

2A Cal. Real Est. Forms § 2:65 (2d ed.)

Miller & Starr California Real Estate Forms | September 2018 Update
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Chapter 2. Leasing

III. Forms

K. Residential Leases

Residential lease

Use of Form. This lease is for use in leasing a residence, such as an apartment or a single-family home. It can be used to create a fixed term or periodic term tenancy. This lease should be used in conjunction with an application, which the tenant completes and provides to the landlord before the lease is signed.

RESIDENTIAL LEASE

THIS RESIDENTIAL LEASE (“Lease”) dated as of *[date]*, is entered into between *[name and capacity of landlord]* (“Landlord”) and *[name and capacity of tenant]* (“Tenant”).

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. Lease

Tenant leases from Landlord the premises located at *[address]*, and consisting of *[description of leased premises and amenities included in lease]* on the terms and conditions contained in this Lease (collectively, “Leased Premises”).

Section 2. Term

The term of this Lease shall commence on *[date]* and continue *[either]*

[for a period of [number of years] [months]]

[or]

[on a month-to-month tenancy until either party elects to terminate the Lease by giving the other party at least thirty (30) days' written notice].

Section 3. Deposit

Tenant has delivered to Landlord a deposit in the amount of *[dollar amount]* in the form of *[personal check/cashier's check/cash/other means of payment]* ("Initial Deposit"). If this Lease is not accepted by Landlord or Landlord's authorized agent within five (5) days, the Initial Deposit shall be refunded. Within *[number]* days of the execution of this Lease by Landlord, Tenant shall deliver to Landlord an additional deposit in the amount of *[dollar amount]* in the form of *[personal check/cashier's check/cash/other means of payment]* ("Additional Deposit" and together with Initial Deposit, collectively "Deposit"). The Deposit shall be held by Landlord as security for and shall be applied to Rent for the period from *[date]* in the amount of *[dollar amount]*, with the remainder of *[dollar amount]* to be held as security for the performance of Tenant's obligations under this Lease pursuant to Section 16.

Section 4. Rent

Rent shall be \$*[dollar amount]* per month ("Monthly Rent"), payable in advance, on the first day of each calendar month to Landlord or Landlord's authorized agent,

[EITHER:]

at the following address: *[[name of landlord]/[name of property manager]]*, *[[address of landlord]/[address of property manager]]*, telephone number *[[telephone number of landlord]/[telephone number of property manager]]* or at any other place designated by Landlord from time to time. Rent payment may be made personally on the days and office hours as follows: *[List of days and hours office open]*.

[OR:]

Rent payments may be made at *[name of financial institution]*, account number *[number of account]*, at *[address of financial institution]* (provided that the institution is located within five miles of the rental property).

[OR:]

Rent payments may be by electronic funds transfer, and this procedure for paying the rent is as follows: *[List information necessary to establish an electronic funds transfer procedure for paying the rent]*.

[END OF CHOICES]

Rent payments may be made in cash, check, money order, or any form previously accepted.

If Tenant takes possession of the Leased Premises on a date other than the first day of a calendar month, the first rent payment shall be prorated in accordance with the then remaining number of days in the month. Tenant agrees to pay a charge of \$[*dollar amount*] for each dishonored check.

Section 5. Utilities

Tenant shall be responsible for the payment of all utilities and services to the Leased Premises, except [*utilities to be paid by landlord*], which shall be paid by Landlord.

Section 6. Use

The Leased Premises shall be used as a private dwelling with no more than [*number*] persons inhabiting the Leased Premises during any month, and for no other purpose, without Landlord's prior written consent. Without Landlord's prior written consent, Tenant may not use or maintain a waterbed on the Leased Premises. Tenant may not repair any automobiles or any other motor vehicles, heavy machinery, or equipment, anywhere on the Leased Premises or in or around the building of which the Leased Premises are a part, including the parking area, garage, and driveway. Tenant agrees not to keep or maintain any pets on the Leased Premises without the prior written consent of Landlord, which Landlord may withhold in Landlord's sole discretion.

Section 7. Compliance with Law

Tenant shall comply with all laws, statutes, ordinances, and requirements of all city, county, state, and federal authorities now or later in force pertaining to the use of the Leased Premises.

Section 8. Maintenance and Alterations

Except as set forth in this Lease, Tenant agrees that as of the delivery of possession the Leased Premises are in good working order and repair. Landlord may, at any time prior to Tenant's entry into possession, give Tenant a detailed inventory of furniture, fixtures, and furnishings in the Leased Premises, and Tenant shall be deemed to have possession of all the furniture, fixtures, and furnishings in good condition and repair, unless Tenant objects in writing within five (5) days after receipt of the inventory. Tenant shall, at Tenant's own expense and at all times, maintain the Leased Premises in good working order and repair, including all equipment, appliances, furniture, fixtures, and furnishings, and shall surrender the Leased Premises at termination of this Lease in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for damages caused by Tenant's negligence and that of Tenant's family, invitees, and guests. Tenant shall not paint, paper, or otherwise redecorate or make alterations to the Leased Premises without the prior written consent of Landlord. Tenant shall not commit or allow any person to commit any act resulting in the destruction, defacement, damage, impairment, or removal of any part of the Leased Premises, including wall, ceiling, and floor coverings, and the furniture, fixtures, and furnishings of the Leased Premises.

Section 9. Entry

Landlord shall have the right to enter the Leased Premises for the purposes of making necessary or agreed repairs and for showing the Leased Premises to prospective tenants, purchasers, or mortgagees, provided that, except in the case of an emergency, such entry shall be made during normal business hours and upon at least twenty-four (24) hours' prior notice. In the case of an emergency or Tenant's abandonment or surrender of the Leased Premises, Landlord or Landlord's agent may enter the Leased Premises at any time, without obtaining Tenant's prior consent. Tenant agrees not to change the locks or add locks to the entrances of the Leased Premises without the prior consent of Landlord and without providing Landlord with a key to any locks.

Section 10. Indemnification.

Landlord shall not be liable for any damage or injury to Tenant or any other person, or to any property, occurring on the Leased Premises or any part of the Leased Premises or in common areas, unless the damage is the proximate result of the gross negligence or willful misconduct of Landlord, Landlord's agents, or Landlord's employees. Tenant agrees to indemnify, defend, and hold harmless Landlord for any liability, costs (including reasonable attorney's fees), or claims for personal injuries or property damage caused by the negligent, willful, or intentional act or omission to act of Tenant or Tenant's guests or invitees. Each party waives the right of subrogation against the other party.

Section 11. Delay of Possession

If delivery of possession of the Leased Premises by Landlord at the commencement of the Term is delayed, Landlord shall not be liable for any damage caused by the delay, nor shall this Lease be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this Lease if possession is not delivered within ten (10) days of the commencement of the Term.

Section 12. Assignment and Subletting

Tenant shall not assign this Lease or any interest under this Lease or sublet the Leased Premises or any portion of the Leased Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. The Landlord's consent shall not be deemed unreasonably withheld for any reasonable objection, including but not limited to the following: (a) the proposed assignee or subtenant does not have the financial ability or stability to carry out the tenant's or optionee's obligations under this Lease, (b) the proposed assignee or subtenant would change the use of the Leased Premises, (c) the proposed assignee or subtenant has a poor credit history or poor history with previous landlords, or (d) the proposed assignee or subtenant does not satisfy the standards then used by Landlord for approving tenants or optionees in the building in which the Leased Premises are located.

Section 13. Abandoned Property

If Tenant abandons or surrenders the Leased Premises, Landlord may consider any personal property left on the Leased Premises to be abandoned and may dispose of it in any manner allowed by law. If Landlord reasonably believes that the abandoned personal property has a total resale value of less than \$300, Landlord may keep the personal property for Landlord's use or otherwise dispose of it in accordance with law. All personal property on the Leased Premises is made subject to a lien in favor of Landlord for the payment of all sums due under this Lease, to the maximum extent allowed by law.

Section 14. Default

If Tenant fails to pay rent when due, or to perform any term of this Lease, after not less than three (3) days' written notice of default given in the manner required by law, Landlord, at Landlord's option, may terminate all rights of Tenant under this Lease, unless Tenant, within the time specified, cures the default.

Section 15. Remedies

If Tenant defaults, Landlord may elect to:

(a) continue the lease in effect, and enforce all Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due, or

(b) at any time, terminate all of Tenant's rights under this Lease, and recover from Tenant all damages Landlord may incur by reason of the breach of the lease, including the cost of recovering the Leased Premises and including the worth at the time of the termination or at the time of an award if suit is instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of the rental loss that the tenant proves could be reasonably voided.

In addition to any other rights and remedies allowed by this Lease or by law, Landlord shall have the remedies as set forth in [Civ. Code, §§ 1951.2 and 1951.4](#).

Section 16. Security Deposit

Tenant will deposit with Landlord the sum of *[dollar amount]* as a security deposit. Landlord shall *[be obligated to pay interest on the Deposit to Tenant at the rate of [rate] per year simple interest/not be obligated to pay interest on the Deposit]*. Landlord will hold the deposit for the full and timely performance by Tenant of Tenant's obligations under this Lease, including payment of rent and cleaning, maintaining, and repairing the Leased Premises after surrender. If all or any portion of Tenant's security deposit is applied by Landlord during the term of this Lease, Landlord may demand that Tenant replenish the full amount applied. Tenant's failure to replenish the amount within five (5) days after written demand will constitute a breach of this Lease. The balance of all deposits shall be refunded no later than twenty-one (21) calendar days from the date possession is delivered to Landlord or Landlord's agent, together with a statement showing any charges made against the deposits by Landlord.

Section 17. Attorney Fees

In any legal action brought by either party to enforce the terms of this Lease or relating to the Leased Premises, the prevailing party shall be entitled to all costs incurred in connection with that action, including reasonable attorney's fees.

Section 18. Waiver

No failure of Landlord to enforce any term of this Lease shall be deemed a waiver, nor shall any acceptance of a partial payment of rent be deemed a waiver of Landlord's right to the full amount of rent.

Section 19. Notices

Any notice that either party may or is required to give, may be given by mailing the notice, postage prepaid, to Tenant at the Leased Premises or to Landlord at the address shown below or at any other place designated by the parties from time to time.

[Name of property manager], [address of property manager], [telephone number of property manager] is the name, address and telephone number of the person authorized to manage the Leased Premises on behalf of Landlord.

Section 20. Successors and Assigns

This Lease is binding upon and inures to the benefit of the heirs, assigns, successors, executors, and administrators of Landlord and Tenant.

Section 21. Time

Time is of the essence in this Lease.

Section 22. Holding Over

Any holding over after expiration of the Lease, with the consent of Landlord, shall be construed as a month-to-month tenancy in accordance with the terms of this Lease, as applicable. No holding over or extension of this Lease shall extend the time for the exercise of the option unless agreed upon in writing by Landlord.

Section 23. Late Charges and Default Interest

If Tenant fails to pay the Monthly Rent within five (5) days after the due date, Tenant agrees that it would be impracticable or extremely difficult to fix the actual damage to Landlord caused by that failure and therefore agrees to pay a late charge of *[dollar amount]* plus interest at *[rate]* per annum commencing on the date on which the delinquent amount was due. The amounts due under this Section are in addition to and not in lieu of any other remedies of Landlord.

Section 24. Tenant's Application

Tenant acknowledges that in connection with the leasing of the Leased Premises the Tenant has provided the Landlord an application dated *[date]*, a copy of which is attached and incorporated as Exhibit *[number or letter]*. Tenant agrees that any material misrepresentation or omission made by Tenant on the application constitutes a noncurable default under this Lease.

Section 25. Construction

Headings at the beginning of each section are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Lease. The singular form shall include plural, and vice versa. This Lease shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Lease.

Section 26. Further Assurances

Whenever requested to do so by the other party, each party shall execute, acknowledge, and deliver any further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments and documents as may be necessary, expedient, or proper to complete any conveyances, transfers, sales, and agreements contemplated by this Lease. Each party also agrees to do any other acts and to execute, acknowledge, and deliver any documents requested to carry out the intent and purpose of this Lease.

Section 27. Third-Party Rights

Nothing in this Lease, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of this Lease.

Section 28. Integration

This Lease and the attached exhibits contain the entire agreement between the parties regarding the subject matter of the Lease, and this Lease expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties regarding those matters.

Section 29. Counterparts

This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

Section 30. Amendment

This Lease may not be amended or altered except by an instrument in writing executed by Landlord and Tenant.

Section 31. Partial Invalidity

Any provision of this Lease that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforcement of this Lease shall have no effect, but all the remaining provisions of this Lease shall remain in full force.

Section 32. Exhibits

All attached exhibits are incorporated in this Lease by reference.

Section 33. Joint and Several Liability

If Tenant is more than one person, each person shall be jointly and severally liable for the performance of Tenant's obligations under this Lease.

Section 34. Conduct of Tenant; Compliance with Rules.

(a) Tenant shall not create a nuisance on the Leased Premises or otherwise disturb other tenants of the property. Tenant shall not play musical instruments, televisions, or stereo equipment between the hours of *[time]* p.m. and *[time]* a.m. on weekdays and *[time]* p.m. and *[time]* a.m. on weekends and holidays.

(b) Tenant shall comply with the rules and regulations for the building that are from time to time promulgated by Landlord. A copy of the current rules and regulations is attached and incorporated as Exhibit *[letter or number]*. Tenant agrees that Landlord may from time to time modify the rules and regulations by delivering a copy of the modifications to Tenant at least *[number]* days prior to the effective date of the modifications.

Section 35. Governing Law

The validity, meaning, and effect of this Lease shall be determined in accordance with California law.

IN WITNESS WHEREOF, Tenant has executed this Lease as of the date first above written.

[signature and name of tenant]

Landlord accepts and agrees to this Lease.

LANDLORD:

[Name and capacity of landlord]

By:

Name:

Its:

By:

Name:

Its:

[Attach Exhibits]

Notes

Drafting Comments:

Section 1. Typically, the leased premises are described by a street address and, if appropriate, an apartment number, rather than a legal description. To avoid future conflict, the amenities included in the lease should be specifically stated.

Section 2. This provision allows the parties to establish a lease for either a fixed term or a month-to-month tenancy. If the lease establishes a fixed-term tenancy, the lease will, subject to local rent control ordinances, terminate at the stated expiration date. If, however, the lease creates a month-to-month tenancy, the lease can, subject to local rent control ordinances, only be terminated by notice from one party to the other. The requirements relating to the termination of a month-to-month tenancy are set forth in [Civ. Code, § 1946](#). [Miller & Starr California Real Estate 4th §§ [34:27](#), [34:147](#), [34:175](#), [34:179](#) (termination of periodic tenancy)]

Specifically, [Civ. Code, § 1946](#) requires that the terminating party give the other party 30 days' written notice to terminate a month-to-month tenancy; provided however, that the parties may agree at the time the lease is signed to shorten the notice period to not less than seven days.

Section 3. In addition to serving as a lease, this form also serves as an offer to lease. In this role, the tenant may choose to tender a small deposit when the offer is initially made followed by an increase in the deposit once the landlord accepts the

lease. The timing of the increase in the deposit as well as the time limit on the landlord's acceptance are subject to negotiation. [Miller & Starr California Real Estate 4th § 34:81 (type of tenant's deposit)]

Section 4. The lease should clearly state the amount of rent, the frequency with which rent is due, the day of the month when it is due, the manner of payment, and the location for payment. If the landlord desires to collect the rent in advance of the period for which it is due, the lease should provide for that since, absent this provision or unless required by "usage," rent is legally required to be paid only in arrears. [Civ. Code, § 1947]

Civ. Code, § 1962 requires the name, address, phone number of the landlord or property manager, how rent may be paid, to whom, in what form, whether in person, electronic funds transfer, etc. The information required by Civ. Code, § 1962(a)(1) may be alternatively disclosed as outlined in Civ. Code, § 1962.5.

This provision allows the landlord to collect a charge if the tenant's rent check is dishonored. This charge is typically in excess of the actual damages to the landlord in order to act as a deterrent to the tenant. Alternatively, the lease can provide the landlord the right to collect from the tenant all bank charges incurred by the landlord as a result of the tenant's dishonored check. [Miller & Starr California Real Estate 4th §§ 34:69 to 34:80 (payment of rent)]

Section 5. Due to various physical constraints, such as the lack of separate metering, landlords of multitenant buildings often pay for water and garbage collection, while the tenants pay for gas, electricity, and telephone. If the landlord does not provide separate gas and electric meters for each tenant's dwelling unit, so that each tenant's meter measures only the electric or gas service to that tenant's dwelling unit, and if the landlord knows that the gas or electric service provided through a tenant's meter serves an area outside of the tenant's dwelling unit, Civ. Code, § 1940.9 requires the landlord, prior to the inception of the tenancy or upon discovery, to disclose that condition to the tenant and either execute a mutual agreement calling for the tenant's payment of the cost of the gas or electric service provided through the tenant's meter to serve areas outside the tenant's dwelling unit or to make other arrangements as may be mutually agreed in writing for payment of the gas or electric service. Failure to comply with these requirements gives the tenant the right to make the landlord the customer of record with the utility for the tenant meter as well as to obtain a reimbursement for payments made by the tenant for service to areas outside of the tenant's dwelling unit. [Civ. Code, § 1940.9]


Section 6. The "use" provision is very important. The landlord relies on the use provision to protect and maintain the physical condition as well as the image and reputation of the leased premises. The tenant is concerned that the provision be drafted broadly enough to allow for all anticipated or reasonable uses. These uses should be specifically set out in the lease.


This lease restricts the number of persons inhabiting the premises at any one time. This is a legitimate concern of the landlord due to the increased wear and tear on the leased premises caused by the occupancy of large numbers of people. Furthermore, if the landlord has agreed to pay certain utilities, such as water, the cost of those utilities may be affected by the number of people in occupancy. This lease also restricts the maintenance of a waterbed on the leased premises without the landlord's consent. This is usually considered reasonable in light of the potential for damage from leaks or the excessive weight of waterbeds. Due to these risks, most landlord's either prohibit waterbeds entirely or require an increased deposit to cover the potential for damage. The landlord is prohibited, however, from refusing to rent or to continue to rent a dwelling unit in a structure that received a certificate of occupancy after January 1, 1973, solely on the basis of a tenant's possession of a waterbed, providing the tenant meets the conditions set forth in Civ. Code, § 1940.5. In general, Civ. Code, § 1940.5 requires that (a) the tenant provide the landlord with insurance in accordance with the statute, (b) the waterbed not exceed the structure's floor load capacity, (c) the waterbed be installed in accordance with manufacturer's guidelines and state law, (d) the landlord receive 24 hours' notice of the installation and be permitted to observe the installation, (e) the installation of the waterbed conform with reasonable structural specifications, (f) the landlord has the right to inspect the waterbed periodically and to require that its

installation and maintenance conform to statutory requirements, and (g) the landlord may increase the security deposit by one-half of one month's rent and charge the tenant a reasonable fee to cover administration costs. [Miller & Starr California Real Estate 4th § 34:69 (obligation to pay rent); §§ 34:59 to 34:62 (tenant's use of premises)]

Section 7. The tenant should carefully consider any provision that generally prohibits the tenant from using the leased premises in violation of the law. While leases frequently contain these restrictions and the landlord can reasonably expect the premises not to be used for criminal activity, the tenant might inadvertently violate the law because of the vast array of governmental regulations in California, e.g., Proposition 65 [Health & Saf. Code §§ 25249.5 et seq.] and the uncontrollability of tenant's family and invitees.

Section 8. Whether the tenant or the landlord has the obligation to repair and maintain the residential leased premises usually depends upon whether the premises being leased is an apartment or a house. If the leased premises is a house, the obligation to repair and maintain the premises is often shifted to the tenant. If, however, the leased premises is an apartment, the obligation to repair and maintain the premises is typically borne by the landlord.

Nevertheless, there is an implied warranty of habitability in residential leases. [See  Green v. Superior Court, 10 Cal. 3d 616, 111 Cal. Rptr. 704, 517 P.2d 1168 (1974)] Furthermore, Civ. Code, § 1941 requires the lessor of a building intended for human occupation to maintain the building in tenantable condition, repairing any condition that causes it to be untenable. The characteristics that cause the premises to be considered tenantable are set forth in Civ. Code, § 1941.1. If the landlord fails to maintain the premises in tenantable condition, that failure can be used by a tenant as a defense in an unlawful detainer action. Furthermore, if the landlord or landlord's agent fails to repair the dilapidations within a reasonable time after receiving written or oral notice of dilapidations rendering the premises untenable, the tenant can repair the dilapidations and deduct the cost of repair from the rent. [See Civ. Code, § 1942] This "repair and deduct" remedy is limited to the amount of one month's rent deducted no more than twice in any 12-month period. [Miller & Starr California Real Estate 4th §§ 34:88 to 34:105 (maintenance, repair, and alterations)]

Section 9. A landlord has the right to enter a dwelling unit as set forth in Civ. Code, § 1954. Civ. Code, § 1954 allows the landlord to enter into a dwelling unit (a) in the case of an emergency, (b) to make necessary or agreed repairs, decorations, alterations, or improvements; supply necessary or agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors, or to make an inspection pursuant to  Civ. Code, § 1950.5(f), (c) when the tenant has abandoned or surrendered the premises, or (d) pursuant to a court order. Civ. Code, § 1954 further requires that, except in the cases of emergency, abandonment, surrender, or consent, the landlord can enter the premises only during normal business hours. Furthermore, Civ. Code, § 1954 requires that, except in cases of emergency, abandonment, surrender, or impracticability, the landlord must provide the tenant with reasonable notice of Landlord's intent to enter and that 24 hours' notice is presumed to be reasonable notice.

Tenant should seek to restrict the landlord's right to show the premises to prospective tenants to the last 30 days of tenant's tenancy. [Miller & Starr California Real Estate 4th § 34:89 (statutory duty of maintenance)]

Section 10. This provision is common in many leases and reflects the passive nature of most landlords. Although some leases omit the exception for the gross negligence and willful misconduct of landlord, landlord's agents, and landlord's employees, the enforceability of this type of provision is questionable. The tenant should attempt to broaden the exception so as to hold landlord responsible for landlord's acts of simple negligence. In addition, the tenant should seek a reciprocal agreement from landlord to indemnify tenant for landlord's acts of gross negligence and willful misconduct. The last sentence of the provision addresses the concern that the insurance carrier for landlord may subrogate itself to the rights of landlord under this provision. [Miller & Starr California Real Estate 4th § 34:104 (landlord's liability to tenant injured on the premises)]

For what constitutes an “act or omission” for purposes of an indemnity provision see, [St. Paul Fire and Marine Ins. Co. v. American Dynasty Surplus Lines Ins. Co.](#), 101 Cal. App. 4th 1038, 124 Cal. Rptr. 2d 818 (2d Dist. 2002).

“For purposes of an indemnity clause, an accident is not considered to have “arisen out of” tenant’s use of the premises where the location of the accident was not within the exclusive control of the tenant. [Morlin Asset Management LP v. Murachanian](#), 2 Cal. App. 5th 184, 206 Cal. Rptr. 3d 195 (2d Dist. 2016), review denied, (Nov. 16, 2016).”

Section 11. Often the landlord cannot deliver the leased premises when anticipated due to construction delays or the holdover of the prior tenant. For these reasons the lease should provide for the landlord’s failure to provide possession by the commencement of the term. At a minimum, the tenant’s obligation to pay rent should be abated until possession can be delivered. In addition, after some agreed upon period of time, the tenant should have the right to cancel the lease.

This provision does not obligate the landlord to pay for the damages resulting from a failure to timely deliver the leased premises. The tenant should seek to add a provision allowing the tenant to recover damages provided that the tenant takes reasonable steps to mitigate the damages. In determining damages, the tenant should consider whether the tenant will be able to holdover at the then current residence and if so what additional costs are involved in holding over. If the tenant cannot holdover, the tenant should consider what arrangements can be made for interim accommodations and what additional costs will be incurred in the interim accommodations. These costs might include the cost of the additional move, the difference in cost between the rent on the leased premises and the rent on the interim accommodations, and the cost of storage of the tenant’s belongings. [[Miller & Starr California Real Estate 4th § 34:56](#) (duty to deliver possession to the tenant)]

Section 12. The assignment and subletting provision is one of the most important provisions in the lease. The provision protects the landlord’s right to obtain the economic benefit from leasing the premises, particularly in municipalities with rent control ordinances. As a result, landlords commonly impose strict limitations on assignment and subletting. The provision also protects the tenant’s right to assign and sublet the leased premises, which is particularly important if the lease is for a fixed term and the tenant decides to move. If the lease is on a month-to-month basis instead, the tenant can generally terminate the lease on 30 days’ notice to the landlord.

While the California Supreme Court addressed the right of a commercial landlord to withhold consent to the assignment and subletting of commercial leases and the legislature has largely codified the court’s ruling [See [Kendall v. Ernest Pestana, Inc.](#), 40 Cal. 3d 488, 220 Cal. Rptr. 818, 709 P.2d 837 (1985) and [Civ. Code, §§ 1995.010 to 1995.270](#)], neither the court nor the legislature has addressed the right of a residential landlord to unreasonably or arbitrarily refuse to consent to the assignment and subletting of residential properties. Notwithstanding this lack of guidance by the courts and the legislature in a residential context, prudent landlords should attempt to specify in the lease the standard for landlord’s consent, together with the grounds by which the landlord may withhold consent to a proposed assignment or subletting. In determining the standard and grounds related to landlord’s consent, the landlord should consider the provisions of [Civ. Code, § 1951.4](#). [Civ. Code, § 1951.4](#) provides that in order for the landlord to take advantage of the right to continue the lease after default and collect the rent as it becomes due, the lease must (a) permit the tenant, or not prohibit or otherwise restrict the right of the tenant, to sublet the property, assign the tenant’s interest in the lease, or both, (b) permit the tenant to sublet the property, assign the tenant’s interest in the lease, or both, subject to express standards or conditions, provided the standards and conditions are reasonable at the time the lease is executed and the landlord does not require compliance with any standard or condition that has become unreasonable at the time the tenant seeks to sublet or assign, or (c) permit the tenant to sublet the property, assign the tenant’s interest in the lease, or both, with the consent of the landlord, and provide that the consent shall not be unreasonably withheld or include a standard implied by law that the consent shall not be unreasonably withheld. [[Miller & Starr California Real Estate 4th §§ 34:128 to 34:136](#) (assignment and subleasing)]

Section 13. The landlord's rights regarding abandoned personal property are controlled by [Civ. Code, §§ 1980 et seq.](#), which generally requires that the landlord send a statutory notice to the tenant and any other person the landlord reasonably believes to be the owner of the personal property, specifying the property abandoned and providing the tenant and any other person with the opportunity to reclaim the personal property before the property is disposed of by the landlord. [Civ. Code, § 1988](#) provides that after statutory notice, if the landlord reasonably believes that the total resale value of the property is less than \$300, the landlord may keep the personal property for the landlord's use or may dispose of it in any manner the landlord chooses. Otherwise the landlord must sell the property at a public sale and deposit the proceeds, after deducting the costs of storage, advertising, and sale, into the county treasury. [[Miller & Starr California Real Estate 4th § 34:214](#) (tenant's personal property)]

The tenant should try to avoid giving the landlord a lien on the property that is on the leased premises because a lien may conflict with the ownership or lien rights of other persons.


Section 14. This provision limits the tenant's notice and cure rights to those required under [Code of Civil Procedure § 1161](#) relating to unlawful detainer. Because checks can get lost in the mail and both landlords and tenants can make accounting mistakes, the tenant should seek additional notice and cure provisions under the lease to allow the tenant to address defaults without the increased cost and animosity engendered by preparing and delivering the statutory three-day notice. [[Miller & Starr California Real Estate 4th § 34:195](#) (default and unlawful detainer)]

A landlord's right to take action upon an event of a tenant default was called into question by 2 companion cases decided by the California courts. The first case, [Boston LLC v. Juarez, 240 Cal. App. 4th supp. 28 \(2015\) \(Juarez I\)](#) held that "any breach" by a tenant regardless of "materiality" could give rise to a termination of the lease by the landlord. Upon appeal, the second district court of appeal in [Boston LLC v. Juarez, 245 Cal. App. 4th 75, 199 Cal. Rptr. 3d 452 \(2d Dist. 2016\)](#), review denied, (May 11, 2016) (*Juarez II*) held that a tenant's breach must be "material" to justify a forfeiture thereby reversing the decision in *Juarez I*. The confusion arises out of the fact that the *Juarez II* decision limited its applicability to "residential" leases and in particular Los Angeles County Rent Stabilization Ordinance ("LARSO") rental contracts. As a result, commercial leases (and possibly other kinds of residential leases) may still be at risk of termination for minor, nonmaterial, breaches by the tenant. Furthermore, the court went on to hold that a tenant's obligation to pay for renter's insurance protects the tenant's interest, not the landlord's and thus could not have harmed the landlord and wasn't a material breach of the lease agreement giving rise to the a forfeiture.

Due to the holdings in *Juarez I* and *Juarez II*, to the extent not already in their standard form leases, landlords should ensure language is now included in their leases to the effect that "all" breaches are deemed "material" in nature and will give rise to the landlord having the right to compel a forfeiture of the lease, while tenants with adequate bargaining power should seek to exclude such language from the lease. If a tenant lacks the bargaining power to exclude such a forfeiture provision, then the tenant should at least try to negotiate additional time to cure breaches and/or add a requirement that the landlord provide more than one notice to a tenant before being able to affect a forfeiture for certain defaults. *See Miller & Starr, California Real Estate 4th §§ 34:181, 34:204* (landlord and tenant).



Section 15. [Civ. Code, § 1951.4](#) allows a landlord to continue a lease in effect only after the tenant's breach and abandonment and to recover rent as it becomes due, if tenant has the right to sublet or assign, subject only to reasonable limitations. Furthermore, as to the damages, a landlord can recover in the event of termination of a lease as specified by [Civ. Code, § 1951.2](#). [[Miller & Starr California Real Estate 4th §§ 34:181 to 34:224](#) (tenant's default and landlord's remedies)]

Residential landlords should generally avoid the use of arbitration provisions in residential leases as such provisions may be


unenforceable. [ [Jaramillo v. JH Real Estate Partners, Inc.](#), 111 Cal. App. 4th 394, 3 Cal. Rptr. 3d 525 (6th Dist. 2003)]




The lease need not reference [Civ. Code, § 1951.4](#) nor quote its language precisely in order for the landlord to preserve its benefit in the event of a default by the tenant. [GECCMC 2005-C1 Plummer Street Office Ltd. Partnership v. NRFC NNN Holdings, LLC](#), 204 Cal. App. 4th 998, 140 Cal. Rptr. 3d 251 (2d Dist. 2012), as modified on denial of reh'g, (Apr. 30, 2012) and review denied, (July 11, 2012).


Section 16. Whether the landlord is obligated to pay interest on the security deposit is usually a matter of negotiation between the parties. However, in some California communities the landlord may be required by local law to pay interest on the security deposit. [See, e.g., Berkeley Ordinance 5261-N.S. § 7]

The use of security deposits in residential leasing transactions is controlled by  [Civ. Code, § 1950.5](#), which generally limits the amount that a residential landlord may charge for a security deposit to the first month's rent in advance plus an amount equal to two months' rent for an unfurnished unit and three months' rent for a furnished unit. Furthermore,  [Civ. Code, § 1950.5](#) restricts the use of the security deposit to (a) the compensation of the landlord for the tenant's default in the payment of rent, (b) the repair of damages to the leased premises, other than ordinary wear and tear, (c) the cleaning of the leased premises upon the termination of the tenancy, and (d) to remedy future defaults by the tenant to restore personal property other than that resulting from ordinary wear and tear, provided the lease provides for this. Finally, the landlord must furnish the tenant copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and must return any remaining portion of the security deposit to the tenant no later than twenty-one (21) calendar days after the tenant has vacated the premises.

This lease requires the tenant to replenish any security deposit applied during the term of the lease. This is particularly important to the landlord because the security deposit is intended to protect the landlord against the tenant's default, not to act as a separate mechanism for the tenant to perform obligations. [[Miller & Starr California Real Estate 4th §§ 34:81 to 34:85](#) (rights and duties regarding deposits)]

Section 17. Absent a specific contractual provision, attorney's fees are not recoverable by a prevailing party in a breach of lease action [[Civ. Proc. Code, § 1021](#)]. Furthermore, absent this provision, the cost of enforcing a party's rights under a lease can exceed the damages allowed by [Civ. Code, § 3306](#), especially if the breach is not in bad faith. Because  [Civ. Code, § 1717](#) allows the prevailing party to collect attorney's fees regardless of contractual provisions allowing attorney's fees to only one party, it is customary to conform the contract to the statute by providing for attorney's fees to the prevailing party. [[Miller & Starr California Real Estate 4th §§ 40:29 to 40:41](#) (damages for breach of contract); [§ 40:72](#) (reciprocity of attorney-fee provision)]

In drafting and interpreting attorney's fees provisions, counsel should be aware that an attorney's fee provision in conflict with  [Civ. Code, § 1717](#) may be found void and unenforceable. In  [Wong v. Thrifty Corp.](#), 97 Cal. App. 4th 261, 118 Cal. Rptr. 2d 276 (1st Dist. 2002), the court held that an attorneys' fees provision in a lease which provided that the landlord could recover its attorneys' fees against the tenant only if the tenant was found to be in default, conflicted with  [Civ. Code, § 1717](#), and therefore, the lease provision was void.

Even though contained in a contract, a broadly worded attorney's fee provision can give rise to an attorneys fee award for a tort action arising out of the contract.  [Drybread v. Chipain Chiropractic Corp.](#), 151 Cal. App. 4th 1063, 60 Cal. Rptr. 3d

580 (3d Dist. 2007), as modified, (June 12, 2007) (holding that an attorneys fee provision in a sublease gave rise to an attorneys fee award in a tort action for unlawful detainer); [Cruz v. Ayromloo](#), 155 Cal. App. 4th 1270, 66 Cal. Rptr. 3d 725 (2d Dist. 2007) (holding that the broadly worded attorney's fee provision sufficient to award attorney fees where the tenant prevailed on a tort action arising from the contract).

Notwithstanding the inclusion of an attorney fees provision, absent a clear definition of who constitutes the "prevailing party" it is possible that neither party will be deemed to be the "prevailing party" and therefore neither side may recover attorney fees. [James L. Harris Painting & Decorating, Inc. v. West Bay Builders, Inc.](#), 239 Cal. App. 4th 1214, 191 Cal. Rptr. 3d 825 (3d Dist. 2015), as modified, (Sept. 3, 2015).

Notwithstanding [Civ. Code, § 1717](#), where the parties agree to cap attorney fees to a certain amount, courts will generally honor that cap even when the contract provides for the recovery of "reasonable" attorney fees. [511 S. Park View, Inc. v. Tsantis](#), 240 Cal. App. 4th Supp. 44, 193 Cal. Rptr. 3d 517 (App. Dep't Super. Ct. 2015), as modified, (Oct. 5, 2015) (finding that a monetary cap and a requirement for "reasonable" attorney fees did not conflict).

A commercial landlord's claim for damages against a debtor in bankruptcy, including attorney fees, are subject to the statutory cap set forth in [11 U.S.C.A. § 502\(b\)\(6\)](#) to the extent that those damages relate directly to the termination of the lease-at-issue. [In re Kupfer](#), 852 F.3d 853 (9th Cir. 2016). Commercial tenants sought review of a district court judgement affirming an arbitration award in favor of landlord for past and future rent as limited by statutory cap set for in [11 U.S.C.A. § 502\(b\)\(6\)](#), and an award for the entire uncapped claim for attorney fees and arbitration fees. [11 U.S.C.A. § 502\(b\)\(6\)](#) expressly caps the damages on the "claim[s] of a lessor for damages resulting from the termination of a lease." The Court of Appeals held that the district court failed to distinguish attorney fees and arbitration fees resulting from the termination of the lease from those resulting from collateral claims, and as such, vacated the district court's judgment and remanded for further proceedings consistent with this interpretation.

A court may choose not to award attorney fees and costs where each party obtains declaratory relief, despite the fact that one party prevailed over the other monetarily. [Marina Pacifica Homeowners Assn. v. Southern California Financial Corp.](#), 20 Cal. App. 5th 191, 228 Cal. Rptr. 3d 799 (2d Dist. 2018), review denied, (Apr. 25, 2018) (quoting [Civ. Proc. Code, § 1032](#)) (where a defendant appealed a lower court's ruling that neither party in the instant action was entitled to costs on the grounds they were "indisputably" awarded a net monetary recovery). The court affirmed the trial court's ruling noting that [Section 1032](#) expressly gives the trial court the authority to determine the prevailing party and to allow costs or not if any party recovers other than monetary relief. Therefore, despite the fact that one party may have prevailed in the sense that they recovered higher monetary relief than the other party, because both parties obtained declaratory relief as well.

While an affirmative defense is not considered to be an "action" or "proceeding" for purposes of awarding attorney fees, it is considered to be "because of" a dispute in connection with the contract thus allowing the defendant to recover attorney fees where it prevailed on its affirmative defense. [Mountain Air Enterprises, LLC v. Sundowner Towers, LLC](#), 3 Cal. 5th 744, 220 Cal. Rptr. 3d 650, 398 P.3d 556 (Cal. 2017). In action for specific performance and breach of contract in real estate purchase agreement, defendant prevailed on an affirmative defense of novation based on an option agreement, however, defendant was denied attorney fees. The attorney fees provision in the agreement provided that "if any legal action or any other proceeding ... is brought ... the prevailing party shall be entitled to recover reasonable attorney fees." Therefore, the main issue on appeal was whether the defendant's affirmative defense constituted an "action" under the attorney fees provision. The court rejected this contention noting that while an action may refer to the entire judicial proceeding, it does not mean that each individual occurrence within the process is itself an "action." However, the appeals court took further notice of another provision within an attorney fees provision of the option agreement which granted the prevailing party fees if an action was brought "because of" a dispute in connection with the agreement. Applying this broad provision, the court held that the defendant would be

entitled to fees under this provision.

In order for a subsequent agreement or document authorizing attorney fees to be incorporated into a prior agreement under [Civ. Code, § 1642](#), the incorporating reference must manifest a clear and unequivocal intent to merge the two documents. [R.W.L. Enterprises v. Oldcastle, Inc.](#), 17 Cal. App. 5th 1019, 226 Cal. Rptr. 3d 677, 94 U.C.C. Rep. Serv. 2d 325 (4th Dist. 2017). (where plaintiff prevailed in an action against defendant for breach of contract and sought attorney fees). The basis for the action related to an agreement entered into in 2001, which contained no attorney fees provision. However, in 2010 a subsequent credit application signed by the defendant contained an attorney fee provision which amended the original agreement, and as trial court found, these agreements could properly be construed together to authorize attorney fees under [Civ. Code, § 1642](#). On appeal, the court disagreed citing that under [Civ. Code, § 1642](#) whether or not a document is incorporated into the contract depends on the parties' intent at the time of contract, and any incorporating reference must be clear and unequivocal. Since the court found that there was no apparent connection between the 2001 contract and the 2010 credit application, it found that the attorney fees provision in the 2010 application did not extend to the breach of contract claim under the 2001 agreement.

Section 18. This provision protects the landlord from unintentionally waiving rights under the lease by accepting late rent from the tenant.

Section 19. [Civ. Code, § 1962](#) requires a residential lease to disclose the name and usual street address at which personal service may be made for each person who is either authorized to manage the premises, is an owner of the premises, or is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting all notices and demands. Also required is the applicable telephone number. [[Miller & Starr California Real Estate 4th § 34:241](#) (identification of owner)]

The parties may desire to modify this provision to provide that the receipt of required notices be confirmed by independent means. Such a mechanism might include sending the notice or copy of the notice by certified mail or by a courier that requires a signature for receipt.

Even though a notice provision establishes clear provisions for the giving of notices, the provision remains subject to modification when the party or its counsel directs the other party to give notices in a different manner. [Eucasia Schools Worldwide, Inc. v. DW August Co.](#), 218 Cal. App. 4th 176, 159 Cal. Rptr. 3d 621 (Cal. App. 2d Dist. 2013) (where tenant's attorney instructed landlord to only communicate with attorney, landlord did not breach the notice provision of a lease by sending notice to attorney and not as required under the terms of the lease). See [Miller & Starr California Real Estate 4th § 1:113](#) (Contracts); [§ 34:55](#) (Landlord and Tenant).

Section 21. As a general rule this provision allows a party to require the other party's performance of obligations by the deadlines set forth in the lease. However, in the context of a residential lease the importance of this provision is lessened due to statutory provisions such as [Code of Civil Procedure § 1161](#), which provides the tenant, in most instances, with at least three days to cure any default before the lease can be terminated. However, absent the "time of the essence" provision, the landlord might not even be able to get to the point where a three-day notice could be given if the landlord is otherwise required to accept the tenant's late performance when tendered within a "reasonable time" following the original deadline. [[Miller & Starr California Real Estate 4th § 2:19](#) (time of the essence)]


Parties should be aware that even though the contract may call for "time to be of the essence," a party's conduct following a missed deadline can waive the benefit of such a provision and allow for late performance. [[Galdjie v. Darwish](#), 113 Cal. App. 4th 1331, 7 Cal. Rptr. 3d 178 (2d Dist. 2003), as modified on denial of reh'g, (Dec. 23, 2003)]

Section 22. The parties should normally address in the lease the issues raised by the holding over of the tenant after the termination of the lease. Absent a provision such as this, the holding over of the tenant can, depending on the circumstances of the holding over, cause the tenant to be deemed either a periodic tenant, a tenant-at-will, or a tenant-at-sufferance. This provision requires that the tenant holding over be treated as a periodic tenant on a month-to-month basis. [Miller & Starr California Real Estate 4th §§ 34:42 to 34:45 (holding over)]

Section 23. Most residential leases contain a late charge provision as an incentive for tenants to pay their rent on time, as well as to compensate the landlord for the cost and inconvenience incurred because of late payments. If the late charge provision is inordinately high, the tenant should seek a reduction in the amount of late charge that can be assessed. In addition, the tenant should seek a notice requirement prior to the assessment of a late charge to protect the tenant in case the rent check gets lost, through no fault of the tenant, prior to delivery to the landlord. [Miller & Starr California Real Estate 4th § 34:70 (late charges for rent)]



Unlike the late charge, the default interest rate is not so much intended as an incentive to encourage prompt payment of rent, but rather to provide the landlord with some protection when the tenant fails to perform obligations under the lease and the landlord must bring legal action either to evict the tenant or to collect damages. Because a landlord must often sue to collect interest, the landlord should make sure that the interest rate in the lease does not violate applicable usury statutes.

Since the assessment of a late charge and default interest on amounts past due could be construed to be liquidated damages, the provision should state that the damage is “impracticable or extremely difficult to fix” so as to comply with Civ. Code, § 1671(d).

When crafting a “late charge” provision, counsel should take care in its wording.  Poseidon Development, Inc. v. Woodland Lane Estates, LLC, 152 Cal. App. 4th 1106, 62 Cal. Rptr. 3d 59 (3d Dist. 2007), as modified, (July 24, 2007) (holding that a final balloon payment did not constitute an “installment” and thus a late charge could not be assessed).

Section 24. Because the landlord relies on the tenant’s application in deciding whether to lease to the tenant, a copy of the application should be attached to the lease, and if material misrepresentations exist in the application, those misrepresentations should constitute a default under the Lease.

Section 28. The integration provision should make either general or specific reference to all of the documentation being executed by the parties in connection with the lease.

Notwithstanding the inclusion of a provision claiming that the agreement constitutes the entire agreement of the parties, parties may now include evidence of oral promises made to a party that are at variance with the written terms of the agreement notwithstanding the lack of fraud in the inducement regarding the entry into the agreement.  Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass’n, 55 Cal. 4th 1169, 151 Cal. Rptr. 3d 93, 291 P.3d 316 (2013) (lender orally promised to extend loan for 2 years although extension agreement only extended loan for 3 months), holding affirmed and clarified  Julius Castle Restaurant Inc. v. Payne, 216 Cal. App. 4th 1423, 157 Cal. Rptr. 3d 839 (1st Dist. 2013) (equitable considerations such as party sophistication and adhesion deemed irrelevant for purposes of allowing admission of parole evidence regarding oral promises of landlord to make repairs). See Miller & Starr California Real Estate 4th §§ 1:63, 1:155; §§ 13:26, 13:71; § 35:17.

Parties counsel should take particular care when drafting and negotiating an integration clause as an agreement between sophisticated parties will be interpreted in strict compliance with the language used therein. [Hot Rods, LLC v. Northrop Grumman Systems Corporation](#), 242 Cal. App. 4th 1166, 196 Cal. Rptr. 3d 53 (4th Dist. 2015) (where the court excluded evidence in support of an award to buyer due in part to the sophistication of the parties to the purchase contract where an integration clause specifically prohibited the introduction of “any extrinsic evidence whatsoever”). See *Miller & Starr, California Real Estate 4th* §§ 1:63, 1:64 (contracts); § 33:17 (defective construction); §§ 39:5, 39:6 (hazardous substances); §§ 40:29, 40:30 (remedies); § 45:6 (alternative dispute resolution).

Section 32. Parties should carefully consider the impact of incorporating by reference exhibits and other documents in a contract as it can have unintended consequences. [[Wolschlager v. Fidelity Nat. Title Ins. Co.](#), 111 Cal. App. 4th 784, 4 Cal. Rptr. 3d 179 (6th Dist. 2003), as modified, (Aug. 27, 2003) (court held arbitration provision enforceable where provision included in title insurance policy incorporated by reference within contract)]

Section 33. This provision allows the landlord to hold each person signing the lease as a tenant, personally liable for all of the obligations of the tenant under the lease. This can be particularly significant where the tenant is a married couple and, subsequent to the execution of the lease, the couple separates or divorces.

Signature Blocks. Parties to a contract should take particular care to ensure that the person signing the contract actually has the authority to bind the party to the contract. [[Elias Real Estate, LLC v. Tseng](#), 156 Cal. App. 4th 425, 67 Cal. Rptr. 3d 360 (2d Dist. 2007), review denied, (Feb. 13, 2008) (holding that where a contract to sell property was not in the ordinary course of the owners’ business a sale contract signed by only one owner did not bind the other owners to the contract).

Despite the lack of actual authority on the part of an officer or manager of a limited liability company, a contract may still be binding on the LLC where the other party lacks knowledge of such lack of authority. [Western Surety Co. v. La Cumbre Office Partners, LLC](#), 8 Cal. App. 5th 125, 213 Cal. Rptr. 3d 460 (2d Dist. 2017), review denied, (May 10, 2017) (where a manager of an LLC held himself out to be a signing manager, despite the fact that he was not authorized by the LLC to bind the company; the court nonetheless held that the LLC could be bound to an indemnity agreement where the other party had no actual knowledge he was not authorized. The court relied upon [Corp. Code, § 17157, subd. \(a\)](#) in its ruling, reasoning that “the act of any member ... binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has actual knowledge of the fact that the member has no such authority.” [Western Surety Co. v. La Cumbre Office Partners, LLC](#), 8 Cal. App. 5th 125, 213 Cal. Rptr. 3d 460 (2d Dist. 2017), review denied, (May 10, 2017).

A party to a contract is not barred by the Statute of Frauds from using extrinsic evidence to substantiate the other party’s capacity or authority to enter into the contract. [[Jacobs v. Locatelli](#), 8 Cal. App. 5th 317, 213 Cal. Rptr. 3d 514 (6th Dist. 2017), as modified, (Feb. 28, 2017) and review denied, (May 10, 2017). A realtor entered into a contract with a co-owner of a parcel to procure a buyer for the parcel of property. The co-owners of the property subsequently entered into agreement to sell the property, and refused to acknowledge the agreement with the realtor. The realtor brought an action to enforce the contract, which was signed by only one of the co-owners who alleged that he had the authority to act on behalf of the other owners. The co-owners filed a demurrer alleging that since the contract was not signed by all of the owners, they could not be bound by the agreement. The trial court sustained the demurrer, and the realtor appealed. The Court of Appeal reversed the trial court’s dismissal on the main issue that the statute of frauds barred the admission of extrinsic evidence. Citing that extrinsic evidence can “be used to *explain* essential terms that were understood by the parties” as opposed *supplying* those terms, the Court held that the trial court impermissibly excluded evidence that the co-owner represented himself to be an agent of all the co-owners. (where the court relied extensively on [Sterling v. Taylor](#), 40 Cal. 4th 757, 55 Cal. Rptr. 3d 116, 152 P.3d 420 (2007)).