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[†] The Esports Bar Association Journal selected Paul Santache as the recipient of the scholarship for the Top Student Submission.

[‡] The Esports Bar Association Journal selected Phillip Jones as the recipient of the scholarship for the Student Runner-Up.

Landlord-Tenant Law as Applied to Team Houses in Esports

By Spencer Mendez†

Introduction

Synergy between the members of an esports organization is important for success. Toward this end, esports organizations have established houses where an entire team of players or content creators can live together.¹ Esports teams—either as direct owners of the building or renters themselves²—use these houses both to grow the organization and to attract investors.³ Whether the talent living in these team houses are classified as tenants, licensees, or invitees will impact the rights of both the talent (as inhabitants) and the organizations (as property owners or renters). Improper classification of talent, or failing to negotiate and establish legal classification at all, can lead to abuse of talent in housing.⁴ As the esports industry matures, organizations should properly classify their talent, and talent should understand the implications of that classification.

To aid organizations and players in understanding their rights, this article provides (1) background of the law applicable to housing classification, (2) how the relationship between talent and the organization impacts that classification, and (3) the implication of the classification for each party.

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¹ *Team Houses and Why They Matter*, ESL MAG. (Jan. 6, 2014), <https://www.eslgaming.com/article/team-houses-and-why-they-matter-1676>.

² Michael Arin, *Esports and Employment After Dynamex*, ESPORTS B. ASS'N J. (Oct. 11, 2019), <https://esportsbar.org/journals/2019/10/esports-and-employment-after-dynamex>.

³ See Justin Ronquillo, Comment, *The Rise of Esports: The Current State of Esports, Its Impact on Contract Law, Gambling, and Intellectual Property*, 23 U.S.F. INTELL. PROP. & TECH. L.J. 81, 84–85 (2019).

⁴ Sky Williams, a content creator, allowed professionals and content creators in the *Super Smash Bros.* community stay in houses that he owned. Multiple members of these houses have come forward to describe the abuse that they suffered from Sky. None of these members had housing agreements. Cale Michael, *Sky Williams' Response to Allegations About His "Sky House" Residences Was Taken Down Mid-Broadcast*, DOT ESPORTS (July 7, 2020), <https://dotesports.com/fgc/news/sky-williams-response-to-allegations-about-his-sky-house-residences-was-taken-down-mid-broadcast>.

I. Possible Classifications

Courts look to landlord-tenant law, which draws upon both contract and property law, to classify common relationships between parties and determine their rights.⁵ The potentially different jurisdictions of an esports organization's base of operations and the location of the team house determine which laws apply.⁶ Though team houses are beginning to spread across the country and world, this article will focus on California landlord-tenant law because many team houses are located there.⁷

The three possible classifications for talent living in team housing are (1) tenant, (2) licensee, and (3) invitee. The factors in determining classification include how the parties' relationship forms, the rights granted to the inhabitant, and the purpose of the inhabitant being on the property. A few factors are vital: courts primarily look to the agreement between the parties, whether written or oral, as a starting point in determining whether someone is a tenant, a licensee, or an invitee.⁸ Without an agreement, courts analyze conduct, such as whether or not the property owner received rent⁹ and whether the inhabitant's use of the property benefits the inhabitant or the property owner.¹⁰ Classification is a matter of law, and courts look to the facts of a case in reaching a determination.¹¹ While the various classifications share some common rights, the difference in classification may determine privacy, habitability, and the duties of each party in the event of a housing dispute.

⁵ *Landlord Tenant Law*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/landlord-tenant_law (last visited Sept. 25, 2020).

⁶ GameDaily Connect, *Legality in Esports | PANEL*, YOUTUBE (Jan. 9, 2020), <https://www.youtube.com/watch?v=vAkeEC4Eois&t=581s> (Krista Hiner discussing the importance of jurisdiction at 16:03).

⁷ Compare Arash Markazi, *Team SoloMid To Begin Construction on \$13-Million Esports Training Center in Playa Vista*, L.A. TIMES (Sept. 11, 2019), <https://www.latimes.com/sports/story/2019-09-11/largest-esports-training-center-north-america-los-angeles>, with Mike Hume, *Bare Walls, Little Furniture and Big Dreams: A Year Inside D.C.'s Esports House*, WASH. POST (Feb. 8, 2019), <https://www.washingtonpost.com/sports/2019/02/08/bare-walls-little-furniture-big-dreams-year-inside-dc-esports-house>.

⁸ *Qualls v. Lake Berryessa Enters.*, 91 Cal. Rptr. 2d 143, 147 (1999) (citing 6 MILLER & STARR, CALIFORNIA REAL ESTATE § 18:5 (2d ed. 1989)).

⁹ 10 MILLER & STARR, CALIFORNIA REAL ESTATE § 34:77 (4th ed. 2015).

¹⁰ *Bylling v. Edwards*, 14 Cal. Rptr. 760, 762–63 (1961).

¹¹ *Qualls*, 91 Cal. Rptr. 2d at 147.

A. *Tenant*

Tenants lease property from landlords in exchange for rent.¹² A lease can be either written or oral, but an oral lease is only enforceable if it expires less than one year from the formation of the agreement.¹³ The lease provides tenants with the right to exclusive possession of the property for the duration of the agreement.¹⁴ Indeed, the right to exclusive possession distinguishes a lease, and therefore a tenancy, from a license.¹⁵ An employee might be deemed to be a tenant if they obtain the rights to an apartment, including exclusive possession, as a benefit of their employment, with their employment serving as a form of rent.¹⁶ Exclusive possession gives a tenant the right as the sole possessor of the property against the landlord and anyone else in the world.¹⁷

On top of exclusive possession, tenants also enjoy the right to a house that is made and kept habitable by the landlord, the right to challenge a landlord's eviction attempts, and the right to privacy, including the right to notice before the landlord visits the property.¹⁸ A landlord is not able to end the tenancy except as provided by law or by the lawful provisions in the lease.¹⁹ Given the foregoing rights, tenancy is the classification most favorable to inhabitants.

B. *Licensee*

A licensee is one who has permission from the property owner (the licensor) to use property for the licensee's own benefit.²⁰ A property

¹² See *Tenant*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/tenant>.

¹³ MILLER & STARR, *supra* note 9, § 34:33.

¹⁴ Howard v. Cnty. of Amador, 269 Cal. Rptr. 807, 813 (1990) (citing Guy v. Brennan, 60 Cal. App. 452, 456 (1923)).

¹⁵ Spinks v. Equity Residential Briarwood Apartments, 90 Cal. Rptr. 3d 453, 482 (2009).

¹⁶ See *id.* Here, the plaintiff was an employee of the defendant and the two had entered into a housing agreement that stated the plaintiff would be provided with housing by the employer. The employer tried to remove the plaintiff from the apartment by threatening to shut off the electricity and actually changing the locks. The court found that the plaintiff was actually a tenant and not a licensee and was therefore entitled to the protections afforded to tenants such as the right to quiet enjoyment and against wrongful entry and eviction.

¹⁷ See *id.* This means that no one outside of the tenants signed to the lease would be able to use the property for the duration of the lease. Notably, this means that one tenant would not be able to exclude another tenant on the same lease (i.e., a roommate in a team house).

¹⁸ *Landlord Tenant Law*, *supra* note 5.

¹⁹ 10 MILLER & STARR, *supra* note 9, § 34:5.

²⁰ See *Licensee*, BLACK'S LAW DICTIONARY (5th pocket ed. 2016).

owner will grant a license to someone allowing that person or entity to perform certain actions on the property though the license does not confer any interest in the property itself.²¹ Licenses, unlike leases, are typically revocable, unassignable, and terminable, all at the discretion of the licensor.²²

A licensee is only granted the rights afforded to the licensee by the licensor in their agreement.²³ Tenants, by contrast, receive certain guaranteed rights, such as the right to a habitable residence.²⁴ The license might grant licensees similar rights to those enjoyed by tenants, but those rights would only exist by virtue of the license and would disappear when the licensor ended the agreement.²⁵ Importantly, licenses do not grant inhabitants exclusive possession.²⁶ Courts can find, however, that an agreement is a lease and not a license if the agreement provides for exclusive possession for a fixed amount of time and offers notice for termination, despite the parties' intent for it to be a license.²⁷ In general, a licensee classification is less favorable to inhabitants than tenancy given that the inhabitant has fewer rights to the property.

Courts can find that a license exists when the inhabitant has a privilege to use the premises under the owner as opposed to a right in the land itself.²⁸ Furthermore, courts have found a license where the licensee's property use socially benefits the licensee itself rather than provide economic benefit to the property owner, even if the licensee's use also incidentally benefits the property owner.²⁹ Additionally, when an agreement does not grant the inhabitant title to or interest in the land, courts can find a license instead of a lease.³⁰ Courts will consider a lack of rent payment as an indicator that the inhabitant may be a licensee.³¹

²¹ *Jenson v. Kenneth I. Mullen Co.*, 259 Cal. Rptr. 552, 554 (1989). Tenancy is a right in property, while a license is an interest in contract.

²² 10 MILLER & STARR, *supra* note 9, § 34:5.

²³ *Qualls v. Lake Berryessa Enters.*, 91 Cal. Rptr. 2d 143, 147 (1999).

²⁴ *Landlord Tenant Law*, *supra* note 5.

²⁵ 10 MILLER & STARR, *supra* note 9, § 34:5.

²⁶ *Id.*

²⁷ *In re Safeguard Self-Storage Trust*, 2 F.3d 967, 972 (9th Cir. 1993).

²⁸ 10 CAL. REAL EST. § 34:5 (4th Ed.).

²⁹ *Bylling v. Edwards*, 14 Cal. Rptr. 760, 763–67 (1961) (finding that the plaintiff was a gratuitous licensee, rather than an invitee, because the plaintiff's purpose of being on the property was social in nature, despite the fact that she gave unsolicited help to the defendants).

³⁰ *Qualls v. Lake Berryessa Enters.*, 91 Cal. Rptr. 2d 143, 147 (1999).

³¹ 10 MILLER & STARR, *supra* note 9, § 34:77.

C. *Invitee*

An invitee is one invited to use the property of another for some economic benefit to the property owner.³² An invitee and a property owner share some mutual advantage from the invitee's use of the property.³³ Invitees can enter the property through the property owner's invitation.³⁴

In contrast to tenants and licensees, invitees normally do not receive much more than the presumption of ordinary care.³⁵ Ordinary care means that inhabitants can expect that a property owner keep the premises reasonably safe or at least warn inhabitants of any potential risks on the property.³⁶ A property owner will be held liable for injuries caused to invitees by dangerous conditions on the property that existed as a result of the property owner's negligence or willful conduct.³⁷

Courts will classify an inhabitant as an invitee if the use of the property benefits the property owner in some meaningful way, as opposed to the incidental benefit of licensees.³⁸ Similar to the considerations for licensees, courts will consider whether the owner granted the inhabitant any interest in the property. A court would likely find that an inhabitant is an invitee if he does not have an interest in the property, does not pay rent, and his present on the property benefits the property owner in a meaningful way.³⁹

II. Likely Classification of Talent

As explained above, courts look to the agreements and conduct between esports organizations and their talent in determining classification. Ultimately, the distinction between licensee and invitee is insignificant for talent living in team houses: both classifications receive fewer rights than tenants.

³² See *Invitee*, BLACK'S LAW DICTIONARY (5th pocket ed. 2016).

³³ *Bylling*, 14 Cal. Rptr. at 762–63.

³⁴ *Clawson v. Stockton Golf & Country Club*, 34 Cal. Rptr. 184, 190 (1963) (citing RESTATEMENT (FIRST) OF TORTS § 332 (AM. LAW. INST. 1934)).

³⁵ *Invitee Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/i/invitee> (last visited Sept. 25, 2020).

³⁶ *Id.*

³⁷ See *Bylling*, 14 Cal. Rptr. at 764.

³⁸ *Id.* at 762–63.

³⁹ 10 MILLER & STARR, *supra* note 9, § 34:77.

A. *Considerations in Esports*

So how might esports players and content creators be classified vis-à-vis team houses? As an initial matter, if the organization itself is a licensee of the property owner of the house, the organization cannot grant tenancy rights to its talent.⁴⁰ If the organization owns or rents the property, however, then courts will conduct further analysis. For example, the court in *Qualls v. Lake Berryessa Enterprises, Inc.* was able to look directly to the agreement between the parties, which limited the amount of time the inhabitants could use the property, further limited the ways in which they could use the property, and allowed for others to cross over the property.⁴¹ The lack of exclusive possession allowed the court to find that the plaintiff was a licensee, not a tenant.⁴² Conversely, the court in *Spinks v. Equity Residential Briarwood Apartments* handled the appeal of an employee who argued that her housing agreement with her employer constituted a lease and that she was a tenant.⁴³ It found that the housing agreement between an employee and her employer constituted a lease because the inhabitant enjoyed the right of exclusive possession: the lease did not impose restrictions on her use of the property, and no one other than her had the right to occupy the property.⁴⁴ Further, the court held that because evidence existed that she was housed as compensation for her employment, a genuine issue of material fact existed as to the payment of rent.⁴⁵ Rent payment points to the existence of a lease rather than a license.⁴⁶

In contrast to the cases above, esports team houses often involve conditions indicating a license, not a tenancy. Members of an organization or staff hired by an organization sometimes live in a team house with the talent. Indeed, coaches and managers might live directly in the house with the talent.⁴⁷ Additionally, staff hired by an organization, such as chefs or maids, might enter the house.⁴⁸ Talent living in team houses may have little privacy, including cameras filming for content, and enforced curfews (e.g., via the organization shutting off the Internet

⁴⁰ *Qualls v. Lake Berryessa Enters.*, 91 Cal. Rptr. 2d 143, 147–48 (1999) (holding a party cannot grant interest in property greater than the interest that it possesses, and a licensee cannot grant tenancy interests).

⁴¹ *Id.* at 148.

⁴² *Id.*

⁴³ *Spinks v. Equity Residential Briarwood Apartments*, 90 Cal. Rptr. 3d 453, 466 (2009).

⁴⁴ *Id.* at 482.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Maddy Myers, *How Pro Gamers Live Now: Curfews, Personal Chefs, and All of It on Camera*, KOTAKU (June 21, 2018), <https://compete.kotaku.com/how-pro-gamers-live-now-curfews-personal-chefs-and-a-1827017564>.

⁴⁸ *Id.*

at a certain time).⁴⁹ Talent living in these conditions more closely resemble the licensee-plaintiff in *Qualls* because others have access to the property: the talent's actual use of the property seems to be limited by the control of the organization. That is, players and content creators typically do not have exclusive possession.

Examples of talent losing their housing lend further to the classification of talent as licensees or invitees. In the case of the Apex Pride League of Legends team, players were removed from the team house for underperforming as a team.⁵⁰ In another instance, the Red Reserve Call of Duty Team had to leave a team house because of the organization's inability to pay for the house.⁵¹ While it is possible that a lease might state that these situations might be grounds for termination, tenants ordinarily receive protections against eviction. Given that lack of protection in the foregoing examples, talent in such situations more closely resemble licensees.

The ability to threaten to take away housing might also point to a person being a licensee. Such was the case with the Meet Your Makers esports team, where the organization threatened to take away the housing of one of its player's parents.⁵² The player, Kori, had his mother sign his contract on his behalf because he was a minor at the time.⁵³ His organization reportedly threatened to take away his mother's house when he attempted to leave the team.⁵⁴ A court can look at Kori's situation in light of the *Spinks* decision by looking to the contract signed by Kori's mother to determine if she was a tenant, like the plaintiff in *Spinks*, or if she was a licensee of the organization and was able to be evicted as they had threatened.

The comparison to the plaintiff in *Spinks* can further apply to talent residing in a team house: if the talent are employees of the organization, and housing is part of their compensation, then *Spinks* indicates that the talent's payment of rent for that housing will bolster the argument that they are tenants. Organizations have sometimes paid for housing, as the employer paid for the apartment in *Spinks*.⁵⁵ Courts

⁴⁹ *Id.*

⁵⁰ Jacob Wolf, *Sources: Apex Pride Asked to Vacate Its House After Underperforming*, ESPN (July 8, 2016), https://www.espn.com/esports/story/_/id/16899820/apex-pride-asked-vacate-house-underperforming.

⁵¹ Reuters, *Red Reserve Call of Duty Players Told to Leave Team House*, ESPN (Apr. 5, 2019), https://www.espn.com/esports/story/_/id/26451033/red-reserve-call-duty-players-told-leave-team-house.

⁵² Richard Lewis, *MYM Threatened Kori with Taking His Mother's House*, DOT ESPORTS (Feb. 8, 2015), <https://dotesports.com/league-of-legends/news/mym-kori-threatened-unpaid-wages-1434>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Myers, *supra* note 47.

could find that this would satisfy the talent's rent payment in consideration for the talent's classification as a tenant.

B. Impact of Classification in Esports Team Housing

In the end, most team houses appear to be the result of license agreements, rather than leases, between organizations and their talent, and talent are likely classified as licensees or invitees. Absent proper classification, talent residing in team houses might find themselves mistreated⁵⁶ or living in inhospitable conditions.⁵⁷ If the esports industry is troubled by organizational abuse, then there needs to be change. Proper representation must become the norm in contract negotiations so that, at a minimum, each party comes out of the negotiation knowing their rights in an agreement. Certain parts of the esports industry already mandate that teams provide their talent with housing, at least for a certain amount of time, and the rest of the industry could benefit from this same practice.⁵⁸

Conclusion

Team houses offer immense benefits to esports organizations by fostering a community of talent, attracting investors for the organization, and benefitting talent with sponsorship deals, technology, and equipment. However, talent and organizations should be upfront about the limits of the occupancy relationship. Classifying talent as tenants, licensees, or invitees is important for determining the rights afforded to each party. Without proper classification, avoidable disputes will arise between organizations and their talent over each party's rights in the house, and the full benefits of team houses will never come to fruition.

⁵⁶ See Arin, *supra* note 2.

⁵⁷ See Ronquillo, *supra* note 3, at 92.

⁵⁸ Richard Lewis, *Leaked Overwatch League Memo Drastically Shifts Housing Requirements, Confirms "Luxury Tax,"* DEXERTO (Aug. 7, 2019), <https://www.dexerto.com/overwatch/overwatch-league-leak-housing-requirements-luxury-tax-888650>. The Overwatch League had required that teams provide newly-signed players with housing for their first ninety days.

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