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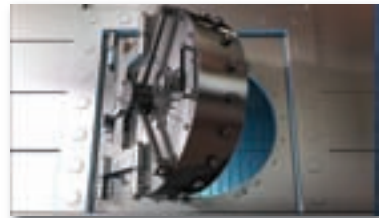


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10/26	Maintenance Management
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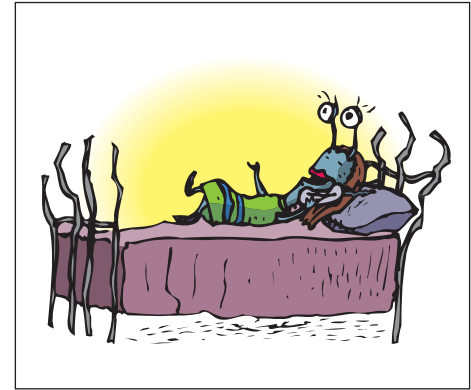
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Sleep Tight and Don't Let the Bed Bugs Bite!

By Nancy Ahlswede



“For landlords to protect themselves, they should incorporate a bed bug clause in rental agreements, lease addendums or house rules.”

Hardly a week goes by when we don't get a question or two in the office about bed bugs.

“The tenant says there are bed bugs in the unit. What do I do?”

“How can I get rid of bed bugs?”

“Do I have to pay to rid the apartment of bed bugs?”

“What do I do if the bed bugs spread to another unit?”

These are all excellent questions but most do not have cut and dried answers because only the State of Maine has actually enacted legislation. Arizona, Ohio, New Jersey and Alabama have each studied the issue of bed bugs in rental units, with New Jersey taking the lead.

The only city in California that has established health code ordinances governing bed bug liability and cures is San Francisco.

For landlords to protect themselves, they should incorporate a bed bug clause in rental agreements, lease addendums or house rules. This document should explain what will happen if there is an infestation. The tenant should be asked to fully cooperate with the fumigator and his recommendations “up to and including disposal of infected furniture.” Finally, this document should require the tenant to notify the landlord within a reasonable time (e.g., three days) of any bed bug infestation.

As always, the landlord should tell the tenants that failure to comply with these requirements will be grounds for eviction or will enable the landlord to charge the tenant for fumigation.

We have asked several attorneys what they see as the implications of bed bugs in the landlord tenant relationship and we received a very straightforward answer from Michael Brennan of the Durringer Law Group PLC:

I looked all over and am unable to locate any

Federal statutes or regulations regarding a landlord's responsibility to remove bed bugs.


Having said that, I did come across several publications in which governmental agencies and individuals have addressed solving the problem and, invariably, they do look to the landlord primarily to rid the units of the bed bugs much like a landlord is expected to deal with roaches and other vermin or rodents.

The best bet is for management companies to treat the problem seriously and have the units fumigated.

The best practice I have come across (from a litigation standpoint) is to contact an extermination company with literature for the tenant on proper preparation of the unit. Hand out the literature along with the Notice of Inspection and come back on the date listed. If the tenants refuse entry, have the exterminator note it and then make another attempt. If the tenants refuse again, issue a three-day notice to cure.

The manager of the units should accompany the exterminator and ask the exterminator whether the unit is properly prepared. Most tenants will not properly prepare their units for the most effective treatment and, so, the manager should take pictures for the file. Furthermore, when issuing the three-day notice, specifically state the deficient preparation and refusal to comply as the basis for a possible eviction.

(You can reach Mike or Steve at www.DurringerLaw.com)

If you want more information on this topic, consider attending the Bed Bug Symposium on Friday, September 10, at the Anaheim Convention Center. Register on the website www.npmapestworld.org. 

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LEGAL CORNER

Q&A

By Stephen C. Duringer



“When asked by the prospective resident about crime in the area, refer them to the local police department for statistics.”

Q: I own a small apartment building in a “rough” area. Seems like a day doesn’t go by without some sort of violent crime in the neighborhood. I have a vacancy now and I don’t know if I have to tell them about all the stuff going on. If I did, no one would rent; what do I do?

A: In many areas throughout Southern California, crime is a fact of life. When asked by the prospective resident about crime in the area, refer them to the local police department for statistics. Be careful not to portray your building as a “security” building or advertise it in any way that may create a false sense of security or safety. If your property provides an increased risk of harm, or has had a recent rash of criminal conduct, you may have a duty to disclose this fact to the prospective resident, even if not asked.

Q: Seems like it’s getting tougher to manage my commercial buildings. Delinquencies are up and so are vacancies. One of my larger tenants in my industrial complex just came to me and said they may have to close down. I really don’t want to lose them, they’ve been a good tenant for years, and are good at what they do. What can I do to salvage them?

A: Increasing delinquencies and vacancies are on the horizon for many commercial property owners in the coming months. In markets where it may be tough to find a replacement tenant, many owners are electing to offer rent deferments to tenants. Rather than waiving rent due or entering into permanent rent reductions, many commercial property owners will offer their existing tenants an opportunity to temporarily pay a reduced sum as rent for a certain period of time. The

“deferred rent” is then amortized over the remaining term and is repaid in the future. Ensure that any agreement to defer rent is placed in writing and signed by all parties.

Q: Most of my rental properties are residential multi family, but I have one small retail strip center in Los Angeles that I own as well. I’ve never had a problem with my commercial tenants, but I have one who hasn’t paid rent this month. Can I use the same three-day notice to pay rent or quit that I use for my residential properties?

A: Commercial and residential landlord tenant laws differ in many ways. One major difference between the two is the ability to accept partial rent payments after service of a notice to pay rent or quit for a commercial property, and not for a residential property. Provided the necessary language is included in the commercial notice, you may accept a partial payment without waiving your notice, and may proceed with an unlawful detainer action without having to re-serve a new notice. For that reason, all commercial notices to pay rent or quit should contain language stating that in the event a partial payment is made, it will not act as a waiver of your right to commence an unlawful detainer action. If you have served a notice that does not contain the proper language, and your tenant tenders a partial payment, you may immediately provide the tenant with a letter acknowledging the partial

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I Don't Need Lead-Based Paint Training

By Steve Masek

“The new EPA Renovation, Repair, and Painting regulation is one of the most significant events of the past 50 years in the rental housing and contracting industries.”

Why waste my money and a day of my time sitting in the 8-hour Renovator training class? I'll just hire contractors and let them take care of everything, or I'll send one of my employees, and that will cover us. While they worry about it, I'll be at the beach or pursuing my hobby (restoring 1920s to 1950s vacuum tube radios, in my case). Yep, owning rental property is easy—why worry? You just hire contractors or employees and turn them loose.

Oops, what is that—my contractors now want to charge how much for that job? Oh wait, I've got a regulator on the phone asking to review our renovation and repair records for the past three years! Egad, the secretary just told me the health department is here to talk about a lead-poisoned child in Unit 3. Now I really wish I was at the beach.

The new EPA Renovation, Repair, and Painting regulation is one of the most significant events of the past 50 years in the rental housing and contracting industries. Why wouldn't you want to understand what it is all about? Why wouldn't you want to save money and manage, rather than react and guess?

Why wouldn't you want to know where there is or is not, lead-based paint on your buildings? Why wouldn't you want to have a leg-up on your clueless competitors?

Your apartment association has thousands of members, and the contractors who work for those members have many thousands of employees, yet only a few hundred people have attended the Renovator training classes offered through your apartment



association. Although demand for lead-based paint inspections is higher than ever, and growing, few of the many thousands of buildings those members own and manage have been inspected. Does anyone believe that training or inspections will become less expensive as growing demand meets limited supply?

As an owner or manager, you may never pick up a tool, but you do want to be able to understand what your employees and contractors are doing, be able to analyze bids, and be able to evaluate their performance. Attending the 8-hour Renovator training class is one of the best ways to enhance your understanding of the tasks and time required to comply with the regulations. Of course, if you are working on your own buildings, or directly supervising work crews, attendance is a must. If you examine the long list of tasks a Renovator must perform, and the times when a Renovator must be present at a job site, it is clear that every on-site work crew supervisor should be trained.

Your apartment association has arranged to provide the eight-hour training classes. The small number of training providers are very busy, so the apartment association classes are the best opportunity for you,

continued on page 52

Learn the Requirements for the New EPA Renovate, Repair & Paint Rule

(Effective April 22, 2010 ♦ Fines begin in November)



Federal law now requires that contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities and schools built before 1978 be certified and follow specific work practices to prevent lead contamination.

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Dear MAINTENANCE MEN



By Jerry L'Ecuyer and Frank Alvarez

“You could do this work yourself, but we would recommend you hire a bee expert to remove the bees...”

Dear Maintenance Men:

I have a bee problem at my apartment building. My tenants are complaining. Because bees seem to be in short supply, I don't want to kill the bees. How can I get rid of my bee problem without exterminating them? In other words, I want them to have a new home, just not mine. What steps should I take to remove the bees and remain bee friendly?



Lesley

Dear Lesley:

We commend you on your wish not to kill the bees. Bees are very important to the world around us; we just don't want to live with the hive too close. We would recommend calling a local bee society or club. Often they will come out to the property, remove the bees, and relocate them without exterminating the hive. If the bees have built a hive outside the wall of your building, it is a very straightforward removal problem. However, often times the bees will build their hive inside a structure's wall or in an attic space. Now, this is a bit more complicated. Relocating the bees is only part of the problem. The other issue is removing the honey-laden hive. If the honey is left in place, it will rot, possibly damage the structure, smell and generally make a mess and attract other pests such as mice, rats or other insects. Removing the honey is a must. If the honey is in between the walls, you will need to open the wall to extract the hive and all the honey. You could do this work yourself, but we would recommend you hire a bee expert to remove the bees and hive and a contractor to open and close the walls.

Dear Maintenance Men:

I have a seam in a vinyl floor that is starting to open up and curl. The rest of the floor is in good condition and I don't want to replace the flooring. What can I do to repair the seam?

Ken

Dear Ken:

Vinyl seams are often found at transition points in a room, such as a doorway or between rooms. Of course, on a room that is larger than 12 feet, a seam may be found at any point in the room. If the seam is in good condition and only starting to curl, use a putty knife to gently open the seam and carefully clean out the seam using an old paintbrush and a vacuum to remove any debris. Any grit left behind can telegraph up through the vinyl and cause additional damage to the flooring. Apply painters tape along each edge of the seam to protect it during the repair process. Using multipurpose vinyl adhesive, inject the seam with the glue. After applying the adhesive, use a block of wood to press the seam together and run a damp rag over the seam to remove any excess glue. Lay wax paper over the seam followed by a 2x4 or scrap sheet of plywood and put weights along the top of the seam. A couple of cinder blocks or five-gallon buckets of water or paint work great. Leave the weights in place over night. After eight to ten hours, remove the weights, clean up the joint and apply a seam sealant to finish the job.



If the damaged seam is in a doorway, an easy and permanent repair can be done with a metal transition strip to cover the seam. Cut the metal strip to length, nail or screw the strip in place. We would still

continued on page 50

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How You Can Qualify as a Real Estate Professional

By David S. Silkman

“A real estate activity is considered passive when you have no involvement with its management or operations.”

I am often asked by my clients that are not “real estate professionals” how they can write off their real estate losses against their regular business incomes.

Under current federal tax laws, generally a real estate activity is considered a “passive activity”. Passive activity losses can only be deducted against passive activity income.

For example, D, a doctor has a full-time medical practice that generates income. D’s income from his or her medical practice is considered non-passive. But, D owns a rental property that generates a loss which is considered passive. Therefore, D cannot offset the loss from the rental property against the income from his or her medical practice. D will not lose the rental loss either. The rental loss will carry forward indefinitely until D has passive income to offset against it or when the property is sold.

Furthermore, there are three levels of participation/involvement you can have in regards to a real estate activity:

1. Passive Participation,
2. Active Participation or
3. Real Estate Professional.

1. Passive Participation

A real estate activity is considered passive when you have no involvement with its management or operations. For example, D, a doctor, decides to invest in a real estate partnership. D has no involvement in the partnership or the management of the property. D just made an investment as though he or she would have in IBM. In this example, D’s investment in the partnership investment is considered a passive activity. Thus, if the partnership generates a loss, D



cannot offset that loss against his or her medical income. Again, the loss is not lost. It gets carried over to future years or until D either sells his or her interest in the partnership or the partnership sells the property. Which at that time, the loss that D accumulated over the years becomes available and D can offset it against his or her other types of income.

2. Active Participation

A real estate activity is considered active when you do make management decisions for it. Let’s take our example above. If D decided to purchase a 20-unit apartment building and D actively was involved with the management decisions of the property, then D would be considered as being actively involved in that property. Active involvement does not mean you cannot have a management company that manages the property. All it means is that at the end of the day, all major decisions of the property, such as accepting a tenant, authorizing repairs, remodeling etc. are ultimately made by you.

When you are actively involved in a real estate activity, then you are allowed to write off a maximum of \$25,000 of the loss from all of your real estate activities against your non-passive incomes. However, your modified adjusted gross income needs to be less than \$100,000 to receive the \$25,000

maximum loss deduction. If your modified adjusted gross income is more than \$100,000 but less than \$150,000, then a portion of \$25,000 is deducted. If your modified adjusted gross income is over \$150,000, none of the \$25,000 loss is deductible. Again, you don't lose the loss; it gets carried over to future years.

In our example above, if D's modified gross income was \$99,000 and the property generated a \$30,000 loss, he or she would be able to offset \$25,000 of the rental losses against his or her medical practice income. But, if D's modified gross income was \$125,000, then \$12,500 of the rental loss would be tax deductible. And if D's modified gross income was over \$150,000, none of the \$30,000 rental losses would be deductible.

3. Real Estate Professional

If you qualify as a "real estate professional," then your rental real estate interests are not automatically treated as passive activities. As a result, if you materially participate in the rental real estate activity, the activity will not be treated as passive, and you will be entitled to deduct losses from that activity against non-passive income.

How do you qualify as a real estate professional?

In order to qualify as a real estate professional, you must satisfy all three requirements below:

1. Either you or your spouse must materially participate in a real estate business. Material participation in an activity means involvement in the operations of the activity on a regular, continuous, and substantial basis.
2. More than 50% of the personal services you perform in all businesses during the year must be performed in real estate businesses in which you materially participate.
3. Your personal services in material participation real property businesses during the year must amount to more than 750 hours. For this purpose, you can't count any work you perform in your capacity as an investor.

What is considered a real estate business? Any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, brokerage or agency (real estate agents) is considered a real estate business.

For married couples filing a joint return, the spouses' activities can be combined to determine

whether they materially participate in their real estate business activities. But, one spouse must separately satisfy the more than 50% of personal services and the more than 750 hours requirements.

In determining whether you qualify as a real estate professional, each of your rental real estate interests is treated as a separate activity—that is, as a separate business—unless you make an election to treat all those interests as a single activity. Because of this rule, if you have multiple rental properties and you don't make the election, you must establish material participation for each property separately, and must satisfy the more-than-50% test and the 750-hours test for each property separately in order to qualify as a real estate professional with respect to that property—and qualifying for one property wouldn't mean you qualify for any other property. Thus, if you don't make the election, qualifying as a real estate professional for all your properties becomes more difficult (and may become impossible) as the number of properties increases. But if you do make the election, you only have to establish material participation, and satisfy the more-than-50% test and the 750-hours test, for the combined properties as a whole.

And, generally speaking, the election is irrevocable. This means that you can't make the election in order to qualify as a real estate professional, and then revoke it with respect to a particular property later, when, for example, that property produces income, and you'd like to use that income to absorb losses from another non-real-estate-related passive activity. Making the election will also disqualify you from utilizing the \$25,000 active participation rule mentioned above, because that rule applies only with respect to losses from rental real estate activities that are passive, and the election will—presumably—work to make your rental real estate properties non-passive. The election must be made in a timely and proper fashion.

You don't have to work full-time in real estate to qualify as a real estate professional. Even if you have another occupation, you can qualify if you materially participate in a real estate business, and spend more than 50% of your time, and more than 750 hours, on that business. (But remember, in this case, if you have multiple properties, it may be

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California Commercial Property Split Tax Roll Proposals

By Ron Kingston

“The California State Board of Equalization claims that tax collections will increase by ‘hundreds of millions of dollars per year’ should the Ammiano measure become law.”

The Challenge

Unquestionably, commercial property owners are under increasing attack to pay a substantially higher property tax. Legislators, powerful labor unions, and many academics are at the helm of these proposals.

California State Legislative Proposals

AB 2492 (Ammiano) is a bill that would mandate commercial property tax re-assessment when 100% of the ownership interest in a corporation, limited liability company (LLC), partnership, or other legal entity holding the property is sold or transferred in either single or multiple transactions. The California State Board of Equalization claims that tax collections will increase by “hundreds of millions of dollars per year” should the Ammiano measure become law.

That measure is pending on the floor of the Assembly and will not be able to move due to the rules of the Legislature. However, this does NOT rule out the right of the author to “gut” another bill pending in the Senate and “amend” it by incorporating the split roll measure in order to address that issue this year. This has been a regular practice in the California Legislature.

Ammiano and many Democratic members of the California Legislature are actively supporting a split roll property tax because this would ultimately line the pockets of government with billions of dollars in new revenue.

California State Ballot Initiatives

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Association (CTA) submitted not one, but two ballot initiatives to the State Attorney General’s office for titling and summary.

The first initiative would:

- Require commercial property owners to pay 1.55% to the full cash value (versus 1% under current law).
- Double the homeowner property tax exemption from \$7,000 to \$14,000.
- Double the renter’s tax credit.
- Exempt the first \$1 million of personal property tax to “protect small business.”
- Subvene new property taxes directly to public schools.

The second initiative would:

- Mandate immediate reassessment of all non-exempt and non-residential property (commercial property). All commercial property would be assessed to “fair market value.”
- Exempt property that is zoned for agricultural production.
- Exempt the first \$1 million of personal property tax to “protect small business.”
- Double the homeowner property tax exemption.
- Double the renter’s tax credit.

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- Dedicate all raised funds to the state general fund. Counties would be reimbursed for new administrative costs associated with the new split roll initiative.
- Luckily, the CTA decided to abandon a costly state initiative drive to qualify one of the ballot measures and then to advocate for the measure once the Secretary of State certified it for the year. Now that the skeleton has been designed, the union will have less work to do when it is ready to take the measure and run with it in the not too distant future.

Financial Impact

The increase in property tax won't just affect tenants' bottom lines when the time comes to write the check for each installment (for net leases)— it will also negatively affect property value by decreasing the amount of rent tenants are willing to pay on triple net leases and net operating income on gross leases.

In today's commercial real estate market, due to increased vacancies, anemic tenant demand, falling rents and increasing economic concessions, tenants signing new or renewing existing leases ("active tenants") are not allowing increased costs operating in their real estate to be pushed to their side of the bargaining table.

Most importantly, if a split roll property tax becomes reality, active tenants will not be willing to increase their gross rent to cover this increased cost to the landlord. For example, we have analyzed the direct financial impact of the FIRST SPLIT ROLL INITIATIVE that would increase commercial property taxes to 1.55%.

While we have analyzed the impact of that initiative in Los Angeles, San Francisco and San Jose, we focus our attention in this article to the Los Angeles commercial market.

The Los Angeles average net operating income (NOI) for **industrial and flex properties** is approximately \$6.71 per square foot per year for properties sold in the first quarter of 2010 (according to Real Capital Analytics). The tenant currently pays an additional \$.87 per square foot per year in property taxes. If approved by the voters, the split roll tax would change this amount

to \$1.33: an increase of \$.464 per square foot per year. Given the state of the market, as tenants' leases roll, this increase in property tax will get indirectly shifted to the landlord, as active tenants will be unwilling to pay more in gross rent. **This will be translated into a direct drop in property value, as the decreased NOI gets capitalized at a similar rate (7.80% as of the 1Q2010).**

Property values could drop by approximately \$5.94 per square foot (from \$86 to \$80 per square foot) for industrial and flex buildings in the Los Angeles area, or approximately 6.9% of their total value. Accordingly, the retail sector would see similar declines. As active tenants renew or sign new leases, property values would drop more than \$15.04 per square foot (from \$212 to \$197 – a decline of 7.1%). **The office market would be exposed as well—with active tenants driving down property values more than \$13.44 per square foot (from \$222 to \$209—a decline of 6.1%). See Chart below.**



These estimations make it abundantly clear that if tenant demand persists anemic, and negotiating leverage remains on their side of the table, property values will decline substantially, ranging from 5% to over 8%.

Academic Community Advocates for Split Roll

The unions are not the only ones interested in splitting the property tax roll. Academics are now coming out of the woodwork. Professors such as Steven M. Sheffrin, University of California at Davis are advocating for a split roll property tax.

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Eight Ways to Improve the Performance of Your Referral Strategy

By Tami Siewruk



Are your communities hearing from friends, coworkers and family of former residents? You should be, but it takes a powerful referral strategy to make that happen.

Imagine this likely scenario: John Doe leased an apartment, and two years later, he purchased a home. Two months later, his brother called to find out about an apartment, and signed a lease. Not long after, a coworker called to find out about a two-bedroom apartment, and signed a lease. That coworker has a family, and friends, and other co-workers, and so the chain continues.

The moral of this story is that the best new business comes from old business, but referrals don't happen all by themselves. They're the result of a great referral strategy that's founded on building great relationships with your residents.

Is your focus on devoting the best possible service to your residents? Are you making meaningful contact with them, and actively managing that relationship to make sure that it stays strong and positive?

We've heard from thousands of successful communities who continually receive referrals because they understand that to receive the best possible benefit of bringing a new resident into your community—i.e., leasing an apartment, retaining that resident, and encouraging them to help you find even more great residents just like them—you have to not only lease an apartment. You have to build a strong and positive relationship. Here are a few relationship-building tips to help you fine-tune your referral strategy!

1. Develop a plan. In order to make your relationships yield the most (and best) referrals, you're going to need a plan. A referral promotion is a great way to remind your residents, and even previous residents, that you're looking for others like them. This includes regular reminders to not only your residents, but also to previous residents.

Action: We've heard from communities who say they've received the best referral results by posting and distributing quarterly reminders to their residents, local employers, relocation companies, locators, and human resource departments; and sending bi-annual cards or postcards to previous residents. It doesn't have to take more than an hour or so per month, but make certain that your plan includes emails, phone calls and handwritten notes. There's no substitute for the personal touch.

2. Be a Resource. The most successful communities implement this ideal across the board, whether they're serving someone who just called in a phone inquiry, or a long-time resident. It's also one of the most impressive ways to set your community apart from the crowd. Know all about your neighborhood so that you're armed and ready to provide the absolute best, on-the-spot service, information, and advice. Toni Blake calls this the "Village" approach, because your community borders aren't the end-all and be-all of the lifestyle that you offer. That park around the corner, fabulous café down the block, and the farmer's market that's within walking distance are all part of what makes your community special enough to refer others to!

Action: You don't necessarily need a community concierge to serve as your one-stop information source. Providing information is a job that can be shared among your team, or it can even be the passive function of an "information directory" that sits on the coffee table in your leasing center. Just research, gather, and keep as much information handy as you can—menus, brochures, flyers, coupons, business cards, price lists, maps, schedules, phone books, you name

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comes from
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but referrals
don't happen
all by
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it—for whomever might ask. Share this information with your residents as actively as you can, because the more they know about and use the resources around them, the happier they'll be as a resident of your community, and the more likely they'll be to invite others in! Don't be afraid to ask the other businesses in your "village" to help you spoil your residents with coupons or gifts—every new resident in your community is a new customer for them!

3. Exceed Expectations. Speaking of ways to set yourself apart from the crowd, let's talk about how to not just make a resident happy, but blow their mind entirely. Providing great service is fundamental to your success, but honestly, residents expect great service. When you exceed their expectations by providing superior service or outstanding attention to detail, it makes an impact on their relationship with you that's tough to beat.

Action: It's surprisingly easy to do. Just imagine the appropriate response in any situation, then go one better. Don't just say thanks—once in a while, send flowers. Don't just file the finished paperwork—call personally to follow-up. Don't just smile—give them a compliment and call them by name. Residents are most inspired to tell others about you when your resident-retention efforts (especially where service is concerned) exceed their expectations in at least one of the following ways: by providing service in ways that are faster, more convenient, and possibly fun, or with some added-value benefit your competition doesn't offer. You're certain to stand out from any competition when you are the first community to provide some of these points of difference. Competitors who institute your "extras" will be copycats, playing catch-up to you. Once you have accomplished this, you can inspire residents to refer their friends and colleagues to your community. By doing so, they can gain "bragging rights" for showing others what a wonderful community they live in... YOURS!

4. Keep it up. Your relationship with residents doesn't end with the signing of a lease. It's just beginning. Make sure they know that you're in it for the long haul. You and your team are there for them, whether they have a maintenance issue or just need to know which dry cleaner can get a red wine stain out of a silk blouse.

Action: Start big on day one. Don't underestimate the impact of pizza or sandwiches and cold sodas on moving day. Put toilet paper in all of the bathrooms and paper towels in the kitchen. Leave a bag of ice in the freezer or turn the icemaker on and leave a card that lets them know that it's fresh

ice. One of our favorite tips is to place a sign in front of the closest parking space for 48-hours that reads "This space is reserved for the next 48 hours for your new neighbor". Make sure that the things that you do are supporting the relationship building process. Take a close look at your move-in gifts, and if they're not making move-in easier, or enriching the experience of living in your community, make some changes now. Now, here's the tough part. Don't wait until their next big event to make that same kind of a great impression, like when they have their first maintenance emergency or worse yet, when renewal time rolls around. **KEEP IN TOUCH!** Call within 48 hours after they have moved into their new home and ask for feedback. Send a note after they have lived in the community for two weeks; contact them again with a note or by phone in three months, and then call or write again three months later. Each note, card, or reason for calling should convey the message loud and clear that they're appreciated, and that you care enough to make sure they're happy living in your community.

5. Create a sense of community. Mailings and phone calls can make a positive impact on a resident, but nothing like the overall experience of being a part of your community. The best thing about building a sense of "neighborhood" among your residents is that you don't only have to rely on the things that are included within the confines of your community. You have, as a rich resource, the resources, character, and offerings of your surrounding area. Build ties between your community and the surrounding area in order to build and strengthen your presence within your marketplace. This not only makes your residents feel like real neighbors instead of co-inhabitants; but it makes your residents, surrounding neighbors, and local business establishments more aware of your presence—and more likely to refer others!

Action: Get out there and meet, greet and get to know the businesses in your area. Remember, more residents for you means more customers for them. Even your competitors might be willing to work out a referral arrangement, provided it's a mutually beneficial one. Meet the people who make their homes in your neighborhood! Host holiday parties and seasonal events that are open not only to residents, but to the surrounding community. Work at least one charity event into your schedule that benefits a local organization. Plan resident appreciation events that capitalize on your community involvement (i.e. a plant sale that includes a "Patio of the Quarter" contest). Is it worth the time and

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Eight Ways to Improve the Performance ... *continued from page 24*

dollar investment? You bet! Building great relationships doesn't cost. It pays... in referrals and more!

6. No matter what it is, do it right—preferably the first time. There is an old adage that we have heard time and time again “you never get a second chance to make a first impression”. No matter what your residents need or expect, do it right. Here's the rule: give your residents great reasons to refer, and never give them a reason not to! Why are people more likely to tell others about a bad experience than a good one? Because bad experiences make BIG impressions. When your actions and your efforts to prove to residents that you care about them and their home make equally BIG impressions, you can bet they'll tell their friends, relatives and associates.

Action: From the very start of the relationship building process, listen carefully. Get the correct pronunciation of their name. Understand their wants, needs, and concerns. Make the move-in easier. Keep in touch. Fix it when it's broken.

7. Come right out and ask. There are two schools of thought when it comes to asking for referrals. Many people feel that it's a good policy to never overtly ask for a referral, because it makes a

resident or previous resident feel used, and nobody wants to be used. The other school of thought feels that happy residents should be happy to contribute to your success; and that it gives them a sense of ownership to know that they have an influence over who might become their neighbor in the future. We hold with the second school of thought. Happy residents will be more than happy to volunteer a referral, if asked... but like all things worth doing, there's a right way to go about it.

Action: Make it without question that your reason for keeping in touch with your residents is because you genuinely care about them. You want them to be satisfied not only because it's in your best interest for them to stay, but truly because you want them to have a home that they'll always be happy with. Do that first, and do it well; and while you're at it, once in a while, put out a referral door hanger; mention in every newsletter that referrals are always welcome; offer a reward if the local law allows. Make your request for referrals something that you do in addition to relationship building; not in place of it.

8. For heaven's sake—don't forget to say thanks! A resident who is willing to refer others to your community is an invaluable resource, so treat them

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that way! Showing appreciation is not only the appropriate thing to do when somebody helps you close a several-thousand-dollar sale, but it's the key to *continuing* to receive referrals. Even if you pay a referral fee, send a personal thank you note. Even if they don't lease the apartment you need to call to say thanks and let them know how the meeting with their friend, family member, or associate went. Make a big, appreciative fuss about the wonderful thing your resident has done. Send flowers, buy a gift certificate for lunch, or give tickets to a show or athletic event; and if you find yourself asking whether the added expense of a thank you gift is really necessary, stop to consider the lifetime value of a happy resident, not to mention one who continues to refer others! The trend is to reward your residents with a memorable event that they want to tell even more people about. An example of this would be to give them tickets to a "backstage" event. This gives your resident bragging rights about your community.

Here's one great example of a program that you can use to improve the performance of your referral strategy! 🏠

Tami Siewruk, Chief Imagination Officer of Multifamilypro and President of Siewruk Development Corporation, is one of the apartment industry's foremost authorities on all aspects of property management. She writes not only from more than 30 years of experience, but also as the owner and developer of award winning properties in three states. Production of Multifamilypro's acclaimed Annual Multifamily Housing Brainstorming Sessions™, one of the industry's largest national events, keeps Tami uniquely and continually connected to the challenges faced by tens of thousands of Multifamily Professionals from coast to coast, and with her particular passions—connecting Multifamily Professionals with each other, and tapping into the trends that are shaping our future and driving the way we do business today. To connect with Tami online visit www.Multifamilypro.com!

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PRESIDENT'S *Message*

By Todd Brisco

Be A Part of the Team

One of the main articles in this month's *Apartment Journal* is about bed bugs—a very unappealing subject that may reach pandemic proportions around the world. Because these “critters” are blood suckers who “hitchhike,” they congregate in urban and suburban neighborhoods where people live in close conditions.

A new survey conducted by the National Pest Management Association and the University of Kentucky shows that 95 percent of the survey respondents indicated that their company encountered a bed bug infestation in the last year.

With the National Apartment Association acknowledging that bed bugs are attacking homes, apartments, hotels, condos, offices, dorms and hospitals, they launched a Bed Bug Resource Center (www.naa.org/governmentaffairs/issues/bedbugs) which is a comprehensive online repository of bed bug articles, surveys and brochures available to you, our members.

Additionally, a bed bug symposium will be held in Anaheim during September for you to get the most recent updates. Earlier this year, NAA's Executive Officer Doug Culkin lead the charge for insecticides that would repel the resurgence of bed bugs. In a letter to the EPA, NAA went on record joining the Ohio Department of Agriculture's request for the approval of Propoxur to control bed bugs. EPA is still studying the matter.

NAA is also on the cutting edge about federal legislative activities. We have participated in several letter-writing campaigns on carried interest, the future of Freddie Mac and Fannie Mae, foreclosures and the use of credit checks on employees and tenants. Our affiliation this year with NAA has provided an additional avenue of support for you as you build your rental housing business.

We have also been able to offer the “Blue Moon Lease,” a rental agreement designed for firms doing business in multiple states and providing company uniformity for training purposes, yet allowing for the peculiarities of individual state laws.

Our CAMT class, sponsored by NAA, is coming to a close. Offered in our AACSC Education Center, 14 students participated in maintenance classes to improve their property skills. Taught by NAA's Pablo Paz, the classes were professional, thorough and hands-on.

The Bed Bug Resource Center, federal legislative activity, leases, and specialized education are benefits of AACSC joining NAA. Our goal is to continue to bring you the most comprehensive benefits, enabling you to efficiently and effectively operate your rental property.

2011 will bring NAA education conferences and student housing opportunities. Be a part of our dynamic NAA team. Please contact me if you would like to serve as an NAA committee member and send me your resume, c/o the Apartment Association, California Southern Cities.

I would also like to hear from you if your interests are local and you would enjoy serving on the AACSC Board of Directors. The Board is the governing body that sets the financial and strategic direction of the Association. Monthly board meetings are held at 8 a.m. on the 3rd Thursday of the month at the Association. Board members are required to support AACSC events and to participate on one committee: PAC, Budget and Finance, State Government Affairs, Local Government Affairs or Education.

The Board members will be presented at the Annual Meeting on Thursday, October 28, 2010.

We need the help of people—like you—with an interest in this business. By working together, we can improve the rental housing environment. By co-opting our skills we can defeat bed bugs and other environmental hazards. By talking together, we can learn more about solutions to our challenges.

Call Nancy Ahlswede, our Executive Officer, for an application form for the Board of Directors.

If not now, when?

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54"	31.25	32.75	34.00	36.25	38.50	42.25	47.25	49.50	51.75	56.25	61.25	66.25
60"	31.75	33.25	34.50	36.75	39.25	43.00	48.25	50.50	53.00	57.50	62.75	67.75
66"	32.25	33.75	35.00	37.50	40.00	44.00	49.50	51.75	54.25	59.00	64.50	69.75
84"	34.00	36.00	37.25	40.25	43.00	47.50	53.50	56.50	59.25	64.50	70.50	76.50
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By Nancy Ahlswede

The Property You Save May Be Your Own!

“ As this house of cards begins to tumble, bear in mind that the cities will want to balance their budgets on your back.”

While state elected officials are worrying about balancing California’s budget, a bigger brouhaha is brewing on the local scene that should capture our focused interest.

The elected officials in the city of Bell have misapplied the public trust with stories of inflated salaries, retirement and other compensation. At press time, community members are seeking some type of recall.

But Bell does not stand alone. This month recall paperwork has been filed against two Hawaiian Gardens councilmembers and one councilmember in Compton.

This summer, the City of Maywood announced that it will begin a process of laying off city employees, beginning by contracting police services with the Sheriff’s Department. To save money, the city proposed sharing services with the City of Bell.

August first saw the receipt of letters to owners and tenants in Inglewood saying that at the end of the month, the Section 8 voucher program would end. Another letter came out from the Housing Manager Kathryn Epps indicating that this would not affect all Section 8 tenancies, just some because the city spent more money than they received.

Each of these situations may not strike you as a disaster but, when all are combined, it makes my blood run cold.

How fiscally sound are our cities? Last year the state depleted redevelopment funds from many cities. Coupled with the effects of the economy and the huge retirement payouts slated by employee contracts, will we see more cities follow the “bankruptcy” direction of Vallejo?

When we see that the City of Long Beach has declared a fiscal emergency with a deficit of \$18.3 million and the City of Los Angeles tops \$350 million, we should be con-

cerned, because the inevitable response for all of these problems will be hikes in fees, fines and major new ordinances.

As this house of cards begins to tumble, bear in mind that the cities will want to balance their budgets on your back. Any info you receive about new fees in any of your cities, please contact me. We have a service territory of 54 cities plus the County, and I need you to partner with AACSC to protect your properties. If we wait until fee proposals are on the council agendas, it may be too late to turn fees around.

We pride ourselves on having good relationships with all of our elected officials, but we need to know what the “civic think” is on recouping funds for each of the city coffers. That’s where you come in. Please keep me posted at (562) 426-8341 or email nahlswede@apt-assoc.com.

The property you save may be your own!

* * *

Cash for Appliances Rebate

Are you thinking of replacing an old refrigerator or other appliance? If so, be sure to check out California’s Cash for Appliance rebate program to see if you would be eligible for a rebate. More than \$16 million dollars is still available in the rebate fund. But don’t delay because the money is going quick since the California Energy Commission expanded the list of qualifying appliances the end of July.

Since April 22, the state has been processing rebates of \$200 for qualifying refrigerators, \$100 for clothes washers and up to \$50 for room air conditioners. The program was expanded to include rebates of \$50 for freezers, \$100 for dishwashers, \$300 to \$750 for water heaters and \$500 to \$1,000 for heating, ventilating and air-conditioning systems.

For more details, visit cash4appliances.org or call (888) 390-4034. 

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We wish to thank our volunteer Board of Directors for their time and dedication to the Apartment Association, California Southern Cities.

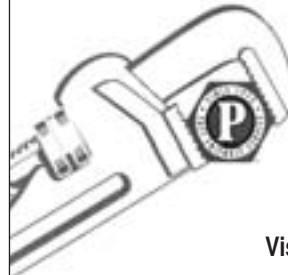
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SPOTLIGHTING MSC

Belmont Brokerage & Management, Inc.

Two factors distinguish a great company from other companies of their kind. One is attention to detail. For more than 22 years Belmont Brokerage & Management, Inc. has distinguished itself in Long Beach by attending to the details of managing and brokering residential income property. The second factor—almost old-fashioned today—is a desire to make a difference in clients' lives. Belmont Brokerage & Management, Inc., incorporated in 1982, continues to do that successfully.

W. Kurt Wood, Belmont president, who holds undergraduate and graduate degrees in finance from the University of Southern California and Long Beach State University respectively, founded Belmont Brokerage & Management, Inc., bringing an in-depth knowledge of real estate, finance, accounting and taxation to the business. With his financial background in corporate, small business and real estate matters, Wood has provided the guiding influence for Belmont's corporate philosophy since the company was founded. Wood was eventually joined by Michael Martinez, whose more than 19 years of property management experience, along with extensive training in maintenance, collections, accounting, legal/civil codes, staff supervisions and property habitability enforcement statutes, complements Wood's strengths. Together, these seemingly unstoppable guys have created a full-service real estate brokerage and management company.

Wood, a Certified Public Accountant, Certified Property Manager with the Institute of Real Estate Management and a Realtor® with the Pacific West Association of Realtors, holds Belmont to a higher standard, subject to both institutions' codes of ethics, by continually asking, "Is this in our client's best interest?" Belmont's clients have certain expectations about their investment goals and dreams of having a small business, and Belmont has created a system that can take a client's concept and respond with various approaches to making an investment dream become a reality.

With more than 1,600 apartments under management in the Long Beach area, and with annual sales in apartment buildings in the millions of dollars, Belmont's clients have peace of

mind that their properties are well cared for and that each transaction will be handled in a professional and efficient manner.

While Belmont has worked with many government agencies and corporate clients, an individual owner or small partnership often provides Belmont with the greatest sense of satisfaction in doing business. Small investors have often committed a substantial net worth in order to create a dream of using real estate to ensure their financial independence, a higher standard of living and future retirement.

Belmont's attention to the details, including risk management, personnel training, property inspection reviews, account management, and personal involvement all work together to help clients become more profitable and realize greater success rates. As property management has evolved from doing business with a simple handshake to an eight-page contract, a knowledgeable company such as Belmont Brokerage, is invaluable to property owners.

In addition to residential and commercial properties, the company has managed a variety of facilities such as medical buildings, boat docks, hotels, restaurants, and bank buildings. With a staff of well-trained, motivated and energetic employees, Belmont Brokerage looks forward to serving the Long Beach area for many more years.

The company philosophy dictates that the management company be located near the properties it manages. Belmont Brokerage & Management, Inc. only manages properties in Long Beach. This parochial view allows them to concentrate their talents and expertise in their selected area.

In order to maximize their owner's income, they have developed a comprehensive marketing strategy for rental of their vacant units. Through this plan, they have been able to consistently keep their vacancy factors under that experienced by others in the Long Beach area. Their city-wide vacancy factor currently runs 1.8% to 3%. They have reduced or eliminated entirely the advertising cost for owners, and have increased each property's operating cash flow.

Belmont Brokerage & Management, Inc. is a member of the Pacific West Association of Realtors, Inc., AACSC, the Institute of Real Estate Management, Inc., and the California Society of Certified Public Accountants. 🏠

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For nearly six decades, Web Service Company has earned a solid reputation as the most trusted name in laundry service. With their advanced technology, unsurpassed responsiveness, and break-through innovations, Web continues to transform the laundry business as the largest West-coast provider of laundry services.

Top-of-the-line Products

Web offers the best commercial-grade machines from manufacturers like Maytag and Whirlpool upgraded with special features to ensure optimum performance that can stand up to the heavy demands of common-area laundry rooms. With their new or Web certified used machines, front and top-load washers and heavy capacity dryers, you can always count on Web to provide exceptional products and services. And now with WebVantage, you can select the product and service level that's best for your property.

Your Needs are Top Priority

Web understands that laundry is a necessary—and sometimes tedious—part of life. That's why Web works hard to make doing laundry easier. Every aspect of their business is oriented to making sure residents' laundry needs are fully satisfied.

With their top-notch machines, responsive service and complete range of technology-based amenities, they strive to create a positive laundry room experience. To further enhance your laundry time, they also offer laundry tips, stain removal tips, and accept refund requests online.

A New Spin on Laundry Services

With WebVantage, you decide what level of laundry service you need for your property. You can pick and choose features based on:

- Revenue-sharing options
- Brand preference
- Choice of new or used model machines
- Reporting frequency

With three basic levels to choose from—Vantage, Vantage Plus or Vantage Premier—you can also select specific services to custom tailor your own unique package.

Where Laundry Meets Technology

Web Service Company applies the best technology available to its laundry room operations. Whether

delivering faster response to service calls with their new @Road GPS systems, providing detailed revenue information using accountability systems, offering the advantages of coinless, cashless electronic laundry room card systems, or giving residents the convenience of on-line laundry monitors so they can call and check on machine availability, Web is always on the cutting edge of laundry room technology.

Our Service is Up and Running


Web delivers on their service commitment with a quick response to service calls and fast repairs that are done right the first time. Most importantly, they do it all with a minimal amount of down time. With @Road Technology, skilled service technicians respond to service calls faster than ever. Web's satellite-guided GPS tool trucks are ready to go with all the necessary parts to repair equipment on the spot.

To keep laundry rooms looking their best, they survey their locations on a routine basis and replace equipment whenever needed.

Energy Star

Strict new laundry laws, recently passed in California, impose greater energy requirements for washers in common-area laundry rooms. Headquartered in a leading "Green State", Web keeps a watchful eye on emerging California legislation as a leading indicator for the rest of the nation. They continue to work in conjunction with manufacturers like Maytag and Whirlpool to ensure that all of their new installations meet or exceed both the new Energy Star requirements and current state regulations.

Web is proud to be an Energy Star Partner in addition to working with local agencies offering rebates or incentives. Keeping abreast of the latest legislation and environmental data is part of their job. You can count on Web to make sure you have the best in energy-saving equipment

Web Service Company, Inc. operates as a laundry service provider in California, Hawaii, and Nevada. The company offers commercial-grade machines and serves multi-housing locations, including apartment properties, condos, college and university residence halls, and military bases. Founded in 1947, Web is headquartered in Redondo Beach. 



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California Commercial Property Split ... *continued from page 20*

Academics' support lends weight and intellectual credence to the split roll tax initiative which can be said to be supported by all educators in the state.

California Governor Considers Split Roll

Finally, the Governor's Commission on the 21st Century came extremely close to adopting a resolution last year that would have advocated for the current property tax and revenue structure to include a split roll property tax.

Summary

If there is anything that we have learned from the events over the past 18 months, it is that there will be a state ballot initiative and a serious push by state Democratic legislators to totally revise the amount of property tax revenue commercial property owners will pay to government.

Let's face it:

- Government coffers are near empty.
- Government is looking to increase revenues instead of cutting government programs.
- Teachers and public labor unions will be at the forefront of advocating a split roll initiative. Progressives, tax groups, and many more are expected to join this most certain battle that the California electorate has not faced since the passage of Proposition 13 in 1978.

So, what does the commercial real estate sector have to lose? **BILLIONS OF DOLLARS.**

The California Political Consulting Group provides lobbying, legal and consulting services for business and trade associations. 🏠

Ronald M. Kingston is an accomplished lobbyist in California. He has successfully written numerous legislative measures relating to housing, building, real estate finance, real estate disclosure, environmental hazards and new construction standards. He has a long and accomplished track record representing landlords, REALTORS®, the finance industry, judicial council, homeowner associations and many other interest groups and businesses. Ron is the President of CPCG and can be reached at: Ron@CALPCG.com or 916.447.7229

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What You Need To Know About How to Prepare For (and Win!) Your Small Claims Court Case *(Part 2)*

By Kimball, Tirey & St. John LLP



“Give
yourself
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impression...”

HOW TO PREPARE IF YOU ARE THE DEFENDANT

Try to settle the dispute. If you have been sued, you can contact the Plaintiff and try to settle the dispute with the Plaintiff before the hearing. If you are able to reach an agreement, make sure the Plaintiff files a “Request for Dismissal” with the court to take the hearing off the court’s calendar.

Filing a counterclaim. If you aren’t able to resolve the disagreement, STOP AND THINK. Is there a claim you have against the plaintiff or any other third party that is in any way connected with the facts and circumstances in this lawsuit?

If there is, you may file a counter claim against the plaintiff. You will be limited to a counter claim of \$7,500 or less (\$4,000 against a guarantor who charges for its services or \$2,500 for guarantors who do not charge a fee). You will file a Defendant’s Claim (Form SC-120) against the plaintiff and any other person who is involved. You must serve your Defendant’s Claim five days before the trial date, unless you were served with the Plaintiff’s Claim ten days or less before the trial date. If you were given ten days or less notice, you must serve the Defendant’s Claim at least 1 day before the trial date. If you fail to file and serve your Defendant’s Claim on the plaintiff or any other person, you may lose your legal right to sue again on the same subject.

Follow all of the steps under the section above regarding “Preparing Your Case.” It is also as necessary for you to have a written chronology of events, documents, witnesses and witness’ statements as it is for the plaintiff, especially if you have filed a Defendant’s Claim against the plaintiff or any other person. The only difference is that the defendant does not have the same “burden of proof” as the plaintiff. You just

need to provide the necessary evidence to defend yourself. (Of course, if you have filed a Defendant’s Claim, your burden of proof on the claim is the same as the plaintiff’s in the Plaintiff’s Claim . . . by a preponderance of the evidence.)

Does this mean you can sit back in court and relax? Of course not! As the defendant, it is your job to make the court aware of the facts, circumstances and/or witnesses who can help you show the judge that what happened was not your fault or was the fault of the other person you named in your Defendant’s Claim.

GENERAL COURT GUIDELINES FOR PLAINTIFFS AND DEFENDANTS

Here are some general rules to follow when you appear in court. Though some of them may seem obvious, you would be surprised at the number of people who appear in Small Claims Court who ignore them.

1. Do not stipulate to a judge pro tem. You want the normally sitting judge or commissioner to hear your case. While there are many fine judge pro tems, generally the sitting judge or commissioner will be more familiar with landlord-tenant issues than a judge pro tem will be. If you do stipulate to a judge pro tem, for example, you take the chance that a personal injury attorney will decide the outcome of your real property dispute. By not stipulating, your case will

be postponed until the next available time that the regular judge or commissioner will be available to hear your case.

2. Be prompt. If the case is set for 8:30 a.m., make sure you're there by 8:25 a.m. Many cases have been taken "off calendar" or canceled because a plaintiff failed to show up in time. And many defendants who were late or failed to show up have had a default judgment entered against them.

3. Wear nice clothing. This doesn't mean you have to wear a tuxedo or a suit with a tie (although a suit is always preferable). It does mean you should wear clean, pressed slacks and shirt (if you're male) and the same if you're female (or a skirt, suit or dress).

Why? We all make judgments about other people based upon what they're wearing (whether we want to admit it or not). You are in court to win your case. Give yourself every opportunity to make a good impression, including wearing nice clothing.

4. Don't call your opponent a "liar" in court. This is not the "people's court"! Even if you know the opposite party is lying, let the evidence you present before the judge prove it. Remember, you are being judged on everything you do, say and present before the judge. When you call someone else names, it reflects badly upon you. And it might arouse feelings of "protection" in the judge for the other party. It's not worth it!

5. Don't argue with the judge. You may not like what the judge asks you, or when the judge cuts you off in mid-sentence (it happens). But don't argue with the judge. The last thing you want to do is make the judge angry with you.

Remember: Not everything that you think is important to your case is important to your case. That's the judge's call. Let the judge make it, and be courteous and polite when you answer his/her questions.

6. If you don't understand the judge's questions, tell him or her. Sometimes judges will ask questions of parties so that s/he will have a better idea of what's going on. And sometimes judges use "legalese." If you don't understand the question that is asked of you, say, "I'm sorry, your Honor, but I don't understand your question. Could you please rephrase your question?"

7. Always refer to the judge as "Your Honor." Why? It shows respect. And if you show that you respect the judge, that same respect should be returned to you.

8. Be prepared. Remember that Small Claims Court cases move very, very quickly. Sometimes it seems as though you don't have much chance to tell your side of the story. That's why it is so important to have lined up your witnesses, testimony, witness statements, documents and facts.

You may want to consult an attorney about your case before you go to Small Claims court. While he or she cannot represent you in the hearing, an attorney may be able to point out certain things that you were not aware of. There is no substitute for good legal advice.

In all cases, one party wins and the other party loses. Unfortunately, there's no way anyone can guarantee that you'll win any given case. But one thing is certain, if you are well-prepared, well-dressed, courteous and prompt, you will have done everything within your power to enable you to win.

WHEN A PROPERTY MANAGER REPRESENTS AN OWNER IN COURT

Under certain circumstances, a rental real property owner may appear and participate in a small claims action through his or her property agent:

- a) The property agent must manage the owner's rental property;
- b) The owner must have hired the property agent principally to manage the rental property and not principally to represent the owner in small claims court;
- c) The claim must relate to the rental property; and
- d) The property agent must submit a declaration at the small claims court hearing.

IF YOU LOSE . . .

If you are the plaintiff in a Small Claims case, you only get one shot at winning. You cannot appeal on the Plaintiff's Claim. And if you lose, you don't get your money!

But if the defendant has filed a Defendant's Claim against you in the same case and you lose on the Defendant's Claim, a plaintiff may appeal the judgment on the Defendant's Claim only.

If you are the defendant and you lose, you may file an appeal with the Small Claims Court. You must file your Notice of Filing Notice of Appeal (Form SC-140) in Small Claims Court within thirty (30)

continued on next page

days from the date on the court's Notice of Entry of Judgment (Form SC-130). Make sure you don't miss the time frame or your appeal will be denied.

Appeals are heard in Superior Court. You have the right to legal counsel in an appeal, so you may hire us to represent you at the hearing.

Bear in mind that certain Superior Court judges will order monetary sanctions against parties found to have filed a frivolous appeal.

FOR FURTHER INFORMATION ABOUT SMALL CLAIMS COURT

1. Contact the court where you will be filing the Plaintiff's Claim. While the courts cannot give legal advice, court clerks can answer certain questions, and many courts distribute information about small claims actions.
2. Contact your local Small Claims Advisors Office.
3. Go to the California Courts Self Help Center on the Internet at: www.courtinfo.ca.gov/selfhelp/smallclaims
4. Send for the publication: *Using the Small Claims*

Court—A Handbook for Plaintiffs and Defendants, an educational book published by the California Department of Consumer Affairs. Single copies are free when you send a self-addressed, 7 x 10 stamped envelope to:

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Kimball, Tirey & St. John LLP specializes in landlord/tenant, collections, business and real estate law, with offices throughout California. This article is informational only. Check with your attorney before acting. If you have any questions regarding this article, please call 800-577-45587.

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Limited Liability Company (“LLC”) Mistakes to Avoid!

By Philip Kavesh



Part II

In previous articles, we have discussed the use of certain business entities—like the Limited Liability Company (“LLC”)—to hold your rental property and not only provide you with enhanced asset protection against lawsuits, but also help you reduce your family’s potential estate taxes. Unfortunately, I often see people who have setup these entities (and tried to save a few dollars by using a bargain-priced document preparation service or internet website), but failed to take certain other simple steps to help insure they will actually receive the intended asset protection and estate tax benefits.

Here are what I consider to be the rest of the “Top 10” mistakes people make when setting up an LLC—any one of which can effectively destroy its intended benefits. Hopefully, you (or a qualified attorney working on your behalf) will make sure you avoid (or cleanup) these mistakes!

Mistake #6: No Operating Agreement. Much of the time, the document that establishes the LLC does not deal with the important details of who will succeed to the management of the LLC and its assets and what rights the other non-managing owners (family members to whom gifts of LLC interests have been made or who will inherit them) will have to change or replace the manager. An important side benefit of an LLC is the ability to control the succession of management when you’re disabled or pass away. You can place in charge only the one or two persons who are most capable and willing to properly manage the real estate or other business of the LLC, while keeping the

other “silent” owners from managing, demanding distributions and forcing a liquidation. This can help reduce family conflict and keep one disagreeable or cash hungry family member (or his or her spouse or creditors) from compelling the others to sell the LLC property.

Mistake #7: Failure to Register a Foreign LLC to Do Business in California. In the first part of this article (see last month’s issue of *The Apartment Journal*), we talked about how an LLC in another, more debtor-friendly state like Nevada, may own your California real estate and provide greater asset protection. However, in order to secure that protection for California property, the LLC must be properly registered to do business in California. This is a detail that the “cheapie” LLC incorporators often fail to handle for you properly.

Mistake #8: Not Observing Proper Formalities in Running the LLC. For example, if there are multiple owners (such as your children owning 10% of an LLC), then when LLC distributions are made, they must be done on a prorata basis (with the children getting ten cents on the dollar). If you’re concerned about controlling that ten cents too, you can setup an irrevocable trust to hold the LLC interests for the children and receive the cash distributions from the LLC.

“The LLC’s
Operating
Agreement
may also
specify
someone
other than the
Trustee of your
Living Trust to
actually run
the business
of the LLC if
you’re ill or
disabled.”

Personal expenses should not be paid directly out of the LLC; they should be paid personally after LLC distributions are made. In many cases, a separate income tax return must also be filed for the LLC, although it's typically a simple, inexpensive "flow-through" return and no additional income taxes are generally due. The failure to observe these formalities may make it easier for creditors to "pierce the corporate veil".

Mistake #9: Not Coordinating the LLC with the Rest of Your Estate Plan. For example, your estate plan may provide for your assets to go equally to your three children (or other beneficiaries). All three can receive equal percentage ownership interests and, therefore, the same rights to receive any LLC distributions. However, you may want to specify that the managing interest in the LLC pass to only one child, so that the right person can be in charge of the real estate business. The LLC's Operating Agreement may also specify someone other than the Trustee of your Living Trust to actually run the business of the LLC if you're ill or disabled.

Mistake #10: Not Considering Estate Tax Liquidity Planning. Although proper use of an LLC can help reduce eventual estate taxes, there still may be significant estate taxes due at the time of your death, particularly if you have a large estate (over \$4 million single or \$8 million married). These estate taxes are due in cash nine months after death and could force the liquidation of assets held by your LLC, regardless of market conditions. Liquidity planning, which could include life insurance, should be done concurrently with or soon after you establish the LLC, as should other gift and estate tax planning, such as possible sale of a portion of some of the LLC interests to an irrevocable trust for the benefit of your family.

That's the last of my "Top 10" LLC mistakes (there are plenty of others, but there just isn't enough room here!). Remember, this article is intended only as a quick summary and contains general information, not legal advice. You should seek the assistance of a qualified attorney when dealing with these various important LLC matters. 🏠

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

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difficult or impossible to qualify unless you make the "single interest" election mentioned above.)

These tests are applied annually. This means that you may qualify as a real estate professional in some years but not in other years. As a result, the same real estate activity may generate passive losses in some years and non-passive losses in other years.

Let us look at an example. Assume taxpayer D, a doctor, is married and they own several rental properties. D's medical practice is very lucrative and every year it generates a net income. D does not qualify as a real estate professional because he or she cannot satisfy its three requirements. Furthermore, their modified adjusted gross income is over \$150,000 thus they are not allowed to write-off the first \$25,000 of their rental loss either under the active participation rule. Therefore, they are not able to offset any of the rental losses against their medical practice income. However, if D's spouse can satisfy the real estate professional requirements, then they will be able

to offset their rental losses against the income from the medical practice!

The extent of an individual's material participation in an activity may be established by any reasonable means and the IRS has established seven tests for it and as long as one is met, then material participation exists. But the most reliable means of showing material participation consists of contemporaneously kept appointment books, calendars, daily time reports, logs, or similar documents that provide a detailed account of what the taxpayer or spouse did with respect to an activity, when he or she did it, and how much time it took. Failure to substantiate material participation is one of the most common ways of losing the right to treat rental real estate activities as non-passive. Therefore, it is crucial that detailed and contemporaneous documents are kept at all times! 🏠

David S. Silkman is a CPA, has a Masters in Taxation (MST) and is licensed real estate broker. He specializes in real estate tax laws and accounting. If you have any questions, please do not hesitate to call him at 310.479.7020 x301, email him at david@saacpa.com or visit his website at www.saacpa.com

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Dear Maintenance Men:

My units all have dishwashers. I am starting to get complaints from the residents that the dishwashers do not clean the dishes as well as they did when new. What is the problem and what can I do about it?



Bill

Dear Bill:

1. Check that the dishwasher's filter or grates are not clogged. The filters are commonly found under the rotating spray arms at the bottom of the dishwasher. The filters normally snap in and out of place. Remove them gently and watch for broken glass.
2. Check the operation of the water inlet solenoid valve. It should open and close crisply.
3. Related to the inlet valve is the water level sensor. The sensor looks like a small upside down cup or float, normally located at the front corner of the tub. Calcium buildup can sometimes cause the water level sensor float to malfunction, causing too little water to be allowed into the dishwasher. Cleaning the float area with vinegar should help.

4. The temperature of the water going into the dishwasher should be at least 140 degrees.

5. Hard water is most likely the biggest hindrance to having clean-looking dishes. The dishes may actually be clean, but look dingy or milky. Hard water will cause calcium and mineral deposits to adhere to all wet areas of the dishwasher and over time the dishes themselves. The rotating spray arms may fill with mineral buildup and clog. To remove the hard water deposits, run the dishwasher empty on its longest setting—usually the pots and pans setting. Add a few cups of vinegar to the water without soap or dishes. Run the dishwasher with clear water through a short cycle to flush the vinegar before using again.

6. Installation of a soft water system will greatly improve the performance of any dishwasher, as will using name brand dishwashing soap.

Dear Readers: We need more maintenance questions! Please send us a note by E-mail: maintenance@JLE1.com, telephone: 714 778-0480, or fax: 714 491-0864. Thank you! 🏠

Jerry L'Ecuyer can be reached at 714-778-0480 or Jerry@ContactJLE.com. Frank Alvarez can be reached at 714-956-8371 or Frankie@ContactBuffalo.com. Please visit our web sites: www.ContactJLE.com and www.BuffaloMaintenance.com



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Legal Corner ... continued from page 10

payment, but also stating that the partial payment will not act as a waiver of your right to proceed with an unlawful detainer action. Other than that, review the cure periods stated in the default portion of your lease. Typically, the cure period for non-payment of rent or other monetary sums due is three days. Failure to provide proof of insurance is typically three days as well. Most commercial leases will allow ten or 30 days to cure a non-monetary breach. Ensure that the forms that you intend to use are consistent with the terms you have negotiated in your lease agreement, as the terms of your lease will control. 🏠

The foregoing has been presented in a general nature to address general legal issues. Specific inquiries regarding a particular situation should be addressed to your attorney. The Durringer 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.DurringerLaw.com for copies of "Eviction and Debt Collection, a Landlord's Guide," and "Asset Preservation Strategies."



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I Don't Need Lead-Based Paint Training ... *continued from page 12*

your employees, and your vendors/contractors to obtain training sooner. Remember, all work done on pre-1978 buildings must now be done according to the new regulations, and there could be heavy fines for violations discovered during future audits. Sign-up now.

The training class discusses the requirement that all paint in pre-1978 residential buildings be assumed to be lead-based, unless a lead survey by a California Department of Public Health certified Inspector & Risk Assessor shows otherwise. All of us can use good news, and testing of buildings constructed from the late 1950s to 1978 often shows there is little or no lead-based paint (please see chart below).

The regulators are not standing still. They have already amended the new regulations. Besides taking the class, it is important to keep up with the regulations. The changes effective July 6, 2010

require additional disclosures of records to tenants. EPA is proposing that a consultant check and test all work, rather than allowing Renovators to use wipes and a color chart to check their work. They are also proposing that the regulation be applied to public and commercial buildings. While they have delayed the certification and training deadlines until later this year, they still require that the lead-safe work practices taught in the Renovator training classes offered through your apartment association be used. 🏠

Stephen Masek is president of Masek Consulting Services, Inc. and has two decades of experience helping people stay out of trouble and save money. Please visit his company's web site www.masekconsulting.net for contact information.

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year built	total units	lead-based paint identified by recent surveys
1956	16	1 wall of one dining room, 1 old door used to make a garden tool storage shed
1961	50	2 corridor side unit entry doors and 1 entry door frame, 2 fire doors, a storage room door, the door frames to the roof, a fire door frame, and a storage room door frame
1962	80	no lead-based paint detected, "lead-based paint free" certificate issued
1962	83	exterior side of 3 entry doors (100% checked), one bathroom door, and metal railings on the exterior second floor walkway and stairs
1963	44	exterior side of 21 of the 44 entry doors (100% checked), the metal barbecue hood, and the wood picnic table set
1964	46	heavy metal stringers on one exterior stairway, owner removed and replaced, "lead-based paint free" certificate then issued
1964	8	exterior of laundry room door
1964	65	3 exterior metal stairway stringer assemblies, 13 exterior stairway metal hand rail assemblies, fire hydrants, old wood door frames on 3 units, garage doors and door frames on 3 buildings
1964	18	no lead-based paint detected, "lead-based paint free" certificate issued
1965	22	the inside side of 1 of 22 front entry doors (we checked 100% of the doors), owner removed and replaced, "lead-based paint free" certificate then issued
1968	8	2 interior door frames, several exterior door frames, 1 exterior door, west side metal railings & fence, owner removed and replaced, "lead-based paint free" certificate then issued
1972	99	USPS mail box, steel pipe bollards in the parking lot
1973	24	no lead-based paint detected, "lead-based paint free" certificate issued

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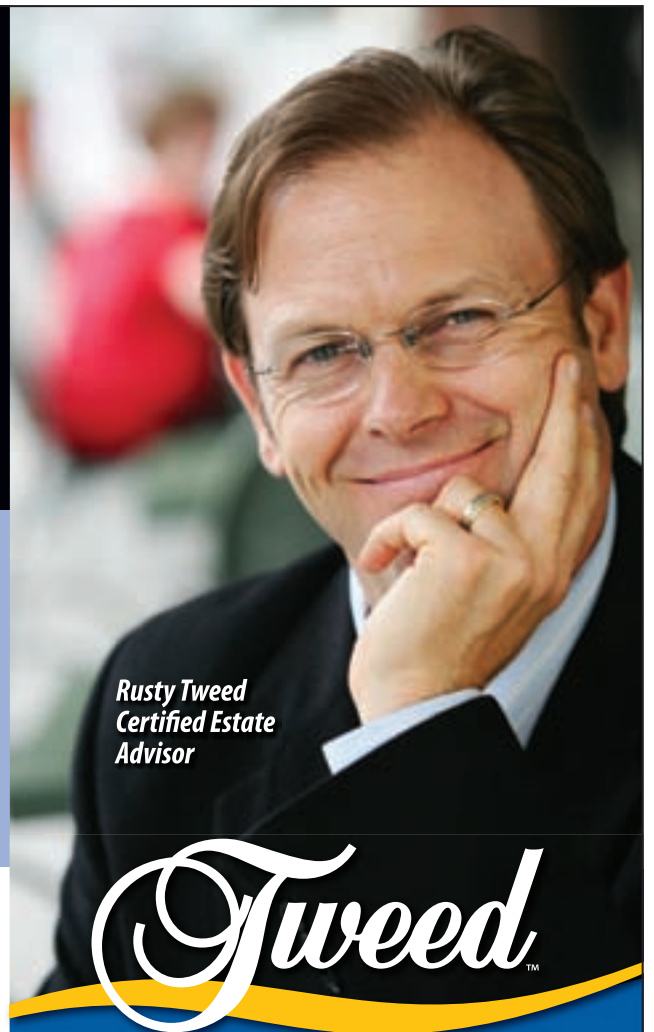
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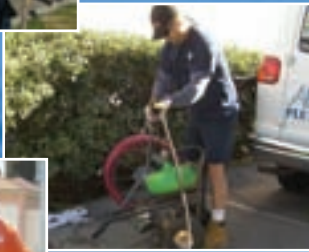
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