9 FAIR HOUSING, STATE AND LOCAL LAWS

FAIR HOUSING

Fair housing, or equal housing opportunity, is an important aspect of managing rental housing. There is the possibility for fair housing violation in almost all management activities, from screening, to setting policies, to the way residents are treated each day. This means it is vital that all residential employees know and understand the laws, and are committed to complying with those laws.

Every employee has the potential liability of being named in a discrimination complaint, and can be held personally liable. We believe it is our responsibility to provide you with as much information and training as possible to help you follow the complex, evolving fair housing laws. Not only is it good business to offer equal housing opportunities to all people -- it is the right thing to do.

H. G. Fenton Fair Housing Policy

It is the policy of the H. G. Fenton Company to provide equal housing opportunity to all prospective and current residents. We will not tolerate acts of discrimination against any protected class by any of our employees because of a person's race, color, religion, sex, national origin, familial status, mental or physical disability, marital status, sexual orientation, ancestry, age, source of income, or any other arbitrary reason. It is our company's intention to carry out all policies and practices in a discrimination-free manner, in strict accordance with federal, state and local fair housing laws and regulations.

All employees will:

- Provide accurate information regarding the availability of dwellings to all inquiring persons.
- Offer the same rental terms, conditions, and privileges to all applicants.
- Use the same standards and procedures in accepting and processing rental applications from all applicants.
- Extend the same courtesies, treatment, and level of service to all persons visiting or living in our properties.
- Ensure that all residents have the full use and enjoyment of their dwellings and common areas.

It is the Company's policy to permit disabled applicants to make reasonable modifications to a dwelling or common area and to make reasonable accommodations in rules, policies, practices and services whenever necessary to provide equal opportunity for disabled applicants and residents to use and enjoy a dwelling or common area. All requests for accommodations should be referred to the Community Director or Vice President, Residential Property Management.

All employees of rental communities managed by H. G. Fenton Company, including on-site, supervisory and administrative personnel, are required to conduct themselves in a manner that is consistent with the intent and spirit of H. G. Fenton Company's Fair Housing Policy. Failure to comply with this Policy may be grounds for termination of employment.

The Fair Housing Laws and Enforcement

Federal and state laws (and in some cases, local ordinances) provide that discrimination in the sale or rental of dwellings is illegal. All individuals are to be provided equal housing opportunity, which means they have the right to live in the home of their choice, as long as they meet reasonable and legal qualifications. Further, they have the right to enjoy equal treatment during their residency.

FEDERAL LAWS/REGULATIONS

The Civil Rights Act of 1866, which remains in effect, provides: All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Title VIII, the Civil Rights Act of 1968, known as The Fair Housing Act, was amended by the Fair Housing Amendments Act of 1988. The amendments added familial status and handicap to the protected classes. It also defined unfair practices, and provided detailed administrative procedures for enforcement of the Act. Briefly, it states:

Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

Discrimination in terms, conditions and privileges and in services and facilities.

(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

Enforcement

Federal law is enforced primarily by the Assistant Secretary of the Fair Housing and Equal Opportunity Department of Housing and Urban Development (HUD) through HUD's regional and area offices. Complainants have one year after they believe a discriminatory practice occurred, or stopped occurring, in which to file a complaint. Cases with potentially significant public impact (such as those involving large management companies), which involve patterns of practice (systematic discriminatory practices), are often handled by the Department of Justice (DOJ). The statute of limitations for a DOJ filing is 18 months.

State and Local Laws/Regulations

In 1994, California brought its Fair Employment and Housing Act (found in the Government Codes) into conformance with federal law. This process is known as substantial equivalency and permits HUD to refer its complaints to other qualified enforcement agencies for investigation. The Unruh Act (found in the Civil Code) and other code sections also govern aspects of fair housing practices, such as senior housing. Some local municipalities have enacted additional fair housing ordinances.

Enforcement

In California, the Department of Fair Employment and Housing (DFEH) or other substantially equivalent state or local agencies can enforce federal, state, and local fair housing laws. There is a one-year time limit on filing a complaint with DFEH. The attorney general's office also has enforcement capabilities.

Private Enforcement: Fair Housing Attorneys

It is increasingly common for complaints to be filed as lawsuits in state or federal court using private attorneys. In this case, the complainant has two years in which to file, which can be extended to as much as three years under certain circumstances.

When There are Differences between Federal and State Laws

We are required to comply with both federal and state laws. Whenever the state, local, or federal laws differ on a particular issue, the stricter law prevails.

Types of Housing Covered by Fair Housing Law

Except for some limited exemptions for certain religious, membership or educational housing, California law covers ALL dwellings, for sale or rent, with one notable exception: An owner who rents to one roomer or boarder living within the owner's household is exempt from fair housing law, although most advertising restrictions still apply.

Potential Complainants

Anyone who believes he or she has been adversely affected by a discriminatory housing practice can file a fair housing complaint or lawsuit, including applicants, current or former residents, current or former employees, guests, testers, and municipalities.

Potential Respondents

Anyone who is alleged to have committed a violation can be named in a complaint, as well as all those who direct or control that person. Responsibility follows the line of authority within the company. Commonly, the complaint is served on the Community Director, the management company, and the known owner(s) of the property.

Protected Classes

The protected classes under federal law include: race, color, religion, sex, national origin, familial status, and disability (federal law uses the term handicap, but it is more commonly referred to as a disability). California also includes marital status, age, ancestry, sexual orientation, source of income, and any arbitrary discrimination against any person or group of persons based on their personal characteristics. Several protected classes need further explanation.

SEX

Refusing to rent to men or women or any combination of men and women (because of their sex) is a fair housing violation. It can also include sexual harassment of prospective or existing residents by the owner, employees, or other residents.

FAMILIAL STATUS

A prohibition against rejecting families because they have children has been the law in California since 1982. Familial status was added to federal law in 1988. It means *one or more individuals (who have not attained the age of 18 years) living with:*

(a) A parent or another person having legal custody, or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

This includes foster parents, adoptive parents, or those preparing to be such. It also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

SENIOR HOUSING

The only housing that is exempt from familial status requirements is bona fide senior housing.

62 or over housing

All occupants must be 62 years of age or over. Employees who perform substantial management duties for the property who are younger than 62 may live on the property. Personal attendants under 62 who provide care for the resident may also live with that resident.

55 or over housing

At least 80 percent of the units must be occupied by at least one person 55 years of age or older. In general, management must also advertise for seniors; have age verification procedures, special lease provisions, and other policies and procedures designed for older persons. You may refer to the Unruh Act (Civil Code) for more information.

DISABILITIES

In California, disability refers to having a medical condition or physical or mental impairment which limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working. California law provides that, 'Major life activities' shall be broadly construed and includes physical, mental, and social activities and working, or in social situations.

Drugs: It does not protect individuals who are currently involved in the illegal use of, or who are addicted to, a controlled substance. A recovered substance abuser or alcoholic is protected under the law, however.

Mental Disability: While physical disabilities may be readily apparent, mental and psychological disorders may not be as evident. They include

such disorders as mental retardation, emotional or mental illness, and specific learning disabilities.

AIDS/HIV: Persons with AIDS or who are HIV positive are protected under this classification.

Accessibility in New Construction: Since 1991, new construction must meet many accessibility requirements. For more information, you may refer directly to the federal guidelines.

The Americans with Disabilities Act (ADA) requires that any common areas which are used by the general public be accessible. It does not include common areas used only by residents and their guests. A rental office and models should be accessible. This might mean providing disabled parking spaces, curb cuts, ramps, accessible bathroom facilities, levered door knobs and other modifications. Other locations could include the pool area if used for public swim meets or the recreational building if used by public groups for meetings.

SOURCE OF INCOME

In California, management may not discriminate based on the source of one's income, although reasonable income requirements may be established. For example, requiring that all residents be employed could discriminate against individuals who are retired, on disability or other support, students, self-employed, or those receiving regular alimony or child support payments. Income must be legal and verifiable and must be paid directly to the applicant.

Common Terms/Activities Used in Fair Housing

STEERING

Steering is an illegal practice that occurs when management directs prospective residents to certain units or tries to control which unit a resident will live in because the person' belongs to a protected class. Some examples include:

- Clustering certain residents in certain buildings, on certain floors, or in certain portions of buildings,
- Encouraging families to live in units near the playground or ground level units, or
- Directing prospects to other apartment communities or even to other parts of town when you have available units.

CHILLING

Chilling means discouraging a prospect from a protected class from living on the property, which is a violation. Typical examples include telling families:

- There are few or no children living there,
- There is no place for the children to play or that schools are poor,
- The property is unsafe or is very quiet with mostly older people living there,

or:

- There are overly restrictive rules for children,
- Showing only the least desirable or dirty units or the most distant unit when better ones are available, or
- Pointing out all the potentially negative features of the unit, apartment community, or neighborhood.

DIFFERENTIAL TREATMENT

This occurs whenever an individual from a protected classes is treated in a lesser or different manner than other applicants or residents. It commonly occurs:

- When policies are more strict for children than adults,
- When higher qualifying standards are required for those in protected classes,
- When applicants from protected classes are treated differently when applying for an apartment, or
- When different levels of service are provided to some residents.

We may be completely unaware that we are treating some people differently from others -- which is why it is crucial to follow our leasing procedures and operational practices until they become routine.

DISPARATE IMPACT OR DISCRIMINATORY EFFECT

This occurs when we establish a rule or procedure that appears to be neutral, but actually impacts or discriminates against a protected class. For example, a low occupancy standard has a disparate impact on families with children. A policy might not be considered discriminatory if it can be shown there is no less discriminatory alternative that will achieve the legitimate business necessity.

TESTING

When a discrimination complaint has been filed against an apartment community, an enforcing or investigatory agency may send out sets of trained testers who pose as prospective residents. Following their visits, they fill out a report describing what happened during the visit, after which they are “debriefed” at the agency office. The purpose of testing is to find out if the situation in the complaint was an isolated incident (or misunderstanding) or if there is a pattern of practice of differential treatment or other discrimination occurring on the property.

Pro-Active Fair Housing Measures

We believe it is important to publicly demonstrate our policy of nondiscrimination to all applicants and existing residents by being as pro-active as possible. The following pro-fair housing measures also clearly say “You are welcome” to all people from all walks of life when they visit an HGF property.

POSTER

The federal fair housing poster must be posted in a conspicuous location in the office of every apartment community of four units or more as required by

law. Additional posters may be hung in laundry rooms and recreation rooms. They can be obtained from the nearest HUD office.

LOGO

The fair housing logo, statement, or slogan should be used liberally in our printed materials, such as display ads, brochures, maps, letterhead, and other conspicuous places.

Logo: the house with equal signs

Equal Housing Opportunity Statement: "We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin."

Equal Housing Opportunity Slogan: Equal Housing Opportunity

FAIR HOUSING POLICY/COMPLAINT PROCEDURE

The company Fair Housing Policy should be posted in each office. It should include the name and phone number of the property supervisor or the person to contact if an applicant or resident believes he or she has experienced discrimination. The property supervisor will follow up on the complaint immediately and resolve the matter as quickly as possible.

Hiring of Staff

It is important that all members of our staff are committed to fair housing. This includes Community Directors, Resident Community Directors, Leasing Community Directors, maintenance personnel, any other on-site personnel, and all supervisorial and administrative personnel. Individuals who have a dislike for children or people in a protected class will eventually create problems for the residents and the company. Therefore if you are in a position to hire:

1. **Listen to the job applicant for any evidence that indicates a potential attitude problem.**
2. **Find out if the candidate is familiar with fair housing law.**
3. **Determine if the candidate is willing to comply with the laws once he or she has been trained.**
4. **When checking references, ask the former supervisor if the candidate has had previous problems regarding fair housing practices. If so, what happened?**

Policies, Procedures, and Practices

We have structured our policies and procedures to avoid discriminatory activities. It is important that you become thoroughly familiar with these policies and procedures, and that they are carefully and consistently implemented in your daily management without exception. It is the exception that creates the problem.

It is our company policy to regularly monitor all our properties to ensure that our fair housing policies and procedures are being implemented.

ADVERTISING

Affirmative Marketing: It is our policy to advertise affirmatively by reaching out to those persons who may not know about our communities. This can be accomplished by marketing broadly, using a variety of advertising mediums, to attract people from all walks of life to let them know about the rental opportunities at our properties.

Nondiscriminatory Terminology: When advertising, avoid using any terminology that might be construed as preferring or excluding anyone or any group, or restricting or limiting residency to any certain group or groups. All advertising should be inclusive, not exclusive, and should advertise the property, not the people living there. Generally, the federal law states:

It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

Use of Human Models: When using models in advertising materials, they should be representative of the greater community.

Verbal Marketing: Discriminatory terminology doesn't have to be in print form to be illegal. It is discriminatory to use such terms verbally. If we can't print it, we can't say it.

Leasing Procedures

The area in which the greatest opportunity for discrimination occurs is the leasing process. It is also where discriminatory practices are the easiest to uncover by fair housing testers. Our leasing procedures are carefully designed to be as discrimination-free as possible. Therefore it is important for all personnel involved in the process to be thoroughly familiar with the procedures and to follow them exactly. Do not allow personal beliefs to be a part of the decision-making process. For example, a personal religious belief that unmarried couples should not live together may not enter into the selection decision.

Once non-discriminatory policies have been established, the most important fair housing practice to remember in the leasing process is to TREAT ALL APPLICANTS THE SAME. The following policies should be applied:

PHONE INQUIRIES/PHONE LOG

We require each property to keep a written phone log of all incoming leasing calls. This information may be crucial in a fair housing investigation.

Do not inquire about the caller's marital status, employment, nationality, or children. You may ask how many persons will be occupying the apartment.

Provide the same vacancy information to all callers. This includes: the same number of available units; and the same availability dates, rent rates, security deposit information and eligibility qualifications.

ON-SITE INTERVIEWS

Each applicant should experience the same interview process when he or she walks in the door. (If you deviate from the standard interview process,

document the deviation and the reason for it.) This may include such practices as:

1 **Standing and greeting each guest with a smile and a handshake.**

2 **Offering everyone coffee or other refreshments.**

3 **Offering all guests the same promotional materials.**

4 **Encouraging everyone to complete a guest card.**

5 **Asking the same questions of all applicants.**

6 **Providing a written copy of the rental criteria to each applicant.**

APPLICATION PROCESS

1 **Provide an application to every adult who will be living in the unit, including adult children.**

2 **Do not ask about the applicant's marital status, nationality, children, or disability.**

3 **Ask all applicants if they would like to complete an application.**

4 **Remind the applicant that the first completed application which meets our qualifications will be accepted.**

5 **Always note the date and time that each application was completed. If the applicant is accepted, note the date and time of acceptance on the application.**

6 **If you deviate from the application process in any way, document the deviation and the reason for it.**

If the applicant is disabled

Do not ask an applicant if he or she is disabled, even if the disability is visible. Do not make comments about a disability unless the applicant brings up the subject first. Any information regarding a disability is confidential and should not be discussed with anyone except on a need to know basis with management.

Treat the disabled applicant as you would any other applicant, unless he or she requires special assistance. Provide assistance as required, being sure to document the deviation from our normal leasing procedures. Such assistance may include, but is not limited to:

1 **If the disabled applicant is unable to fill out the application, you may fill it out for him or her, or allow someone else do it.**

2 **If the disabled applicant is unable to come to the office, you may have to mail an application to the person or conduct the interview in his or her present home.**

THE PROPERTY TOUR

Tell the applicants which apartments are available and let them decide which ones they would like to see. This avoids potential steering.

Provide an equal quality tour to everyone by offering to tour the same general route when showing the common areas, vacancies or demonstrating

the models. If you deviate from your normal route, document the deviation and the reason for it.

Do not offer information on the demographics of a building, the property or neighborhood. If the applicant asks 'What kind of people live here' or 'Are there many children living here,' the best answer is, H.G. Fenton Company is an equal opportunity housing provider and anyone who meets our qualifications may live here. If they press you, tell them you are not able to respond because of fair housing law.

If anything arises which is unusual, such as the applicant asks you questions that are discriminatory in nature, document the situation.

RENTAL CRITERIA/QUALIFYING

The rental criteria has been carefully developed in an attempt to be fair to all applicants and to obtain residents who will be responsible.

- Apply the same income and credit standards to all applicants.
- Use the same process for reviewing credit history of all applicants.
- Apply the same holding deposit policy to all applicants.

RESIDENT SELECTION

Always apply the policy: first come, first qualified, first served. Batching applications and choosing the best is not allowed and may open us to potential discrimination.

1 **All approved or approved with conditions applicants should meet our established rental criteria and credit screening requirements. There should be no exceptions, such as renting to someone who is declined. When exceptions are made, the risk of discrimination increases.**

2 **The Community Director or Resident Community Director should verify that all eligibility requirements have been met before approving an application.**

3 **Use our call back procedure for notifying applicants consistently. When we call some applicants back but have others call us back to see if they have been accepted, we open ourselves to possible discrimination.**

4 **Apply our policy for waiting lists consistently to all applicants.**

5 **Keep all applications for a minimum of four years, whether accepted or rejected.**

DECLINING APPLICATIONS

There are many legitimate reasons for declining an unsatisfactory application; however, you may never reject an applicant because of his or her protected class.

Decline the application, not the applicant.

Document the reasons for declining an application. This information will be requested in a fair housing investigation.

If an applicant exhibits threatening or otherwise unacceptable behavior during the interview process, document the behavior. When possible, have a witness to the behavior. You do not have to rent to a prospective resident who is a threat to the property or other residents. On the other hand, an applicant who appears to be drunk may actually have a medical condition. Be cautious about jumping to conclusions.

Do not refuse to rent a dwelling to a family with children or discourage them from renting a dwelling because you feel it is not safe for them. The parent has the right to decide if a unit is safe for his or her family. Management's responsibility is to maintain the premises in accordance with the law and standards in the industry.

Disability

The disabled resident's right to make reasonable modifications:

If the applicant meets your resident qualifications, he/she may make reasonable accessibility modifications to an available unit of his/her choice at his/her own expense. A resident may also become disabled during tenancy, in which case he or she may also modify the unit. Reasonable modifications may include exterior modifications, such as installing a ramp at an entrance to the unit. If there is an accessible unit available, he/she may prefer to rent that unit, if available, to avoid the cost of modifications; however, he/she does not have to select an already accessible unit.

- The modification must relate to the disability.
- You may request verification from a health professional that the modification is needed.
- The resident should let you know what modifications are planned. If you feel the request is unreasonable, you may negotiate a more agreeable plan.
- The resident may use his/her own contractor with modifications to be performed in a workmanlike manner.
- The resident is responsible for obtaining any permits that might be necessary.
- When he/she moves out, the resident must restore, to their original condition, any interior modifications that might negatively impact the next resident. For example, a widened doorway would not be noticeable by the next resident, but lowered kitchen cabinets would.

The management's responsibility to make reasonable accommodations:

Federal and state fair housing laws require management to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. Accommodations may be required at any point during the landlord-tenant relationship.

When a new or existing resident requests an accommodation for their disability or the disability of a member of their household, provide them with a Request for Reasonable Accommodation form. Make a copy for their records.

Within the same workday, the Community Director should fax the form to the VP, RPM or RPM Regional Maintenance Manager and make reasonable attempts to discuss the request with the VP, RPM or RPM Regional Maintenance Manager Director within 24 hours and determine what action should be taken.

Accommodations will be considered on a case-by-case basis since no two persons will have the exact same needs. It is important to remember that the purpose of the accommodation is to allow the resident the opportunity to fully use and enjoy the property that he or she is paying for.

- The accommodation must be reasonable. This means that it may not cause undue financial or administrative burden on the staff or company. Common accommodations includes: assignment of a reserved parking place near the resident's dwelling, allowing assistive animals, adding flashing smoke detectors for the hearing impaired, or modifying appliance controls for the visually impaired.
- The accommodation requested should relate to the disability. (Refer to the Request for Reasonable Accommodation form)
- Assistive or Support Animals
    - If the resident requires the services of an assistive animal, it is not unreasonable to require such a statement from a health professional. (Use the Request for Reasonable Accommodation form.)
    - It is not required that the animals be trained or certified, as long as they are deemed necessary for the health of the individual. This also includes companion animals for the mentally disabled.
    - We do not charge a pet deposit or increase the security deposit since the animal is not considered to be a pet and is necessary for the person to more successfully live his or her life. Any damages done by the animal may be deducted out of the resident's normal security deposit.
    - Properties which allow pets, but only with certain size restrictions, may not require that the assistive animal meet the same requirements. The animal is not considered a pet.
    - There may be reasonable rules of conduct for the animal so that it does not damage the property, create a nuisance for others (such as excessive barking), or injure other residents.
    - These rules also apply to certified trainers of assistive animals.
- If there is any question about granting the accommodation, it should be discussed with legal counsel before the final decision is made.

Community Policies

Our community policies are the same at all properties for conformity. We have established them after considering the needs of our company and the residents of each community. Their purpose is to prevent or solve problems,

not to create new ones. We follow these general principles with regard to policies:

All policies should be fair, reasonable, legal and nondiscriminatory.

Before establishing and enforcing any policy, it should be reviewed by the property supervisor. If there is any question, the policy should be reviewed by legal counsel for any needed modifications or recommendations.

CHILDREN

Children should not be singled out in the rules. Instead, rules should be directed toward persons in general. For example, rather than stating, “Children may not ride bicycles in the parking lot”, say, “There is to be no bicycle riding in the parking lot.” This type of wording helps eliminate overly-restrictive, discriminatory rules for children that serve to discourage families from living in a property (chilling), and can often trigger complaints based on familial status.

Narrowly-drawn rules regarding the health and safety of children may be established, but only after review by legal counsel.

Pool or spa rules may not restrict usage by families with children, except that persons under 14 must be supervised by an adult while in the pool or spa. The same access hours should be available to all residents. Separate family and adult pools are not permitted.

It is considered to be both segregation and steering to have separate family and adult buildings or sections.

There may be no curfews established for children.

During Residency

DISCRIMINATION

Discriminatory situations are not restricted to the leasing process -- they can happen at any time during the residency. To reduce the potential, be particularly alert in these situations:

1 **Provide the same move-in instructions and assistance, new resident packet, and welcome gifts to all new residents.**

2 **Apply the community policies to everyone equally, fairly, and consistently. Avoid being more strict with anyone or any category of residents, such as children.**

3 **Make sure the same level of maintenance is provided for all residents. Follow our established procedures for handling requests. Be sure residents know what we consider an emergency and a non-emergency.**

4 **Respond to all residents' requests for service promptly and cheerfully. Follow our established service procedures and note completion dates, as well as any reasons for delay.**

5 **Follow our established procedures for handling resident complaints, including complaints about other residents. Follow the process no matter who is making the complaint.**

6 **Treat all residents with the same courtesy and respect.**

7 **Treat the guests of all residents courteously, fairly and equally, including children.**

8 **Document ALL incidents and problems with ALL residents. This is critical, not only for fair housing purposes, but in case you need to evict, or for insurance reasons or other legal situations that might arise.**

9 **In a non-subsidized month-to-month tenancy, there is no law which requires a reason for the service of a 30 or 60 day notice to terminate the tenancy for communities located outside of the city of San Diego. However, to protect against an allegation of discriminatory motive, always have a sound, non-discriminatory, non-retaliatory business reason for giving any notice. If you have a good reason, and if you have objectively documented past problems with the resident, you will be able to better defend yourself if there is a discrimination complaint. Notices to terminate tenancy within the city of San Diego require a reason be stated if the resident has occupied their apartment over 24 months.**

SEXUAL HARASSMENT

Unfortunately sexual harassment occurs in the rental industry. Any such activity by a residential employee may result in immediate termination of employment. Always follow our established procedure for entering a resident's unit. Employees should never enter a residence unless requested by the resident or there is an emergency. This is particularly important where sexual harassment could be an issue.

If a resident who has requested service comes to the door inappropriately dressed, do not enter the apartment. Tell him/her you will return at a more convenient time. Report the incident promptly to the property supervisor and document it.

Employees should also avoid consensual relationships with residents to avoid potential sexual harassment problems.

Telling off-color or ethnic jokes, making suggestive comments, or other similar behaviors by management personnel, could create an offensive environment for some residents. Such sexual harassment may result in immediate termination of employment.

Requesting sexual favors in exchange for special treatment, such as revoking late charges, notices, or rent increases; offering special placement on the waiting list, or other similar situations, is sexual harassment and may result in immediate termination.

Avoid giving rent increases that could have the appearance of affecting only a specific group of people, such as families or minority groups.

DISABILITY, NO REQUEST FOR ACCOMMODATION

If a problem arises with a resident and you suspect the problem is disability-related, contact the resident and point out the problem (breach of covenant or lease) and ask if he or she needs an accommodation in order to comply

with the lease. Do not directly ask if the person has a disability. Provide the resident with a Request for Reasonable Accommodation form. If the person is unable or unwilling to communicate with you, you may need to contact a co-resident, family member, case worker, or health professional to see what can be done to resolve the issue.

Annoying or irritating other residents may not be adequate reason for eviction. **Eviction should be used only as a last resort after all other reasonable avenues have been exhausted** and only if the resident creates a genuine nuisance or a health or safety risk to the other residents or property.

If a notice has already been served on the resident and the resident then notifies you that the behavior is disability-related, promptly contact the property supervisor and legal counsel for advice on how to proceed.

IN-HOUSE TRANSFERS AND LEASE RENEWALS

Residential employees must follow the establish policy for resident transfers within and between apartment communities. Communicate the policy to residents in writing, and then apply it across the board (unless a disabled resident needs an accommodation).

Community Directors and residential employees must make sure lease renewal policies are applied equally to all residents and that any renewal incentives are offered in an equitable manner.

Residential employees must provide strong back-up documentation if they decide not to renew someone's lease.

Addressing Cultural Differences

"We are not all the same, but we are all equal." Our apartment communities are becoming more and more diverse, reflecting the diversity of the larger sub-markets and cities in which they are located. It is important for each of us as professionals to learn as much as we can about the customs, needs, and beliefs common to the many groups with which we interact each day. This will help prevent misunderstandings, avoid potential discrimination, and help to ensure that all our residents have a satisfactory and enjoyable rental experience.

Cultural understanding extends not only to people from other countries, but to those of other races, religions, and even the disabled. The more we know about other people and their ways, the more comfortable we will be around each other. And the less likely we are to say or do something unfortunate.

Professional Conduct

Regardless of our job title, we are all professionals, and as such, we are expected to behave in an appropriate manner. When we do so, we reduce our risks of fair housing violations. As professionals, we should:

1. **Demonstrate our commitment to fair housing through our actions and words.**
2. **Be fair-minded at all times.**
3. **Stay alert to potential problems on the property. They can escalate into fair housing problems if they are not resolved promptly.**

4 **Never be curt or abrupt with applicants, residents or guests.**

5 **Never tell off-color or ethnic jokes around our applicants, residents or guests.**

6 **Never make disparaging comments about applicants, residents or guests from protected classes when on the job. These conversations are discoverable in a court of law.**

7 **Also make sure written memos; letters and other correspondence are objective and factual. All documentation may be read by investigators, judges and juries.**

8 **Never show anger or annoyance with residents.**

9 **Always follow company policies and procedures. Variations and exceptions to the rules create future problems.**

10 **Make an effort to improve our own self-respect. When we feel good about ourselves, we have no need to treat others poorly.**

Staying Informed

As professionals, we must all take responsibility for staying informed about fair housing developments. To assist you in this effort:

- It is our company's intention to provide you with an on-going program of fair housing training and information.
- It is also important for you to remain alert to information in magazines and newspapers, which might impact your fair housing practices. Keep a file for clippings, articles, brochures and other fair housing materials. Share this information with your supervisor.
- When faced with a potential fair housing situation, contact your Community Director immediately. If the supervisor is not sure how to proceed, he or she will contact legal counsel for advice.
- The company will pay for the cost of your attendance at local fair housing seminars and workshops at your request, so you can sharpen your fair housing skills and stay abreast of the most recent rulings and legislation.

In the end, we can only provide you with information. It is up to you to implement that information in your day-to-day management routines. When you put your knowledge to work, it benefits our customers, the residents; our company, and most of all, you, as a rental housing professional.

See Request for Reasonable Accommodation and Request for Reasonable Modification in Appendix.

STATE AND LOCAL LAWS

State

CALIFORNIA SEX OFFENDER DISCLOSURE LAW AFFECTS RENTAL PROPERTY OWNERS

by Helaine S. Ashton, Esq

Kimball, Tirey & St. John

Although felony sex crime rates have declined in California in recent years, the growing presence of sex offenders in the community remains a major concern of the public. This concern has prompted the state to take a number of steps to further the arrest and punishment of such offenders, tighten sex offender registration requirements, and notify the public when such offenders are paroled in their neighborhoods. At the same time, there has been a recent trend in California landlord-tenant law to increase owner responsibility to protect tenants from criminal conduct of third parties. The stakes grew even larger for rental property owners and managers in the wake of a statutory disclosure law effective in July of 1999.

Who is required to register?

In California, about 78,000 persons are required by state law to register for life as sex offenders (and certain other offenders such as arsonists) with their local police chief or county sheriff because they were convicted of felony or misdemeanor sex-related crimes such as rape, child molestation, sexual assault, indecent exposure, or possession of pornography.

When must sex offenders register?

Sex offenders are required to register within five working days after release from a local jail or state prison, completion of any alternative sentence, and when they change their name or address. In addition, each sex offender is required to register annually within five working days of their birthday. Sex offenders convicted of felonies who fail to register can be charged with a felony, which may result in a “third strike” conviction.

Classifications

Since 1996, each convicted sex offender is classified as either a “high-risk” sex offender; “serious” sex offender or “other” sex offender as defined by the Penal Code. Currently more than 64,000 sex offenders are classified as “high risk” or “serious,” allowing for public disclosure of specific information. The remaining 13,000 registered sex offenders are classified as “other” and not subject to public disclosure. Each month, approximately 300 sex registrants are released from the Department of Corrections.

California program for identifying offenders

In conformance with a federal statute known as “Megan's Law”, state and local law enforcement authorities in California have implemented programs to notify residents when a high-risk offender is present in their neighborhood.

The state distributes CD-ROM computer discs to local law enforcement agencies and operates a “900” telephone hotline to provide the public with information on the community of residence and the zip code of felony sex offenders. The Governor has requested additional funding from the 1999-00 Budget Bill to update the information on a monthly instead of quarterly basis.

The state provides detailed information to local law enforcement agencies prior to the release of high-risk sex offenders, and authorizes those agencies to provide specific warnings and information about such offenders to schools and individuals determined to be at risk from their presence in the community.

Landlord's responsibilities

California has enacted legislation that requires rental property owners and sellers to make certain disclosures to tenants and purchasers regarding the existence of the database that contains the names of registered sex offenders. Since July 1, 1999, the State of California has required the following language be inserted in all residential leases, in not less than 8-point type:

Registered Sex Offenders Notice: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other law enforcement authorities maintain for public access a data base of locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The database is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a “900” telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the “900” telephone service.

The new law also provides: “... Upon delivery of the notice to the lessee or transferee of the real property, the lessor, seller or broker is not required to provide information in addition to that contained in the notice regarding the proximity of registered sex offenders. The information in the notice shall be deemed to be adequate to inform the lessee or transferee about the existence of a statewide database of the locations of registered sex offenders and information from the database regarding those locations. The information in the notice shall not give rise to any cause of action against the disclosing party by a registered sex offender…nothing in this disclosure law alters any existing duty of the lessor, seller, or broker under any other statute or decisional law, including, but not limited to, the duties of a lessor, seller or broker under this article...”

Penalties for denying housing

At the same time, the mere fact that an individual is listed on the 900 number or the CD-ROM does not appear to allow a rental property owner to deny housing or to evict them based on their status. The penalties for violation of this statute include actual damages, treble damages with a minimum of $250, attorney's fees, exemplary damages or a civil penalty not exceeding $25,000.

Owners are advised to make sure they have updated their leases to conform to this legal requirement. The California Apartment Association and its local chapters can provide support in the form of background papers, compliant forms and other materials to help you stay informed.

Helaine Ashton is a partner with Kimball, Tirey, & St. John. The law firm specializes in landlord/tenant law and represents clients throughout California. Any questions regarding the contents of this article should be made by calling (800) 564-6611.

The above discussion is general in nature and should not be construed as individualized legal advice. Readers are cautioned to seek individualized legal assistance based on a detailed analysis of their particular facts and circumstances. If you have any questions regarding the above material or any other matter involving landlord-tenant issues, you may contact the Law Offices of Kimball, Tirey & St. John, 800-338-6039.

WHAT DO WE DO WHEN THE TENANT IS DEALING DRUGS?

California

by Bob Thorn, Esq.

Kimball, Tirey & St. John

Recently a long-standing client of our firm requested a letter from our firm dealing with the recurrent concern in the industry of a tenant utilizing their apartment to sell illegal drugs. Specifically we are presented with the scenario of a tenant in a residential (or commercial) property who is suspected of engaging in illegal activity, particularly the sale, use, disposition, manufacture, distribution, control, solicitation or possession of illegal drugs/controlled substances. What is the checklist approach to this concern?

Document

Paper the tenant file. Make clear and precise notes regarding complaining witnesses, whether the same are other residents, management, staff, vendors, or guests, with full names, addresses, phone numbers, and the usual “who, what, when, where, why and how” of the incident(s) immediately after the event.

Contact the police

When the event provides a reasonable suspicion that criminal activity is occurring, contact the police department, provide whatever information can be confirmed on personal knowledge of the complainant, and ask whether the premises are under surveillance, or will be. This contact should be noted, with the name of the officer, his telephone number, and the nature of his assignment (for example, is he with the “drug abatement task force” or does he work in a different division?).

Review the tenancy

Review the nature of the tenancy. Is this a month-to-month agreement, or a lease for a specific term? Regardless, either is terminable on three days' notice to quit, if the circumstances rise to the appropriate severity.

(1) If month-to-month, consider a thirty-day notice, given a reasonable suspicion that this activity is occurring. If a lease, what is the date of termination? Are there any options held by the lessee to extend the lease? If the lease will be expiring, notify the lessee that it will not be extended at termination, and they will be required to vacate the premises. You are not required to give a reason. Review the holdover provision in the lease, to confirm whether prior notice of election not to renew is a prerequisite, and if so, comply. Contact counsel if any question.

(2) Note that a lease is not easily terminable on suspicion of drug activity. Forfeiture of a lease is a significant judicial finding that is not easily achieved. An arrest on the premises, seizure of narcotics, testimony of witnesses who observed the activity, and confirmation of the illegal

contraband, as well as a police report authenticated by arresting officers in court, will produce favorable results for the lessor in trial.

Secondhand statements that brown baggies were being passed between the parties, tin foil items, exchange of cash, or the aroma of marijuana, in the absence of confirmation by a qualified witness or the contraband itself, invites cross-examination in court that may lead the judge to conclude that the lessor has not shown, by a preponderance of the evidence (more likely than not) that nuisance activity has occurred. Nuisance is defined in the code as conduct “injurious to health, including, but not limited to, the illegal sale of controlled substances...” (California Civil Code ¤3479). Given the above fact pattern, if we don't prove it more likely than not that the sale occurred, we will not be successful in removing the tenant from the property.

Are there witness agendas?

Confirm that there are no hidden agendas being served by the complaints of witnesses. Do we have a personality conflict that is getting out of hand? These issues become paramount when court action and credibility concerns are center stage. Independent corroboration is the key.

Review drug management procedures

Review procedures with staff, employees, and police resource personnel. Are we doing everything we can to educate our people and utilize public programs? Participation in the “crime-free multi-housing” programs sponsored by local police departments will ensure current events updating. And our firm will continue to provide seminars on this important topic.

Zero tolerance remains the norm in the apartment industry, regardless of legal inroads into medicinal use of marijuana. If you have reason to believe there is a problem in your complex, feel free to give us a call to discuss particulars. Being “drug free” is not just a state of mind; it can be a state of reality!

Bob Thorn is a partner with Kimball, Tirey, & St. John and a principal in the firm's Civil Real Estate Practice Group. The law firm emphasis is real estate law and represents clients throughout California. Any questions in regards to the contents of this article should be made by calling 800-338-6039.

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OBTAINING A TEMPORARY RESTRAINING ORDER TO STOP HARASSMENT

California

by Ted Kimball, Partner

Kimball, Tirey & St. John

A legal device known as a Temporary Restraining Order (“TRO”) may be obtained in order to stop a person or persons from harassing your managers or other tenants. A TRO is a court order which may be obtained by an

individual (a TRO can only be obtained by an individual, it cannot be obtained for a corporation, partnership or organization) if:

- the harassing party's actions are intentional;
- the harassing party has committed a series of acts which seriously alarms, annoys or harasses the party seeking the TRO;
- the party seeking the TRO has suffered emotional distress; and
- there is no legitimate reason for the harassing party's conduct and his or her conduct is not protected by the constitution.

Before a TRO can be obtained, a Petition for Injunction Prohibiting Harassment and Application for Temporary Restraining Order must be submitted to the court by the plaintiff (the party requesting the TRO). This document is submitted ex parte to the court without notice to the defendant (the harassing party) and must set forth in detail the actions of the defendant. The TRO, once granted by the court and served, prevents the defendant from alarming, annoying or harassing the plaintiff.

In addition, the court may order that the defendant not threaten, strike, or make physical contact with the plaintiff, not keep plaintiff under surveillance, not follow plaintiff, not telephone plaintiff, not block plaintiff's movements in public places or thoroughfares and stay at least 100 yards away from the plaintiff while at work, home or any other place the plaintiff may request.

The TRO is in effect from the date it is granted until the date set by the court for a hearing. At the hearing, the defendant will be given the opportunity to defend or explain his or her actions. If the court finds for the plaintiff, an Order After Hearing on Petition of Injunction Prohibiting Harassment will be issued by the court which is valid for three years from the date it is issued.

Note that this process cannot be used for matters involving domestic violence or collection of a debt.

BACK TO BASICS: THE SECURITY DEPOSIT

by Ted Kimball, Partner

Kimball, Tirey & St. John LLP

Security deposits are the subject of more disputes between landlords and tenants than any other. This is often because of misunderstandings about the law and differences of opinion regarding what constitutes “clean” or “normal wear and tear.” The law received a major overhaul because of legislation that went into effect in 2004.

Collecting the Security Deposit

- You may charge up to two times the monthly rent if the rental unit is unfurnished, up to three times the monthly rent if the unit is furnished, plus an additional half-month's rent if there is a waterbed.
- Last month's rent, pet deposits, key deposits, cleaning deposits, and any other “deposits” for potential future losses are all considered to be a part of the security deposit. When totaled, they may not exceed the legal limits. We advise that you label all deposits as “security deposit.” This gives you the maximum flexibility in its use.

- The law does not permit any “nonrefundable” deposits of any kind, such as an automatic deduction for flea spraying when there has been a pet.

Initial Inspection Prior to Move-out

Landlords generally must provide tenants with a notice of the tenant's right to a pre-move-out inspection.

Returning the Security Deposit

The lease can allow the landlord up to 21 days to provide the tenant with the final accounting and return the balance of the tenant's security deposit. The time period begins when the landlord regains possession of the property.

This final “disposition of the security deposit” accounting must be either personally delivered or sent by first-class mail, postage prepaid, to the last known address of the tenant. Often this means mailing it to the premises the tenant just vacated. If it is returned to you by the post office, keep the original, plus a copy of the unopened return envelope as proof that you mailed the accounting within the prescribed time. If the returned mail has a forwarding address, send it to that address.

If you have a roommate situation, it is advisable to make any refund check payable to all of the tenants who have signed the lease. This way you avoid the situation where each tenant claims he or she should have received the deposit refund.

Security Deposit Accounting Requirements

Owners and managers must provide their tenants with written receipts showing the charges incurred to repair or clean the apartment if the total amount is $125 or more. The receipts must be attached to the final security deposit accounting.

If the landlord did the work personally, he or she must “reasonably” describe the work performed and must include the time spent and the reasonable hourly rate charged. Arguments about what is “reasonable” are common, so a conservative approach is highly recommended.

If a contractor does the work, the owner or manager must provide the tenant with a copy of the bill, invoice or receipt supplied, including the contractor's name, address and telephone number.

Owners and managers must also provide receipts for materials if the tenant is being charged for them. Property owners or managers who purchase materials on an on-going basis may provide the tenant with a copy of a vendor price list or any other vendor document that reasonably documents the cost of the item used in the repair or cleaning of the unit.

If a repair cannot be made, or receipts are not available within the 21-day period, the owner or manager may deduct only a good faith estimate of the deduction amounts and must provide an estimated accounting to the tenant within the 21-day period.

If the owner or manager doesn't have the receipts within the 21-day period because they are still with the contractor, the owner or manager must provide the name, address and telephone number of the contractor along with the estimate. When the final figures and receipts are available, the owner or manager must provide a final statement within 14 days from the date the repair is completed or from the date the owner or manager receives the receipt documents from the vendor.

The tenant has 14 days after receiving the final itemized statement to request additional receipts from the owner or manager. If receipts are requested, the owner or manager has another 14 days to provide the additional receipts.

The only exception to this law exists if the repairs or cleaning do not exceed $125 total, or if the tenant signs a written waiver of his/her right to receive the receipts. The waiver can only be signed after the termination notice is given, including three-day notices, or within 60 days of the expiration of a fixed term lease. If the waiver is signed, the tenant can still request receipts within 14 days after receiving the final security deposit statement.

The security deposit may be used:

For unpaid rent;

To repair damages to the premises, not including ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant;

To clean the premises to return it to the same level of cleanliness it was in when the tenant moved in; and,

To restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the rental agreement authorizes this use of the security deposit.

The express terms of the security deposit law do not specifically list other items but indicate that this list may not be complete. It remains unsettled whether it is appropriate to use the deposit for other purposes such as late charges, unpaid utility charges, and N.S.F. check charges.

The Penalties

The damages for the bad faith retention of a security deposit by a landlord are up to two times the amount of the security deposit. They may be awarded in a lawsuit even if the tenant did not ask for those damages in the lawsuit.

Resolving Security Deposit Disputes

If you cannot reach an amicable agreement with the tenant over a security deposit dispute, the tenant may file suit in Small Claims Court. The jurisdictional limit of Small Claims Court is $7,500 per claim by an individual as of January 1, 2006 (up from $5,000). Claims by entities such as partnerships, corporations and LLCs are limited to $5,000 or less.

Actions against guarantors or co-signers of the lease are limited to $4,000 per claim or $2,500 if the guarantor does not charge a fee for the service.

CLEARING UP THE CONFUSION: RIGHT OF ENTRY RULES FOR OWNERS, MANAGERS AND RESIDENTS

January 2003 Kimball, Tirey & St. John

One of the most frequent questions we receive in our law offices is “What are my rights in regards to entering my resident's unit?” Under California law, when an owner rents real property to the resident, the resident is entitled to exclusive possession of the premises, even to the exclusion of the owner or property manager of the premises. The California legislature has, however, recognized that there are legitimate reasons for owners and managers to enter the premises and therefore decided to regulate, completely, the rights and obligations of owners and residents in respect to entering the resident's

dwelling unit. In 1975, the California legislature limited the right of entry by a landlord to four categories. The statute states that these are the only reasons a landlord may enter the premises (unless specifically specified within another statute such as waterbed inspections). Furthermore, the rights and obligations under this statute cannot be waived by the tenant.

Emergencies

The first, in cases of emergency, is only permitted when there is a true emergency which effects the health or safety of the resident or the protection of the premises from damage. It must be impractical to give notice in these situations. Courts are extremely sensitive to the right of privacy of residents and will carefully scrutinize the “emergency” which led to entry by the owner or manager. Entry under this category does not require that a notice of intent to enter be given to the resident prior to entry.

Repairs, services, showing

The second category allows owners or their agents to enter into the premises to make necessary or agreed repairs or services or show the premises to prospective tenants or purchasers. This category also allows mortgagees, workmen and contractors to enter the premises.

Since the owner is responsible to keep the premises in a habitable condition, the owner may need access to the interior of the unit to maintain the unit's habitable condition and should be able to make periodic inspections for specific purposes, i.e. to inspect electrical or plumbing fixtures in accordance with industry standards. Entry for “general inspections” is not listed in the categories of permissible reasons to enter.

An owner or manager may also enter the dwelling unit to make any agreed upon repairs or services. A Notice of Intent to Enter must first be delivered to the resident giving the resident “reasonable notice” of the date and time of the proposed entry. Effective January 1, 2003, requests of entry must be in writing. The notice of entry may be either personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. We recommend posting all four corners of the notice to the main entry way.

California law requires landlords to give the tenant “reasonable notice”. The law presumes twenty-four hours is reasonable. However, if the notice is only mailed, the law presumes that six days prior to an intended entry is reasonable. The only exception is in cases of an emergency or when the tenant has abandoned or surrendered the premises. In these events, entry need not be made during normal business hours and no prior notice is necessary.

Also, if the purpose of the entry is to exhibit the unit to prospective or actual purchasers of the property, the notice may be given orally, in person or by telephone, if the landlord has notified the tenant in writing within 120 days of the oral notice that the property is for sale and the tenant was informed they may be contacted to allow for an inspection. At the time of the entry, the landlord or agent is required to leave written evidence of the entry inside the unit.

Although the law presumes that twenty four hours is reasonable notice, but each case should be individually examined to determine what is reasonable under the circumstances. The court would measure the notice period by

what a reasonable, prudent property manager or owner would have needed in like circumstances.

Abandonment

The third category allows an owner or manager to enter onto the premises "when the tenant has abandoned or surrendered the premises." It is not unusual to experience a resident who either moved out in the middle of the night or has indicated that he or she was moving but did not give final confirmation of the vacancy.

Abandonment, as defined by Black's Law Dictionary, means that there must be "... an absolute relinquishment of the premises by the tenant consisting of act and intention." These are sensitive issues and a look at the total circumstances is warranted before a decision to enter should be made. It is often difficult to determine if the tenant has abandoned the premises without taking a look inside. If there are objective facts which would lead a reasonable person to believe that the tenant had abandoned the premises, then you may enter based upon the belief of abandonment unless, of course, there is any indication that the tenant has not abandoned or surrendered the unit.

Posting a notice of your intention to enter is not legally required if you are entering based upon abandonment or surrender. However, many owners and managers make it their practice to post a twenty four hour notice of intent to enter based upon abandonment to allow for the slight chance the resident did not intend to abandon the unit and has the opportunity to contact the owner or manager.

When entering, it is always advisable to have at least two people present to check around for any recent signs of living activity, such as unspoiled food or sleeping bags. If there is still a reasonable belief that the tenant has abandoned the unit, photographs or video tape are wonderful ways to document the condition of the unit before taking over possession and removing any personal property.

This method should not be confused with the abandonment of real property procedure set up by the California legislature to protect owners and managers from liability for taking over possession based upon their good faith belief of abandonment. Under this procedure, owners and managers can protect themselves from liability if they reasonably believe the tenant has abandoned the unit in question.

To take advantage of this procedure, the owner or manager must send a notice of his or her belief of abandonment of the rental unit and allow the tenant 18 days from the date of the notice to declare that the unit has not been abandoned. However, before the abandonment letter can be sent, the rent must remain unpaid for a period of 14 days. If the tenant fails to notify the owner of his claim of possession, the owner may take over possession after the notice time has expired. There is still some liability exposure for the owner, however, if the tenant claims that the owner's belief of abandonment was unreasonable.

Court Order

The fourth and final category allows entry by the owner when the entry is pursuant to a court order. This implies that the owner or manager cannot engage in self help if the resident refuses entry, even in cases where the owner is completely within their rights for the entry. Instead, the owner or

manager must seek a court order prior to entry. To enforce the order, the Marshal or Sheriff would meet the owner at the premises to allow safe entry into the dwelling unit.

Unfortunately, a requirement for a court order to enforce entry forces the filing of a lawsuit because the court cannot grant an order out of thin air; it has to be attached to litigation. One way to commence litigation is to use the Three Day Notice to Perform Conditions and Covenants or Quit. For example, if the owner wanted to show the property to prospective tenants or allow workmen in to make necessary repairs, but the resident refuses, the Notice to Perform Conditions and Covenants or Quit would instruct the resident to give reasonable dates and times for entry into the unit. If the resident fails to comply with the notice, an action for unlawful detainer could be filed. Once the lawsuit is filed, the owner is then able to apply for the court order allowing the entry.

Obviously, it is far better to use your power of persuasion to convince the resident to allow entry voluntarily. Keeping a copy of the applicable code and pointing out to the resident the obligations of California law and your lease may persuade a recalcitrant tenant to obey the law. If your rental agreement or lease provides for attorney's fees, the threat of litigation coupled with attorney's fees awards may also convince the resident that it is not in his or her best interest to refuse reasonable entry needs.

Waterbeds and Smoke Detectors

The law also affords two other limited reasons for entry into the resident's dwelling unit: to periodically inspect smoke alarms and to inspect waterbeds for compliance with state law.

For waterbed inspections, the law specifically provides that “... the owner, or the owner's agent, shall have the right to inspect the bedding installation upon completion, and periodically thereafter, to insure its conformity with this section.” It is wise to specifically address these issues in the lease and clearly define what rights the owner or manager has in regard to entering the rented unit.

General Inspections Prohibited

The above reasons, methods and procedures are the only ones an owner or manager may use to legally enter the resident's dwelling unit. Many owners and managers believe that they can enter the unit for inspection purposes only. Entry for general inspection purposes is not, however, permitted under current California law. In fact in the early 1990s, a bill was introduced in the California legislature to allow owners and managers to enter the inside of the unit for general inspection purposes, but the bill died in committee.

Time of Entry

Time of entry unless in an emergency is also limited to normal business hours. Most judges construe “business hours” to mean between 8:00 a.m. and 5:00 p.m., Monday through Friday, although an argument can be made that for leasing agents and property owners and managers, Saturdays and Sundays are normal “business hours.”

The reason the legislature heavily regulated the issue of entry is to protect the right of privacy of the resident. Violation of entry rules could lead to litigation and liability for invasion of privacy and trespass among other possible causes of action. It is therefore prudent and responsible to stay

clear of the appearance of violating the rules of entry set forth by the California legislature.

TRAP FOR THE UNWARY: PROHIBITIONS AGAINST DAYCARE

by Craig D. McMahon, Esq. and Edward O'Connor

Kimball, Tirey & St. John LLP

Imagine this scenario: Your on-site manager is approached by one of your residents. The resident indicates that they plan to open a small day care business operated out of the apartment. They want to know if management has any objection and the manager points out that the rental agreement prohibits operating a business out of the apartment. The manager also points out that the area in which the apartment building is situated is not zoned for commercial businesses. Unfortunately, as well intended as the manager might be in providing this response to the resident, the manager is wrong. Here's why:

Under California law, all single family residences, including rental apartments and condominiums, can be used for small family day care homes. Qualifying operations are not considered a “business use of the property.”

There is no legal requirement that providers of day care services own their own home. Even in situations where a rental agreement specifically states that an apartment can only be used as a residence, family day care is still allowed.

The California legislature made findings and declarations in support of legislation which created rights for residents in rental properties who choose to operate a family day care home. This was enacted in the California Health & Safety Code at Section 1597.30, et seq.

The law establishes a “public policy” to provide home environments for day care and creates restrictions governing real property in order to promote the operation of family day care homes. Health & Safety Code §1597.40 states that it is “the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.”

These laws were enacted by the legislature to meet a perceived need for greater access to day care facilities within residential neighborhoods in which the families reside.

The legislature declared that: (a) it has a responsibility to insure the health and safety of children and family homes that provide day care; (b) there are insufficient numbers of regulated family child care homes in California; (c) there will be a growing need for child day care facilities due to the increase in working parents; and (d) there should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.

The Legislature went on to declare this policy to be of statewide concern with the purpose of occupying this field of law to the exclusion of municipal zoning, building and fire codes and regulations governing the use or

occupancy of family day care homes for children….and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children.

But what about restrictions or regulations prohibiting commercial activities in a residential area that existed before this law was enacted?

In Barrett v. Dawson (1998) 61 Cal.App.4th 1048, residential neighbors attempted to force a day care center to shut down because of a restrictive covenant prohibiting any residence from being used for any “business” activity, including a family day care home. The covenant was in place in 1968, 13 years prior to the passage of this law in 1981. The original code section declared that “every restriction or prohibition entered into on or after the effective date of this section, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.” In 1983, the section was amended to remove the italicized language above. The court in Barrett held that this amendment showed legislative intent that all restrictions on family day care homes were void, whether they were created before or after the code section was put into law. Thus, the residential neighbors challenging the family day care home were prevented by the statute from using the 1968 covenant to shut down the day care home.

Under this law every provision in a written contract entered into relating to real property, which purports to forbid or restrict the leasing of real property for use or occupancy as a family day care home for children, is void.

A prospective family day care home operator, who resides in a rental property, is expected to provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home. The reality is that many operators do not provide prior notice. Since the operator is not required to obtain the landlord's “consent,” the failure of an existing resident to provide prior notice should be treated as a small technical deviation from compliance responsibilities and does not provide you a basis to stop the day care activity. In order to avoid disruption of services to the children involved, residents moving a family day care home to a new location may not be required to give the new landlord 30 days' notice.

The law does provide that upon commencement of, or knowledge of, the operation of a family day care home on their property, the landlord or property owner may require the family day care home operator to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of residents who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

Family day care homes must be licensed by the California Department of Social Services1. The Department establishes requirements for the home and the qualifications of the care providers (for example, each licensee must have at least fifteen hours of training on health practices). Officials inspect the premises for compliance with required elements such as smoke detectors and fire extinguishers and restrict the number of children allowed. If the Department approves a “small” day care home in a particular location, the operator can provide care for up to six children, including resident

children under ten years of age, without the owner's permission and can add two more school-aged children with the owner's consent. “Large” day care homes are rarely approved, but if they are, the limitations are the same except that the numbers allowed are 10 without consent and 12 with consent.

Operators are required to carry either liability insurance of $100,000/ $300,000 or a bond of $300,000. **In lieu of this requirement**, they can inform each parent they do not carry either liability insurance or a bond and keep affidavits on file signed by each parent acknowledging that they have been made aware of the lack of insurance or bond. Operators must also inform parents that it is possible that the property owner may not carry insurance coverage for losses “arising out of, or in connection with, the operation of the family day care home,” except if the losses are “caused by, or result from, an action or omission by owner for which they would normally be liable under the law.”

If there is insurance or a bond, the property owner can be named as an additional insured if so requested by the owner in writing. If this causes an increase in premiums, that increase is at the owner's expense. Adding the property owner to the insurance policy as an additional insured is allowed, as long as it does not result in cancellation or non-renewal of the insurance policy. Note that apart from the day care operation, if the landlord otherwise requires residents to carry renter's insurance, that requirement will still apply to the home within which a family day care home is located.

Though the law requires that you allow a day care home to be run from an apartment, the same, reasonable rules that apply to other residents may be imposed. For example, you are not required to tolerate excessive noise that unduly disrupts the peaceful and quiet enjoyment of other tenants, or conduct that damages the property, if you censure non-day care operators for similar activities. If there are breaches of conduct in terms of excessive noise, etc., you can provide warnings or notices in a manner consistent with any other rule violation. However, you should be careful to evaluate the circumstances and any contemplated action carefully in each instance as it might be viewed as a retaliatory or discriminatory response to the operation of the family day care home. Not only could there be repercussions from fair housing enforcement agencies, but also from attorney advocates who specialize in child care issues.

In summary, all of your managers and staff should be made aware of the prohibition against restrictions for licensed family day care homes. Additional material concerning family child care homes is available in the form of a “Manual of Policies and Procedures” provided by the State of California. This manual summarizes the regulations and other information pertaining to the operation of licensed family day care homes. It is available online at http://www.dss.cahwnet.gov/getinfo/pdf/fcc.PDF.

REMOVING UNAUTHORIZED VEHICLES FROM PRIVATE PROPERTY

California

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Kimball, Tirey & St. John

Unauthorized and abandoned vehicles parked on private property are a common problem for property owners and their agents. California Vehicle

Code §22658 authorizes a property owners and managers to remove unauthorized or abandoned vehicles from private property provided if specific conditions exist and certain procedures are followed.

Within one hour of notifying the local traffic enforcement agency, a property owner or manager may tow an unauthorized or abandoned vehicle parked on private property to the nearest public garage under any of the following circumstances:

- A sign is posted, in clear view, at each entrance to the property. The sign must state that public parking is prohibited, that vehicles will be towed at the owner's expense and must contain the telephone number of the local traffic law enforcement agency. The sign must be at least 17" by 22" and lettering on the sign must be at least one inch in height. The sign may also indicate that a citation may be issued for the violation; or
- the vehicle has been issued a notice of parking violation, and at least 96 hours have passed since the notice was issued; or
- the vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the property owner or agent has notified the local traffic law enforcement agency and 24 hours have passed since that notification; or
- the vehicle is parked on a lot or parcel that has been improved with a single-family residence.

The tow truck operator must obtain written authorization for the tow identifying:

- the vehicle (make, model, VIN and license plate number);
- the person authorizing the tow (name, signature, job title, residential or business address and working telephone number);
- the grounds for removal;
- the time the vehicle was first observed parked illegally; and
- the time the authorization to tow was given

The authorization must be provided upon request to the vehicle owner, although the tow truck operator will not provide the vehicle owner with the identification of the person who authorized the tow.

If there are 16 or more units, or an onsite owner or manager, the property owner or manager must authorize the tow in writing and be on-site when the tow takes place (although the owner or manager does not have to be physically present at the place where the vehicle is being towed - he/she must simply be present at the property).

For 15 or less units that do not have an onsite owner or manager, the owner or owner's manager is not required to be present nor verify the parking violation; the tenant may verify the violation and request the tow from the tenant's assigned parking space by signed request, email, or by calling and providing a signed request or email within 24 hours to the property owner or manager. The signed request or email must contain the name and address of the tenant and the date and time the tenant requested the tow. The owner

or manager must provide the tenant's verification and authorization to the towing company within 48 hours of the tow.

The vehicle's owner or his or her agent can stop a tow in process by immediately moving the vehicle to a lawful location. The tow company can charge the owner of the vehicle ½ of the normal towing fee if the vehicle has already been coupled to the tow truck or lifted off the ground, but not yet removed from the property.

An owner or manager may not enter into an agreement with a tow company granting general authorization to remove vehicles from the property at the tow company's discretion, (known as “patrol” or “contract” towing), except when a vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from the private property, and only after taking a photograph of the violation.

After a vehicle has been towed from the property, the tow truck operator removing the vehicle must immediately give written notice of the removal. The notice must identify the vehicle, state the grounds for removal, the mileage on the vehicle at the time of removal and the vehicle's new location. If the name and address of the registered or legal owner of the vehicle is known or can be determined, (from the property owner, the vehicle owner, DVM records or otherwise), the notice must be given to the registered and legal owner. If the identity of the owner of the vehicle cannot be determined, or for any other reason the tow truck operator cannot give notice to the vehicle owner, and the vehicle is not returned to the owner within 120 hours, the notice must be sent to the Department of Justice, Stolen Vehicle System. If the vehicle is stored in a public garage, a copy of the notice must also be given to the garage's proprietor.

Improper removal of a vehicle from private property may subject the property owner and/or manager to civil and criminal liability. A property owner or manager may be liable for two to four times the storage or towing charges for failure to comply with applicable requirements (the amount depends on the nature of the violation). A property owner may also be liable for vehicle damage if caused by any intentional or negligent act of any person causing the removal, or removing, the vehicle. However, the tow company will be solely liable for any damage to the vehicle that occurs during transit from the property to the storage

By meeting the requirements of the California Vehicle Code §§22658 and 22853(c) described above, private property owners and managers can control unauthorized or abandoned vehicles on their property while limiting exposure to liability. Because city and counties may have ordinances that contain additional requirements, local ordinances should also be researched and followed.

PEST CONTROL NOTICE

Pest Control Notice

As required by California Civil Code, Section 1940.8, you are notified that the following chemicals are used for pest control within our community. The exteriors of all buildings are treated on a monthly basis. Interiors are treated upon request only.

Products Used:

Maxforce (Fipronol)	Catalysts (Propetamphos)	Diazinon (Diazinon)
Dragnet (Permcirhin	Suspend (Deltamethrin	Contrac (Bromadiolone)
Demand (Lambdacyhalothrin)	Talstar (Bifenthrin)	Pre-Empt (Imidscloprid)
Tempo (Cyflurin)	Timbor (Disodium Octaborate Tetrahydrate)	Cy-kick (Cyflurin)

I acknowledge receipt of a copy of this Pest Control Notice.

Resident's signature _____ Date _____

Resident's signature _____ Date _____

Resident's signature _____ Date _____

Resident's signature _____ Date _____

Agent for Owner _____ Date _____

Local

CAUSE EVICTION

On March 16, 2004 the San Diego City Council voted in favor of adopting a "Tenants Right to Know" ordinance also known as a Cause Eviction ordinance that requires rental owners and managers to state and therefore be able to prove the grounds for serving a 60 Day Notice to terminate residential tenancy to tenants who have lived in a rental unit for more than two years. This means that the burden of proof has shifted from the tenant to prove that the notice was retaliatory to the rental owner or manager to prove the stated basis for serving the notice.

MANDATORY TRASH RECYCLING

On Nov. 13, 2007, the San Diego City Council adopted its proposed multi-family and commercial Recycling Ordinance (O-2008-30). Multifamily property owners will be required to establish and implement a recycling program - or seek an exemption if they qualify - according to the following timeline:

- By Jan. 1, 2008 for all complexes currently receiving trash and recycling service from City of San Diego haulers. Complexes that currently only receive trash pick-up need to call the city's Environmental Services Department at (858) 694-7000 by this date to be added to a waiting list for recycling services. Service will be provided as additional bins become available.

- By Feb. 11, 2008 for all complexes with 100+ units receiving private hauling service
- By Jan. 1, 2009 for all complexes with 50-99 units.
- By Jan. 1, 2010 for all complexes with 49 or fewer units.

Property owners/managers will be required to:

1 **Provide educational materials about the property's program at the inception of the rental term, annually, and anytime the program is modified;**

2 **Post appropriate signage on all receptacles. All receptacles must be compliant with city guidelines and be stored in designated storage areas. Recyclables include plastic bottles and jars, paper, newspaper, metal containers, cardboard, and glass containers. Items must be collected at least two times per month.**