

MEMORANDUM 2023-51

**Landlord and Tenant Terminology: Discussion of Issues**

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In 2022, the Legislature directed the Commission<sup>1</sup> to study the use of consistent and appropriate terminology to describe the parties to a residential property rental agreement across the California codes:<sup>2</sup>

SECTION 1.

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- (c) On or before December 31, 2024, the California Law Revision Commission shall deliver, pursuant to Section 9795 of the Government Code, to the Legislature a study regarding all of the following:
- (1) Establishment of consistent terminology across the California codes to describe the parties to an agreement, lease, or other contract for the rental of residential real property, including in mobilehome parks, that meets all of the following criteria:
    - (A) The terminology chosen shall preserve legal distinctions currently recognized in statute, regulation, case law, and contracts, including the distinction between month-to-month rental agreements and leases for agreed-upon periods of time.
    - (B) The study addresses whether the continued use of the terms “landlord” and “tenant,” including related terms including “cotenant” and “subtenant,” is useful and appropriate in code provisions that involve the rental of residential real property.
    - (C)(i) If continued use of the terms “landlord” and “tenant” is no longer useful and appropriate, then the study suggests replacement terms that are reasonably concise, given the frequency with which these terms are currently used in statute, regulation, litigation, case law, and contracts.
    - (ii) Replacement terms suggested under this subparagraph shall not affect the usage of the terms “landlord” and “tenant” elsewhere in real property law, including in the terms “joint tenants” and “tenants in common.”
  - (2) Terminology used in the laws of other states.
  - (3) The effect of the establishment of terminology under paragraph (1) on case law

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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](http://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. 2022 Cal. Stat ch. 462 (AB 2503).

- established under existing terminology.
- (4) The effect of the establishment of terminology under paragraph (1) on contracts made under existing terminology.
- (d) If the California Law Revision Commission determines that adopting a statutory scheme that meets the criteria set forth in paragraph (1) of subdivision (c) is prudent and practicable, the study shall do both of the following:
- (1) Recommend a comprehensive statutory scheme that meets those criteria.
  - (2) Identify provisions of the California Code of Regulations involving the hiring of residential real property that may need to be amended in order to conform to the terminology in the comprehensive statutory scheme under paragraph (1).

This memorandum introduces and presents a proposed plan for the study.

### ASSIGNMENT BACKGROUND

A legislative analysis<sup>3</sup> of the bill assigning this study to the Commission explained the basis of the bill as follows:

- The statutes that govern rental of real property in California date from the initial enactment of the California Codes in 1872. There are currently more than two-dozen different terms used across the Civil Code, Code of Civil Procedure, Government Code, and Health and Safety Code, including “housing owner,” “landlord,” “lessee,” “lessor,” “management,” “occupant,” “owner of residential rental property,” “property owner,” “renter,” “subtenant,” and “tenant,” to describe the parties to a residential rental agreement. The California Code of Regulations also uses several of these terms. (See, e.g., Cal. Code Regs., tit. 2, chap. 5, sec. 12140 [using the terms “housing owner,” “landlord,” and “tenant”]; Cal. Code Regs., tit. 2, chap. 5, sec. 12050 [using the term “renters”].)
- Some of these differences in terminology are due to substantive differences in the legal relationships being described. For example, a subtenant is a person whose legal existence presupposes and depends upon there having been an original tenant who rented or leased the property; it would make no sense to use identical terms for these parties, as they have somewhat different legal rights and obligations. But other differences seem unnecessary or superfluous and are simply the product of inconsistent drafting over the course of 150 years. For example, it is unclear why Civil Code Section 1940.8 uses the term “landlord of a residential dwelling unit” and the immediately-adjacent Section 1940.8.5 uses the term “owner of residential rental property”—when both provisions deal with pest control in rental housing.
- One of the motivations of this bill is to establish consistent vocabulary in this area of law, so that if an identical term is used in different Code provisions, one can reasonably assume that the same legal rights and obligations adhere to the

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3. Assembly Floor Analysis of AB 2503 (May 20, 2022).

person being described by that term; whereas if different terms are used, one can safely assume that the legal rights and obligations in question differ in one or more respects.

- Another motivation for this bill is to consider whether the terms “landlord” and “tenant” are outdated and ought to be replaced. The term “landlord” has its roots in the law of medieval England. The Merriam-Webster Dictionary states that its first known use dates from before the 12th Century. The term “tenant” dates from the 14th Century in English, but its roots go back much further, to the Latin “tenēre” (“to hold”). These terms are tinged with certain class-based connotations.
- Reformulating the statutes in this area is a complex, important task, for at least three reasons. First, because hundreds of thousands of unlawful detainer (eviction) lawsuits are filed annually in California, these are among the most heavily-litigated statutes in the Codes, and are the source of caselaw that dates back to the state’s founding. Second, because there are approximately six million renter households in the state, these statutes form the basis of millions of contracts. Third, these terms are also used in other areas of real property law that do not directly address rental housing. Consider, for example, the ability of two or more persons to hold title to property as “joint tenants” or “tenants in common.” Accordingly, it is imperative that any changes in this area take into account the needs and settled expectations of property owners, renters, and the courts, all of whom rely on the law in this area.

## PROPOSED STUDY PLAN

### Research

The assignment to the Commission directs that before the Commission were to recommend statutory revision to the Legislature in conjunction with this study, it must first determine that the adoption by the Legislature of a new statutory scheme, meeting the criteria set forth in subdivision (c)(1) of the bill, would be “prudent and practicable.”<sup>4</sup>

To enable the Commission to make this prerequisite determination, Commission staff will need to provide the Commission with the results of considerable legal research, research that the staff has commenced but not yet completed.<sup>5</sup> As noted in the bill, the staff will need to brief the Commission on the various terms used to describe a party to an agreement for the rental of residential real property across California codes, regulations, appellate opinions, and standard contracts,<sup>6</sup> as well as whether different terms used are intended to have any special distinguishing meaning.

In light of the directive that the Commission deliver a study in this matter to the

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4. See subdivision (d)(1).

5. It is the staff’s hope to soon be assisted in this effort by a law school extern.

6. See subdivision (c)(1)(A).

Legislature on or before December 31, 2024, the staff hopes to present the results of this research at the next Commission meeting.

### **Evaluations by the Commission**

Once the research has been completed, the bill directs the Commission to evaluate and formulate responses to the following inquiries from the Legislature:

- Whether the terminology currently used in California statutes, regulations, case law, and contracts to refer to parties to residential property rental agreements can be conformed in a manner providing for consistency among terms intended to have the same meaning, while preserving intended legal distinctions in meaning.<sup>7</sup>
- Whether the continued use of the terms “landlord” and “tenant,” “cotenant,” and “subtenant” in those California statutes remains useful and appropriate, and to the extent not, an identification of reasonably concise replacement terms, with consideration given to the frequency with which the terms that would be replaced are currently being used in statutes, regulations, litigation, case law, and contracts, and without affecting the usage of the terms “landlord” and “tenant” in contexts other than the description of a party to an agreement for the rental of residential real property.<sup>8</sup>
- The effect that revision of these terms would have on case law referring to existing terminology.<sup>9</sup>
- The effect that revision of these terms would have on contracts referring to existing terminology.<sup>10</sup>

### **Statutory Revision**

After making the evaluations listed above, if the Commission determines that adoption by the Legislature of a comprehensive statutory scheme meeting the criteria set forth in the bill would be “prudent and practicable,” the Commission is directed to recommend that statutory scheme to the Legislature.<sup>11</sup>

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7. *Id.*

8. See subdivision (c)(1)(B).

9. See subdivision (c)(3).

10. See subdivision (c)(4).

11. See subdivision (d). If the Commission makes this determination, that subdivision also calls on the Commission to identify regulations that may need to be amended concurrently with the adoption of this statutory scheme.

## STAKEHOLDER OUTREACH

As is customary in most studies undertaken by the Commission, at the start of the study an invitation to comment on the study is directed to entities that may be able to provide helpful input.

The staff has to date identified the following stakeholders as candidates for outreach:

Apartment Association, Greater Inland Empire  
Apartment Association of Greater Los Angeles  
Apartment Association of Orange County  
California Apartment Association  
California Association of Realtors  
California Department of Housing & Community Development  
California Rental Housing Association  
California Housing Council  
East Bay Rental Housing Association  
Housing Authority of the City of Los Angeles  
Judicial Council of California  
Los Angeles Tenants Union  
Oakland Housing Authority  
Rental Housing Association of Sacramento Valley  
Sacramento Housing and Redevelopment Agency  
San Diego County Apartment Association  
San Diego Housing Commission  
San Francisco Apartment Association  
San Francisco Housing Authority  
San Francisco Tenants Union  
Santa Clara County Housing Authority  
Small Property Owners of San Francisco  
Tenant Association of California  
Tenants Together

**The staff welcomes additional suggestions for stakeholders to include in the initial outreach for this study. Does the Commission wish to offer any special direction or suggestions to the staff relating to this outreach?**

## NEXT STEPS

As indicated, the staff intends to continue the background research needed to allow the Commission to make the evaluations directed by this legislative assignment, and report back to the Commission with the results as soon as it is completed.

**Does the Commission approve the proposed study plan offered in this memorandum?**

Respectfully submitted,

Steve Cohen  
Staff Counsel