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March 2010 Volume 39 Number 3

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March 2010

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LEGAL CORNER Q&A

By Stephen C. Duringer

"A cause of action for unlawful detainer does not accrue until after the three days have legally expired."

Q: ***When my most recent resident moved in several months ago, he deducted one hundred dollars from his second month's rent because he said he had to fix a few things in the unit. I didn't say anything at the time. I needed the unit rented, and I didn't want to upset my new tenant. Since then, he has been able to find something wrong each and every month, deducting a little bit each time. I told him I didn't think that was right, but he did it again this month. He told me that California law says he can "repair and deduct" for anything wrong in his apartment. Is this true?***

A: No. California law, specifically California Civil Code Section 1941.2, provides that a residential tenant may make repairs and deduct the cost from the rent only under certain very limited circumstances. These limited circumstances require the tenant to give the landlord notice of the dilapidation before using the repair and deduct remedy. After giving notice, the landlord has a "reasonable time" to make the repairs, before entitling the resident to repair and deduct. Only defects that are serious, and render the premises uninhabitable will qualify for this remedy. Tenants may only invoke this remedy twice in any twelve-month period, and each time the remedy is utilized, the deduction cannot exceed one month's rent. In your situation, it appears that the tenant is abusing a privilege that is reserved for tenants with serious dilapidations in their apartments. Without providing notice to you of the defect, and an opportunity for you to correct any serious defect, the tenant is not entitled to deduct anything from his rent. Provided you haven't condoned his conduct, or waived your rights to accept the full amount of rent, you may demand that the tenant pay all amounts previously deducted, and become current.

Q: ***I am the supervisor at a property management company and have had numerous problems with onsite managers calculating the days for a three-day notice. I realize that it may be self-explanatory, but could you please outline how to calculate the expiration date when serving a three-day notice?***

A: Surprisingly, the time period for a three-day notice is not self-explanatory, and is often misunderstood. While it is quite logical to count out three days, it is not necessarily correct. A cause of action for unlawful detainer does not accrue until after the three days have legally expired. A notice may be served any day, including weekends and holidays. Don't count the day of service, but count each day thereafter. The third day must be a normal business day, not a weekend or holiday. If the third day falls on a weekend or a holiday, the expiration date rolls over to the following business day. Thus a notice served Monday expires Thursday, while a notice served on Wednesday, Thursday or Friday, will expire the following Monday at midnight.

Q: ***Are the rules for calculating time for a thirty- or sixty-day notice to vacate the same as the rules for calculating time for a three-day notice to pay rent or quit?***

A: Yes. As with a three-day notice, the calculation time for a thirty- or sixty-day notice excludes the date of service of the notice. The following day is day one, counting out thirty, or sixty, consecutive calendar days. The tenant must vacate on the thirtieth, or the sixtieth day. If however, the last day falls on a weekend or holiday

continued on page 47

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EPA New RRP Certification Training

On April 22, 2008, The Environmental Protection Agency (EPA) issued a final rule under the authority of §402©(3) of the Toxic Substance Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities. The rule requires contractors to adopt certain safety measures while performing general renovation work that disturbs lead-based paint in target housing and child-occupied facilities constructed before 1978. ***The rule will fully take effect on April 22, 2010, and renovators will be required to apply for certification from the EPA and to adopt specific work practices designed to prevent lead contamination. EPA Lead Renovation, Repair, and Painting Program, 40 C.F.R. § 745.***

AACSC is offering EPA Accredited RRP Certification Training >>>

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About Lead >>>

- Toxic metal used for many years in paint
- Banned for residential use in 1978
- Exposure to lead can result in health concerns for both children and adults
- Children under six years of age are most at risk because of their developing nervous systems and higher likelihood of ingesting lead due to more frequent hand-to-mouth behavior
- Major source of lead poisoning is lead paint and lead-contaminated dust from deteriorated paint

The National Lead Information Center at 1-800-424-LEAD (5323) or www.epa.gov/lead/nlic.htm can tell you how to contact your state, local, and/or tribal programs or get general information about lead poisoning prevention.

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Costly EPA Renovation, Repair, and Painting Misperceptions

By Stephen Masek

Owners, managers and contractors who want to save money and avoid costly problems must avoid misperceptions regarding the new EPA lead-based paint regulation which will take affect on April 22.

"I don't want to know if there is lead-based paint on my building(s)."

"You do not have to have a lead poisoning to have a violation."

Owners and managers who have not had their buildings tested now have to assume that ***ALL*** paint on their buildings built before 1978 is lead-based paint, and it must be handled accordingly by contractors and employees of ***ALL*** trades working on their buildings. "I don't want to know" is no longer an option. Those days are over!

"Nobody but the EPA cares about their new regulation."

Competent contractors are aware of the new regulation, and will have to raise their prices for work done on pre-1978 buildings. You can also be sure that tenants' attorneys will focus on it.

You do not have to have a lead poisoning to have a violation. You don't even have to have lead-based paint to have a violation.

Liberty Mutual has started requiring lead surveys of pre-1978 buildings in New Jersey, and such requirements are likely to spread to other states and other insurers. Some lenders have been requiring lead surveys, and more are likely to require them.

Owners and managers need to be especially careful about relying on limited lead surveys done for lenders (e.g. ten test locations, when a proper survey of even a duplex will require 300 to 400 test locations).

"Small maintenance tasks and repairs are exempt."

Of course, renovations that affect only components that have been determined to be free of lead-based paint are exempt.

For untested components and components coated with lead-based paint, activities that disturb under 6 ft. on the interior or 20 ft. on the exterior are exempt, unless they are window replacement, demolition, or projects involving prohibited practices (e.g. using torches to remove paint).

Senior housing and commercial buildings are exempt when the same child, less than six years old, does not visit two or more days per week, three or more hours per visit, six or more hours per week, and 60 or more hours per year.

"Lead poisonings, lawsuits, fines, and jail sentences happen to other apartment owners, contractors, and property managers."

Have you ever gone to a gambling hall and bet your entire net worth?

What would you do if you were served with a lawsuit over lead poisoning tomorrow? What would you do if EPA arrived a year from now and wanted to examine your records? What would you do if a tenant

continued on page 40

Stephen Masek will present a seminar for members to answer questions regarding RRP on Saturday, April 10 at the Association's Education Center (333 W. Broadway, Suite 101). Registration is at 9 a.m. and the event is free to members. Non-members will be charged $49.99. Seating is limited so advance reservations are required (562) 426-8341 or www.info@apt-assoc.com.

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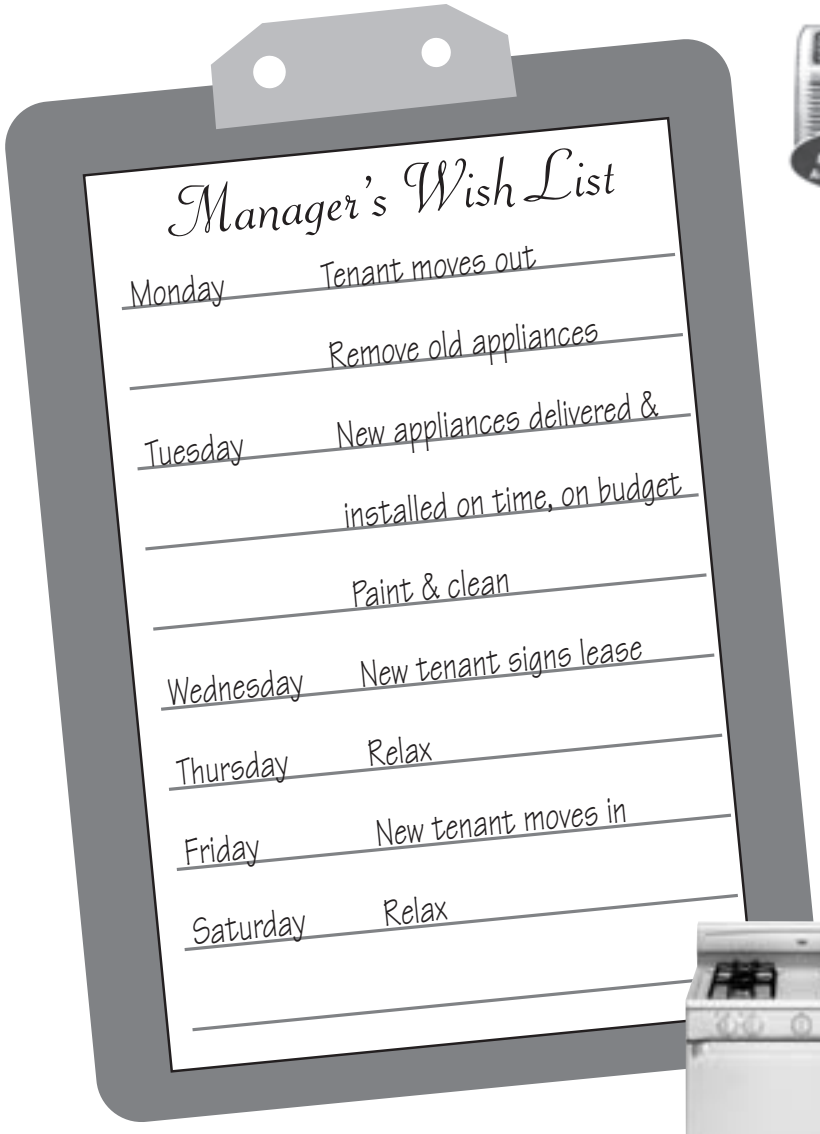

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What Are Obama & Congress Up To? (And What Should You Be Doing Right Now?)

By Philip J. Kavesh

This article is a quick summary of the key topics covered at the special presentation given to the Association on February 25th by attorney Philip J. Kavesh.

"Although technically there is no estate tax currently, it may be reinstated retroactive to the first of the year."

Has the federal estate tax really gone away? Although technically there is no estate tax currently, it may be reinstated retroactive to the first of the year. It is likely that estate tax legislation will occur after the November mid-term elections, because if Congress does nothing, the tax will come back in 2011 with the old exemption of only $1 million and a 55% top rate. It is likely that the exemption will be a minimum of $3.5 million and the top rate 45%. Therefore, if you are married with a total estate of over $6 million or have a single estate of over $3 million, you should be considering proper estate tax planning, as the value of your estate will likely appreciate beyond the exemption by the time you pass.

Some of the important gifting strategies you should look at include the following. Utilizing not only your $13,000 per year annual gift tax exclusion, but in addition your $1 million lifetime exemption (married couples get twice these amounts).

For your personal residence and vacation home, you should consider the use a Qualified Personal Residence Trust ("QPRT") as a way to make a discounted gift of a non-income producing asset.

Note that when using the gifting techniques above for real estate, they must be setup carefully in order to avoid property tax reassessment. Also, realize that these techniques are currently being targeted for limitation or "extinction", so you should pursue them as soon as possible.

Mr. Kavesh also emphasized not to overlook the proper use of life insurance. The death benefit can not only pay possible estate tax without "fire-sales" of real estate, but help buy out family members who later wish to be cashed out of real estate and even fund a "family bank" where the family can pyramid your real estate empire by purchasing more property during down markets.

Mr. Kavesh also discussed the inevitability of increased income taxes and the need to take advantage of certain strategies as soon as possible, otherwise they may no longer be available under the law. One, in particular, is the conversion of company retirement plans and traditional IRAs to the Roth IRA. This can help eliminate taxable required minimum distributions for you and your spouse, allow the money to compound tax-free until you need it later in life, allow you to pull the money out later tax-free and allow your beneficiaries to take it out tax-free after you're gone. There's a one-time opportunity in this year 2010 to do a Roth conversion at a minimum income tax cost. He also talked about utilizing some overlooked planning options to reduce capital gains upon the sale of real estate, including a tenant-in-common exchange, where you can eliminate property management, and the Tax-Exempt Trust if you want to replace real estate with higher income producing assets.

Finally, Mr. Kavesh urged that you review your current basic Living Trust-centered estate plan. One enhanced feature you may want to add is the "Personal Asset Trust℠". This helps put a protective wrapper around your beneficiaries' inheritance, while allowing them to continue to control and use it. Another feature is the "IRA Inheritance Trust®". This can help take advantage of new income tax "stretchout" rules for non-spouse beneficiaries while also protecting inherited company retirement plans and IRAs from spouses, divorces, lawsuits, creditors, etc.

Attorney Philip J. Kavesh is a California State Bar Certified Specialist in Estate Planning, with over 30 years of experience.He can be reached at phil.kavesh@kaveshlaw.com or 1-800-756-5596.

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2. A meaningful new contact.

The person you'll meet at the networking events that you would never have known if you hadn't attended the conference. The person who will someday help solve your onsite challenges because they've faced them before and know exactly what you're going through such as complaints about second-hand smoke. The person who becomes your friend and maybe even your future business partner. Out of more than 5,000 attendees—that person will be in New Orleans and can't wait to meet you.

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"Three hundred exhibitors with their products and services will all be available in one convenient place and time."

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Register today and save $100. The early registration discount offer expires April 30.

For more information and to register, visit www.naahq.org/nola.

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NOTICE TO TENANTS

You are hereby notified that this building is subject to the Los Angeles Rent Stabilization Ordinance (RSO), LAMC Chapter XV

The RSO regulates rent increases:

- Landlords may only collect rents of units registered with the Los Angeles Housing Department.
- Generally, a landlord may not raise the rent in excess of the annual allowable rent increase unless otherwise permitted by LAHD or the Los Angeles Municipal Code.
- A reduction in services may also constitute an unlawful rent increase.

The RSO limits the reasons for which a tenant may be evicted:

- The landlord may be required to pay relocation assistance for certain evictions.
- Mere foreclosure or sale of a property is not an allowable reason for eviction.

All rental properties in the City of Los Angeles must meet the minimum habitability requirements set forth in the Building Code and the California Health and Safety Code.

For further information, or to file a complaint, please contact the Los Angeles Housing Department hotline at (213) 808-8888 or log on to http://lahd.lacity.org

OWNERS ARE REQUIRED TO POST THIS NOTICE IN A CONSPICUOUS LOCATION IN THE LOBBY OF THE PROPERTY, NEAR A MAILBOX USED BY ALL RESIDENTS ON THE PROPERTY, OR IN OR NEAR A PUBLIC ENTRANCE TO THE PROPERTY.

ATENCIÓN INQUILINOS:

Le notifican por este medio que esta propiedad esta sujeta a la Ordenanza de la Estabilización de Rentas de la Ciudad de Los Angeles (RSO), Capitulo XV del Código Municipal (LAMC)

El RSO regula los aumentos de renta:

- El propietario solo puede recibir pagos de renta si su unidad esta registrada con el Departamento de Viviendas (LAHD).
- Por lo general, no se le permite al propietario aumentar la renta por más del permitido porcentaje anual a menos que sea permitido por el LAHD o el Código Municipal (LAMC).
- Una reducción en los servicios también podría representar un aumento de renta ilegal.

El RSO pone límites en las razones para desalojar a los inquilinos:

- El dueño podría ser sujeto a pagar assistencia de reubicación por ciertos desalojos.
- La ejecución hipotecaria, el remate, o la venta de una propiedad no son razones aceptables para desalojar a los inquilinos.

Todas las propiedades de alquiler en la Ciudad de Los Ángeles tienen que cumplir con los requisitos mínimos de habitabilidad expuestos por el Código de Edificios y el Código de Salud y Seguridad de California.

Para mas información, o para iniciar una queja, comuníquese con el Departamento de Viviendas llamando al (213) 808-8888, o por internet en http://lahd.lacity.org

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RSO

PRESIDENT'S Message

By Todd Brisco

During the last three weeks, your Board of Directors has been meeting with Congressional Representatives, State Assembly members and State Senators to advocate on your behalf, fighting proposed taxes and new regulations. More on the successful trips in my column next month.

As taxes and legislation heat up, the L.A. Housing Department also has been busy. All owners of rent-controlled properties are mandated to post a sign (similar to page 22) in a very visible location of the building. Signs are available in the office for $13 (members) and $15 (non-members).

California Supreme Court Rejects Challenges to "Jessica's Law" Residency Restrictions

In a 5-2 decision, the California Supreme Court rejected challenges to the constitutionality of a state law that prohibits registered sex offenders from living within 2000 feet of parks and schools.

Four registered sex offenders, convicted of and paroled for sex crimes before the law took effect Jan. 1, 2007, alleged that "Jessica's Law" amounts to retroactive punishment in violation of both the U.S. Constitution and California Penal Code.

While none of the four plaintiffs were or have been on parole for sex offenses upon and following passage of the statute, the majority ruled that residency requirements contained within the law apply to all registered sex offenders, regardless of whether they were convicted of such offenses before the law took effect. "It matters not," wrote Justice Marvin M. Baxter, on behalf of the majority, "…whether the registered sex offender is being released on his current parole for a sex or nonsex offense."

Applying residency restrictions set forth in the law

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Dear MAINTENANCE MEN

By Jerry L'Ecuyer and Frank Alvarez

"Water will find its way through cracks in the stucco, through window frames and under doors."

Dear Maintenance Men:

With the increase in water rates and the decrease in rents, I'm looking into sub-metering as a way to manage some of my income and expenses. But, the more research I do about sub-metering, the more confused I get. Can you help make sense of it all?

William

Dear William:

Great Question! We have always found a great way to save a resource and cut the costs is to have the person who actually uses the resource pay the bill. You will find they become very conservative with the resource! After reading your question, we contacted Todd Clark from California Utility Billing Services to help us with your question.

As you may have found in your research, there are two basic methods to bill your residents for their water use. 1: RUBS (Ratio Utility Billing Systems) and 2: sub-metered billing systems.

The RUBS is a method of allocating utility costs evenly between multiple residents within a community. The billing is based on factors such as occupancy, square footage, number of bedrooms, etc.

The sub-meter billing system uses individual meters between the master meter and the resident's unit. This provides a way to measure individually each resident's usage. The sub-metering method is more accurate than the RUBS method, but plumbing configurations on many properties could make the sub-metering costly or impossible to install.

Both methods require a little preparation to work smoothly and both will require monthly input. The RUBS system will require you to supply monthly water bill information and occupancy numbers. The sub-meter system will require monthly meter readings.

Dear Maintenance Men:

I thought I was prepared when my building was hit by torrential rains in a recent storm. The roof was fine, but water found its way in anyways. What can I do to be even better prepared the next time the sky opens up?

Pat

Dear Pat:

You were not alone, many of us were scrambling to battle the immense amount of water falling or flowing through our properties. Surprisingly, roof leaks were not the major cause of water intrusion this year. Flooding and seepage were the big problems.

Primary Areas of concern: Often during storms, flowerbeds, concrete walkways, windows and other flat areas, will not allow water to drain away from the building fast enough. Water will find its way through cracks in the stucco, through window frames and under doors. Over the years, buildings tend to settle a little bit and this causes concrete walkways to slope towards the building instead of away, making drainage an issue in a major rainstorm. Building settling will also affect flowerbeds that abut a wall or living area.

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10 Things Your Customers Won't Tell You, But We Will

By Nancy Friedman

"I couldn't believe no one said, 'Thank you.'"

Most business owners know that customers will walk—take their business elsewhere—if they're not treated as they'd like to be. But how does a business owner find out what the customer really likes or dislikes?

Well, as the Telephone Doctor, your customers have told us what they won't tell you. Here are TEN things only your best friend will tell you. (By the way, that would be us—The Telephone Doctor.)

Dear Telephone Doctor,

I'm not a person to be confrontational and cause a scene. However, there are several things that bother me when I call or walk into an establishment. If you pass this on to management, it couldn't hurt and probably would help. Thank you.

Dear Owner/Manager:

1. Nobody greeted me when I walked into your location. No one said, "Hello," no one asked if they could help me, and no one said goodbye when I walked out. Well, at least I wasn't any trouble.
2. Your sales staff looked tired. Yea, they did. Otherwise why wouldn't they greet me with a big smile and some enthusiasm? It didn't look like they even wanted me in the place.

continued on page 27

SACRAMENTO REPORT

By Ron Kingston

"If the legislature waits until April 1, 2010, the state is expected to run out of money..."

The California state budget crisis continues to worsen, not improve. Legislators scramble to either increase taxes or reduce spending in an effort to address a $20 billion hole.

One of the unfortunate solutions that is proposed is another budget gimmick, which is to impose a three percent independent contractor withholding mandate on businesses and public agencies.

This proposal directly affects our businesses because according to the proposal, which the Senate Democrats are pushing for, a business or public agency that is hiring an independent contractor (anyone that receives a 1099-MISC) will have to reduce every payment by three percent and is responsible for remitting that money to the state Franchise Tax Board (FTB), the state tax collection agency.

Most every company and government agency, including non-profits, will be required to withhold three percent of the payment.

Almost anyone who receives a 1099-MISC will be withheld upon, including attorneys, real estate agents and property managers.

The proposal will require three percent be withheld even if the business owes no income taxes for the year due to losses or small profit margins.

The state will use the money that we, and almost every other business, will pay to the state interest free until the following year when tax returns are filed with FTB.

Implementation will be costly and very complex should business and local government agencies be forced to comply. And if that was not enough, the mandate will be ongoing and permanent upon businesses and government agencies.

Now here is the kicker. If that was not enough, last year's state budget agreement between the Legislature and the Governor imposed a new state mandate which requires independent contractors to pay 70 percent of their tax by June each year for the next two years.

The net result of the withholding tax is that it focuses on all businesses that fully comply with paying taxes and requires complex and costly staff computer system changes. Interestingly, State Controller Chiang has stated that the state computer system changes to accommodate pay cuts would cost $177 million, a cost that taxpayers will also pay for. Of course the state will not even consider the unrecoverable cost burdens that we will face.

Lawmakers have until the first part of March before financial gridlock actually starts costing the state. Every day afterward the budget hole widens by millions of dollars. If the legislature waits until April 1, 2010, the state is expected to run out of money and it will "overdraw on its checking account".

The Governor's office warns that if the budget adjustments and tax changes are made so late, that it could cost the state an additional $2.4 billion, mostly because making cuts to social programs and starting up new initiatives such as the plan to require independent contractor withholding takes time to implement.

The spokesman for the state Department of Finance warns, "The longer it takes to confront this problem, the bigger the problem is going to be." This is lost in most budget discussions because the longer the delay in balancing the state budget:

- The larger the budget deficit becomes because the state is spending more money than it is taking in.
- The time it takes to implement changes becomes more complex.

Ron can be reached at: Ron@CALPCG.com

10 Things ...

continued from page 25

3. I signed a 12-month lease. I couldn't believe no one said, "Thank you." No one told me to enjoy my apartment. I did get a lukewarm "Have a nice day." But it was said so routinely, it didn't mean anything to me.
4. When I phoned for some information, my call was treated as an annoyance. I sensed very little desire to be of any real help. Know what I did then? I called a few more places until I found one who sounded as though they wanted my business..
5. Whoever answered your phone never identified themselves. I happen to like to know who I'm talking with and when I don't, it hurts any trust I might give your company.
6. During the phone call, the voice of whoever answered sounded aggressive and challenging. I didn't feel very welcomed.
7. When I walked in, all your employees were talking and laughing amongst themselves and ignored me until I asked a question.
8. There was no management around. Remember the old saying "when the boss is away, the mice will play." Guess what? They do!
9. When I told your staff about my problem, which was important to me, no one sympathized with me. It was "business as usual" for them.
10. Everyone looked angry. No one was smiling. Remember, sometimes it's the things you don't do that make me want to go elsewhere.

Thanks for listening. We all know these are basic common sense topics, but we also know that basic common sense isn't too common.

Nancy Friedman is President of Telephone Doctor, a customer service training company in St. Louis. To receive a free monthly email article on customer service and free subscription to the Telephone Doctor Newsletter, The Friendly Voice, email press@telephonedoctor.com or call 314-291-1012.

Guest Column

"Alle, Alle Atzen Free"
Jobs Still Playing Hide and Seek in California

By Senator Tom Harman

"I have been through enough budgets to know that the only way to increase and sustain the tax base is to create high wage jobs. Of course, the entire country is talking about job creation, but its importance can't be overstated in California. There is no more important barometer of economic struggle and family suffering than a 12.4 percent unemployment rate."

– Senate Pro Tem, Darrel Steinberg

Actions speak louder than words and it is sure hard to tell by majority party actions that these legislators are serious about making jobs a top priority. Just last week Republican legislative efforts to enact "job-creator" legislation were summarily put out of business.

Look at what the majority party said NO to:

- SBX8 70 (Dutton R - Rancho Cucamonga) and SBX8 66 (Cox R - Sacramento), allowing greater flexibility for employees and employers to implement more family friendly work schedules, ease traffic congestion and commute time. The measures would also have put an end to the frivolous lawsuits that are driving businesses—and jobs—out of state.
- SB 8x 57 (Cox R Fair Oaks) to delay the costly

new diesel engine regulations that have hamstrung California's transportation sectors. The regulations have been questioned by economists and industry experts since their implementation.

- Another rejected measure, SB 8X 65 (Huff - R Diamond Bar), which would have made healthcare more affordable in California by offering competition from out of state insurers and plans.
- Efforts by Senator Roy Ashburn (R - Bakersfield) to expand his hugely successful homebuyer tax credit by $200 million were tabled as well. This measure has bipartisan co-authors, support from industry and labor, and would have created much needed construction jobs and get people buying homes and investing in California communities again.

By contrast, let us take a look at majority party priorities during a job crisis:

- A new tax on sugar in soft drinks. (SB 1210 Florez, D-Shafter)
- A new tax on pet food. (SB 1277 Florez D-Shafter)
- Create a $200 billion dollar single payer health care plan. (SB 810 Leno, D-San Francisco)
- Mandating ski helmets. (SB 880 Yee D- SF)
- Eliminating free parking. (SB 518 Lowenthal, D-Long Beach)
- A requirement for fancy labeling on your cell phone to inform you there are radiation waves emitted when you use it. (SB 1212, Leno, D- San Francisco)
- No Cuss Week (ACR 112 Portantino, D- La Canada Flintridge)

These proposals don't represent my priorities, especially when families are drowning in a sea of foreclosures, lost jobs and a stagnant economy. What they do represent are more government, more government mandated costs and just plain annoying intrusions into our lives. California should be focused on getting and keeping jobs in the state. Plain and simple.

Now who is the Party of "NO?"

... Senate Republicans didn't miss a beat this week presenting a full spectrum of legislation designed to bring jobs to California and stimulate the economy. But the liberal majority said "NO" - No to workers, No to business growth, and No to jobs. This is the same, tired strategy liberals have employed for decades that has dragged our state into its current economic crisis.

continued on next page

"Alle, Alle Atzen Free"... *continued from previous page*

... One of every six American employers that closed permanently in 2008 was in California. Our state experienced 45% more business closures than launches, compared to 10.5% nationally. By the end of 2008 there were almost 47,000 fewer businesses in California than in 2007. The global recession is a convenient scapegoat for California's economic ills—and certainly a factor. But overregulation has been driving businesses out of this state for years, and good jobs with them. Sadly that is what some in Sacramento refuse to acknowledge.

One of every six American employers that closed permanently in 2008 was in California.

California families need jobs. We all need relief from the high unemployment that is strangling our state. We do not need leadership that refuses to recognize that reality.

NEWS AND NOTES

California is a greater risk of default than Greece

Telegraph, UK February 26, 2010 by James Quinn, US Business Editor, New York

Jamie Dimon, chairman of JP Morgan Chase, has warned American investors should be more worried about the risk of default of the state of California than of Greece's current debt woes.

Dimon told investors at the Wall Street bank's annual meeting that "there could be contagion" if a state the size of California, the biggest of the United States, had problems making debt repayments. "Greece itself would not be an issue for this company, nor would any other country," said Dimon. "We don't really foresee the European Union coming apart." The senior banker said that JP Morgan Chase and other US rivals are largely immune from the European debt crisis, as the risks have largely been hedged.

California however poses more of a risk, given the state's $20bn (£13.1bn) budget deficit, which Governor Arnold Schwarzenegger is desperately trying to reduce.

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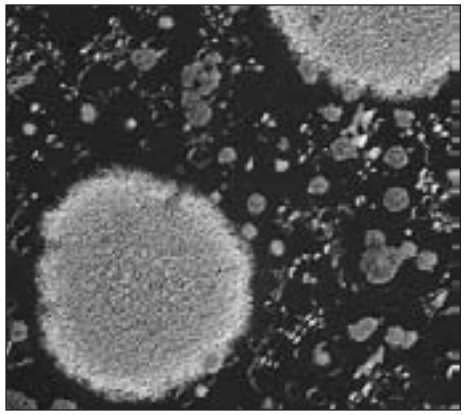
Mold Inspection and Remediation

By Jason Harris

The mold inspection and remediation process is a balancing act of ensuring occupant health and safety and preserving the property value for the owner.

The mold inspection company you choose should offer a value proposition that stands apart from others. The credentials should include a certification, experience, a fine work product, and a competitive price. In addition, the company should be able to provide multiple references of past customers who were satisfied with their experience.

To minimize the chance for conflict of interest, the mold inspection company should strictly be in the business of inspecting, testing, and consulting. That way, the company has no vested interested in benefiting from the repair that may be necessary through mold remediation.



The inspection report should be a two-part document: lab results and an inspection report. Once mold testing is conducted it should be sent to an independent laboratory for analysis. The results of the lab analysis will be interpreted by the inspection company, who will then provide a comprehensive analysis of the property condition, laboratory findings, and recommendations.

The report should be easy to understand when you read it and not a bunch of legalese that is confusing and unhelpful. Some inspectors simply provide the lab results without any additional documentation. However, an inspector also serves as consultant and should be able to produce a document to reflect their interpretation of the inspection process.

The value proposition is reflected in the promptness of service, availability of an inspector to speak with and schedule an appointment, the price, and the quality of the report. The report should be informative and easy to read. Beware of lengthy reports with a lot of "mumbo-jumbo" designed to protect the inspection company instead of educating the customer.

There are several disclosures and disclaimers that should be included in most reports. But, ask yourself, "Do I really need a legal dissertation included with an inspection report?" At times, they are the most expensive reports yet reach similar conclusions as a simplified report designed to answer the question as to whether or not there is a mold problem.

Property owners and managers dealing with a mold problem want to know four (4) things:

1. Do I have a mold problem?

2. If yes, how do I solve it?

3. How much will it cost?

4. How long will it take?

The mold inspection company will address the first two questions, and the remediation company will address the third and fourth questions.

It is acceptable for an inspection company to make referrals to remediation companies; however, an objective inspection company should be able to refer more than one remediation company. The remediation company should be a licensed and insured contractor because they will be destroying the property in order to repair. This can be an expensive endeavor and you want to have recourse in the event something goes wrong!

The basics of mold remediation should include area containment, removal of moldy materials, treatment of remaining construction materials

continued on next page

with antimicrobial solution, disposal of moldy materials, and air scrubber treatment to remove airborne fungal activity. The source of water damage or moisture penetration may need to be done by a plumber or other trade specialty depending on the source of the water intrusion.

Once the remediation has been completed, a post-remediation verification (PRV) should be conducted prior to rebuilding the affected area. It is prudent to use the same inspection company before and after the remediation to ensure consistency in the inspection protocol and testing methodology. The PRV inspection will verify that the mold problem has been mitigated and handled properly before reconstruction.

The scheduling and billing for the PRV inspection should be handled through the inspection company directly instead of the remediation company to ensure accurate pricing and independent reporting.

Whenever a mold problem has been identified, it needs to be solved. Inspection and remediation is the way to solve the problem. It is in the best interest of owners and occupants to work collaboratively to have the problem solved as soon as possible to prevent further risk to persons and property. The key to mold control is moisture control.

Whenever a mold problem has been identified, it needs to be solved.

The above article was produced by Same Day Mold Testing. The company offers fast, affordable results for owners and occupants concerned about the indoor environment of their structures. The company was established in 2005 to serve owners, managers, and tenants in the arena of mold contamination.

If you suspect a mold problem contact our office to schedule an appointment (888) 882-7719.

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Costly EPA Renovation ... *continued from page 14*

called EPA next month about work being done on your units?

How would you pay a fine in the $20,000 to $30,000 per day range? How would you pay a multi-thousand dollar fine just for a simple paperwork violation? How would you deal with being sentenced to a federal prison for a willful violation?

"Only one employee needs to be trained as a Renovator."

At least one employee (or the only employee) in each company must be trained as a *Renovator*, and must train all of the other employees, direct the work, keep records, and be present when the warning signs are up and when the containments (enclosures of polyethylene sheeting) are being built, and when cleaning is being performed. Firms with multiple work crews and multiple job sites will find it impractical to have just one *Renovator*. The Renovator must also be available, either on-site or by telephone, at all times that renovations are being conducted, and must carry copies of their training course completion certificate.

"The apartment owner does not have to be certified or trained."

The company doing the work has to be certified. If the owner hires a company or companies to do the work, they do not have to be certified. If the owner hires an employee (including casual labor) they do have to be certified. The certification fee is $300. If the owner personally also does work on the building, they also have to be trained as a *Renovator*.

"Tenants won't know work on actual or assumed lead-based paint is underway."

EPA's *Renovate Right* must be given before the start of the work. Signs must be posted where they will be seen, describing the nature, locations, and dates of the renovation, and be accompanied by *Renovate Right* or by information on how parents and guardians can get a free copy.

No more than 60 days before beginning renovation activities, the firm or firms performing the renovation work must provide the owner of the unit with the *Renovate Right* pamphlet, obtain from the owner a written acknowledgment that the owner has received the pamphlet, and obtain a certificate of mailing at least seven days prior to the renovation.

If the owner does not occupy the unit, the firm or firms performing the renovation must provide an adult occupant of the unit with a copy of *Renovate Right*, obtain from the adult occupant a written acknowledgment that the occupant has received the pamphlet or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant.

The certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no

adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

Alternately, each firm performing renovation work may obtain a certificate of mailing at least seven days prior to the renovation. The regulation states "to the extent practicable, these signs must be in the primary language of the occupants."

"Lead-based paint is everywhere, so I'd better not test my building and have to disclose the test results."

Lead-based paint is ***NOT*** everywhere, and is quite rare in buildings built in the 1960 to 1978 period. Our experience with thousands of properties agrees with The American Healthy Homes Survey of December 15, 2008 for US EPA which reports lead-based paint in just 29 percent of homes in the west, and just 24 percent of homes built 1960-1977. Some of those results include lead-glazed ceramic tile.

Even in buildings built before 1960, lead-based paint is most often found on exterior wood items and wood windows and doors, and is sometimes also found on interior wood trim. It is far, far less common on interior walls and ceilings.

"Lead surveys are expensive."

Lead surveys (also called inspections) are inexpensive, so it is obviously wise to have all of your buildings surveyed to prevent contractors (all trades) from charging more for unnecessary RRP procedures, eliminate unnecessary spending for RRP training, equipment, and procedures for your staff, and to allow you to market certified lead-based paint free units to families with children (especially the 1960 to 1978 units). It is a one-time expense, and the per-unit cost is less than what owners spend again and again for routine items such as painting, cleaning, carpet, etc.

"Keeping files on work which is done is too difficult."

The RRP regulation has very specific requirements for documentation.

EPA requires that all documents must be retained for three years following the completion of a renovation. The records to be retained include reports certifying that lead-based paint is not present, and documentation of compliance with the requirements of the RRP regulation.

Photos with digital cameras cost almost nothing, and notes about what was done, how it was done, and who did it are easy to write. The notes and photos may simply be kept in a computer file. Should somebody claim that the work was not done properly, those notes and photos would be very helpful. Pre-testing helps contractors avoid blame for lead problems which were present before they started their work.

continued on next page

Costly EPA Renovation ... *continued from previous page*

"A lead survey will result in all kinds of scattered damage due to scraping and cutting out of paint samples."

Lead surveys are performed using X-Ray Fluorescence (XRF) machines which give on-the-spot results with absolutely no damage to painted surfaces. Some people who claim to be lead consultants are too small to own the expensive XRF equipment, so they should not be hired, as they will try to scrape and cut out spots of paint all over every room in a building, producing expensive and unsightly damage.

Such work is also very time consuming, so they also charge more than companies with the right equipment for the job. Consultants who perform lead surveys in California must be certified and have a state-issued photo ID card showing that they are a lead inspector and risk assessor. Demand to see that ID card before paying somebody who may not be able to legally perform a lead survey.

"Any lead content above zero means that lead abatement procedures must be followed."

No. Portions of the federal OSHA and corresponding California lead regulations do apply to any amount of lead content above zero, but that mainly means that employers need to perform simple periodic exposure assessment monitoring of their employees.

"A trained Renovator can use swabs to check paint for lead."

Not on plaster or drywall, the materials used for the walls and ceilings of almost every apartment, as the EPA does not permit using them on those materials.

"A trained Renovator can use wipes to perform clearance tests."

A California Department of Public Health certified lead inspector/risk assessor or project monitor must perform risk assessments, pre-testing, and formal clearance testing, if it is desired. The wipe samples which are compared to a color chart by a Renovator to check cleaning progress are not the same thing.

Contact information for Steve Masek is newclients@masekconsulting.net.

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Bigger Isn't Always Better: The Trend Towards Renting Smaller Apartments

By Heather Blume

When she was in 8th grade, as is tradition in my family, my sister got her first set of matched luggage. It was dark blue with tan piping, and I remember it was from JC Penney. For 8th grade promotion, I think she received all the pieces to that luggage set that she hadn't gotten for the holiday season prior. There was a garment bag, and a little overnight suitcase, and there were also make-up cases and duffel bags. And then there was the MONSTER.

I had never seen a suitcase this big before. I was tall for my age, and chubby, but I could fit inside of it entirely with the lid zipped shut. I thought it was the coolest suitcase ever. That was, of course, up until the one year we packed it for a vacation. It was an ideal solution, we thought. We each had plenty of room to fill up with our stuff. It all fit in there nice and neat with a non-bulging lid.

We stood the MONSTER up and quickly found that fully loaded, it was heavy, hard to control, and very annoying to deal with. I had never before realized it was possible to have too much suitcase.

It's possible to have the same experience with an apartment as a renter. Trends in America for the last few decades have had us renting bigger and bigger living spaces and buying more and more "stuff" to fill them with. The sun is quickly sinking on that trend.

Continued trouble in the real estate market and foreshadowing shows that what we're about to see is a lot of downsizing. Whether it's from Boomers who can no longer keep up with the demands of a large house, or Gen Y renters who are eco-conscious about the space they take up and the energy they use, we are going to see a lot more people inquiring for a smaller sized apartment than they would have previously rented.

This gives those of you out there who top out with the two bedroom floor plans a chance not only to get back in the game, but to score some of those rentals for your own property. When you get a call about whether or not you have three bedroom floor plans, you may want to encourage your leasing consultants to ask more questions before dismissing the lead.

Statements like, "We do have some two bedrooms with a lot of square footage; do you think that an extra large second bedroom would work for your needs?" Pointing out that in many floor plans, those third bedrooms can be not much bigger than the size of a walk-in closet will help with selling a downsize. And focusing on square footage over walls can be a persuasive move for many people.

As a leasing consultant, it can be hard to push for more information without worrying about looking pushy. Remember to encourage your staff to be inquisitive. If you're trying to encourage them to be better information gatherers, do your best to eliminate any negative connotation words from your vocabulary, such as "nosey." Those kinds of words are exactly what keep your leasing staff from asking the deeper questions. It's not being nosey, it's determining needs. Bigger isn't always better for everyone.

Legal Corner ... *continued from page 10*

the tenant has until the following business day to vacate the premises. A complaint for unlawful detainer may not be filed until the next business day after the notice has expired.

Q: ***I'm the manager at a complex where the tenancies are typically month-to-month agreements. Every time I serve a notice to vacate, the tenants want to know the reason. My supervisor has told me that I'm not required to give a reason, and to just state that the owner wants the apartment back. Is there ever a time when I must give the tenant a reason?***

A: Yes. Your rental agreement or local statutes may require specifying reasons for termination of the tenancy. Most local rent control or eviction control laws require just cause for terminating a tenancy. Additionally certain government assisted housing, including Section 8 tenancies, requires the landlord to state the reasons for terminating the tenancy. As a general rule month-to-month tenancies do not require cause to terminate the tenancy, only that the termination is not based on improper grounds such as discrimination or retaliation.

The foregoing is presented in a general nature to address general legal issues. Specific inquiries regarding a particular situation should be addressed to your attorney. The Duringer Law Group, PLC is one of the largest and most experienced landlord tenant law firms, specializing in evictions and in the collection of debt, representing landlords throughout Southern California. The firm may be reached at 714.279.1100 or 800.829.6994 or 877.387.4643. Visit our website at www.DuringerLaw.com for copies of "Eviction and Debt Collection, a Landlord's Guide," and "Asset Preservation Strategies."

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only to those convicted of such crimes following its passage would give sex offenders registered prior to the law's effective date a "free lifetime pass." That, according to the majority, would be akin to flouting the will of California voters who passed the law by ballot in 2006 to protect children from sex offenders.

The court did, however, leave open the question of whether the law, by restricting sex offenders' housing options, is unconstitutionally "unreasonable and vague" and an infringement upon both their privacy and property rights, as the plaintiffs further allege. It instead instructed plaintiffs to prove in lower court that the law factually renders them homeless.

Major FCC Victory for Owners

The apartment industry won a major telecommunications victory this month when the Federal Communications Commission (FCC) affirmed the right of apartment owners to enter into exclusive marketing contracts and bulk billing agreements with video service providers.

The "Second Report and Order" (MB Docket No. 07-51) follows a 2007 retroactive ban on exclusive access agreements between apartment properties and most video service providers.

Under an exclusive marketing agreement, an apartment community promotes one video service provider to residents, but may allow additional providers to serve the property. (This is a key distinction from exclusive access agreements with Multichannel Video Program Distributors (i.e., franchise providers), which were banned in 2007 and which prevented more than one provider from serving a building.)

Based on the record, to which NAA/NMHC made substantial contributions, the FCC concluded that exclusive marketing is allowable under Section 628 of the Federal Communications Act (47 U.S.C. § 548) because it doesn't significantly hinder or, more importantly, block competition

In a bulk billing agreement, the property owner contracts with, and directly compensates, one video provider to service the entire community at a significant discount; however, residents are free to contract with an additional provider. Some firms use bulk billing as an amenity for residents by

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continued from page 24

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Jerry L'Ecuyer is the owner of JLE Property Management, Inc. and Buffalo Maintenance, Inc. and is a licensed contractor and real estate broker. He is currently on the Board of Directors, Chairman of the Education Committee and President of the Apartment Association of Orange County. Jerry has been involved with apartments as a professional since 1988 and can be reached at (714) 778-0480 or jerry@JLE1.com.

Frank Alvarez is the Operations Director for Buffalo Maintenance, Inc. He has been involved with apartment maintenance and construction for over 18 years. He is also a lecturer and educational instructor. Frank can be reached at (714) 956-8371 Frankie@ContactBuffalo.com Please view our web sites at: www.JLE1.com and www.BuffaloMaintenance.com

providing discounted video service that is available immediately upon move-in.

The FCC found that a bulk agreement between the community and a particular provider may deter—but does not prevent—other providers from serving residents.

HIRE Act

The following bill passed the Senate this week and is on its way to the House for final approval. It is expected to clear and the benefits to businesses are great. The key features of the HIRE Act include:

- An exemption from Social Security payroll taxes for private employers for each worker hired in 2010 who previously had been unemployed for at least 60 days;
- A $1,000 income tax credit for private employers for each new employee hired in 2010 and retained for at least 52 weeks and claimed on the employer's 2011 income tax return;
- An extension of the small business "expensing" tax break for one year, allowing small businesses to continue writing off up to $250,000 of certain capital expenditures instead of depreciating them over time;
- A $2 billion Build America Bonds program, which would provide an optional direct subsidy payment in lieu of a tax credit for tax credit bonds issued for certain school and energy projects;
- Expanded federal aid for highway programs.

The HIRE Act now goes to the House of Representatives. Although some House Democrats have grumbled that the bill does not do enough, it is still expected to quickly pass and become law.

While the HIRE Act does not extend the COBRA subsidy or unemployment insurance, extensions of those programs are not off the table. Both programs were set to expire in February, but it was proposed to extend the unemployment benefits program to April 5 and COBRA benefits to March 28, 2010.

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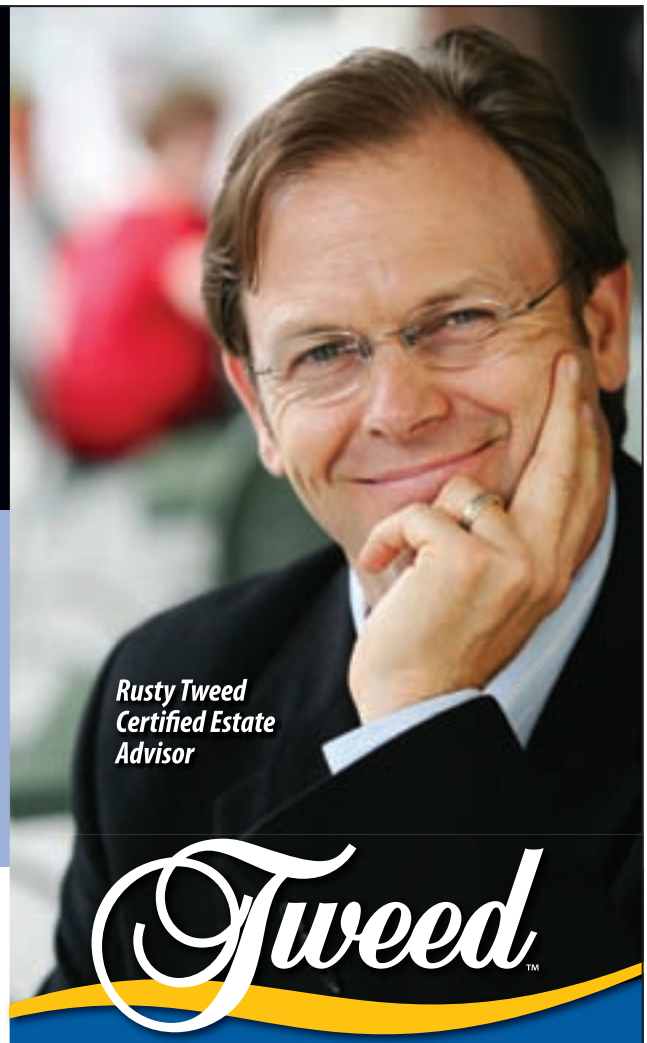

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