing tenant. Assume further that the tenant's negotiating power as a major tenant prevented the lessor from obtaining protective clauses in the bargain. The present operation of the implied covenant of good faith and fair dealing does not aid the lessor because the lessor did not have the reasonable contractual expectation of a compulsory operations clause or a strict limitation on transfer and use. Suppose in another situation that the lessor is able to show that it would be "commercially reasonable" to charge a higher rent than agreed, or to force the tenant to change the tenant's present use to one which will produce a greater percentage rent for the lessor, and the same or greater profit for the tenant. Can the lessor force

an amendment?

If the doctrine is to be expanded, there is no logical reason to limit the expansion to commercial leases. If expansion is warranted there, it would be logical to apply the extension to all contracts which contain the implied covenant--i.e. all contracts.

In Mr. Zankel's letter, he points out this problem of using the covenant of good faith and fair dealing to change an express provision. He notes that it would be commanding the lessor to amend the lease. In an earlier article written by Mr. Zankel,he pointed out that "(if the lessor) simply states that the sole purpose will be as specified in the lease, then arguably there can be no change without an actual amendment of the lease. To argue otherwise would be to say that the tenant could change any lease provision by simply requiring the landlord to be 'reasonable.' Why not, for example, change the rent?" (M. Zankel, Commercial Lease Assignments and the Age of Reason: Cohen v. Ratinoff, 7 Real Prop. L. Rep. 29, 36 [1984].)

If the Commission decides to expand the covenant of good faith and fair dealing into modification of contract terms, it should also consider the ramifications of using the litigation process to renegotiate the terms of contracts. It will be a growth industry for lawyers earning a living by litigation. The Commission should also define how this extension relates to formation doctrines such as adhesion, and to existing law relating to reformation of contracts and relief from forfeiture. The

change will also have an effect on the contract negotiating process. If, at a later date, a court can ignore an express provision and impose a "commercial reasonableness" standard on the facts at the time of litigation, there is less incentive to spend time, money and effort negotiating and reducing the bargain to writing. For example, why should a tenant bargain for an express reasonableness standard, and perhaps have to give up something in exchange, if the court will provide it later anyway?

D. RELATIVE BARGAINING POWER.

There are many contractual situations where an exact equality of bargaining positions does not exist. There are doctrines such as the adhesion doctrine which have developed to provide a base line protection in contract formation. There are certainly situations where a party has made a bad bargain and the adhesion doctrine does not provide relief. If a test of the relative bargaining power of the parties is adopted for the enforceability of contract provisions, what are the components of that test and how is it to be applied? Additionally, it would be naive to adopt a policy based on the assumption that all lessors have greater bargaining power than all tenants.

2. IMPLIED REASONABLENESS STANDARD (C.C. 1995.260): EFFECTIVE DATE/RETROACTIVITY (C.C. 1995.270).

When a clause requiring the lessor's consent is silent on the standard to be applied, there are two views. The common law

(and apparently still majority) view implies a standard of subjective sole discretion. The minority view (and Kendall case) implies a standard of objective reasonableness. The Commission adopted the minority and Kendall view that a reasonableness standard should be implied when the consent clause is silent on the standard to be applied.

This issue of retroactivity was thoroughly discussed and carefully considered at Commission hearings and during the legislative process. Mr. Johnson's position was one of the views raised and discussed. Views on the effective date of the implied reasonableness standard included the 1990 effective date of the legislation, the 1985 date of Kendall, the 1983 date of Cohen, the 1978 date of Wellenkamp, and total retroactivity. Although the California Supreme Court did not decide the Kendall case until 1985, an effective date of Sept. 23, 1983 was chosen for implementation of the implied reasonableness standard. The reason for choosing the earlier date was the belief that practitioners in general would have been alerted to the issue by the Cohen case in 1983. This was considered to be a fair compromise for the change of law in California.

Until the Court of Appeal decision in Cohen v. Ratinoff in 1983, it seems clear that a careful and competent lawyer could reasonably conclude that California followed the common-law and still majority view that a sole discretion standard would apply absent an express agreement to not unreasonably withhold consent.

Prior to Cohen, an attorney doing research on this specific

issue would have found agreement in major treatises and the Continuing Education of the Bar practice handbook on commercial leases. They would lead the attorney to the conclusion that a tenant who wants a reasonableness standard to apply must negotiate and expressly provide for it. I find it hard to believe that a tenant's attorney involved with negotiating a pre-Cohen lease would rely on speculation that the minority view and an implied reasonableness standard would be implied. Express reasonableness standard clauses were a matter of negotiation and bargain. If the implied reasonableness standard had been applied to pre-Cohen leases, it would have provided an unbargained windfall.

The Richard case in 1960 involved a "Silent Consent Standard" clause and the court clearly followed the common-law and majority rule that the lessor was not bound by a reasonableness standard if the clause did not express one. This was not directly challenged until the Cohen case in 1983.

Mr. Johnson refers primarily to three cases in support his argument for retroactivity prior to Cohen. They are Wellenkamp v. Bank of America in 1978, Richardson v. La Rancherita in 1979, and Laguna Royale Owners Association v. Darger in 1981.

Wellenkamp involved a "due on transfer" clause in a deed of trust. It was certainly possible to speculate on further ramifications of this decision. However, it seems reasonable that an attorney could conclude that a clause in a deed of trust restraining alienation of a fee simple interest would be dis-

tinguishable from a lease clause restraining assignment and subletting of a leasehold. Indeed, the Cohen court which adopted the implied reasonableness standard made such a distinction. The court expressly rejected the tenant's contention that the Wellenkamp reasoning should be applied to leases.

Richardson involved a sale of stock by a corporate tenant. The assignment/sublease restriction clause did not restrict a sale of stock, so the restriction clause did not even apply to the transaction. Despite this fact (and a case decision clearly supporting the right to transfer the stock), the lessor insisted on the right to consent and delayed the closing of the stock sale. The court upheld a judgment against the lessor based on tort interference with contract. This case did not predict Kendall since it involved a transaction which was not even covered by the restriction and which did not require the lessor's consent at all.

Laguna Royale involved the attempt by a condominium association to block a mini-time share division by one of the condominium owners. Although the condominium was developed on a 99 year ground lease, the court viewed the condominium relationship as more of a fee ownership than a lessor/tenant relationship. The common-law has long recognized a distinction between a leasehold interest upon which restrictions are allowed, and a fee ownership interest upon which restrictions are virtually prohibited. The court recognized the distinction when it stated: "Even assuming the continued vitality of the rule that a lessor may arbitrarily

withhold consent to a sublease...there is little or no similarity in the relationship between a condominium owner and his fellow owners and that between lessor and lessee or sublessor and sublessee." The court had no occasion to apply or reject the arbitrary discretion rule of the Richard case because it was distinguishable on the facts.

Mr. Johnson refers to by Robert Kerr's 1980 article in the California State Bar Journal. Mr. Kerr's prediction of the Kendall result was thoughtful and accurate. I continue to be impressed by the article. However, I would have a hard time holding a lawyer to speculation (though well reasoned) in a bar journal when it is contrary to more traditional research sources. Even if a tenant's lawyer read and believed the article, I would expect the attorney to bargain for an express reasonableness standard rather than rely on the prospect of a future court decision to give it without bargaining.

I am not saying that an experienced real property lawyer could not have predicted the 1985 Kendall result. However, I believe it would be placing too much of a premium on expertise and speculation to expect that prescience from the general bar and the busy practitioner prior to Cohen in 1983. Full retroactivity based on the asserted predictability of Kendall would raise some interesting malpractice issue for attorneys who relied on basic research tools.

3. CHARGE THAT TENANT'S POSITION WAS NOT CONSIDERED.

Lawyers experienced in representing tenants participated in all phases of the process of review and discussion, and presented tenant positions articulately and forcefully.

In response to your pointing out that the legislation was supported by the State Bar Real Property Section, Mr. Johnson appears to charge the organization with a lessor bias. His letter of January 13, 1990 states: "Unfortunately, most of the organized bar in this area, primarily represent landlords and building owners. Before the legislature the support is described as the Building Owners and Managers Association of California and the Executive Committee of the Real Property Law Section."

I cannot speak for "most of the organized bar in this area," but I am quite familiar with the Executive Committee of the State Bar Real Property Section to which Mr. Johnson refers. The Executive Committee consists of 16 members (including the chairperson) who are carefully selected to represent a broad diversity of experience and viewpoints. There is a turnover of about 5 members each year. As I recall, at least three different years of Executive Committee review and comment was involved in this legislation. In addition, the Executive Committee has formed various Subsections to deal with specialty areas of the law. The Subsections also pay particular attention to representing diverse views. The people who serve on this Executive Committee and on the Subsections are volunteers who take time away from their busy practices to donate time to public service. I can personally at-

test to their scrupulous efforts to be impartial and to avoid knee-jerk positions of benefit to particular constituencies.

With respect to the charge of primarily representing landlords and building owners, it is interesting to note that the chairman of the Executive Committee during the initial review of this issue was a prominent Bay area legal aid lawyer. The chairman of one of the two main Subsections involved with reviewing the legislation, and a present Executive Committee member is a long time attorney for the California Rural Legal Assistance organization. The two strongest letters advocating changes for the benefit of tenants in the pending remedies proposals are from lawyers (Carbone and Zankel) who have served on the Executive Committee and who are on (and former chairs of) the main subsection that reviewed the Assignment/Sublease Restriction legislation.

Many hours of careful review and deliberation went into the Commission proposals, and I feel that any charge of landlord bias is unfounded and unfair.

The following is an outline of some of the considerations on behalf of tenants that went into the legislation proposed by the Commission.

A. LOCK-IN REMEDY PER C.C. 1951.4 AFTER TENANT BREACHES & ABANDONS.

(1) The use of <u>express</u> language, <u>describing</u> the remedy, is encouraged by providing a "safe harbor" form of clause. This was not present in the former section. (1951.4(a)).

(2) The former section had some ambiguities that were considered by the Commission and resolved in favor of the tenant. (1951.4(b)). The issues can be summarized as follows:

a. Suppose the lease contains a clause expressly prohibiting transfer. Can the lessor later waive that clause and exercise the lock-in remedy if the tenant breaches and abandons? The Commission proposal now prevents such a subsequent waiver.

b. Suppose the lease contains a clause requiring lessor's consent and expressly providing the lessor can withhold consent in his sole discretion or be unreasonable. Can the lessor later waive that clause and exercise the lock-in remedy if the tenant breaches and abandons? The Commission proposal now prevents such a subsequent waiver.

c. Suppose the lease contains an express specific standard or condition limiting transfer, and the standard or condition is unreasonable. Can the lessor later waive the unreasonable express specific standard or condition and exercise the lock-in remedy? The Commission proposal now prevents such a subsequent waiver (unless the condition/standard was reasonable at the time of lease execution and later became unreasonable).

d. Suppose the lease contains an express clause with dual operations. The lessor expressly reserves the right to withhold consent in his sole discretion; but the lessor expressly agrees to be reasonable if (and only if) he exercises the lock-in remedy. Can the lessor use that clause to later allow

reasonable transfers and exercise the lock-in remedy if the tenant breaches and abandons? The Commission proposal now prevents such a dual operation clause.

It should be noted that these changes to the section language provide the tenant with significant bargaining power when negotiating for a reasonableness standard under the new assignment and sublease sections (C.C. 1995.010 et. seq.). Under the prior law, if a later waiver or a dual operations clause were permitted, the tenant would have the necessary escape hatch when the remedy is exercised. However, the tenant would not be able to use the availability of the lock-in remedy as leverage to negotiate a reasonableness standard applicable to transfers that were not involved with 1951.4.

B. ASSIGNMENT & SUBLEASE RESTRICTIONS PER C.C.1995 ETC.

(1) The basic functions of the new provisions are to clarify existing law, to recognize the enforceability of express agreements, and to preserve transferability in the absence of express restrictions. Tenant attorneys expressed agreement with the need for clarification and for the move toward requiring express language.

(2) Free transferability, absent restriction, is codified.

(3) Construction in favor of transferability is codified.

(4) Existing law did not deny the validity of express provisions for an absolute prohibition against transfer,

specific standards or conditions, or profit sharing/shifting. The new legislation recognizes that, as long as these provisions are express in the lease, they are enforceable. Neither the Kendall case, nor any of the cases it relies on, would nullify such express provisions. The express provisions put the tenant on notice of the nature of the restriction before entering into the lease, and provide either an opportunity for negotiation or knowledgeable acceptance.

(5) Also note that changes to C.C. 1951.4 gave tenants stronger bargaining power to exact a reasonable consent standard when the lessor wants to preserve the lock-in remedy.

(6) A reasonableness standard is implied in a clause which requires the lessor's consent to transfer, but which fails to state an express standard. This adopts the view of the Kendall case, although this appears to still be a minority view in the United States.

One last comment. I have had a couple of attorneys who represent lessors complain about the Commission and the legislature getting involved in the issues because they predicted they could get a better deal from the post-Kendall members of the California Supreme Court.