

# Eastern Michigan Real Estate Investment Association

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# SAVE THE DATE

## EMRHA IS HAVING THEIR ANNUAL PROPERTY TAX APPEAL MEETING

**WHEN: JANUARY 31, 2013**

**WHERE: THE OFFICES OF MATT WALLACE  
709 HURON AVENUE  
PORT HURON**

**TIME: 6:30 P.M.**

**FREE TO EVERYONE!!**

**GUEST SPEAKER: PAUL WITZKE**

**FROM BLUEWATER APPRAISAL COMPANY**

**PLEASE LET US KNOW IF YOU WILL ATTEND.  
REMINDERS WILL BE SENT. 810-385-2332**

**January 2013**

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## CREATING AND TERMINATING TENANCIES AND UNDERSTANDING THE LEASE FROM MSU COLLEGE OF LAW

### A. THE TENANCY

#### Q1 What are the types of tenancies?

While the lease refers to the written (or oral) agreement, the “tenancy” refers to the actual property right a tenant receives under the lease. When the owner conveys to another a lesser interest in the property for a term less than that of a owner’s for valuable consideration (generally rent), thereby granting another use and enjoyment of his or her property during the period stipulated, that creates a tenancy. In Michigan, there are three types of tenancies:

1. **Fixed-Term Tenancy.** This type of tenancy is created when the lease agreement specifies when the tenancy begins and when it ends. It terminates automatically at the end of the period specified. Generally, a written lease provides that if a tenant holds over after the fixed term expires, the tenancy shall be considered a month-to-month tenancy. On the other hand, if the lease does not so provide, and the parties acquiesces-i.e., tenant stays in possession and landlord accepts the rent-the lease is considered renewed for the same fixed term upon the same conditions.
2. **Periodic Tenancy OR Tenancy at Will.** This type of tenancy is indefinite in duration. It is created by actual or implied consent. Usually a month-to-month tenancy, the lease is considered renewed at the end of each rental period (month-to-month or week-to-week, depending how often rent must be paid). Termination procedure is governed by statute and required notice.
3. **Tenancy at Sufferance OR Holdover Tenancy.** This type of tenancy is created by operation of law only. A tenant holds possession after his or her legal right to possession has ended (oftentimes based on landlord’s failure to act). The person is just short of being considered a trespasser. The elements: (a) the tenant entered into possession lawfully, (b) the tenant’s legal right to possession has ended, and (c) the tenant remains without the landlord’s consent.

#### Q2 Are there advantages and disadvantages to the different types of tenancies?

##### Fixed-Term Tenancy

*Advantages.* The advantage to the tenant is that the rental period is fixed and the rental amount is stable; the

landlord may not regain possession or raise the rent, with few exceptions. The advantage to the landlord is that the tenant is committed to pay rent for a specified period of time; the tenant is bound by the lease terms, with few exceptions.

*Disadvantages.* The disadvantage to the tenant is that he or she is bound by the lease term and may not simply move without remaining liable for the rent, permitting fewer changes in arrangements. The disadvantage to the landlord is that he or she is stuck with the tenant until the lease term ends.

##### Periodic Tenancy OR Tenancy at Will

*Advantages.* The advantage to the tenant is that he or she is free from any further obligation once proper notice of termination is given to the landlord-different housing arrangements can be made more quickly. The same advantage is true for the landlord; he or she may decide to no longer rent to the tenant if the same proper notice is given.

*Disadvantages.* The disadvantage to the tenant is that the landlord, with proper notice, can also raise rent. The disadvantage to the landlord is that he or she is not provided with any certainty as to how long the tenant will remain.

### B. THE LEASE

#### Q1 Are there advantages to a written lease?

Although it is common for tenants to sign some type of written agreement, a lease is not always put in writing. Sometimes it is nothing more than an oral agreement as to the move-in and move-out dates, the address of the rental property itself, and the amount of the rent and when it must be paid. However, if the lease agreement is for a period of more than one year, an oral lease is not an option-it must be put in writing to comply with the Statute of Frauds (MCL 566.103).

Whether there is a fixed-term tenancy or a periodic tenancy, it is best to have a written record of the rental agreement. A written record is a permanent record that may be used for reference if misunderstandings arise-and they do. In the absence of a written lease, signed by both the landlord and the tenant, it is advisable to keep a personal written record of the agreement.

#### Q2 What provisions should be included in the lease?

The Michigan Truth in Renting Act (Act 454 of

## CREATING AND TERMINATING TENANCIES AND UNDERSTANDING THE LEASE FROM MSU COLLEGE OF LAW

1978, MCL 554.631 to 554.641) regulates residential leases-requiring the landlord to disclose certain information. Leases differ somewhat in terms, but a **written lease agreement should include:**

1. Name and signature of the landlord;
2. Name and signature of the tenant;
3. Rent amount to be paid, how frequently, and when and where it is to be paid;
4. Address of the rental property;
5. Starting and ending dates if it is a fixed-term tenancy;
6. Landlord's mailing address;
7. Amount of the security deposit, if any;
8. Name and address of the financial institution holding the security deposit;
9. Notice of the tenant's obligation to provide a forwarding address to the landlord within 4 days of terminating the tenancy;
10. Who is responsible for paying utilities;
11. Repair and maintenance responsibilities;
12. Eviction procedures;
13. Any other terms and conditions that the landlord and tenant agreed to; and
14. This statement *must be provided* in a prominent place in the lease, in at least 12-point font size:

**"NOTICE: Michigan law establishes rights and obligations for parties to rental agreements. This agreement is required to comply with the Truth in Renting Act. If you have a question about the interpretation or legality of a provision of this agreement, you may want to seek assistance from a lawyer or other qualified person."**

**Note:** Two copies of an inventory checklist must be provided to the tenant when he or she takes possession of the rental property.

### ***Q3 What provisions are prohibited by law from being included in the lease?***

The Michigan Truth in Renting Act regulates residential leases-prohibiting certain clauses or provisions and prescribing penalties. A provision or clause in a lease that violates the Truth in Renting Act is void. In particular, a **written lease shall not include** a provision which:

1. Waives or alters a remedy available to a party when the rental property is in a condition that violates the covenants of fitness and habitability;
2. Waives a right established under the laws that regulate security deposits;

3. Unlawfully excludes or discriminates against a person in violation of the laws relating to civil rights;
4. Provides for a confession of judgment and/or warrant of attorney, e.g., requiring a person to give up certain legal rights in advance;
5. Relieves the landlord from liability for the landlord's failure to perform a duty or for negligent performance of a duty imposed by law (however, the landlord's duty could be waived to the extent a tenant was able to recover under an insurance policy for loss, damage, or injury caused by fire or other casualty);
6. Waives or alters a party's right to demand a jury trial or any other right of notice or procedure required by law;
7. Provides that a party is liable for legal cost or attorney fees incurred by the other party in excess of costs or fees specifically permitted by statute;
8. Provides for the landlord to take a security interest in any of the tenant's personal property to assure payment of rent or other charges, except as specifically permitted by statute;
9. Provides that rental payments may be accelerated if the tenant violates a lease provision, unless that amount is determined by the court;
10. Waives or alters a party's right with respect to possession or eviction proceedings;
11. Releases a party from the duty to mitigate (or minimize) damages;
12. Provides that the landlord may alter a lease provision after the lease begins without the tenant's written consent, *EXCEPT: with 30 days' written notice, the landlord may make the following types of adjustments, as long as there is a clause in the lease allowing for the adjustments:*
  - > changes required by federal, state, or local law, rule, or regulation;
  - > changes in rules relating to the property meant to protect health, safety, and peaceful enjoyment; and
  - > changes in the amount of rental payments to cover additional costs incurred by the landlord because of increases in property taxes, increases in utilities, and increases in property insurance premiums.
13. Violates the Consumer Protection Act (MCL 445.901 to 445.922) which lists multiple unfair trade practices; or
14. Requires the tenant to give the landlord a power of attorney.

*continued on page 4*

## CREATING AND TERMINATING TENANCIES AND UNDERSTANDING THE LEASE FROM MSU COLLEGE OF LAW

### **Q4 What if the lease contains a provision that is prohibited by law or is missing the required disclosure language?**

A provision or clause in a lease that violates the Truth in Renting Act is void. The lease is not void-only the prohibited provision. However, a landlord must fix the prohibited provision or add the required disclosure language within 20 days after the tenant brings the deficiency to the landlord's attention in writing. If the landlord fails to fix it within the time specified, the tenant may bring an action to:

- > void the entire lease agreement;
- > make the landlord remove the prohibited provision from all lease agreements in which it is included; and
- > recover \$250 per action (for prohibited provisions) or \$500 per action (for missing disclosure provisions required by law), or actual damages, whichever is greater.

### **Q5 What other provisions can be included in the lease?**

As long as a provision or clause does not violate federal, state, or local laws, rules, or regulations, the parties can agree to almost anything and include it in the lease. It can be as outlandish as stating, "Only blue cars can be parked in the driveway." Some special provisions to be aware of include:

- > **Smoking:** A landlord is free to prohibit smoking in the rental property, as this would not violate any state, federal, or local laws.
- > **Pet Restrictions:** A landlord may prohibit all pets in a rental unit. A landlord may charge a fee for having a pet. An exception here is that a landlord may not prohibit a disabled individual relying on a service animal from housing the animal.

### **Q6 How can a lease be terminated?**

#### **Fixed-term tenancy**

This type of tenancy is created when the lease agreement specifies when the tenancy begins and when it ends.

**It terminates automatically at the end of the period specified.** A fixed-term lease ends on its own without further action. However, many leases include the provision that the lease converts to a month-to-month tenancy at the end of the fixed term.

#### **Periodic Tenancy OR Tenancy at Will**

This type of tenancy is indefinite in duration. It is created by actual or implied consent. Usually a month-to-month tenancy, the lease is considered renewed at the

end of each rental period (month-to-month or week-to-week, depending on how often rent must be paid). **Termination procedure is governed by statute and requires notice.**

Additionally, there are special termination rights for senior citizens or persons incapable of independent living.

### **Q7 What are the termination rights for senior citizens or persons incapable of independent living?**

Lease agreements entered into, renewed, or renegotiated after June 15, 1995, must provide special termination rights for senior citizens and persons incapable of independent living. These leases must allow the tenant who has already occupied a rental unit for more than 13 months to terminate the lease with 60 days' written notice if either of the following occurs:

1. Tenant becomes eligible to move into a rental unit in senior-citizen housing subsidized by a federal, state, or local government program, OR
2. Tenant becomes incapable of living independently, as certified by a physician in a notarized statement. (MCL 554.601a)

### **Q8 What does "joint and several liability" mean?**

If more than one person signs the lease as a tenant, the lease may state that their obligations are "joint and several." This means that each person is responsible not only for his or her individual obligations, but also for the obligations of all other tenants. This includes paying rent and performing all other terms of the lease.

### **Q9 Can a landlord raise the rent once the lease has started?**

Generally, the landlord may not alter a lease provision after the lease begins without the tenant's written consent. There are, of course, exceptions to this. With 30 days' written notice, the landlord may make the following types of adjustments, as long as there is a clause in the lease allowing for the adjustments:

- > changes required by federal, state, or local law, rule, or regulation;
- > changes in rules relating to the property meant to protect health, safety, and peaceful enjoyment; and
- > changes in the amount of rental payments to cover additional costs incurred by the landlord because of increases in property taxes, increases in utilities, and increases in property insurance premiums.

## Do I need to install hardwired smoke alarms? the Voice

Some RPOA members have reported that their electrical contractor has informed them that if they pull any kind of electrical permit or certain building permits, hardwired smoke detectors must be installed in the entire home.

The Building Code and the International Property Maintenance Code stipulate that hardwired smoke detectors DO NOT need to be installed in the following scenarios:

- Where no construction is taking place.
- If the area undergoing alterations or repairs does not expose the structure by removal of interior wall or ceiling finishes-unless the area is accessible from an attic, crawl space or basement. (See more information below.)
- Where a commercial power source is not available (e.g. Consumers Energy).

Bullet point number two above is where the confusion comes in. Here are some scenarios to help determine when hardwired smoke detectors must be installed. As you'll see, rarely will hard-wired smoke detectors be required within the entire building.

Scenario 1 - A permit is pulled to upgrade the service from 60 amps to 100 amps. If the service is located in a basement where the structure is exposed, a hardwired smoke detector must be installed in the basement and in any adjacent basement room that can be accessed through the open structure. Hardwired smoke detectors would not be required in the rest of the building.

Scenario 2 - A permit is pulled to install a 220 outlet for a dryer in a first floor laundry room. If no walls or ceiling finishes are removed and no structure is exposed, no hardwired smoke detectors would need to be installed.

Scenario 3 - A permit is pulled to remodel a kitchen. The kitchen area is gutted and the structure in the ceiling and the walls is exposed. Hardwired smoke detectors would have to be installed in the kitchen area AND in any adjacent room where access can be had through the open structure.

Scenario 4 - A permit is pulled to gut and remodel the en-

tire property. Hardwired smoke detectors would be required in all rooms per the code.

Scenario 5 - A permit is pulled to rewire the entire house. Hardwired smoke detectors would be required in all rooms per the code.

Here is a brief summary of the codes as related to smoke detectors:

- All existing dwellings constructed prior to November 6, 1974 must have 10 year sealed smoke detectors in each sleeping room or each area directly outside the sleeping room and on each floor level including the basement level, per MRC R-314.5, R-314.6. Other power sources are permitted per R-314.6 (2).
- All smoke detectors must meet the requirements of NFPA 72.
- New construction or major rehabilitation requires hardwired, interconnected, battery backup smoke detectors in the bedrooms, outside the bedrooms and on all levels per R-314.3, R-314.4.
- Work areas involving additions and minor renovations generally require the first smoke detector to be hard wired with battery backup. Where access is provided throughout the work area or crawl spaces, then additional hardwired smoke detectors with battery backup must be installed. Where access is not afforded, 10 year sealed smoke detectors may be installed in the required locations per R-314.4.

It should be noted that all rental properties must have battery operated or hardwired smoke detectors installed per the code.

In short, to say that you must install hardwired smoke detectors in the entire building if you're pulling an electrical or building permit is inaccurate. The situation dictates when this is necessary. If you're unsure, confused or need to get a second opinion about whether or not hardwired smoke detectors are required in your particular circumstance call your local electrical inspector.

## Apartment Rents Continue to Rise As Vacancies Fall by Dawn Wotapka

Apartment landlords continue to impose hefty rent increases as 2012 drew to a close, although there are some early indications they could be losing their leverage with tenants.

The average nationwide monthly apartment rent was \$1,048 in the fourth quarter, up 0.6% from the third quarter and up 3.8% from a year earlier, according to a report set to be released by real-estate research firm REIS Inc. The year-over-year increase was the largest since 2007 and a sign that landlords still have the upper hand they regained in 2010.

The nation's apartment vacancy rate, which has declined since hitting 8% in the aftermath of the financial crisis, fell to 4.5% from 4.7% in the third quarter. The rate is the lowest since 2001's third quarter.

High rates aren't deterring "people from renting," said Jeff Donnelly, a real-estate analyst with Wells Fargo Securities LLC.

Vacancy rates fell in some of the markets hit hardest by the housing bust, including Phoenix, where vacancies declined to 5.8%, and in Orlando, Fla., where vacancies dropped to 5.3%.

New York City's performance offered perhaps one of the report's biggest surprises. The city continues to have the lowest vacancy rate among the cities tracked by Reis, at 2.1%, and effective rent levels were up 3.9% for the year. But in the fourth quarter, average rent levels in New York declined 0.2% to an average of \$2,985.

Rent levels in New York are already the highest in the nation and observers say some renters may be resistant to paying anything higher. "Three thousand dollars is a very expensive threshold": said Ryan Severino, a Reis senior economist. Rents "certainly can't keep going up forever". Rent levels in Fairfield County, Conn., near New York, dropped 0.1% to \$1,819.

Still, rates continue picking up in many other cities. Seattle led the nation with a 5.8% climb from the prior year, while San Francisco, Houston and San Jose, Calif., saw increases topping 5%.

But as rents continue rising and mortgage rates remain near record lows, more consumers are finding it is cheaper to own a home than to rent. In the third quarter, the ratio of rent to after-tax mortgage payments was 107.8%, according to Duetsche Bank. A rent-to-mortgage ratio above 100 means mortgage payments are cheaper than rent for the median homeowner. The ratio is well above an average of 85% since 1991.

Observers of the rental market agree that, while the healing housing market is an increasing threat, fundamentals should remain sound this year for apartment landlords. Scraping together a down payment to buy a home remains tough for many consumers, and tight mortgage standards are forcing many who might like to buy a home to continue renting.

Plus, many people like being able to easily pick up and move for a new job. "We are heading to being more of a renter nation," Mr. Donnelly said. "Young people today, they put much higher value on flexibility...It doesn't seem like that's going to change."

Meanwhile, oversupply poses a longer-term threat to landlords. While apartment construction stalled after the housing crash, developers are rushing to deliver new apartment buildings. Industry watchers also have their eye on job creation, a key department demand driver. A lack of job creation combined with a pickup in home sales "would be a perfect storm," for apartments, said Rich Anderson, an analyst with BMO Capital Markets.

## Section 8 Program Fact Sheet by Housing & Urban Development Department

### (RENTAL VOUCHERS AND RENTAL CERTIFICATES)

#### WHAT ARE SECTION 8 RENTAL VOUCHERS AND RENTAL CERTIFICATES?

The Section 8 rental voucher and rental certificate programs are the federal government's major program for assisting very low-income families, the elderly, and the disabled to rent decent, safe and sanitary housing in the private market. Since the rental assistance is provided on behalf of the family or individual, participants are able to find and lease privately owned housing, including single-family homes, townhouses and apartments. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing project.

Section 8 rental vouchers and rental certificates are administered locally by public and Indian housing agencies (HAs). The HAs receive Federal funds from the HUD to administer the Section 8 programs. A family issued a rental voucher or certificate and is responsible for funding and selecting a suitable rental unit of its choice, which may include its present unit. Rental units must meet minimum standards of health and safety, as determined by the HA. A rental subsidy is paid directly by the HA to the landlord on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.

#### FEDERAL PREFERENCES AND WAITING LIST--WHAT ARE THEY AND HOW DO THEY AFFECT ME?

Since the demand for housing assistance often exceeds the limited resources available to HUD and the local housing agencies, long waiting periods are common. In fact, an HA may close its waiting list when it has more families on the list than can be assisted in the near future.

In selecting a family from its waiting list, an HA may give preference to a family who is (1) homeless or living in substandard housing, (2) paying more than 50% of its income for rent, or (3) involuntarily displaced. Families who qualify for these preferences will move ahead of other families on the list who do not qualify for any preference. Each HA has the discretion to establish other additional preferences to reflect other needs of its particular community.

#### RENTAL VOUCHERS AND RENTAL CERTIFICATES --

#### WHAT ARE THE DIFFERENCES AND HOW DO THEY FUNCTION?

The Section 8 rental voucher and rental certificate programs each place the choice of housing in the hands of the individual family. A very low-income family who has been selected by the HA to participate is encouraged to consider several housing choices to secure the best rental housing for its needs.

The rental unit must meet an acceptable level of health and safety before the HA can approve payments to landlords under the rental voucher and certificate programs. When the rental voucher or certificate holder finds a unit that it wishes to occupy and reaches an agreement with the landlord over the lease terms, the HA must inspect the dwelling and review the lease for approval. A rental voucher or certificate holder is also advised of the unit size for which it is eligible, based on family size and composition, and the applicable rent levels.

Under the rental certificate program, the rent for the unit usually may not exceed a maximum rent, determined by the HA, based on HUD standards established for each county and metropolitan area. The maximum rents are adjusted on a periodic basis to keep pace with increased costs of rent and utilities. Most rental certificate holders must lease a unit in which the total rent including utilities does not exceed the maximum rent. The rental certificate holder generally pays 30% of its monthly adjusted income towards the rent and utilities.

In the rental voucher program, the HA determines a payment standard which is used to calculate the amount of rental assistance a family will receive, but does not affect the amount of rent a landlord may charge or the family may pay. A family which receives a rental voucher can select a unit which rents below or above the payment standard. The rental voucher family must pay more than 30% of its monthly adjusted gross income for rent and utilities if the unit rent is greater than the payment standard. However, the family would pay less than 30% of its monthly adjusted gross income if the total rent was less than the payment standard.

#### FAMILY SHARE OF RENT VERSUS THE RENT SUBSIDY:

In the rental certificate program, a family generally pays either 30% of its monthly adjusted gross income, 10% of its monthly gross income, or its welfare rent payment toward rent, whichever is greater.

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## Landlord duty and liability on adjacent property depends on “control” the Voice

A case that was highlighted in this bulletin (Landlord Tenant Law Bulletin, August 2012, Vol. 33, Issue 8, p.5) addresses the issue of landlord duty and liability to protect tenants from dangerous conditions on adjacent property. Though this particular case involved the hazard of what was arguably an “attractive nuisance,” more commonly this issue arises in the criminal context with tenants claiming that their landlord owed them a duty to protect them from nearby criminal activity—such as a mugging on an unlit city-owned sidewalk outside of an apartment complex, or a gang related shooting near an apartment complex.

### **Duty and liability to tenants on adjacent property.**

While landlord duty and liability vary by jurisdiction, generally, a landlord owes a duty of care to prevent the existence of dangerous conditions on property he/she controls; and generally, that duty of care will only extend to adjacent properties that he/she controls. Generally, a duty of care is only owed from the landlord to the tenant when there is a connection between the harm suffered by the tenant and the care and maintenance of property that the landlord controls. In other words, as the court in the case highlighted in this bulletin suggested, if the landlord has somehow exercised control over the hazard on the nearby property (i.e., a broken city owned water meter box, located adjacent to the landlord’s property), he/she could be potentially liable for failing to warn the tenant or protect the tenant from the hazard. Similarly, if the landlord is deriving an economic benefit from the adjacent property (e.g., having customers park on an adjacent lot), he/she may be potentially liable for dangerous conditions on that property.

As to liability for criminal activity: while landlords usually have a duty to tenants and patrons to take reasonable steps to secure the landlord-owned premises against foreseeable criminal acts of third parties or tenants, where criminal acts occur near but not on the landlord’s property, generally, courts will find no duty, instead holding that premises liability is limited to the premises.

*Assumption of duty.* While a landlord may not have a duty to protect a tenant from a hazard on adjacent property, as the case highlighted in this bulletin discusses, the landlord may assume such a duty if the landlord engages in actions intending to provide security to tenants (e.g., if the landlord erects a fence with the intention of securing and containing children on the apartment complex, preventing their access to a neighboring pond or street). Still, other courts have held that a landlord assumes a duty by erecting a

fence, regardless of the landlord’s intention. See e.g., *Calkins v. Cox Estates*, 110 N.M. 59, 792 P.2d 36 (1990) (holding landlord who had constructed a playground with a fence around it had a duty to maintain this “common area” and was under a legal obligation to maintain the playground in a reasonably safe condition, so that children playing on the playground would be unable to escape from the playground and potentially be injured beyond its confines); *McDaniel v. Sunset Manor Co.*, 220 Cal. App. 3d 1, 269 Cal. Rptr. 196 (1st Dist. 1990) (holding that a landlord had no duty to erect such fence, it gave the “deceptive appearance of safety” and therefore the landlord was liable for foreseeable injuries caused by failure to repair the fence, which may include children from the premises).

**Duty and liability to third parties on adjacent property related to tenant actions.** Landlord duty and liability related to adjacent property also arises in the context of the landlord duty and liability to protect third parties from tenant conduct.

*Dog-related liability.* Laws governing landlord liability for injuries and property damage caused by tenants’ dogs vary by state and locality. Depending on the locale, a landlord may be liable for dog-inflicted injuries or property damage caused by a tenant’s dog—even if the landlord had no knowledge of a dog’s viciousness or dangerous nature. Landlords may be liable for injuries or property damage caused by a tenant’s dog even if the injuries or property damage do not occur on the rental property. Some courts have held that the liability for dog-related injuries depends on the same factors as liability for an injury on the rental premises. Still, other courts have ruled that a landlord has no duty to prevent injuries to third parties caused by a tenant’s dog off premises. Under a relatively new Maryland law, the harboring of American Staffordshire Terriers (more commonly known as “pit bulls”) is considered “an inherently dangerous activity” for which landlords may be held strictly liable. Thus, landlords in Maryland who know that their tenant has a pit bull or mixed-breed pit bull are strictly liable for damages that a third-party may suffer if attacked by the dog, whether on or from the rental premises.

*Liability for criminal acts of tenant.* Under allegations that the rental property is a public nuisance that threatens the public safety and morals (such as where there are drug dealers on the rental premises), a landlord may also be liable to a neighboring resident who is injured by the criminal act of a tenant.



## New issues surrounding state tax liens

the Voice

REALTORS® have recently had closings fail at the last minute due to the discovery of numerous state tax liens against the property they are trying to close. The state tax liens are filed against the owner or a former owner of the property who received a deed for the property as a result of a foreclosure by advertisement. The claim for unpaid taxes appear to arise from a failure of a purchaser who did not reside on the property (the Non-Resident Owner) to pay additional property taxes as a result of the removal of the principal residence exemption (PRE) after December 31 of the year title transferred to the Non-Resident Owner. The Non-Resident Owners to date that have been brought to the attention of MAR are HUD, Federal Home Loan Mortgage Corporation and Wells Fargo Bank. It is fair to assume the same situation exists for other banks, Fannie Mae and Freddie Mac.

Some of the tax liens have been filed with the Register of Deeds. The Michigan Department of Treasury contends that the filing of a state tax lien with the Register of Deeds covers all properties owned by a Non-Resident Owner anywhere in the State of Michigan. In other words, if the Federal Home Loan Mortgage Corporation has a state tax lien filed against it, it is claimed that this state tax lien attaches to all properties owned by the Federal Home Loan Mortgage Corporation throughout Michigan. It should also be noted that the state tax liens are cumulative. For example, if the Federal Home Loan Mortgage Corporation has state tax liens against it totaling \$150,000 based on taxes owed on a number of different properties the entire \$150,000 will attach to every property owned by the Federal Home Loan Mortgage Corporation in Michigan. This could result in a property under contract for \$12,000 having tax liens against it totaling \$150,000.

It is our understanding that Non-Resident Owners such as HUD are currently working with the Michigan Department of Treasury to try and resolve this situation. Further, MAR will be meeting with the Treasury to discuss the importance of this issue. In the meantime, if REALTORS® are listing properties or representing buyers who are interested in purchasing properties that are currently owned or were owned at one time by a Non-Resident Owner, they should check with a title company to make certain that there are no state tax liens on the property. If there are state tax liens on the property, as a practical matter, it is likely that the property cannot be sold until this issue is resolved with Treasury. Keep in mind that this particular problem with state tax liens is limited to residential properties that were previously owner-occupied and then acquired by a Non-Resident Owner, such as HUD, typically through foreclosure.

## Landlords use water affidavit to avoid property liens

the Voice

If you've ever been stuck with a tenant's water bill you know how financially painful that can sometimes be. Tenants leave huge water bills in the hands of landlords because there is ultimately no accountability for paying a water bill in their name. And, if the tenant doesn't pay their bill, the municipality simply puts a lien on the property that has to be paid on the next tax bill.

Good news! You can avoid this lien. How? The landlord can file a "water affidavit, the lease must provide that the lessee is liable for the water bill and not the landlord and be signed and dated by the landlord. In some communities, a copy of the lease is also required.

Here are the specifics of the law regarding water liens and rental properties:

*123.165 Priority of lien; applicability of act where lease provides lessor not liable for payment of bills; affidavit.*

Sec. 5.

*The lien created by this act shall, after June 7, 1939, have priority over all other liens except taxes or special assessments whether or not the other liens accrued or were recorded before the accrual of the water or sewage system lien created by this act. However, this act shall not apply if a lease has been legally executed, containing a provision that the lessor shall not be liable for payment of water or sewage system bills accruing subsequent to the filing of the affidavit provided by this section. An affidavit with respect to the execution of a lease containing this provision shall be filed with the board, commission, or other official in charge of the water works system or sewage system bills accruing subsequent to the filing of the affidavit provided by this section. An affidavit with respect to the execution of a lease containing this provision shall be filed with the board, commission, or other official in charge of the water works system or sewage system, or both, and 20 days' notice shall be given by the lessor of any cancellation, change in, or termination of the lease. The affidavit shall contain a notation of the expiration date of the lease.*

A copy of the water affidavit form can be found at the RPOA website. Go here for the form:  
<http://rpoaonline.org/rental-mgmt-forms/rental-forms-view.cfm>

## Section 8 Program Fact Sheet (conclusion) by Housing & Urban Development Department

The family's share of the rent is calculated by the HA, but the family pays that amount to the landlord. In turn, the HA pays the remainder of the rent directly to the landlord. The family's rent share changes when its income or family circumstances change, while the HA rental assistance varies according to the actual rent.

Under the rental voucher program, a family may choose a unit that rents for more than the payment standard and may pay more or less than 30% of its monthly adjusted gross income for rent. The HA calculates the maximum amount of rental assistance allowable, which is the difference between the payments standard and 30% of the family's monthly adjusted gross income, and pays rental assistance. The amount of rental assistance paid by the HA changes with the payment standard while the amount the tenant pays varies with the actual rent. For example, if a family locates a unit that rents below the payment standard, the family would pay less than 30% of its monthly adjusted gross income for rent. On the other hand, if a family decides to rent a unit above the payment standard, it would pay over 30% of its monthly adjusted gross income for rent. The family's rent share also changes when its income or family circumstances change.

### ROLES - THE TENANT, THE LANDLORD, THE HOUSING AGENCY AND HUD

Once an HA approve an eligible family's lease and housing unit, the family and the landlord sign a lease and, at the same time, the landlord and the HA sign a housing assistance contract which runs for the same term as the lease. This means that everyone--tenant landlord and HA--has obligations and responsibilities within the rental voucher and certificate programs.

**Tenant's Role:** When a family selects a housing unit, and the HA approves the unit and lease, the family signs a lease with the landlord for at least one year. The tenant may be required to pay a security deposit to the landlord. After the first year the landlord may initiate a new lease or allow the family to remain in the unit on a month-to-month lease.

When the family is settled in a new home, the family is expected to comply with the lease and the program requirements, pay its share of the rent on time, maintain the unit in good condition and notify the HA of any changes in income or family composition.

**Landlord's Role:** The role of the landlord in the rental voucher and certificate programs is to provide decent, safe, and sanitary housing to a tenant at a reasonable rent. The dwelling unit must pass the program's housing standards and be maintained up to those standards as long as the


owner receives housing assistance payments. In addition, the landlord is expected to provide the services agreed to as part of the lease signed with the tenant and the contract signed with the HA.

**Housing Authority's Role:** The HA administers the rental voucher and certificate programs locally. The HA provides a family with the rental assistance that enables the family to seek out suitable housing and the HA enters into a contract with the landlord to provide rental assistance payments on behalf of the family. If the landlord fails to meet his/her obligations under the lease, the HA has the right to terminate assistance payments.

**HUD's Role:** To cover the cost of the program, HUD provides funds to allow HAs to make housing assistance payments on behalf of the families and HUD pays the HA a fee for the costs of administering the program. When additional funds become available to assist new families, HUD invites HAs to submit applications for funds for additional rental vouchers and certificates. Applications are then reviewed and funds awarded to the selection HAs on a competitive basis.

If there is a topic that you would like more information about please contact Jodi at 810-385-2332 or email: [jgalbraith@innovativehousing.org](mailto:jgalbraith@innovativehousing.org)






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