

# Eastern Michigan Real Estate Investment Association

## Eastern Michigan Real Estate Investment Association

### The New World of Property Investing

by AnnaMaria Andriotis

November 2014

*Firms are offering individual investors a growing array of ways to profit from renting out single-family homes. We investigate.*

Two-and-a-half years into the U.S. housing recovery, the real-estate industry is rolling out new ways for individuals to invest in the property market.

Brokers, property managers and others are helping buyers purchase houses in distant cities and manage them as rentals for a fee. Publicly traded trusts that collect rental income are selling shares to investors. And crowdfunding startups are matching buyers with willing lenders.

The latest pitches generally aim to eliminate the day-to-day headaches of being a landlord, and the potential payoff can make the concept worth considering. Investors can buy in for the price of a single-family home or a single share of stock.

But the plunge in U.S. home prices in the financial crisis should be a fresh reminder that bets on housing can sour in a hurry.

The latest deals often don't depend on home values going up, which sets them apart from the house-flipping strategies that cost many home buyers dearly when the market collapsed. Yet investors could still face losses if, for example, the economy weakens and renters can't keep up with their payments.

Those who buy a rental property and then need their money back down the road could also get burned. Unlike stocks, bonds and mutual funds that can be sold quickly, it can take months to unload a house even in a strong market. And if prices decline, investors may lose a chunk of principal for good.

Despite the risks, investors worried about pricey stocks and meager bond yields can be lured by the prospect of a steady income stream and average annual returns that could range from 5% to 15%, if things go well.

Don't go overboard. Investors should maintain a diversified portfolio that also includes stocks, bonds, and cash. Single-family homes shouldn't exceed 5% of their investments, not including their primary residence, says Jeff Sica, president of Sica Wealth Management in Morristown, N.J.

For the moment, the supply of rental homes and the demand from renters are high. Some 14.9 million single-family homes were occupied by renter in 2013, up 31% since 2006, before the U.S. housing market collapsed, according to data released this past week by the U.S. Census Bureau.

The vacancy rate on single-family rentals fell to 7.3% in the second quarter, down from 10% in the fourth quarter of 2008, according to the bureau.

Here's what you need to know about making money in the rental market.

#### The Traditional Route

Many investors become landlords on their own.

Millions of the single-family homes occupied by renters are owned by investors who have just one such rental property, estates Jade Rahmani, cont. on page 2

Up in Smoke	4
Pest-Test Your Properties	5
Landlord and Tenants in Bankruptcy	6
HOT TIPS for Success	7
The Long-Term Fix for 'Long-Term Guests'	8
Landlord Remedies in Disputes with Tenants	9
Service Animals: Yes or No? Avoid a Fair Housing Violation	10

# The New World of Property Investing by AnnaMaria Andriotis

who tracks the single-family rental market as an analyst at Keefe, Bruyette & Woods, an investment bank based in New York.

There are many benefits to going the traditional route. You get to choose the tenants, and you decide how much rent to charge them. You don't have to pay fees to a property manager, which can eat into your returns.

But it also means taking on a lot of responsibility, both when buying the property and while owning it.

Would-be landlords should figure out whether they are paying a good price. That means knowing the market and hiring an inspector to determine what repairs a house may need. Buyers should lower their offer to account for expensive repairs such as to the roof or boiler, says Jack McCabe, an independent housing analyst in Deerfield Beach, Fla.

Investors should plan to own a home for at least 10 years and realize that they may shell out significant sums before seeing a return on the investment, says Mr. Sica. Be careful about taking out big mortgages. "Low borrowing rates encourage speculation," he says. "Investors are constantly tempted to take cheap money and not be as diligent with the deals they do."

Investors should also research the expected annual expenses, including property taxes, insurance and maintenance, says Mr. McCabe. Allow for the fact that property taxes and insurance rarely decline, and can sometimes spike suddenly.

The net gain, once taxes on rental income are factored in, should be at least 8%, he says.

Landlords also routinely get emergency calls from tenants about urgent repairs, so it is often best to live or work in the area to get to the property quickly, if necessary. Experts say tenants tend to take better care of a home when they know the owner is nearby.

Be prepared for worst-case scenarios, and study local laws. Landlords, for example, may have limited options if a tenant stops paying rent, and evictions can take months in some places.

## One-Stop Shopping

To many investors, doing all that work sounds hard. An expanding roster of real-estate firms promise to make the process easier for a price.

**Memphis Invest**, a real-estate brokerage based in

Memphis, buys properties-which have often gone through foreclosure-fixes them up, rents them out and then sells them to investors. It will also manage the property for a fee. It has been operating in the Memphis area since 2004, and it expanded to Dallas in 2010 and Houston in January.

**HomeUnion**, based in Irvine, Calif., helps clients find prospective rental properties and purchase them. The firm will then help buyers find property managers. HomeUnion launched in 2011 and operates in 15 metropolitan areas, primarily in the Southeast and Midwest, and is expanding to others by year-end.

San Francisco-based **Dwell Real Estate Advisors** also helps buyers find rental properties to purchase. Typically, the homes already have tenants. Dwell will help clients find a property manager. The firm operates in and around Atlanta, Chicago, Dallas, Houston and San Antonio, as well as in Northern California and South Florida.

The firms generally look for homes that have low prices, usually \$60,000 to \$150,000, but that have the potential to fetch relatively high rents.

In addition to helping investors find a house to buy, the firms make it easier to invest far from home, including in markets where home

prices may be lower.

Mike Cook, who is 61 years old and lives in Hollister, Calif., says he has spent about \$350,000 purchasing five rental home in the Indianapolis and Cleveland areas through HomeUnion over the past 18 months or so.

"I was looking for what I consider a more stable return on investment," says Mr. Cook, a manager at a construction-materials firm. "It's not about appreciation of properties. It's really about cash flow." He says he has earned a 5.5% to 7% return on each property so far, after management fees and property taxes.

But investors also surrender a great deal of control in such deals, particularly if they don't live nearby. They should consider visiting the property before purchasing it, or at least request extensive pictures of the home, including all the rooms, the roof and major appliances.

Research the local market, too. For example, investors can check the Bureau of Labor Statistics website to see whether the local unemployment rate is decreasing, which could suggest a smaller chance of renters falling behind on their payments.



# The New World of Property Investing by AnnaMaria Andriotis

In addition, the National Association of Realtors' website provides quarterly updates on median home-sale prices in many metro areas. Rising prices suggest that investors have a better shot at recouping their cash-and possibly turning a profit-if they suddenly have to sell.

There are other potential drawbacks. Memphis Invest charges and 15% to 20% premium on the homes it sells, says Chris Clothier, a partner at the firm. That could make it harder for an investor to unload the property at a profit in the near term.

Fees can also add up. HomeUnion, for example, charges 1% of the purchase price annually as long as the investor owns the property. It also charges 7% to 10% of monthly rent when the home is occupied. Memphis Invest charges 9% to 10% of monthly rent, depending on the number of homes it manages for an investor.

Investors should also plan to closely track a property manager's expenses and review receipts for repairs.

In addition, investors should consider what could happen if the home is vacant or the renter doesn't pay. Some of the firms guarantee rent payments for a year, but even they make no long-term promises.

## Taking Stock

Investing in a home means placing a risky and concentrated bet. So does buying shares in a company that owns homes-but the price tag can be much lower.

Firms that own portfolios of single-family rentals are for the first time offering shares to the public through real-estate investment trusts, or REITs, says Jason Lail, manager of real-estate research at SNL Financial, a financial-information firm based in Charlottesville, VA.

Six REITs that are entirely or primarily focused on single-family homes have started trading publicly since the end of 2012.

Many of the properties were distressed homes purchased from banks at a discount, then repaired and rented out. Much of the rent the REITs collect gets passed on to investors. Shareholders must receive at least 90% of a REIT's taxable income in the form of dividends each year.

Performance varies widely. For example, one such REIT, **American Homes 4 Rent**, has logged an 8% gain this year, including dividends, through Thursday, while another, **Altisource Residential**, has logged a 12% loss, according to FactSet.

Investors should consider the risks of an investment that is so new. Before buying shares, investors should review a REIT's holdings by checking the firm's website and filings with the Securities and Exchange Commission.

REITs that bought single-family homes around 2009 and 2010, when home prices were near bottom, may provide greater returns, says Mr. McCabe. So may REITs that are

currently buying in cities where purchase prices and other costs are relatively low, such as Dallas, Indianapolis and Nashville, he says.

The company's management can also be crucial. Returns could depend on the companies' access to capital and operating efficiency, among other factors, says Mr. Lail.

## Crowded House

Crowdfunding-the practice of pooling small amounts of money from many investors-has helped budding entrepreneurs capture the imagination of strangers who combine to bankroll a dream.

Recently, home buyers who think they have found a promising fixer-upper have gotten into the act.

New online crowdfunding platforms that focus on housing, such as **Groundfloor**, **iFunding** and **Patch of Land**, have launched over the past year or so. These firms consider pitches from borrowers who want to repair a home, then sell it or rent it.

The firms then post the approved projects online, listing the property, the requested loan amount, the interest rate the borrower will pay and the amount of time it will take the borrower to repay the loan.

Typically, investors decide how much cash they are willing to put up. Groundfloor will accept as little as \$100 per lender.

Michael Patzer, a 27-year-old software engineer who lives in Atlanta, says he began making loans through Groundfloor in March and so far has helped fund seven deals by putting up \$300 to \$1,600 for each. The loans must each be repaid after six months, and the interest rates range from 8% to 12%. He has already been paid back on two of the deals.

He chose short-term deals and focused on homes he believes are a good value in an effort to limit potential losses.

"I certainly think of the risk in any of these projects," Mr. Patzer says. "This hasn't been done before."

But there are limits and risks to crowdfunding. In some cases, investors may only be able to participate if they live in the same state as the house. Groundfloor currently operates only in Georgia.

Others have a greater reach but are currently only available to accredited investors-individuals with annual income of more than \$200,000 or a net worth of more than \$1 million, excluding their primary residence. IFunding handles deals in Indiana, Louisiana, Massachusetts, New Jersey, New York, North Carolina, and is expanding to seven more states soon.

If borrowers default, the platforms say they can foreclose on the properties and sell them to make investors whole. Some will consider renting the property instead.

But investors could be at risk if home prices fall or the economy falters-two possibilities that investors who lived through the financial crisis should know are all too real.

# Up in Smoke?

BY Nancy J. Burke

## **MARIJUANA LAWS ARE CHANGING, BUT LANDLORDS AREN'T POWERLESS.**

Marijuana legalization is sweeping the nation.

Twenty states and the District of Columbia have legalized medical marijuana, 17 states have decriminalized marijuana possession and two states have legalized the sale and possession of recreational marijuana. Colorado and Washington approved ballot initiatives to "regulate marijuana like alcohol," and Alaska is poised to do the same.

Twelve states including Arizona, California, Maine, Massachusetts, Montana, Nevada and Oregon are seeking legalization through ballot measures. Hawaii, Maryland, New Hampshire, Rhode Island and Vermont are seeking legislative action.

State governments are "smoking this pipe" primarily because proponents point to an additional revenue stream that makes state budgeters instant backers. Colorado, for example, anticipates \$65 million in tax revenues from marijuana sales in the first year. These additional funds will assist the state with school funding and other enhancements. If marijuana reform is not yet in your state, don't think it won't be soon.

State laws do not make marijuana legal under federal law. Marijuana remains a Class 1 Controlled Substance, and therefore is still illegal under federal law. In 2013, the Obama administration said it would not challenge state laws that legalized marijuana as long as the states maintain strict rules on the sale and distribution.

Over 50 percent of Americans support marijuana reform, and over half of our nation's population resides in states pursuing it. More than one third of Americans are choosing to rent for their housing need, so this equates to a significant number of marijuana proponents who may be seeking rental housing. The time has come for landlords to understand how marijuana laws could affect them.

Here are some questions to consider:

### **AS A LANDLORD, DO I HAVE TO ALLOW MARIJUANA SMOKING ON MY PROPERTY?**

Because marijuana is still illegal under federal law, landlords may prohibit tenants from possessing marijuana. Although state laws may differ, smoke-free properties can remain smoke-free. Add to that zero tolerance for drug possession through a crime-free lease addendum to solidify the prohibition.

## **DO I NEED TO ADOPT A POLICY TO ADDRESS MARIJUANA USE ON MY PROPERTY?**

Ultimately, landlords may either allow or disallow marijuana use. In states where both medical and recreational marijuana exists, landlords should consider adopting a medical marijuana policy. Landlords may prohibit the use of recreational marijuana but allow the use of medical marijuana as a reasonable accommodation. Landlords may also choose to adopt a policy that prohibits both or, lastly, none. The medical marijuana and recreational marijuana policies don't need to align, but that could lead to confusion.

## **SHOULD I ALLOW TENANTS TO GROW MARIJUANA PLANTS?**

Growing marijuana requires substantial amounts of electricity, and amateurs will sometimes replace breakers on electrical panels to allow higher amps, which can overload the electrical system and possibly cause a fire. Excessive use of electricity increases utility costs, which could disproportionately impact other tenants under utility billing allocation formulas.

Growing marijuana also produces high heat and humidity conditions, and that can cause the growth of mold and mildew if not properly vented. Additionally, leaves of marijuana plants produce oil, which can permeate walls and carpet. Lastly, people who grow marijuana are more likely to sell marijuana; your property could face a higher level of undesirable traffic.

## **CAN I PROHIBIT MY TENANTS FROM GROWING MARIJUANA PLANTS?**

Yes. Despite the allowance of growing plants under some state laws, marijuana is still illegal under federal law.

## **DO I NEED TO REVISE MY LEASE DOCUMENTS TO PROHIBIT MARIJUANA USE?**

Marijuana is legal in some states now, but federal law and some state laws allow landlords to prohibit it. If you choose to prohibit marijuana, stating this up front will avoid the numerous "marijuana is legal" arguments from tenants. For stronger enforcement, your lease or addendums should state that you have the right to terminate marijuana violators without a right to cure.

## **IS IT LEGAL TO EVICT A TENANT WHO IS DISTURBING OTHER TENANTS WITH MARIJUANA SMOKE?**

If you prohibit marijuana, a landlord can demand the tenant to stop smoking marijuana and disturbing others. If you don't prohibit marijuana, then you can demand the

## Up in Smoke?

BY Nancy J. Burke

tenant stop disturbing other tenants. Regardless of your policy, tenants are never allowed to disturb other tenants. If the behavior persists, you can begin eviction proceedings.

### **IF MY PROPERTY IS FEDERALLY SUBSIDIZED, CAN I RENT TO MARIJUANA CONSUMERS?**

HUD regulations prohibit marijuana use. If your property or tenants receive federal subsidies and you are subject to federal regulations banning the use of marijuana, you must adopt a policy that prohibits the use of recreational or medical marijuana to avoid violation of federal regulations that could potentially lead to a loss of subsidies.

### **A DISABLED TENANT REQUESTED AN EXCEPTION TO OUR DRUG-FREE POLICY, STATING HE HAS A MARIJUANA LICENSE AND IS LEGALLY ALLOWED TO USE MARIJUANA. HOW SHOULD WE HANDLE THIS?**

Disabled tenants are entitled to make reasonable accommodation requests. To be entitled to a reasonable accommodation under federal law, the tenant must be disabled. Just because a tenant has a marijuana license doesn't necessarily mean the tenant is disabled under fair housing laws and entitled to a reasonable accommodation.

Only disabled tenants are entitled to reasonable accommodations. You do not have to accommodate non-disabled tenants. While you may deny the request under federal law, a disabled tenant could argue or possibly file a fair housing complaint stating that medical use should be allowed as a disability accommodation because it is legal under state law. Denying is not risk-free. It is advisable to have a policy in place to cover these requests.

Landlords should review rental criteria, lease documents and crime-free addendums, and consider adopting marijuana policies. If your policy prohibits marijuana use, possession or grows, lease documents should clearly state that. Your lease should also state that marijuana use will not be allowed to disturb other tenants' rights, comforts and quiet enjoyment.

Training employees on the marijuana policies will help to ensure operational consistency and provide a stronger understanding of the policies. Landlords may want to consider publishing the policies to share with tenants and prospective tenants. By addressing the issue up front, applicants and tenants will have a better understanding of expectations.

## Pest-Test Your Properties

by BreAnn Stephenson

### **A DIME-SIZE HOLE IS ALL RODENTS NEED TO GET INSIDE YOUR BUILDINGS.**

Tiny mammals can cause big problems if they find their way into your rental properties.

And it's something that property investors and managers should be thinking about now. Fall, after all, is when mice, rats and other rodents start looking for a warm place to hole up for the winter. If they nest in your rental properties, not only will they create unsanitary conditions, they will gnaw on the building's wood and wiring.

Nesting, infestation and related damage are not covered by insurance policies for rental properties. Luckily, there are steps you can take to keep mice and affiliated varmints off your property.

### **LOOK FOR ENTRY POINTS**

Rodents won't ring the doorbell. Instead, they'll use holes and cracks—even ones as small as a dime—to make their entry. Survey the exterior of the property for cracks in the foundation, space around vents, gaps under door or near windows, and holes for electrical, plumbing and other utility lines.

And don't forget to check the roof, eaves and other high points for openings. Mice can climb.

### **FILL THE GAPS**

The Centers for Disease Control and Prevention recommend using steel wool, secured by caulk, on smaller holes. For bigger openings, you should consider metal sheeting, cement, lath screen, lath metal or hardware cloth, the CDC says. Metal flashing is another option for the base of a house.

### **CLEAR OUT THE REST OF THE PROPERTY**

Keeping the yard trimmed and free of brush, old tires and other clutter gives mice and rats fewer places to build a nest. The CDC recommends maintaining a "perimeter" of at least 100 feet around a property.

### **TALK TO TENANTS ABOUT CLEANLINESS**

Mice have terrible eyesight, but their sense of smell is razor-keen, Utah State University says. Leaving food out or failing to clean up messes will make a property much more likely to attract their attention, as well as the presence of even smaller pests such as ants and cockroaches.

# Landlords and Tenants in Bankruptcy by Lawyers.com

A personal bankruptcy can be traumatic for anyone. Typically, a bankruptcy debtor's credit is damaged severely, making it nearly impossible to buy a car or a home. And, in today's economy, bankruptcies are on the rise as all types of consumers struggle with debt.

Landlords and tenants are no exception. In fact, there's been an increase in bankruptcies in the residential rental market as tenants try to use bankruptcy to stop or avoid evictions, which are typically caused by their failure to pay rent. And, either because of reduced rental income or just general market matters, landlords have trouble paying the mortgage on the rental and face bankruptcy or foreclosure.

For landlords and tenants in bankruptcy, some matters arise that don't typically arise in other personal bankruptcies. For example, a tenant-debtor often loses his or her residence as a result of a bankruptcy, while the typical homeowner has protection against losing his or her home. The crucial matters for landlords and tenants are:

- Will the lease survive the bankruptcy?
- Will the bankruptcy stop an eviction action?

The bankruptcy laws are complicated, and be even more so when it comes to leases. So, if you're considering a bankruptcy, research the federal bankruptcy laws and as well as the bankruptcy laws in your state. Or, probably your best bet is to hire an experienced bankruptcy attorney.

## Some Bankruptcy Basics

The bankruptcy laws are very complex, but for our purposes, you need to know that:

- You're the **debtor**, the person who has filed for bankruptcy protection
- A **trustee** is appointed by the bankruptcy court, and he or she is responsible for things like reviewing your assets and debts, selling or liquidating your assets and collecting money owed to you and using those funds to pay your creditors
- As soon as your bankruptcy action is filed, there's an **automatic stay**, which immediately stops all lawsuits, foreclosures and debt collections against you
- A **claim** is when one of your creditors files a paper

with the bankruptcy court stating that you owe the creditor money and the creditor wants to be paid when your assets are sold

- A **discharge** is your goal: it's when you are relieved from paying all (or at least most) of certain debts, such as back rent (unpaid rent), and credit card and medical bills

## What Happens to the Lease?

Generally, when a landlord or tenant files for bankruptcy, there are two things that can happen to the lease. The landlord or tenant (or actually, their trustee) can either:

- **Assume** the lease, that is, allow the lease to continue in effect, or
- **Reject** the lease, which essentially terminates or cancels the lease

If you assume the lease, you have to continue to perform all covenants or "promises" you made in the lease. So, as tenant, you're primary responsibilities under almost any residential lease is to paying rent and keep the premises clean, which you'll have to continue to do after the landlord files for bankruptcy protection. For the landlord, you have to continue to keep the premises structurally safe and "habitable," that is, provide adequate heat, water, and power.

If you reject the lease, then you'll be liable for breaking the lease early; both the landlord and tenant have remedies for the early termination or cancellation of the lease.

If the tenant-debtor rejects the lease, as the landlord you can give the tenant notice to quit, that is, a notice to leave the premises within a certain amount of time, which is usually 30 days under most states' landlord-tenant laws. After that, you can begin eviction proceedings if the tenant doesn't leave. And, in most states, the tenant will have to pay all the rent that would have been due if the lease had continued until it expired.

If the landlord-debtor rejects the lease, as for the tenant you can:

- File a claim in the landlord's bankruptcy for damages resulting from the rejection and early termination of the lease
- Stay on the property for the remainder of the lease and off-set or reduce your rental payments by any damages

you suffer as a result of the landlord's failure to provide services under the lease, such as power, heat and trash disposal

### Impact on Evictions

If your landlord hasn't gone to court and gotten an order of eviction against you, then you can file for bankruptcy protection, and the automatic stay will prevent the landlord from beginning an eviction action against you.

In the past, tenants could stop an eviction by filing for bankruptcy protection. Even if a landlord got a court order of eviction, a tenant could file bankruptcy and the automatic stay would stop the eviction. That's no longer the case. Under the current bankruptcy law, the automatic stay will not stop an eviction if the landlord obtained an order of eviction **before** you filed for bankruptcy.

There are, however, two exceptions. The automatic stay will stop an eviction if, within 30 days of the date you filed for bankruptcy, you file a certification with the court and the landlord stating that:

- Under the state landlord-tenant law, you are entitled to "cure" or fix the problem that caused the eviction, and you deposit with the court the rent that would become due during the 30-day period after you filed for bankruptcy, or
- You have paid all back rent that was due before you filed bankruptcy

### Questions for Your Attorney

- I filed for bankruptcy at a time when I was 2 months behind on rent. Before I filed, my landlord had called a few times to demand rent. Since I filed, my landlord rarely answers my calls about needed repairs and maintenance. Is there anything I can do to get him to make these repairs?
- As a landlord, how do I decide if I want to reject or assume a lease?
- Can my trustee assume a lease that I want to reject, and vice versa?
- Can I change my mind later after I decide to reject or assume a lease?
- How long does a bankruptcy take?

I have two months left on my 12 month lease, and my landlord just filed for bankruptcy. What happens if my lease expires while the bankruptcy is still pending?

### BE VIGILANT WITH DUE DILIGENCE WHEN BUYING PROPERTIES

The RPOA has recently learned that some sellers are listing properties that have huge IRS or other liens against them, making the buyer potentially subject to problems with clear title or losing the property to the IRS. Buyers need to be particularly vigilant and do the proper due diligence when buying a property by checking the record themselves or hiring a title company to research the property before proceeding to close or making the offer contingent upon the findings of the title company. If you're buying a property and the seller insists on closing at a particular closing agent other than the one you normally use, consider this a red flag. This all goes doubly true for buying on land contract which is often-wrongly-treated differently than buying thru conventional financing.

### LOWE'S AND CONTRACTORS HIT WITH LARGE FINE FOR VIOLATION OF EPA RRP RULE

By Doreen Cantor Pastor  
US Environmental Protection Agency

The EPA and the Department of Justice announced that Lowe's Home Centers, one of the nation's largest home improvement retailers, agreed to implement a comprehensive, corporate-wide compliance program at its over 1,700 stores nationwide to ensure that the contractors it hires to perform work minimize lead dust from home renovation activities, as required by the federal Lead Renovation, Repair, and Painting (RRP) Rule. The company will also pay a \$500,000 civil penalty, which is the largest ever for violations of the RRP Rule.

Earlier this year EPA announced additional enforcement actions that will require 35 home renovation contractors and training providers to take additional steps to protect communities by minimizing harmful lead dust from home renovation activities, as required by the EPA's Lead Renovation, Repair, and Painting (RRP) Standards. These standards provide important, front-line protection for children and others vulnerable to exposure to lead dust that can cause lead poisoning. The enforcement actions, which all require contractors to certify compliance with the RRP standards, led to more than \$274,000 in civil penalties.

Anyone living in my rental property, if he or she is legally an adult, must be listed on and sign the lease. It's a simple rule that I always follow, and it has never steered me wrong.

This is going to sound harsh, but I don't really care if it's just a college kid home for the summer, or an elderly woman who's moving back in with her daughter. I've heard all the excuses in the book, but it all comes down to liability and my ability to collect rent.

I refer to long-term guests as "rogue tenants." Rogue tenants are individuals who have taken up residence in my rental property without approval or permission, and perhaps even changed their mailing address to receive mail there.

## LIABILITY AND ACCOUNTABILITY

If they are not on the lease, then they are not subject to the terms and conditions therein, and I cannot hold them accountable for rent. *That's a big problem.*

Most of the time, they move in under the assumption that they are only going to be visiting for a week or two. Before you know it, they have been living there for five months, never having received prior approval. They think of themselves as "long-term guests."

Unfortunately, the words "long-term" and "guest" are contradictory.

Rogue tenants are not necessarily bad. They just need to be documented and accountable to the terms of the lease.

After all, I do want my tenants to be happy.

Whenever this situation arises, my answer is always the same: "If you are an adult, living in my property, I need to know who you are, which is why you need to fill out an application, and you need to agree to be jointly and severally liable for rent and damages-which is why you sign a lease."

I believe that if I treat my tenants like adults, they will behave as such.

## USE OF PREMISES

To accomplish this, I use a rock-solid lease, and stick to it. The moment I deviate from enforcing any part of the lease, I set a precedent that I will waive other lease terms, such as late fees or eviction.

In my lease, I use a clause entitled "Use of Premises" to limit the number of people allowed to occupy the dwelling and to explain the difference between a tenant and a guest.

*"Any guest staying in the property more than 2 weeks in any 6 month period will be considered a tenant, rather than a guest, and must be added in the lease agreement. Landlord may also increase the rent at any such time that a new tenant is added to the lease or premises."*

As you can imagine, some tenants want to hide their guests simply because they don't want me to raise the rent.

The fact is that I rarely ever raise the rent when a college kid comes home, but I want the option to do so, just in case my individual tenant suddenly decides to move in seven extended family members.

## REFUSAL TO SIGN

If a rogue tenant or long-term guest refuses to sign the lease, I have the option to terminate the lease, based on the original tenant's violation of the provision listed above.

The main purpose is not to raise the rent, but rather to have everyone accounted for and liable for the rent in case the original tenants abandon the lease.

Most tenants (rogue or otherwise) usually comply with signing the lease, especially if there is not extra expense.

## TYPES OF ROGUE TENANTS

Listed below are the most common examples of rogue tenants and how I typically respond.

### COLLEGE KIDS

**SITUATION:** Empty-nesters often want to downsize, so they sell their house and move into my rental. Then their youngest either drops out of school and moves back in, or simply comes home for the summer.

**MY RESPONSE:** As long as this does not violate any county occupancy ordinances, or increase utility usage that I pay for, I simply create a lease addendum that adds the additional occupant to the lease, by name, and then I have everyone sign it.

### SICK OR ELDERLY PARENTS

**SITUATION:** An elderly parent takes a bad fall and now needs regular assistance. The children (my tenants) quickly volunteer to take Mom in, without considering either the landlord or the lease.

**MY RESPONSE:** Because Mom is at higher risk of accidents and injury, I especially want to make sure she signs the lease, not so much for the rent collection aspect, but just so she acknowledges her responsibility to obtain her own renter's liability and medical insurance. The sad truth is that landlords can be held responsible for the personal injuries of tenants, but some of the risk is mitigated if the tenants sign a lease that requires renters insurance. Again, as long as this doesn't violate any county occupancy ordinances, I think families should help each other and stick together.

### SINGLE-INCOME COUPLE

**SITUATION:** Sometimes a couple will want to rent my unit together, but only one of them has an income. They assume that only the person who is qualifying for the lease needs to be listed.

**MY RESPONSE:** I'm all for true love, but I'm not stupid. Even though the couple might qualify based solely on one income, I still need both individuals to fill out separate applications and sign the lease, because they are both occupants. This protects my rental income if the couple breaks up or gets divorced.

### THE PERPETUAL OVERNIGHT BOYFRIEND OR GIRLFRIEND

**SITUATION:** Three days after your new tenant moves in, the neighbors call and say, "I thought you only had one new tenant!" When you approach your tenant, she says, "Oh, that's just my boyfriend. He was fired from DQ, and doesn't have any money, so he's staying with me until he can get on his feet."

**MY RESPONSE:** In response, I simply point to the lease and say, "That's fine, but if it's more than two weeks, I'll need him to fill out an application and sign the lease."

### THE FORBIDDEN SUBLET

**SITUATION:** If subletting is prohibited in the lease, or if there is an extra fee involved, sometimes tenants will try to hide their sub lessee. Sometimes jobs change, or they need to leave, but they don't want to pay the early termination fee or the subletting fee.

**MY RESPONSE:** If I learn that a sub lessee has moved in without my approval, I usually just require them to pay the one-time subletting fee (mentioned in the lease), under threat of a lease violation and subsequent termination. However, if the sub lessee wants to live there for a while, I might try to release the old tenant, and sign a new lease with the sub lessee (who then becomes the tenant).

Therefore, I sign a longer tenancy, the original tenant is released, and the new tenant doesn't have to hide from me. Everyone is happy



It's not uncommon for residential landlord and tenants to have disagreements, even conflicts, about things like the timely payment of rent, or wanting to end the lease early. But, as a landlord, you have remedies for almost every disagreement or dispute you might have with tenants.

For the most part, your remedies depend on:

- The nature or reason for the dispute
  - Whether the tenant is still on the leased premises
- Also, it's critical that you understand the landlord-tenant laws in your area, which usually tell you exactly what you can and can't do in a dispute with your tenant. And, because these laws vary from state to state, and even city to city, and because they are sometimes complicated, it's not uncommon for landlords to get help from an experienced real estate lawyer.

## Eviction: The Ultimate Remedy

Eviction is the ultimate remedy. It's where you take legal action to terminate or cancel the lease, and if the tenant doesn't leave after a court orders him or her to do so, then the tenant can be forcibly removed from the property by a local sheriff. Eviction is also commonly referred to as "**forcible entry and detainer**," "**unlawful entry and detainer**," or "**unlawful detainer**."

State laws usually have strict requirements on how and for what reasons a tenant can be evicted. Generally, you have to give notice to the tenant of the eviction and then file a lawsuit. Some of the most common reasons for evictions are the tenant's failure to pay rent or conducting criminal activity on the premises, like growing or selling illegal drugs.

## Tenant on the Premises

In most states, if a tenant breaches or violates an important provision of the lease, such as failing to keep his or premises clean, you must give the tenant a written notice that explains the problem and gives the tenant a certain period of time, typically 10-15 days, to fix it. The notice can also state that if it's not fixed within that time, the lease will be terminated.

If the tenant is disrupting other renters' use or enjoyment of the premises, such as by playing loud music in the late evening, you can give the tenant notice of the problem and, if the tenant doesn't stop the behavior within a certain amount of time, typically 30-60 days, you can get an injunction-or a

court order requiring the tenant to stop. In some states you can also terminate the lease with proper notice to the tenant.

If the tenant remains on the premises after the lease term has expired (called "holding over"), in some states you can start eviction proceedings immediately. In other states, you have to give the tenant notice to "quit" or leave the premises. Depending on the state, the notice period can be anywhere from 10 to 30 days. If the tenant does not leave within that time, you can begin eviction proceedings.

You have to be careful here. If your tenant is holding over and he or she pays and you accept rent, then in most states you can't begin eviction proceedings immediately. Rather, you have to give the tenant notice, usually 30 days, to quit the premises.

In most states, once the lease has been terminated, you have the right to retake possession of the premises and/or demand any past-due rent. Of course, you also have the tenant's security deposit, which can help you recoup at least some of your losses.

## The Tenant's Gone

Generally, your tenant is bound by the term or length of the lease, and if he or she wants to break the lease early or if the tenant just leaves without telling you, he or she is still responsible for the rent for the balance or remainder of the lease term.

In many states, a tenant can break a lease early for "good cause," such health problems or your failure to keep the premises safe and livable. In such instances, the tenant might be excused from having to pay you rent for the unfinished term of the lease.

If the tenant leaves the premises early and without good cause (which is called "surrender" or "abandonment"), then the tenant is liable for the rent for the entire lease term. However, in most states, you have to make good faith efforts to rent the property to someone else for the remainder of the surrendering tenant's lease term. If you're successful in finding a new tenant:

- Some states will make the old tenant liable only for rent he or she failed to pay while on the premises
  - In other states, the old tenant is liable for the difference between his or rent and the rent being paid by the
- continued on page 10

## Landlords' Remedies in Disputes with Tenants

by [Lawyers.com](http://Lawyers.com)

new tenant (if the new tenant's rent is less than the old tenant's rent) In almost all states, if you can't find a new renter, the tenant is liable for all rent under the lease.

In many states, if a tenant surrenders the premises, you have an obligation to keep and hold the tenant's personal property for a period of time, typically 7 to 10 days. You can't hold the tenant's property "hostage" by not letting the tenant have it unless he or she pays past-due.

### Some Things You *Can't* Do

You need to be careful when trying to resolve a dispute yourself. If a tenant is not paying rent or is damaging the property, you can't change the locks in the premises ("lock-out") and you can't turn off the water or heat ("freeze-out"), or even threaten to do so, in an effort to get the tenant to pay the rent or leave the premises. If you do, you could be liable for any damages or injuries suffered by the tenant, as well as his or her attorney's fees.

### Questions for Your Attorney

- My tenant signed a one-year lease, from January 1st to December 31st. In August he just disappeared and didn't pay rent for that month. I rented it out in September. In that same month, the old tenant returned and demanded that I let him back on the premises. What can I do?
- How much will an eviction proceeding cost and how long will it take?
- If my tenant owes me 3 months rent and clearly has no means of paying me, is it worth going to court and suing him for the unpaid rent after I evict him? Why can't I keep and sell his furniture to pay for the rent?

My tenant left early and I was able to re-rent the premises, but at a much lower rate because of the drastic change in the housing market. In our area, what can I recover from the old tenant?

## Service Animals: Yes or No? Avoid A Fair Housing Violation MICHIGAN LANDLORD

A lot of members are asking questions about service/assistance animals and if they can deny a tenant a unit if they have one or disallow an animal based upon an existing pet policy. The ROIA has investigated the most up to date information concerning assistance animals. There is a great risk of being in violation of federal fair housing regulations by not following the rules.

### HERE'S THE SCOOP.

Liz Keegan of the Fair Housing Center of West Michigan states that "the Fair Housing Act does not place any limits on what may be considered an assistance animal. They also do not have to be trained or otherwise certified."

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals.

In all cases regarding persons with disabilities, landlords are required under law to make reasonable accommodations unless there is an undue financial burden. Keegan also stated that, for example, "if a housing provider would lose their current insurance and cannot secure comparable insurance (with evidence of seeking said insurance such as multiple quotes, etc.) because of the type of animal, then it would not be reasonable for the housing provider to allow the accommodation because it would be an undue burden on the provider. However, we recommend that the housing provider research their own insurance policy as well as other options, and document their efforts so that they may be able to defend why the accommodation wasn't reasonable for them if they were to be challenged."

Also, according to HUD, breed, size, and weight limitations may not be applied to an assistance animal...Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals (such as pet deposits or fees). HUD issued new regulations concerning service animals in 2013.

[http://portal.hud.gov/hudportal/HUD?src=press/press\\_releases\\_media\\_advisories/2013/HUDNo.13-060A](http://portal.hud.gov/hudportal/HUD?src=press/press_releases_media_advisories/2013/HUDNo.13-060A)

The RPOA recommends that landlords follow the process outlined by HUD in their detailed "Statement on Reasonable Accommodation"

[http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf)

These steps should be followed to ensure that your rental process is in compliance. It's important to keep in mind that a landlord can't ask if a person is handicapped or disabled, but they can ask if the animal is needed due to a physical or mental disability.

1979 Holland Ave.  
Port Huron, MI 48060

(810) 984-3829  
FAX (810) 984-8943

**Stewart,  
Beauvais  
& Whipple P.C.**

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS



**PLUMBING, HEATING  
& COOLING**

188 14th Street  
Marysville, Michigan 48040  
(810) 364-5211  
FAX (810) 364-3020

**RESIDENTIAL - COMMERCIAL  
INDUSTRIAL**

Lou Gordon  
lougordon@sbcglobal.net

*Estate Planning & Elder Law  
Business Planning & Real Estate*




**Matthew M. Wallace, C.P.A., J.D.**  
*Attorney & Counsellor at Law*

Matthew M. Wallace, P.C.  
709 Huron Avenue  
Port Huron, MI 48060  
Fax: 810.985.4108  
Website: [www.wallaceplaw.com](http://www.wallaceplaw.com)

Phone: 810.985.4320 Email: [matt@wallaceplaw.com](mailto:matt@wallaceplaw.com)

**HURON**  
TITLE COMPANY

330 Michigan Street  
Port Huron, MI 48060  
810 • 987 • 2141  
1 • 800 • 878 • 4853  
FAX (810) • 987 • 1317  
E-Mail: [patty@hurontitle.com](mailto:patty@hurontitle.com)



**Catherine Bott**  
CEO

936 Military St.  
Port Huron MI 48060

810.984.1415  
[president@sspm.biz](mailto:president@sspm.biz)  
[www.sspm.biz](http://www.sspm.biz)

Advertising Price Rates in our Newsletter and on our website:

1/8 page: \$125/yr \$14/mo

1/2 page: \$200/yr \$22/mo

1/4 page: \$165/yr \$18/mo

Full page: \$400/yr \$44/mo

1/3 page: \$185/yr \$20/mo

\*based on 9 issues per year

---

## Eastern Michigan Real Estate Investment Association

3051 Commerce Dr, Ste 5  
Fort Gratiot, MI 48059

Phone: (810)385-2332  
Fax: (810)385-8875

Email: [jgalbraith@innovativehousing.org](mailto:jgalbraith@innovativehousing.org)

---

# E.M.R.I.E.A. ADVISOR

Our office is located at:

3051 Commerce Dr, Ste 5  
Fort Gratiot, MI 48059

Phone: (810)385-2332  
Fax: (810)385-8875

[www.emrha.org](http://www.emrha.org)

Office Hours:

Monday - Thursday  
8:30 a.m. - 5:00 p.m.  
Friday  
8:30 a.m. - 4:00 p.m.

## Board of Directors

President	Edward Schultz	810-385-2332
Vice President	Judy Harris	810-385-3284
Secretary	David Oppliger	810-966-1881
Treasurer	Renae Kiehler	810-385-2332
	Matt Wallace	810-985-4320
	Kathy Swantek	810-388-1200
	Virginia Irland	810-982-6239
	Ken Montgomery	810-385-3150