Eastern Michigan Real Estate Investment Association

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January 2011

Renting Residential Property (Part 1)

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INTRODUCTION

RENTING AN APARTMENT can be a headache, whether you are the prospective tenant or the landlord, and disputes between landlords and tenants are never pleasant. This chapter offers some help over the rough spots.

Keep in mind that state and local laws on this subject vary widely and are frequently different from the established principles of common law. For specific answers you may need to get help from your local government, tenants association or building managers association. The examples in this newsletter concern rental arrangements between private parties; the rules may be different if you are renting from a government agency, such as a city or county housing authority.

Choosing a Landlord/Tenant

The first decision in a rental relationship requires that both the landlord and the tenant choose each other. The wisdom of this decision will probably affect each party's satisfaction until the tenant moves out or the landlord turns over the property to someone else, and that could mean years. A "problem" tenant or a "problem" landlord usually does not improve over time. Both the landlord and the tenant should do all they can to make sure of a good match.

If you are a landlord, do not be so anxious to rent a place that you will accept a poor tenant. If you are a prospective tenant, do not accept a poor dwelling or lease just because the place is available today. Check each other out.

Q. How can tenants choose a good landlord?

A. If you look at a house or apartment to rent, you will naturally check out the space and the amenities: the number of bedrooms and bathrooms, the presence of kitchen appliances and air conditioning, and so forth. You should check out the landlord as well.

The single most important question is whether the landlord will make repairs if something breaks. If possible, get the answers to this question before you move in. You can also check out the landlord with the local building management association, apartment association, or Board of Realtors, the local office of the Institute of Real Estate Management, and whatever agency handles tenant complaints in your locality.

The mailbox test - One quick way to judge the quality of a building is to look at the mailboxes and doorbells at the front door.

Sidebar: The mailbox test

In choosing an apartment you will want to check the overall condition of the grounds and the building, the common areas, parking areas, the interior painting, cleanliness, and maintenance. Look at it at night as well as in daylight. Talk to present tenants.

One quick way to judge the quality of a building is to look at the mailboxes and doorbells at the front door.

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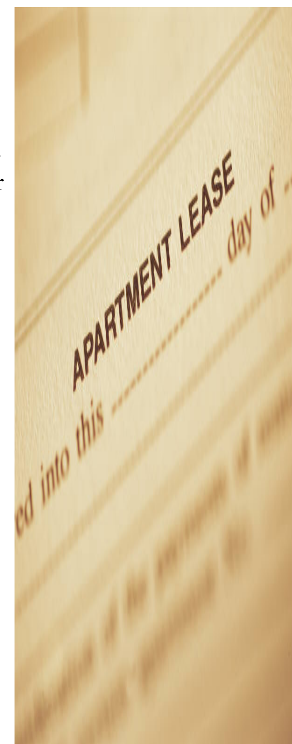

Survey Critical When Purchasing Real Estate

By Matthew M. Wallace, CPA, JD

When you purchased your investment real estate, you probably did not get a stake survey of your property. Most likely, you had what is called a mortgage survey. But do you know the difference and what protections each would afford you?

Unless you always by your properties for cash, the most common type of survey that you as a real estate investor usually will see is the mortgage survey. A mortgage survey shows whether any buildings or other improvements are within the boundary lines of your property and whether there are any structures or improvements from neighboring properties encroaching on your property. The mortgage survey is not for your benefit. The mortgage survey is to benefit your mortgage lender which requires it before they will give you a loan. The lender doesn't care where your property lines start or end or where the corners of your property are located. As such, a mortgage survey should never be used to determine property lines or build improvements.

On the other hand, for a stake survey, which is also called a boundary survey, the surveyor will document all the corners of your property and mark them with an iron stake. Using those stakes, the surveyor then maps out all of your boundary lines. With a stake survey, you get more information than a mortgage survey. You will know the exact location of all your property lines.

If you do not get a stake survey, your property lines may not be where you think they are and then you may end up with a boundary dispute with the neighbor. That is never a good thing.

For example, I once purchased a 39 foot subdivision lot with a small home on it. Before I purchased the property, I had a survey completed. The survey showed that the existing back yard fence was 9 feet inside the property line. By having a survey done, I was able to increase the size of the backyard by nearly 25%. Had I not done the survey, I would have left the fence where it was thinking that's where the property line was located.

If the fence had been in that location for more than 15 years and the neighbors had openly, notoriously and exclusively occupied the property, they could have filed a quiet title lawsuit for adverse possession. If successful, they would have been the owner of part of my property.

I had another situation in which a client owned some property along a road in the middle of a section of a rural township where the lots were one-half mile deep. They were the only property on their road in that one mile section that had never been surveyed. All their neighbors to the east and west had long ago been surveyed and the property lines established for 30 or more years. Driveways, homes, barns, fence rows and farm fields had all been located based upon these old surveys.

According to his property description, my client had 450 feet of frontage on the road, which amounted to about 27 acres. When he had his stake survey done, he discovered that he had less than 300 feet of frontage. He found out that his township section was a short section. At 5,120 feet, it was 160 feet short of a 5,280 foot mile. In such situa-

tions, surveyors are supposed to allocate the shortage pro rata to all parcels in the section. However, the surveyors of the other parcels had been a little lazy and only measured the parcels to the west from the west section corner and the parcels to the east from the eastern section corner. The short section was never discovered until my client did his survey.

Since all of the old surveys and property lines had been established for more than 15 years and for other legal reasons, my client who thought he had a 450 foot wide lot, had only a 290 foot lot. Because this lot was one-half mile deep, that 160 foot shortage amounted to about 10 acres. My client only had a little over 17 acres when he thought he had purchased 27 acres.

I had another case in which a fellow purchased a home that was going to be demolished because of redevelopment. He also purchased a lot to which he was going to relocate the home. Foundations were dug and the home was moved onto the new lot. Unfortunately, he did not survey the lot that he had purchased and moved the house onto an adjoining lot that was owned by my client. My client did not want the house on his property and the house purchaser did not want to move the house onto his own lot after paying to move it once. Had the house purchaser surveyed the new lot before he moved the house, he would have saved my client and himself tens of thousand dollars in legal fees to resolve the matter.

Recently a survey saved me quite a bit of expense. I was removing a number of dead and dying ash trees from my yard. One huge ash tree appeared to be on my property but was close to the property line. Since I had done a survey when I purchased the property, I hired the surveyor to mark the property line. Good news for me. The tree was not mine and I saved nearly $1,000. Bad news though for my neighbor.

Whenever I am going to purchase a parcel of real estate, I have a survey completed prior to the purchase. I want to know where the four corners of the lot are located. I want to know if any of the neighbor's buildings are on my property or my buildings are on somebody else's property. I want to know if the fences are actually on the property line. I want to know if I am really buying what I think I am buying.

If you really want to protect yourself, you should order a stake survey when buying real estate. Most real estate investors do not get a stake survey because they do not want the additional expense and do not see the benefits. However, I do not think that you could afford not to have a stake survey. You should want to know if the property that you are purchasing is in fact the property that you are purchasing.

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Are the tenants' names all uniform, such as generated by a plastic label gun? If so, they were probably put there by an above average landlord who cares about the appearance of the building.

Are the name labels all different, as if the tenants put them there themselves? That is a sign of a landlord who is indifferent to the appearance of the building. Are the names written on the mailboxes with a felt marker or scratched into the metal? Are the mailboxes broken or lacking locks? That looks as though the landlord and tenants don't care at all about appearances. You should look elsewhere.

Q. Suppose the landlord says he'll fix anything that's broken. Why should I believe him?

A. If you inspect the apartment and see some things that are broken or need to be repaired, ask the landlord when repairs will be made.

If the landlord is willing to write down a list of repairs to be made and sign it, that is an indication of good faith. This is an above average landlord.

If the landlord makes only an oral promise to repair things, you cannot be sure of the real intention. Some things may be repaired and some may not.

Suppose the landlord says he'll fix anything that's broken. Why should I believe him?

If the landlord won't even give an oral promise, it's a clear sign that repairs won't be made. This landlord is below average. Look someplace else.

But remember the difference between repairs and improvements. A tenant is entitled to have things in good working order. A tenant may not be entitled to a new refrigerator.

Sidebar: LET'S LOOK AT THE RECORD

It may be difficult and time-consuming, but one way to check the quality of a landlord is to visit the courthouse and check the public records.

Has the municipality sued the landlord for failure to maintain the property up to the requirements of local codes? If there is no record of such a suit, it's probably a sign of a good landlord (though it could also indicate an inattentive municipality). If the landlord has been sued, you should be suspicious. If a suit is pending now, run away.

If the municipality has a local code inspection agency, its files may be matters of public record. Check them if you can. A code violation in the past does not necessarily indicate a bad landlord. Not all code violations are equally serious, and many buildings will have some violations. Municipalities will issue complaints or file suits against the landlord only in cases of serious code violations and only if repairs are not made promptly.

Q. How can landlords go about choosing tenants?

A. If you are offering a place to rent, have the prospective tenants complete a rental application. Standard application forms are usually available at stationery stores.

The two most important elements of the application are the employment history and the rental history. Get information for the past three or five years. Then contact each of the applicant's employers and landlords for that period. If the applicant has worked at the same job and lived in the same apartment for that time, you have as good an indication as possible of a quality tenant.

A perspective tenant who undergoes such a check might well be thankful. The landlord will have checked the building's other tenants as well, and so the neighbors will probably be reliable people.

Q. How else can landlords evaluate perspective tenants?

A. Many areas have companies that specialize in tenant records. They can tell you if someone has been evicted in the past or failed to pay the rent.

General credit bureaus can supply a history if credit payments to landlords if the prospective tenant authorizes a search of the records. This credit information will include the timeliness with which car and credit card payments have been made, bankruptcies, judgments against the tenant, and adverse information from other creditors.

Q. Are there any legal pitfalls in choosing a tenant?

A. Landlords need to take special care to treat all prospective tenants in the same way. The law prohibits many kinds of distinctions that landlords used to make in selecting tenants. Fair housing laws forbid discrimination on the basis of race, of course, but go far beyond that. (More information to follow.)

LEASES

When the landlord has decided to rent to the tenant and the tenant has chosen to rent from the landlord, they will enter into a lease or rental agreement.

Q. What is a lease or agreement?

A. They are contracts, either written or oral, in which the landlord grants to the tenant exclusive possession of a premises in exchange for rent for a period of time.

Renting Residential Property (Part 1)

Q. Do all tenants have the same kind of lease?

A. No. Most tenants fall into one of two categories.

If the tenant rents for a fixed period of time (that is, a term) and no notice is required to terminate, the tenancy is called a tenancy for years. This tenancy is usually in writing. It must be in writing if the term of the lease is longer than one year.

If the tenancy continues indefinitely, automatically renewing from one period to the next, and if a notice is required to terminate, the tenancy is called periodic. This lease or agreement may be written or oral.

Q. What are the advantages of an oral versus a written lease?

A. For tenants with an oral month-to month agreement, the major advantage is the ability to terminate the lease and move out without further rental liability with only a short notice to the landlord. The notice usually must be the same as the term of the agreement, commonly 30 days. Tenants are very mobile (20 percent move each year) and the ease of moving can be an important consideration.

For landlords, an oral lease provides an easy way to terminate the lease and make the tenant move out with only a short notice, or to raise the rent. The landlord is usually not required to state a good reason for the termination, as must be done in other cases. (See the sections on termination of leases and security of tenure later.)

Q. What are the disadvantages of an oral lease?

A. Because nothing is written down, the major disadvantage is the possibility of misunderstandings between the landlord and the tenant about the conditions of the tenancy.

Q. What are the advantages of a written lease?

A. The chief advantage of a written lease is the landlord's right to hold the tenant to pay rent for the entire duration or term of the lease.

The tenant may also have an advantage, in that the landlord cannot raise the rent beyond the amount specified in the lease during the term of that lease. There is no evidence, however, that landlords with oral leases increase rent more often than landlords with written leases. Furthermore, since most standard lease forms are written by attorneys who work for landlords or the real estate industry, the slant of the lease is usually in favor of the landlords.

Q. **What are the disadvantages of a written lease?**

A. The major disadvantage for the tenant is that the landlord may write in express provisions that void certain protections that the law ordinarily gives to the tenant. Also, in most written leases the landlord's responsibilities are not very well spelled out.

Q. What are the most important lease clauses from the point of view of landlords?

A. The most important clause to landlords is the duty of the tenant to pay the rent in full and on time. This includes the right to charge a fee for damages if payment is late. Other important clauses grant the landlord the right to enforce the rules and regulations written into the lease.

What are the most important lease clauses from the point of view of landlords?

Q. What are the most important lease clauses for tenants?

A. The lease states the duty of the landlord to maintain the physical condition of the premises. Other clauses should state the right of the tenant to terminate the lease if the landlord fails to make needed repairs. Where the law allows it, the tenant should have a clause specifying the right to hire workers to correct defects in the premises and to charge the landlord for the cost or deduct it from the rent. A clause giving the tenant the right to pay reduced rent is important if the landlord fails to make repairs.

Sidebar:

CHANGING THE RULES

Leases are not written in stone, even though standard forms may seem that way.

Most standard leases are written by lawyers who favor landlords. Tenants should try to remove clauses they do not like. They should try to add conditions that they want, such as the right to own pets or to have the landlord paint the apartment.

Likewise, of the scores of standard forms available, none is likely to meet the needs of every landlord. Some fail to spell out which utility services the tenant pays for and which ones the landlord pays. Others fail to allow the landlord the right ever to enter the premises without the consent of the tenants.

Landlords have as much right as the tenants to alter the lease terms to cover such things.

Q. How should the tenant or the landlord change the lease if either doesn't like certain clauses?

A. If either one can persuade the other to remove a particular provision, that provision should be marked out in ink on all copies. Both the landlord and the tenant should then initial the marked-out sections.

Many preprinted forms contain large blank spaces for the landlord and tenant to write additional agreements, which become part of the lease. These inserted paragraphs should be initialed by both landlord and tenant. If the spaces are absent or are too small, the additional terms should be written on a separate sheet of paper and signed by both the landlord and tenant.

Q. Does the law regulate the provisions in a lease?

A. Yes. Both courts and legislative bodies have made laws restricting the provisions in a lease.

For example, state courts have struck down lease clauses which provide that the tenant accepts the apartment in "as is" condition and that the tenant must pay the rent regardless of whether the landlord maintains the property. So, if a landlord sues to evict for nonpayment of rent, tenants can defend themselves by arguing that the premises were not worth the full contract rent because of the deteriorated condition. This legal concept is called the implied warranty of habitability, which is discussed later. It prevents the landlord from evading the responsibility to maintain the premises even if the tenant signed a lease waiving the right to maintenance.

Is the lease canceled because the landlord sells the building or the tenant dies?

Many states and municipalities have enacted laws that prohibit some clauses from residential leases. An example of a commonly prohibited clause is "confession of judgment." Such a clause would permit the landlord's attorney to go into any court and represent the tenant without any prior notice, service or process. The tenant would waive a jury trial, confess judgment to whatever the landlord sues for without any defense, waive all errors or omissions made by the landlord in making the complaint, and authorize an immediate eviction or wage deduction.

Lease Clauses to Consider

Q. Can the tenants own pets?

A. With an oral agreement or lease, tenants would probably have the right to own a pet. Without a clause in a written lease prohibiting pets, it would be hard for a landlord to prove that tenants were told that pets were forbidden.

Written leases usually have a clause prohibiting pets on the premises or requiring tenants to get written permission for them from the landlord. A tenant who violated this clause could be evicted if the pet remained after the landlord asked for its removal.

Q. Is the lease canceled because the landlord sells the building or the tenant dies?

A. Most preprinted standard lease forms contain a paragraph on heirs and successors. This paragraph provides that the lease does not expire upon the sale of the building or the death of the tenant. If the tenant dies during the term of the lease, the tenant's estate will continue to owe the rent until legally released; it will also have the right to occupy the premises.

Sidebar: PLEASE DON'T COME IN

Normally a landlord has no right to enter a tenant's apartment unless the tenant gives consent. Under the general concept of landlord-tenant law, the landlord has surrendered possession of the premises entirely to the tenant for the term of the lease.

But a written lease will almost always give the landlord the right to enter to show the premises to prospective buyers or prospective tenants and to make necessary or agreed repairs. A lease may require the landlord to give a 24-hour notice, but some leases do not require any prior notice or restrict the time or frequency of entry.

State and local laws may also give landlords the right of access. Usually these ordinances require landlords to give reasonable advance notice and to enter only at reasonable times and not so often as to be harassing.

Q. Does the tenant owe the landlord a late fee if the rent is not paid on the date specified in the lease?

A. Not unless a late fee is specified in the written lease. Some municipal ordinances restrict the amount of late fees that a landlord may charge. State courts have also ruled that such a fee may be charged for damages but cannot be so large as to constitute punishment. Only the government has the right to punish or penalize someone for misconduct.

Q. Can tenants be forced to waive their rights by signing a lease?

A. Maybe. It depends upon whether the local or state law prohibits landlords from requiring such waivers. For example, the landlord's duty to maintain the property cannot usually be waived by the tenant. However, the landlord's duty to notify the tenant before suing for eviction can be waived in

most places.

Q. Is the landlord liable for the damages incurred by a tenant who was injured because of inadequate maintenance of the property?

A. Many leases contain clauses called exculpatory clauses, in which the tenant automatically excuses the landlord from any liability for damages from any cause whatsoever. Only about half of the states prohibit such clauses in residential leases.

If the lease does not contain an exculpatory clause or if the state makes such a clause illegal, it will be up to a court to decide whether the injury resulted from some negligent act by the landlord.

Some courts have held that if the tenant's injury resulted from the landlord's violation of the housing code, the landlord is plainly negligent and liable. Other courts have required the tenant to prove negligence. That is, there must be evidence that the landlord knew or should have known of the defective condition before the tenant's injury. Furthermore, the landlord must have failed to make repairs within a reasonable time or in a careful manner.

Q. If the landlord loses the building to the bank by foreclosure for failure to pay the mortgage, is the tenant's lease still valid?

A. No. Most leases provide that the lease is subordinate to any mortgage. This means that if the landlord fails to make payments to the mortgage holder, the landlord can lose the property through a lawsuit, called a foreclosure. Since the lease is subordinate to the mortgage, the bank can disregard it and evict the tenant.

Q. If the property burns down, does the tenant still owe rent under the lease?

A. In most cases, no. But a few state laws still on the books call for continued payment.

Q. If the government condemns the property and decides to tear it down, is the tenant's lease still valid?

A. No. Most leases state that the landlord or the government may terminate the tenant's lease if the government condemns the property. The right of the government to condemn private property is called imminent domain. The government must compensate landlords for taking their property. The lease may provide that the tenants are not entitled to any of this money, but in some areas the law may entitle them to a portion of the settlement.

If the government condemns the property and decides to tear it down, is the tenant's lease still valid?

Q. Can the tenant, with the landlord's consent, operate a business out of the rented premises?

A. How residential property may be used legally is governed by local zoning ordinances. In residential areas, some ordinances permit white-collar work, such as accounting, word processing, tutoring, and counseling, but forbid any commercial, retail, industrial, or manufacturing use. Likewise, local zoning may prohibit people from living in a commercial, retail, industrial, or manufacturing building. Therefore, if the landlord rents manufacturing space to a residential tenant in violation of the zoning ordinance, the lease is unenforceable because it is for an illegal purpose.

Most leases provide that the tenant must use the premises solely for residential purpose. Thus, business uses would be illegal even if the zoning law allowed them.

Sidebar: WHOSE CHANDELIER IS IT

Disputes often arise when tenants install more or less permanent fixtures, such as chandeliers or ceiling fans, in their apartments. Can they remove them when they move out?

Under the general concept of landlord-tenant law, tenants may do anything they wish as long as they do not damage the property. But most leases do not allow a tenant to install such fixtures without the landlord's approval. Sometimes the lease provides as well that such fixtures become the landlord's property when the lease expires. Some leases permit removal of the fixtures if the wall or ceiling is restored to its original condition.

Q. If the landlord provides laundry facilities in the building at the time that the tenant signs the lease but later discontinues this service, does this violate the lease?

A. Maybe. Most leases provide that the tenant's use of any facility in the building outside of the apartment is a license and not a lease. These facilities include laundry in the building, storage areas, garages and parking spaces, bike rooms, swimming pools, workout rooms, and party and recreational areas. A license conveys permission to exercise a privilege in the use of the property and can be revoked by the landlord.

But state statutes or municipal ordinances may define the term "premises," which are rented to the tenant, to include the common areas of the property. In that case, the landlord

cannot discontinue such services. If the landlord discontinues services that are included in the rent, the tenant probably would be entitled to a reduction in rent.

Q. What can the tenant do if other tenants in the building make noise and interfere with the tenant's "right of quiet enjoyment" of the premises?

A. Traditionally, other tenants cannot interfere with the "right of quiet enjoyment." But that legal phrase does not refer to noise; it refers to the tenant's legal right to occupy the apartment. The landlord would violate the right by renting the same apartment to two different tenants or by removing the tenant's belongings.

As for noise, some courts have held recently that the landlord has the duty to keep tenants from annoying others where the lease contains a clause requiring tenants not to disturb their neighbors. Because they control who may rent in the building, it is appropriate to require landlords to enforce their own rules.

Sidebar: CONDOS ARE SPECIAL

A tenant who rents a condominium has two obligations, one to the condo unit's owner and one to the condo association.

The condo owner is the landlord. But the association sets the rules and regulations for the building and controls the common areas. Depending on local law, the association may have the right to seek eviction of a condo tenant who violates the rules. It may also have the right to seek the tenant's eviction if the condo owner fails to pay the regular association assessments.

All states and many municipalities have passed special condo laws, although in some cases they do not apply to buildings with only a few units. If you rent a condo, check the local law.

Q. In a legal dispute between the landlord and the tenant, does the tenant have to pay the landlord's attorney's fees?

A. Most leases make the tenant responsible for the payment of all attorney's fees incurred by the landlord in the enforcement of the provisions of the lease. But some state and local laws restrict that provision to situations where the landlord wins a lawsuit and the court awards fees; if the tenant wins, the landlord pays the fees.

MAINTENANCE OF RENTAL PROPERTY

A major source of conflict between landlords and tenants concerns the maintenance and repair of the rental property. Regardless of how high or low the rent is, there is an inherent tension between the desire of landlords to make money and the desire of tenants to have money spent on the property.

Q. Does the landlord have the obligation to maintain the premises and to make repairs if defects occur?

A. Yes. The lease makes the landlord responsible, and so do many court rulings and state and local laws.

Q. Does the tenant have any obligation to the landlord regarding the maintenance of the premises?

A. Traditionally, the tenant has the duty not to "commit waste." That means the tenant may not cause unreasonable and permanent damage to the property.

The common law, leases and landlord-tenant laws have modified this concept. The tenant must comply with the sections of housing codes concerning keeping the premises clean and disposing of trash in a reasonable manner and in the facilities that the landlord supplies. The tenant must obey the rules of the lease and may not damage the property negligently or deliberately. When moving out, the tenant must return the property to the landlord in clean and repaired condition, except for reasonable wear and tear.

In a legal dispute between the landlord and the tenant, does the tenant have to pay the landlord's attorney's fees?

Q. What is the express warranty of habitability?

A. The lease may explicitly say that the landlord shall maintain the premises and make repairs. Such promises are called express warranties of habitability.

When the lease is signed, the tenant should make sure it lists all repairs that are needed now and contains a clause by which the landlord agrees to make future repairs when needed. Then, if the landlord fails to maintain the premises up to the express standard written into the lease, that would constitute a breach of contract and the tenant could sue or seek other remedies.

Q. What is the implied warranty of habitability?

A. The traditional concept of landlord-tenant law was that unless the lease explicitly provided for the landlord to maintain the property and make repairs, the tenant accepted the premises "as is." The landlord had no duty to make the property fit for habitation before the tenant moved in or to repair the premises if they became defective while tenant was living there.

Beginning in the late 1960's, courts ruled that the lease of every residential tenant contained an implied (that is, unwritten but understood) warranty that the property was in good condition and the landlord would keep it that way. Lease clauses in which the tenant waived the right to maintenance were declared illegal and unenforceable. Almost all of the state courts have made such rulings. By passing laws

requiring the landlord to maintain the property, state legislatures and municipalities have also created an implied warranty in leases.

Habitability is sometimes defined as the minimum standard for decent, safe, sanitary housing specified in the state or local housing code.

This implied warranty of habitability gives tenants the right to withhold rent if the landlord fails to comply with the state or local housing code. Tenants can also sue landlords and can defend themselves against eviction for nonpayment of rent by arguing that the landlord violated the implied warranty of habitability.

Q. What are housing codes?

A. A housing code is an ordinance enacted by the state or municipality requiring property owners, including landlords, to maintain their property and to make repairs.

To qualify for funding from the federal urban renewal program, about five thousand municipalities passed these codes between 1954 and1965. They also hired inspectors to enforce the codes.

A standard provision in the codes prohibits a landlord from renting a property that does not meet the minimum code standards.

Q. Do the implied warranty of habitability and housing codes apply only to tenants living in slum buildings?

A. They apply to everyone. It is true that the original lawsuits that led to the adoption of the implied warranty of habitability were brought on behalf of poor tenants living in slum conditions. However the courts make no legal distinction between the rights of tenants based on income. The standard of maintenance required applies to all buildings, all landlords, and all tenants.

It cannot be stressed too much that tenants at all income levels have problems with landlords providing adequate maintenance. It is not uncommon for very expensive apartments to have dozens of severe code violations, such as corroded plumbing, defective or missing locks, and faulty furnaces.

Q. What kind of standards do housing codes require landlords to maintain?

A. Tenants should know what the local housing code requires because they have the right to demand these conditions of the landlord. Landlords should know the requirements because the municipality expects them to maintain these conditions in the property. The following conditions are typical of the broad areas covered in detail in local housing codes:

- the building outside the apartment, such as garbage and refuse removal, and safe and structurally sound stairs, porches, railings and handrails, windows and doors, screens, storm windows, walls and siding, roofs, chimneys, foundations, basements, signs, awnings, and other decorative features;
- the interior of the apartment, such as walls, floors, and ceilings without holes, cracks, or other defects, no lead-based paint, waterproof bathroom and kitchen floors, no rodent or insect infestation;
- light, ventilation and space, such as minimum lighting for halls and stairways, window or mechanical ventilation, minimum adequate space for occupants;
- plumbing facilities and fixtures, such as running water, adequate hot water, sufficient water flow, no leaks, working fixtures;
- mechanical systems, such as hot water tanks, furnaces, air conditioning, cooking equipment, fireplaces;
- electrical systems, such as elevators, sufficient circuits and capacity, working fixtures, switches and receptacles;
- fire safety, such as smoke detectors, fire extinguishers, automatic sprinkler systems, adequate exits, control over storage of flammable materials;
- security, such as locks on the windows and doors, peepholes in the doors, shatterproof glass on windows.

Q. Can the tenant do anything if the landlord refuses to make repairs?

A. Yes. The tenant has a number of options, though not all are available in all states. The tenant might complain to the municipal code enforcement agency, take the landlord to court, repair the defect and deduct the cost from the rent, reduce the rent payment, or terminate the lease.

Coming in the next issue: - Part II

- Municipal Code Enforcement
- Suing the Landlord
- Repair and Deduct
- Reduced Rent
- Lease Termination for Code Violations
- Other Lease Termination by Landlords
- Termination by Tenants

Slip and Fall Accidents

Two common types of injury claims are Slip & Fall and Trip & Fall cases. In legal terms, these are Premises Liability legal actions.

A victim who is hurt due to the negligence or carelessness of someone else can file a Michigan slip and fall liability case. Unfortunately, thousands of Michigan slip and fall accident victims are eligible to make these claims every year, after suffering injuries caused by property owners who failed to use reasonable care to warn of hazards or remove dangerous conditions from their property.

The following are some of the dangerous conditions that can cause injury and may be the basis for a premises liability claim;

Standard puddles of water, uncleared snow, clear ice, black ice, inadequate lighting, defective flooring, improperly secured mats, stairways and steps that violate building safety codes, hidden drop-offs, concealed holes.

It is doubtful that any area of Michigan personal injury law has undergone more change than premises liability. Unfortunately, recent Michigan Supreme Court decisions have placed stricter limits on the ability of an injured party to bring a claim.

Elements of a Michigan Slip and Fall Accident Claim Injury

To succeed in a Michigan Slip & Fall or Trip & Fall claim, it is necessary to demonstrate damages. The accident victim must have evidence of a real injury, usually one that a physician confirms.

Causation or Proximate Cause

The victim also must prove that a dangerous condition on the property directly caused the fall and resulting injury. This legal requirement, known as causation or proximate cause, is based on simple logic. For example, if a property owner failed to remove ice from his parking lot, but there is no proof that ice caused an individual to fall, then the property owner can argue that he or she is not responsible for any injury.

(Landlords, please note: If there is a question about conditions on your property causing an accident or injury, contact your lawyer, and make sure that he thoroughly investigates the accident site, obtains witness testimony, medical records and other evidence. If this has not been a negligent action or omission on your part, your lawyer would need to prove that there is no direct connection to tenant's injury.)

Negligence Notice

Proving negligence under Michigan law may require evidence that:

- The property owner actually knew, or reasonably should have known, about the dangerous condition, and
- The property owner had the ability and opportunity to correct the problem or warn of its existence, and
- The property owner negligently failed to do so. This concept is known as notice or constructive notice. Even so, a property owner is not required to fix a hazard immediately. Instead, the law permits a reasonable amount of time to correct a dangerous condition. These standards are further complicated by legal distinctions. Based on the type of property where an injury occurred, and the reason for the victim's presence on the property, as a licensee, invitee, or trespasser.

The Michigan Open and Obvious Doctrine

Even if a Michigan property owner has "notice" of a dangerous condition, he may try to use a legal defense called the "open and obvious doctrine" to escape responsibility. Years ago, the doctrine prevented slip and fall claims by individuals whose injuries resulted from their own carelessness. (This is not necessarily a valid defense anymore.)

Purpose on the Property

The reason that the injured person was on the property is an important factor in a premises liability case. The landlord must use a high level of care to protect a tenant, warn him of dangers, inspect the property for hazards, and take reasonably prompt steps to repair them.

A property owner owes a lesser duty to someone who may be a social guest or is allowed on the property but not a tenant. Trespassers are owed very limited duties of care from a property owner. However, the landlord may have some obligations when the trespasser is a child, when the owner or possessor of the land knows or reasonably should know of the child's presence. Additionally, the owner cannot set a trap to try to cause injury to a trespasser. (Source: The Bernstein Law Firm)

If anyone has a topic they would like to see in the newsletter or an article that you think other members would be interested in, please contact Jodi at

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