

LEGAL ALERT - WA State:

Class Action Lawsuits Based on Eviction Notices

TO: Clients of Puckett & Redford, PLLC
FROM: Randy Redford
DATE: June 24, 2009

There are several federal class action lawsuits that have been filed by a couple of local attorneys against both law firms and property owners/management companies in eviction cases, alleging that the inclusion of items other than just rent (including late charges, notice fee, utilities, and any other non-apartment rent charges) is a violation of the federal Fair Debt Collection Practices Act (FDCPA) and the Washington State Consumer Protection Act. In a couple of these suits, the court is buying at least part of the argument and allowing the suits to proceed to trial.

In these class action suits, they are seeking class damages and attorney fees for every case where this has occurred, whether or not a judgment was issued or not. Their theory is that the simple service of a 3 day notice to pay rent or vacate and the subsequent eviction suit (whether filed or not) is the basis for the violation.

The potential damages in each of the suits is actual damages (the amount of the non-rent items included), statutory damages of up to \$1,000.00 for each case, and reasonable attorney fees. It is the potential for the issuance of fees that is the problem in these suits. There are many FDCPA suits where the court has awarded nominal damages of as little as \$25.00, but awarded upwards of \$50,000.00 in attorney fees. In the pending suits, the attorneys are seeking actual and statutory damages for each member of the class (consisting of all persons given improper notices) plus attorney fees for the period of the statute of limitations for CPA claims is 4 years. The potential damages in a single suit for a medium to large management company could be millions of dollars. This was never a problem in the past, but due to these law suits, is quickly becoming a serious issue to consider.

The good news is that there is a simple way to insulate yourself from any potential liability. When issuing notices, you need to issue both a 3 day or vacate with just the rent and nothing else. For every other charge, including late fees, notice fee, any deposits, pet rent, garage rent, utilities, etc., you need to issued a 10 day comply or vacate notice and itemize the other charges on that notice.

The downside to this practice is that you will have to wait for both notices to expire before you can begin the eviction if you want to include all the amounts owing in the eviction case for inclusion in the judgment. If you serve both notices, but

**Continued on the back of this newsletter...*

ORCA ♦ WISDOM ♦

You demonstrate success or failure according to your habitual trend of thought. In you, which is the stronger - success thoughts or failure thoughts?
P.Y.

EMPLOYMENT SCREENING

A Must!

The legal tightrope: Using credit checks to screen potential employees

When filling staff positions, many companies use credit checks to make sure the person they want to hire hasn't misrepresented his or her background. Here are some things you need to know if you use consumer credit reports to screen potential employees.

Fair Credit Reporting Act

The federal [Fair Credit Reporting Act](#) controls activities of the big consumer-reporting companies and the people, like you, who use their services. It considers a consumer report (credit check) to be: "any written, oral, or other communication of any information by a consumer-reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for ... employment..."

When employers can use credit reports

All reporting agencies are only allowed to release a report for a few specifically approved uses, including employment.

Employers can use these consumer reports for a broad range of purposes, including decisions to hire, promote, retain, or otherwise affect someone's employment in some way. Employers must be aware, however, that any report by consumer-reporting agencies may be subject to federal regulation.

If you misrepresent the reason you have requested a report or if your company uses it for a questionable purpose, it could mean trouble. In fact, you might be held personally liable even if you were acting on behalf of the company. Checking up on former employees, for example, for purposes unrelated to hiring them back, is an inappropriate use of the services.

**Continued on the back of this newsletter...*

FOR SALE

Real Estate—Land and Homes
Lake Chelan, Washington

Dan Folsom

Real Estate Broker (& Rebekah's Brother)

509-682-2371

start the eviction prior to the expiration of just the 3 day notice, the case law is clear that the court has no jurisdiction to rule on the amounts listed in the 10 day notice since the eviction suit is premature as to that notice.

As a practical matter, this will mean that there would be a delay of approximately a week before we could bring the eviction action for all the charges. The question to ask yourself is: Is that week delay worth insulating yourself for massive potential liability? I personally believe that it is well worth it and strongly urge you to adopt this new procedure for all of your properties. If you wish, you can let our office know that you have adopted this policy and we can be sure not to commence any evictions for notices that do not comply with this restriction.

Based on my prior experience with these attorneys, I do not believe that the pending suits are a flash in the pan. At least one of the attorneys filing these suits has told me directly that he believes that the only way for an attorney to make any money in today's world is for that attorney to file class action lawsuits against other attorneys and property owners. They are targeting eviction cases because this attorney used to represent property owners and now has switched to representing tenants, searching for clients as possible plaintiffs in these new suits.

I am sending this notice out to all of the property managers that I have an email address for and in the most recent billing that is going out from our office. If you would like to be added to the property manager group for emails on such updates, please send me an email with your contact information and asked to be included. My email address is redford@puckettredford.com

Please don't hesitate to contact me with any questions that you may have about this memo and the significant changes that our office is very strongly encouraging you to adopt immediately. Thank you.

Randy Redford, Attorney at Law

NEGLIGENT HIRING

Courts are now accepting the premise that some facts in an employee's background should disqualify them for a given position. If the employee causes a foreseeable injury to a third party and the court determines the employer failed to detect or heed the warning signs, the company may be held liable for damages. Since the risk cannot be easily quantified, employers are well advised to seek outside services to thoroughly investigate the backgrounds of prospective employees.



For Orca's Employment Screening Services, Call Rebekah, 800-341-0022, Ext. 103

And if you knowingly and willfully obtain information on a person from a consumer-reporting agency under false pretenses, you might be criminally prosecuted. The sentence could be a fine of up to \$250,000 and imprisonment for up to two years.

Or you could be held liable for failure to comply with the mandates of the Fair Credit Reporting Act, whether knowingly or negligently. Additional grounds may include invasion of privacy, slander, libel, and negligence. The damages may include the actual damages suffered, pre-set statutory damages, and attorney fees.

Federal law applies to credit checks and outranks any state laws that are inconsistent. This ensures some consistency across the United States. However, some states have enacted supplemental laws on credit checks, so it is imperative that you understand your state's law as it pertains to credit checks for employment reasons.

The nuts and bolts of using a credit report

To use such services for legitimate "employment purposes," you must first:

*Make a clear and conspicuous disclosure in writing to the person, in a separate document that consists only of that disclosure, that a consumer report may be obtained for employment purposes. You must make the disclosure before you ask for the report.

*Secure a written authorization from the person for the procurement of the report.

*If you take adverse action based on a credit report, you must give the person a copy of the report and a description in writing of their rights as prescribed by the Federal Trade Commission under 15 USC 1681g (c)(3). (See the FTC Web discussion and forms below.)

You must also tell the person affected:

*About the adverse action, giving them the name, address, and telephone number (including the toll-free number for nationwide agencies) of the consumer-reporting agency making the report.

*That the consumer-reporting agency did not make the decision to take adverse action and will not provide specific reasons why the adverse action was taken.

*About his or her right to obtain, under 18 U.S.C. 1681j, a free copy of the consumer report from the consumer-reporting agency, with an indication of the 60-day period under that statute for obtaining such a copy.

*About his or her right to dispute, under 18 U.S.C. 1681i, the consumer-reporting agency's accuracy or the completeness of any information in a consumer report furnished by the agency.

Other requirements may apply, depending on the particular facts involved.

If the laws surrounding credit checks sound complicated, it's because they are. And recent congressional amendments specifically aimed at employers haven't made things any easier.

If you want more guidance, the [Federal Trade Commission](http://www.ftc.gov) provides a useful Web site giving guidance on federal law in this area, including a summary of [consumer rights](#). The documents on this Web site will give you a more complete sense of what you must do when you use a consumer report.

This article is for informational purposes only; it discusses legal principles in general terms only and not as they would apply to any particular person's factual situation. It is not legal advice nor does it create any kind of an attorney-client relationship. No warranty as to the accuracy or correctness or sanity of this information is made, expressly or implicitly. Each person's legal situation depends on the particular laws that may apply and his or her own unique, factual circumstances. If you need legal guidance on credit reports, see your lawyer.