

ORCA TALES

January 2010

"We can tell you more about them than their mother"

Volume 17 Issue 1

2010 Legislative Session

The 2010 Legislative session begins January 11 and WMFHA (Washington Multi-Family Housing Association) is prepared to tackle a variety of issues during the short 60-day session.

#1. Limitations on Tenant Screening

Tenant advocates will again pursue legislation that will severely limit the information that screening companies could give to landlords about previously filed eviction actions involving the applicant. It will also allow for portability, allowing an applicant to take a screening from one property and use it at other properties for the next 60 days. WMFHA defeated this proposal last year and has been involved in discussions to find a compromise, if one exists, at the request of the Chair of the Senate Housing Committee.

Inspections of Rental Property

Many cities are currently exploring the idea of mandatory inspection programs that could be very costly and unnecessary to owners. WMFHA continues to participate in stakeholder meetings with legislators, city and tenant representatives to find a compromise on some limit to mandatory inspection programs. WMFHA and other representatives from the industry are seeking to have one statewide law in place that details the parameters of any inspection type program cities might want to enact in their jurisdiction.

Street Utility Fee Proposal from the Association of Washington Cities (AWC)

AWC will pursue a permanent transportation funding source for basic street maintenance and preservation that could potentially charge multi-family buildings between .50 and \$3 a unit. Depending upon the building's billing practices the owner would receive the line item charge, or the charge would show up on each individual tenant's bill.

Carbon Monoxide Detectors

The State Building Code Council recently adopted rules that require all existing multi-family housing units be equipped with carbon monoxide detectors by July 1, 2011. WMFHA will be working with other industry representatives to seek an amendment to this requirement that would push the implementation date to 2013, limit the installation to those buildings with fuel fired appliances only and clarify the responsibilities of the tenant with respect to maintaining the devices.

Utility Liens

WMFHA will pursue legislation that clarifies the current law by giving owners the ability to request notification of delinquency by the resident and prohibiting the utility from collecting more than 4 months' delinquencies from the owner if such a request is made.

Mandating Acceptance of Section 8

Legislation again will be pursued that adds 'source of income' as a protected class - essentially mandating landlords to accept tenants who are recipients of Section 8 housing vouchers. WMFHA defeated these measures last year and will continue to oppose.

Join WMFHA for our annual Day on the Hill event!

On January 28 WMFHA and others from the rental housing industry will go to Olympia in an effort to educate legislators about our top priorities and how their decisions affect our daily lives.

Please contact WMFHA for more information about this very important opportunity.

In other news...

LANDLORDS WIN SIGNIFICANT VICTORY REGARDING 3-DAY NOTICE

The Court of Appeals has just issued its decision in an eviction case that landlord lawyers have been watching and waiting for. The case involves non-payment of rent and the validity of the 3-day notice served by the landlord. The court ruled that the notice was valid and that the late charges set forth in the rental agreement were not excessive.

The monthly rental amount was \$800 and the rental agreement provided that a late fee of \$50 would be imposed on the 3rd of the month if rent had not been paid plus \$10 per day thereafter. The tenant did not pay rent for July until almost the end of

the month and did not pay any late charges. The tenant failed to pay rent in August and on August 11 the landlord served a 3-day notice for \$800 in August rent, \$330 in late fees for July, and \$130 in late fees for August. At the show cause hearing the tenant argued that the 3-day was invalid because it included late fees and, in the alternative, that the amount of late fees charged was excessive. The trial court ordered the eviction and the tenant appealed.

The Court of Appeals ruled that because the late fees were a direct result of the tenant's failure to pay rent, the late fees were properly included in the 3-day notice and that the notice was valid. Alternatively, the court stated that even if the late fees could not be included in the notice, they were set forth separately and the notice "substantially" complied with the statutory requirements.

The court then turned to the tenant's argument that the late fees provided for in the rental agreement were "unconscionable." In order to be unconscionable the provision must "shock the conscience," be "monstrously harsh," and "exceedingly calloused." The judges ruled that these late fees did not meet that standard and could be enforced.

The decision by the Court of Appeals is "unpublished." This means that it only affects the parties to the lawsuit and cannot be cited by other landlords or their attorneys as precedent in subsequent eviction cases. However, WMFHA along with other landlord attorneys will be filing a motion with the court to "publish" this opinion so that it will be binding on judges in future eviction cases. We anticipate a ruling from the court on the motion to publish by the end of February.

NARPM's Day On The Hill is January 28th. We need your attendance. For more information contact John Parker of Willow Properties at: John@willowproperties.com

A Criminal Past – Your Rights When Screening

One of the hottest topics these days in our industry is whether or not you can deny tenancy based on an applicant's criminal record. The long and short of it is yes – AS LONG AS YOU ARE CAREFUL AND HAVE WELL ESTABLISHED GUIDELINES.

The proper question isn't really whether or not you can deny tenancy based on a criminal record, but rather, can you do so without getting sued for discrimination? The law governing this area is the Federal Fair Housing Act.

Even though the federal law does not specifically mention criminal history in its list of protected classes, you will want to ensure that there is no question as to the legality of your action if you choose to deny tenancy based on the applicant's past criminal record. As far as this decision is concerned, the most important section of the Fair Housing Act (FHA) is section 3604(f)(9), which states, "Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." It is this section that landlords fall back on to deny tenancy based on a person's criminal record. Before you deny tenancy due to the following safeguards, which just might save you from a very costly lawsuit for discrimination.

DON'T automatically deny tenancy just because the applicant tells you that he/she has a criminal record.

DO always make an "independent and objective" evaluation of the actual threat that the tenancy of the applicant would pose on the other residents and their property, and base the decision to accept or deny tenancy on this investigation.

DON'T just talk to the applicant and ask them for the details of the crime they have been convicted of.

ORCA ♦ WISDOM ♦

To build may have to be the slow and laborious task of years. To destroy can be the thoughtless act of a single day.

Sir Winston Churchill

**Screening Report
May NOT Report the following**

RCWA 19.182.040

1. No consumer reporting agency may make a consumer report containing any of the following items of information:
 - a. Bankruptcies that, from date of adjudication of the most recent bankruptcy, antedate the report by more than 10 years;
 - b. Suites and judgments that, from the date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;
 - c. Paid tax liens that, from date of payment, antedate the report by more than 7 years;
 - d. Accounts placed for collection or charged to profit and loss that antedate the report by more than 7 years;
 - e. Records of arrest, indictment, or conviction of crime that, from date of disposition, release, or parole, antedate the report by more than 7 years;
 - f. Any other adverse item of information that antedates the report by more than 7 years.
2. Subsection (1) of this section is not applicable in the case of a consumer report to be used in connection with:
 - a. A credit transaction involving, or that may reasonably be expected to involve, a principal amount of fifty thousand dollars or more;
 - b. The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of fifty thousand dollars or more; or
 - c. The employment of an individual at an annual salary that equals, or that may reasonably be expected to equal, twenty thousand dollars or more.

DO contact the police department where the applicant was convicted, the applicant's parole office, the prosecutor's office and the prison of jail where the applicant served his/her sentence for details of the applicant's full criminal history.

DON'T deny applicant tenancy for every crime they may have committed. Several crimes do not fall within the requirements of the FHA, including most misdemeanors, simple possession of drugs or other controlled substance, fraud, bad checks, vehicular homicide (in most cases) and DWI.

DO make sure that the crime that the applicant has committed is one that fits within the protective framework of the FHA. Keep in mind that the crime must be recent for it to affect your decision. Examples of crimes that will, most often, allow you to deny tenancy are murder, assault, robbery, arson, rape and sale of drugs.

The most important thing you can do to protect yourself when making these decisions is to establish a set of criteria for every case and always make the required investigation.

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FOR SALE

Real Estate—Land and Homes

Lake Chelan, Washington

Dan Folsom

Real Estate Broker (& Rebekah's Brother)

509-682-2371

Know the difference between Cold and H1N1 Flu Symptoms

<u>Symptom</u>	<u>Cold</u>	<u>H1N1– Swine Flu</u>
Fever	Fever is rare with a cold.	Fever is usually present with the flu in up to 80% of all flue cases. A temperature of 100F or higher for 3 to 4 days is associated with the flu.
Coughing	A hacking, productive (mucus-producing) cough is often present with a cold.	A non-productive (non-mucus producing) cough is usually present with the flu (sometimes referred to as dry cough).
Aches	Slight body aches and pains can be part of a cold.	Severe aches and pains are common with the flu.
Stuffy Nose	Stuffy nose is commonly present with a cold and typically resolves spontaneously within a week.	Stuffy nose is not commonly present with the flu.
Chills	Chills are uncommon with a cold.	60% of people who have the flu experience chills.
Tiredness	Tiredness is fairly mild with a cold.	Tiredness is moderate to severe with the flu.
Sneezing	Sneezing is commonly present with a cold.	Sneezing is not common with the flu.
Sudden Symptoms	Cold symptoms tend to develop over a few days.	The flu has a rapid onset within 3-6 hours. The flue hits hard and includes sudden symptoms like high fever, aches and pains.
Headache	A headache is fairly uncommon with a cold.	A headache is very common with the flu, present in 80% of flu cases.
Sore Throat	Sore throat is commonly present with a cold.	Sore throat is not commonly present with the flu.
Chest Discomfort	Chest discomfort is mild to moderate with a cold.	Chest discomfort is often severe with the flu.