

Eastern Michigan Real Estate Investment Association

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Are You Ready to Be a Landlord? Buying Investment Property Can Be Risky. Here's How to Do It Smartly WSJ

The pitch is compelling: Buy a vacant house or apartment building and rent it out to some of the throngs of Americans who have lost their homes to foreclosure. With interest rates near record lows and property values still slumping, getting into the landlord business is cheaper than it has been in years.

Investors turned off by paltry bond yields and the mercurial stock market are intrigued. Kimberly Foss, president of Emyrion Wealth Management in Roseville, Calif., says she has seen a surge of clients looking to purchase distressed homes and apartment buildings. Her clients have an average net worth of about \$4 million, she says.

"Many of my clients are looking to use part of their portfolios to scoop up properties," she says. "They see it as an alternative retirement plan."

But aspiring property owners need to watch out for a slew of traps. Among them: prolonged vacancies, surprise costs, deadbeat tenants, difficulty refinancing and overestimating the rental potential.

It is easy to overlook those risks when the market conditions appear so ripe. Home prices have fallen to 2002 levels nationwide, according to the latest data from the S&P/Case-Shiller index, and financing remains cheap. For the week ending Nov. 10, the average rate on a 30-year fixed-rate loan was 3.99%, not far from the Oct. 6 record low of 3.94%, according to Freddie Mac data going back to 1971.

Rents are improving, too. The average monthly rent for all categories, including apartments and single-family homes, was \$846 nationwide in the third quarter, up 2.5% from the same period a year earlier, according to Local Market Monitor, a Cary, N.C., firm that analyzes real-estate trends. That is lower than the long-term average gain of 3.5% a year, but better than the 3% decline in calendar year 2009.

Even the Obama administration is considering getting involved in the rental markets. Government officials have been soliciting ideas for how to convert some of the foreclosed homes owned by Fannie Mae and Freddie Mac into rentals, in order to cut the mortgage giants' losses on those homes.

All of this is attracting interest among investors. Brian Davis, who runs exLandlord-Forms.com, a website for property investors, says

traffic is up 20% this year.

"Most people think I'm crazy to buy now," says Jason Walker, a marketing director in Washington. But the numbers were too good to pass up, he says. Mr. Walker is closing this week on a town house in Baltimore, for which he paid \$275,000. He says he put down 20% of the purchase price, locked in a 4.5% rate on a 30-year fixed mortgage and expects to net \$1,000 a month in profit.

Here is what you need to know before taking the plunge.

◆ **Cheaper homes aren't always a good investment.** Even if a property is selling for half the price it fetched during the boon, that doesn't mean it will generate enough income to make the deal pay off, says Wayne Copelin, a financial planner in Sugar Land, Texas.

The key is to figure out how much rental income the property will generate. A good rule of thumb: Make a deal only if you can collect at least 1.25% of the purchase price each year in rental income, says Jason Reed, a real-estate agent in St. Paul, Minn., who works exclusively with investors.

Determining the rental potential can be tricky. Some properties already have been rented out, and the owner can furnish records. Others have no rental history.

One way to examine the rental market is to use websites like FinestExpert.com, which tracks occupancy rates and rents across the country.

In certain sweet spots, rents are rising even as home prices fall. Take Nashville, Tenn., where rents have jumped 6% over the past 18 months, while home prices have dropped 3%, according to Local Market Monitor. Other markets where that is happening: El Paso, Texas; Houston; Omaha, Neb.; Raleigh, N.C.; Pittsburg; and Washington.

Markets in areas that have been battered by foreclosures, such as Las Vegas and Phoenix, remain unstable. They might have low prices, but they also are suffering from high unemployment. That could leave aspiring landlords with empty homes, which then could fall even further in value, according to Local Market Monitor President Ingo Winzer.

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5 things I wish someone had told me earlier by Vena Jones-Cox

A major regret of my youth was that no one ever bothered to tell me that working for a living was a drag or that depending on a job to make you rich was a fantasy. I guess I was aware on some unconscious level that my dad's real estate investor friends were able to go to Europe for months on end while my friend's parents—even the ones with great jobs—were lucky to put two weeks of vacation time together each year, but I always assumed that my dad's friends had so much spare time because they were unemployed. I was never told that—despite their paint-spattered overalls and 15-year old pickups—they were multimillionaires.

In short, when I entered the “real” world after college, my education was sadly lacking in some very important areas. In the ensuing years, I've learned some lessons about the world of real estate—some painful (never give a big earnest money check to a seller until you know he actually owns the property), some pleasant (you can hire other people to do the jobs you hate). Each time real estate investing teaches me something new, I wonder why somebody didn't just sit me down and tell me about it years ago. How much easier my life would have been if only someone had told me these things early on...

1. Real Estate Isn't About Properties, or Deals, or Financing.

About four weeks into my real estate career, I made my first deal on a house. In one of the most obvious examples of karmic retribution I've ever experienced, the seller of this house was one of the little old ladies that I'd once accused my parents of taking horrible advantage of. However, this particular little old lady surprised me by telling me right up front that all she wanted for her home was the loan balance plus \$1,000 to move, despite the fact that the property was worth about \$15,000 more than that. Her husband had recently died and she was moving out of state to live with her daughter and grandchildren. In short, she wanted to be gone by the end of the month.

Now, while this was my first actual deal, I had made approximately 100 offers up to that point that went nowhere. Like many first-time investors, I hadn't fully absorbed the lesson that real estate was about people, not properties; as a result, I had made all of my offers on houses where I thought the seller should be motivated to sell for some reason. I never once asked whether or why the seller wanted to sell cheap, because, hey, the house was ugly, right? Who wouldn't be ready to sell cheap?

This woman taught me the all-important lesson that people don't necessarily want what you think they should want. Her house was in pretty good shape; she could have sold it for full value in 60 days or so. But what she wanted wasn't top price, it was speed. She wasn't motivated by money but by the desire to put the property behind her. As a result, she was pleased as punch to take about two-thirds of the value of the property at the closing a week later. And if someone had bothered to tell me right from the beginning that not every owner of a junker house or a house in a questionable neighborhood automatically wanted to sell cheap (even though it was the logical thing to do!) perhaps I

could have saved my time in making the previous ninety-nine offers. People are funny, and the only way to really know what they want out of a deal is to ask them. So if you're making offer after offer and getting rejection after rejection, you might want to think about talking to sellers about what they want, instead of assuming you know.

2. Never, Ever Rent to Anyone You Know.

Inevitable, someday your buddy (or brother) Joe is going to need a place to live at exactly the same time that you have a vacancy. It's going to go through your mind that this might be the perfect solution for both of you. Joe's a nice guy and with his carpentry skills (he was the one who drilled through the fridge door in your college apartment to invent the Keg-A-Rator!) you know he'll fix your place up real nice. So, in a gesture that you will never cease to regret, you offer Joe your vacant property. He gets a discounted rent, you get a tenant you can trust—everybody wins. Everybody, that is, except anybody who's even remotely involved in this situation. The thing about renting to people you know (and this also encompasses lease/optioning, carrying financing etc.) is that you and your friend/family member enter the agreement with opposing viewpoints in terms of the benefits of the situation. You go in happy because you know your buddy will treat you fairly—meaning that the rent will be on time, the repairs you agreed on will be made in a timely fashion, and he won't turn your new refrigerator into a Keg-a-Rator. He goes in happy because he knows you'll treat him fairly—meaning that you'll let him slide on the rent at Christmas, take his time on the repairs, and indulge his longtime dream of raising Rottweilers in the basement. You think he'll be the perfect tenant; he thinks you'll be the perfect landlord. It's a conflict of outlooks that can't be resolved without lawyers or fisticuffs.

Remember, when you become a housing provider, your outlook on life undergoes a major change. Your friends who are still tenants probably haven't had the benefit of experiencing that kind of entrepreneurship and, more than likely, have no idea what it's like to invest huge chunks of time and money in a property. My partner once lost not one but an entire group of college friends when he evicted one for nonpayment of rent; suddenly he'd become “The Man” and was no longer welcome at the poker games. I have a brother who can't see me at family gatherings without eventually coming around to the subject of how shabbily I treated his best friend by forcing him to pay late fees every month. I have never ever seen a situation like this work out to the satisfaction of both parties. If you have, I'd like to hear about it. On the bright side, since no one ever tells people that renting to friends and relatives is a very bad thing, there are an awful lot of buying opportunities out there generated when owners realize they're never going to see a dime out of Joe. Keep your eyes open for these situations; they can become some of your best deals.

3. There's No One Best Way to Invest in Real Estate.

5 things I wish someone had told me earlier by Vena Jones-Cox

Most new investors have a “guru,” a teacher to whom they look not only for advice but for a world view that helps to direct and focus the newbie on a particular strategy. These gurus can take the form of a professional teacher/instructor, a mentor, or as was the case in my early career, a family member. One of the major attractions of gurus is their certainty that their particular strategy is the be-all and end-all of real estate investing. My father was a good example of this: he had a cookie cutter that involved buying low-end homes for cash, lease/optioning them, and then ultimately refinancing packages of 5-10 at a time to get more cash to buy more houses. No property, no matter what type, condition, or area ever got any other treatment. And like most gurus, he was willing to defend until death the idea that other strategies were less profitable, more difficult to execute, and generally inferior to his particular favorite.

The guru is a compelling figure to the new investor precisely because he (or she!) is so focused and certain of himself. Following a particular guru can be extremely valuable for the overwhelmed newbie since it allows him to really learn how a particular technique works. The downside of guru-worship is that it limits the new investor’s experience. Most gurus and not just those who have seminars to sell-advocate one or two strategies to the exclusion of all others. As a result, their followers tend to have a narrow viewpoint in terms of what a “good” deal is and therefore pass up a lot of profit opportunities. Once I’d quit working for my father, the “pay cash for houses” option dried up, and I was forced to learn some new strategies for putting food on the table. Wholesaling properties for quick cash became a prime focus of my business and quickly became a huge profit center. One day about 2 years ago, I went back through my files of offers I’d made when “Buy and Lease Option” was the only thing I knew and discovered that I’d walked away from over \$100,000 in wholesaling profits during the time I was stuck in that mindset. Many, many properties that didn’t fit my dad’s “cookie cutter” would have been great little flips, but I simply couldn’t see them. And never mind all the times I hung up on a seller with an expensive pretty house for sale because I couldn’t get it for 70 cents on the dollar.

4. People Are Liars.

Somehow, I grew up with the idea that lying was a bad thing to do and that getting caught lying was embarrassing and could get you into a lot of trouble. Somehow, people who apply for rentals missed this lesson growing up or have unlearned it in adulthood. Because no one ever told me this, I spent the first four years of my real estate career checking applications only superficially, and as a result ended up giving over control of my houses to some real tenants-from-hell. I actually believed that my properties were cursed since perfectly good applicants somehow self-destructed just weeks after moving in.

The first thing that clued me in was when I got not one but three separate calls from collection agencies about one tenant within a few weeks of having rented to her. I kept telling the

callers that they had the wrong lady, since my tenant’s record was clean when I checked it. Finally, one of the creditors gave me a description of the tenant and her car, and I realized that I’d somehow missed something. A little detective work uncovered the fact that I’d actually checked her sister’s credit, since the name and social security number on the application were hers. Furthermore, the “boyfriend”, whose \$35K/year job in a nursing home qualified her to rent the home, was actually an ex-husband who had no intention of living in the home OR of helping with the rent, and the “prior landlord” who gave such a glowing reference was actually the tenant’s mother. Needless to say, she was evicted a few months later having paid only the first month’s rent.

Since learning this lesson, I’ve become an application-checking fiend. I look at driver’s licenses. I compare and cross-check current addresses with those on the credit report; then cross-check owner’s names with those of landlords on the application. I use the “Criss-Cross” directory to make sure that the work phone number actually belongs to a business. And, I have a firm policy that nobody gets to live in one of my houses if they’ve told a major lie on their application. After I discovered that something like 60% of my applicants were giving false information on their applications, I developed a full-page instruction form explaining to all potential tenants that lying about their rental, credit, criminal, or work history would result in automatic rejection and loss of their application fee, and you know what happened? Not a thing. I’ve rejected 8 out of the last 10 applicants I’ve had due to falsification of the application. Go figure.

5. You Never Get to the Point Where You Know “Enough.”

When I had been in real estate for about 4 years, I figured I was pretty hot stuff. I knew all the basic strategies backward and forward. I’d done over 100 deals. I’d spent maybe 1,000 hours in classrooms learning more. I honestly believed that there was nothing else that I really needed to know to be successful. Then one year seven of my lease/option tenants refinanced in a four month period. Staring down the throat of a mid-five figure income tax bill, I suddenly “discovered” the 1031 exchange, a technique that’s been around for decades but which I thought applied only to old guys who were ready to get out of the business. About that time, I also started doing a radio program and my attorney recommended that I look into land trusts as a way of keeping my name out of the public record. Then I discovered that escrowing documents could protect iffy lease/option deals to a degree that made me comfortable. And last week, I found out that a “mortgage to secure option” was a valid way to record one’s interest at the courthouse. So in case no one’s told you yet, the moral is: in the real estate business, knowledge is profit. Keep learning all the time, and don’t forget to pass a little of that knowledge on to the folks who are coming up behind you.

Are You Ready to Be a Landlord? WSJ
Buying Investment Property Can Be Risky. Here's How to Do It Smartly

Akron, Ohio; and Dallas as among the most attractive markets overall, and calls Detroit, Las Vegas and West Palm Beach, Fla., "dangerous."

When looking at properties, act like a renter, says Jeff Cronrod, president of the Boulder, Colo.-based American Apartment Owners Association. Tour the neighborhood to see if landlords seem desperate to lure tenants. Are there lots of vacancies? Are building offering deals like living rent free for a couple of months in order to drive up demand? If so, be wary, Mr. Cronrod says.

◆ **Carrying costs add up.** An other pitfall for real-estate investors: not accounting for unexpected expenses.

Besides closing costs, which generally average between 3% and 6% of the purchase price, general maintenance expenses like taxes, insurance and repairs can be much higher than many investors expect, says Jason Post, president of Los Angeles based Post Investment Group, a boutique real-estate investment firm that buys and operates apartment buildings.

You should allot roughly \$2,000 a year for insurance, taxes and any association fees for neighborhood pools and the like, Mr. Reed says. To ensure that a major repair doesn't break you, set aside at least six months' worth of expected rent, he says.

"You can't even fathom some of these strange costs," says Jerry Garretty, who runs a property-management firm in San Jose, Calif. Six months ago, Mr. Garretty says, he found a nasty surprise after overseeing the eviction of tenants who were three months behind on rent in a Cupertino, Calif., home: They had poured quick-drying cement into the sewer pipes a \$1,000 repair-and defaced the walls with graffiti scrawls, he says.

Jumps in property insurance premiums also can dent your investment profits, says Jason Holtz, a real-estate lawyer with Kevin Jursinski & Associates in Fort Meyers, Fla. This is particularly common in states like Florida that are prone to tropical storms.

Kathleen Farmakidis, owner of a three-unit apartment building in Winter Haven, Fla., says she has seen her property insurance jump 50% this year, to \$110 a month.

◆ **Venturing far from home can be dicey.** It is a good idea to buy rental properties only in your immediate geographical area, Mr. Cronrod says. Although it might be tempting to venture far from where you live for better deals, those properties can be difficult to manage.

As an owner, you need to be ready to repair leaky faucets, collapsed roofs and all other middle-of-the-night disasters-or pay someone to do it.

Hiring a local property manager can help. Such managers perform maintenance, collect rent and even screen tenants. But they typically charge 8% to 10% of the annual rent for their services.

And some are much better than others. Michael Epstein bought a single-family home in Pompano Beach, Fla., in 2009 even though he lived more than an hour's drive away in Jupiter and the house needed work.

Mr. Epstein, a small-business owner, hired a property manager to rehab the house, which he scooped up at a foreclosure sale, and maintain it. But because Mr. Epstein didn't visit often, it took him months to discover the manager hadn't been overseeing construction and that the work was botched. He had to spend an additional \$40,000 to bring the property up to building codes.

"That was a risk I didn't even factor in," Mr. Epstein says.

◆ **It pays to plan conservatively.** Don't assume you will be able to attract renters immediately. If a neighborhood is littered with foreclosures, those properties aren't going to be any more attractive to would-be renters than they are to buyers, says Jim Evans, president of real-estate investment firm Bruce G. Pollack & Associates and president of the nonprofit Institute of Real Estate Management.

The best tactic, says financial advisers, is to build in a cushion. Assume you need at least three months to find a tenant, and keep that much cash in reserve.

John Interdonato wishes he had foreseen the dry spell he would suffer after buying an investment property in Cape Coral, Fla., for \$280,000 in 2005. The electrical engineer planned to rent it out for enough to cover \$2,200 mortgage payments. But after the property sat empty for more than a year, starting in 2009, Mr. Interdonato fell behind.

Last December, after having sunk 50% of his savings into the property, he was forced to sell.

"It felt like a was staring down the barrel of a shotgun," he says.

◆ **Refinancing can be difficult.** With interest rates so low, many homeowners have been able to refinance their mortgages recently. But lenders are reluctant to take on refinances of investment properties, says Matt Englett, a real-estate lawyer in Orlando, Fla.

Banks view such owners as more of a risk, he says, because they can walk away from the property more easily than owners of primary residences can.

Mark Cheplowitz, the owner of an international event-planning firm in Aurora, Ohio, says he is losing roughly \$24,000 a year on two properties in Collier County, Fla. Last week, a lender declined his applications to refinance the mortgages.

"Here I am, staying in a crappy motel," he says, "as tenants live in these beautiful carriage houses I am losing money on."

◆ **Screen tenants with care.** Renting out your property to unreliable people can be a costly mistake. Eviction proceedings can take months, and owners can't rent out the property until the eviction is final.

Chris Ourand, a chief marketing officer for a technology company, says he battled for nearly 10 months to evict a tenant who had stopped paying rent in February on a four-bedroom town house in Arnold, MD.

Mr. Ourand, who lives in nearby Severna Park, says he trekked to court three times to get the tenant to pay up. In October, he says, he was able to oust the delinquent tenant, whom he says trashed the place.

Mr. Ourand, says the ordeal cost him roughly a third of his annual investment income on the property. "This is the worst experience with investment properties I have ever been through," he says. "It was a nightmare."

Even tenants with clean credit can turn out to be unsavory. Attorney Rachel Horbenko says she had to boot tenants from her Chicago building after waking up in the middle of the night to the smell of marijuana. The tenants were consuming so much, she says, that the smoke had seeped into her six-month-old daughter's room.

"The room was cloudy," she says. "I could barley see the crib." The eviction process took more than three months, she says.

A landlord can't begin an eviction lawsuit without first legally terminating the tenancy. This means giving the tenant written notice, as specified in the state's termination statute. If the tenant doesn't move (or reform—for example, by paying the rent or finding a new home for the dog), you can then file a lawsuit to evict. (Technically, this is called an unlawful detainer, of UD, lawsuit.)

State laws set out very detailed requirements to end a tenancy. Different types of termination notices are required for different types of situations, and each state has its own procedures as to how termination notices and evictions papers must be written and delivered (“served”).

Notice for Termination With Cause

Although terminology varies somewhat from state to state, there are basically three types of termination notices for tenancies that landlords terminate due to tenant misbehavior:

◆ **Pay Rent or Quit Notices** are typically used when the tenant has not paid the rent. They give the tenant a few days (three to five in most states) to pay the rent or move out (“quit”).

◆ **Cure or Quit Notices** are typically given after a tenant violates a term or condition of the lease or rental agreement, such as a no-pets clause or the requirement to refrain from making excessive noise. Usually, the tenant has a set amount of time in which to correct, or “cure”, the violation. A tenant who fails to do so must move or face the possibility of an eviction lawsuit.

◆ **Unconditional Quit Notices** are the harshest of all. They order the tenant to vacate the premises with no chance to pay the rent or correct a lease or rental agreement violation. In most states, unconditional quit notices are allowed only when the tenant has:

- repeatedly violated a significant lease or rental agreement clause
- been late with the rent on more than one occasion
- seriously damaged the premises, or
- engaged in serious illegal activity, such as drug dealing on the premises.

However, in some states, landlords may use Unconditional Quit Notices for transgressions that would require *Pay or Quit Notices* or *Cure or Quit Notices* in other, more tenant-friendly states. In these strict states, landlords may extend second chances if they wish, but no law requires them to do so.

Even after receiving notice, some tenants won't leave or fix the

lease or rental agreement violation. If you still want the tenant to leave, you must begin an unlawful detainer lawsuit by properly serving the tenant with a summons and complaint for eviction.

Notice for Termination Without Cause

Landlords may usually use a *30-Day* or *60-Day Notice to Vacate* to end a month-to-month tenancy when the tenant has not done anything wrong. Many rent control cities, however, do not allow this; they require the landlord to prove a legally recognized reason for eviction (“just cause”) of tenants.

Tenant Defenses

If the tenant decides to mount a defense, it may add weeks—even months—to the process. A tenant can point to mistakes in the notice or the eviction complaint, or improper services (delivery) of either, in an attempt to delay or dismiss the case. The way that you have conducted business with the tenant may also affect the outcome: If your rental unit is uninhabitable or the

tenant thinks you are retaliating, this may excuse or ship attention away from the tenant's wrongdoing and diminish your chances of victory.

Removal of the Tenant

If you win the unlawful detainer lawsuit, you will get a judgment for possession of the property and/or for unpaid rent. But you can't just move the tenant and his things out onto the sidewalk—trying to remove a tenant yourself can cause a lot of trouble.

Typically, you must give the court judgment to a local law enforcement officer (sheriff or marshal), along with a fee that is charged to the tenant as part of your costs to bring suit. The sheriff or marshal gives the tenant a notice that the officer will be back within a number of days to physically remove the tenant if he isn't gone by then.

Rationale for the Rules

Landlords often chafe at the detailed rules that they must follow. There is a reason, however, why most states have insisted on strict compliance. First of all, an eviction case is, relatively speaking, a very fast legal procedure. (How many other civil cases are over and done with after a few weeks?) The price to pay for this streamlined treatment is unwavering adherence to the rules.

Second, what's at stake here ~ a tenant's home ~ is arguably more important than a civil case concerning money or business. Consequently, legislators have been extra careful to see to it that the tenant gets adequate notice and an opportunity to respond.

BE CAREFUL REMOVING TENANTS' ABANDONED PROPERTY
A few states allow landlords to freely dispose of property a tenant leaves behind after moving out. Even in these states, this is legal only if it is quite clear that the tenant has left permanently, intending to turn the place over to the owner. In many states, landlords must follow storage and notification procedures.

It's not uncommon for tenants with significant financial burdens to declare bankruptcy. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which took effect on October 16, 2005, makes it easier for landlords to evict bankrupt tenants. The steps you'll need to take depend on whether the tenant files for bankruptcy before or after you get a judgment against the tenant awarding you possession of the rental.

Tenant Files for Bankruptcy *After* You've Won Possession

If you sued the tenant for eviction and won a judgment for possession *before* the tenant filed for bankruptcy, you can proceed to evict the tenant, even if the tenant then files for bankruptcy in an attempt to stop the eviction.

New bankruptcy law vs. prior law. Under prior law, tenants could stave-off eviction by invoking bankruptcy's "automatic stay" with a last-minute bankruptcy filing. Under the new bankruptcy law, in this situation landlords can usually proceed with the eviction without having to ask a judge to lift the automatic stay.

Exceptions in some states. In a few states, and only in evictions based on nonpayment of rent, and in very narrow circumstances, a tenant *can* stop an eviction at the last minute by filing for bankruptcy - if the tenant files a certification and pays back rent and forward rent. As the landlord, if you file an objection to the tenant's certification right away, you'll get a hearing in the bankruptcy court. If you convince the judge that the tenant's certification is not true, the court will lift the stay and you can proceed to evict the tenant.

Tenant Files for Bankruptcy *Before* You Win Possession

If you have *not* won a judgment for eviction when your tenant files for bankruptcy, and the tenant is (or becomes) behind in the rent, or violates another term of the tenancy (such as keeping a pet in violation of a no-pets clause), you can't deliver a termination notice, let alone start the eviction process. This prohibition is known as the "automatic stay."

Hearing to remove stay. You'll need to go to the federal bankruptcy court and ask the judge to "lift," or remove, the automatic stay before you can evict the tenant. In most cases, you'll get the stay lifted within a matter of days and then you can proceed with your termination and eviction.

Exception for drugs or damage to property. You may find yourself needing to evict a tenant who is using illegal drugs on the property or endangering your property. Even if the tenant files for bankruptcy before you win a judgment for possession, you can still proceed with an eviction without asking the bankruptcy judge to lift the automatic stay. You'll need to prepare a certification that the tenant has endangered the property or used illegal drugs on the property (or had guests who used the property in such a way) and file it with the bankruptcy court (and serve the tenant with the notice). If your tenant does not file an objection within 15 days of being served, you can proceed with the eviction without asking the court to lift the stay. If a tenant

objects, the bankruptcy court will hold a hearing.

Tenant is Not Behind On Rent or Violating Lease

Filing for bankruptcy can affect a tenancy even if the tenant is not behind in the rent or otherwise in violation of the lease. After a tenant files for bankruptcy, the "bankruptcy trustee" (the person appointed by the bankruptcy court to oversee the case) must decide whether to carry on with or terminate the lease or rental agreement. In most situations, the trustee will let the tenant keep the lease, since it wouldn't benefit the tenant's creditors to force the tenant to incur the expense of finding a new home. However, if the tenant is paying an outlandish rent and there are plenty of modest rentals available, the bankruptcy trustee may terminate the lease and require the tenant to find a new home.

You do have the right to ask the bankruptcy court to demand that the tenant show proof of his ability to pay future rent, even if the tenant has never been late with the rent. If the tenant later becomes unable to pay the rent, you can ask the bankruptcy court to lift the automatic stay so that you can terminate the lease and, if necessary, evict the tenant.

How can landlords and tenants avoid disputes

by NOLO

Whether your disagreement is over a rent increase, responsibility for repairs, or the return of a security deposit, rarely should lawyers and litigation be the first choice for resolving a landlord-tenant dispute.

Both landlords and tenants should follow these tips to avoid legal problems:

- Know your rights and responsibilities under federal, state and local law.
- Make sure the terms of your lease or rental agreement are clear.
- Keep communication open. If there's a problem—for example, a disagreement about the landlord's right to enter a tenant's apartment—see if you can resolve the issue by talking it over or using a local dispute resolution service.
- Keep copies of any correspondence and make notes of conversations about any problem. For example, tenants should ask for repairs in writing and keep a copy of the letter. The landlord should keep a copy of the repair request and note when and how the problem was repaired.

Landlords and their agents need to be aware of how they may be affected by new requirements imposed upon them by the Fair Credit Reporting Act (FCRA). This is because the FCRA has been amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Dodd-Frank was signed into law by President Obama in July of 2010. Although less attention was paid to it than was paid to the administration's comprehensive health-care act, they had this in common: we needed to pass them to find out what was in them.

What we have found out, in this instance, is that landlords who take "adverse action" regarding a tenant application will have to provide specified information if that adverse action is based upon the applicant's credit score.

What might adverse action be? At least one of the following:

- ◆ denying the lease/rental application
- ◆ requiring a co-signer
- ◆ requiring a higher security deposit
- ◆ requiring an increased rent amount

If such an action is taken, based on the applicant's credit score, then the following information must be provided to the applicant:

1. the credit score
2. the entity that created the credit report
3. the date of the credit report
4. the range of possible scores within the model used
5. the key factors, not exceeding four, that affected the credit score.

If one of the factors is the number of credit inquiries made, then that can be listed as an additional factor.

Number 5 might pose a problem for some landlords. It is not clear that they are always going to know what the key factors were that affected the credit score. It may require that the landlord will have an ability to interpret the report, not just read the score. Sure, most landlords are going to be able to spot negatives, but they may not know what weight has been assigned to those negatives. Some landlords just want to know the score. That's enough for them.

This kind of disclosure will not be entirely new to California landlords and their agents. Since 2005 they have been required to make disclosure to tenant applicants if their adverse action was based on a credit report. However, the California requirements had more to do with informing the applicant about the availability of credit reports and the right to dispute them than it had to do with the content of the reports. The new federal requirements are much more report-specific.

These new requirements have been in effect since July 21, 2011. Presumably, enforcement will come under the jurisdiction of the new Consumer Financial Protection Agency, about which we also have more to learn.

It should be emphasized that the new requirement comes into play only if the adverse action is based on the credit report. No such disclosure is required if it is based on other considerations.

We all believe our taxes are too high and that they keep going up. Unfortunately, these are not sufficient reasons to appeal to the Board of Review. You also can't appeal the values because you are not able to pay the tax bill. Following are four bases for a successful appeal.

1. My property has the wrong property classification.

There are several classifications of property in each jurisdiction, such as residential, commercial and industrial. If your home is classified as commercial but is actually only a residence, you may be able to have your taxes reduced. The classification is a number located near the top of the form. You will need to ask the assessor's office for the class that corresponds to that number.

2. The Principal Residence Exemption is missing.

Property in Michigan that is not a principal residence is subject to an additional 18 mills for school operation. You must file for this exemption by May 1 to receive it in that year. Once it is on file, it will remain until the use of the property changes. Near the bottom, the Assessment Notice tells how much of the property is exempt as your principal residence. If you have filed a Principal Residence Exemption, the amount of the Assessment Notice should be 100%. If it is not, check with the assessor's office to determine why.

Two bases for appeal require a copy of your Assessment Cards, which you can get at the assessor's office. This sheet has the information the assessor uses to determine your AV.

3. There is a mistake on the Assessment Card. The card may have the wrong dimensions for your home or property. It may say you have a finished basement when it is actually unfinished. Does it list three bathrooms when there are only two? Does it claim you have city water and sewer rather than a well and septic? If there is a mistake on your card, ask that the property be revaluated. Every property owner should have a copy of their Assessment Card, whether they intend to appeal their taxes or not. In many jurisdictions, you can download a copy on-line. Assessors are human and can make mistakes. Review the card for your property. If you find an error, you will have lower taxes for the current year and are entitled to a refund for the three prior years.

4. My Percent Good is too high. Your Assessment Card or worksheet will have a "percent good" calculation. This is the method your assessor used to depreciate the value of your home. If your home is ten years old, this number should be about 90%.

Answering your questions about assistance animals the Voice

We'll provide an overview of the federal laws about federal fair housing requirements with respect to assistance animals for individuals with disabilities.

WHAT DOES THE LAW SAY?

The Fair Housing Act (FHA) prohibits discrimination in housing based on disability by conventional and federally assisted housing providers. In addition, Section 504 of the Rehabilitation Act of 1974 generally imposes similar restrictions to all recipients of HUD funds.

Together, the FHA and Section 504 are the two federal laws that protect individuals with disabilities from housing discrimination, including refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodation may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling.

Under these laws, individuals with disabilities may be entitled to keep an assistance animal in housing communities that otherwise impose restrictions or prohibitions on animals, according to a recent memo by a top HUD official. To qualify for the accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling. In addition, there must be a relationship between the individual's disability and the assistance that the animal provides. If these requirements are met, the housing provider must permit the assistance animal as an accommodation, unless it can show that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing community, according to the memo.

The ADA is the federal law that applies to state and local governments as well as public accommodations and commercial facilities. Generally, that means public places, including government buildings, business offices, grocery stores, medical offices, service animals to accompany people with disabilities in all areas where members of the public are allowed to go, according to the Justice Department.

Only dogs are recognized as service animals, according to new ADA regulations issued by the Justice Department. The regulations, which became effective in March 2011, include separate provisions allowing for individually trained miniature horses under some circumstances, but otherwise exclude all other species from being considered a service animal under the ADA.

To qualify as a service animal, the dog must be individually trained to do work or perform tasks for a person with a disability. The work a dog has been trained to do must be directly related to the person's disability, according to recent guidance issued by the Justice Department on the new ADA regulations. Examples include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, altering and protecting a person having a seizure, reminding a person with a mental illness to take prescribed medication, calming a person with Post-Traumatic Stress Disorder (PTSD)

during an anxiety attack, or performing other duties, the department explains. Furthermore, the new rules specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks" for purposes of the definition of "service animals" under the ADA.

Both HUD and the Justice Department emphasize that the new ADA rules on service animals do not trump federal fair housing requirements. The Justice Department specifically stated that the law with respect to the definition of "service animal" does not affect the broader definition of "assistance animal" under the FHA. In a recent memo, a HUD official said as much, explaining that the new ADA regulations do not affect reasonable accommodation requests for assistance animals under the FHA or Section 504. Under fair housing laws, disabled individuals may request assistance animals other than dogs, including emotional support animals, according to HUD. And in situation where both sets of laws apply—for example, in leasing offices that are open to the public—housing providers must meet the broader FHS/Section 504 standard for deciding whether to grant reasonable accommodation requests, the official warned.

TAKEAWAY LESSON: ASSISTANCE ANIMAL VS. SERVICE ANIMAL

As you can see, there's a big difference between the broad rules applicable to assistance animals under federal fair housing laws and the restrictive rules defining service animals under the ADA. The new ADA restrictions came about after much debate, particularly from various groups that opposed limiting service animals to dogs—as opposed to the wide variety of animals that provide assistance to individuals with disabilities.

Whatever your stance on the controversial topic, it's important to keep in mind the purpose of the new ADA rules—to clarify what animals should be allowed in a public setting as opposed to the private confines of someone's home. That is, a cat, bird, reptile, or other creatures may be okay in someone's living room, but not sitting in a carriage at the grocery store, or in the adjacent seat in a movie theater.

Remembering that key difference should help avoid confusion about which laws apply to your community. Since you are dealing with housing—most of which is not open to the public—it should be easy to remember that your community must comply with the broader FHA rules, not the restrictive ADA rules, related to assistance animals.

It would also help to use precise language when referring to such animals. Many people (and even some laws) use the words "service animals" and "assistance animals" interchangeably, but you now know the key legal differences between the terms under federal law. Training your staff to use the term "assistance animals" as opposed to "service animals," will help reinforce that fair housing law requires you to consider accommodation requests by individuals with a disability for assistance animals, which may include various species and provide various forms of assistance, with or without special training.

Housing and Economic Forecast Points to Rising Activity by realtytimes

Home sales are expected to stay on an uptrend through 2012, although the performance will be uneven with mortgage constraints weighing on the market, according to experts at a residential real estate forum today at the REALTORS® Midyear Legislative Meetings & Trade Expo here.

Lawrence Yun, NAR chief economist, said existing-home sales have been underperforming by historical standards and will rise gradually but unevenly. "If we just hold at the first-quarter sales pace of 5.1 million, sales this year would rise 4 percent, but the remainder of the year looks better," Yun said. "We expect 5.3 million existing-home sales this year, up from 4.9 million in 2010, with additional gains in 2012 to about 5.6 million—that's a sustainable level given the size of our population."

Mortgage interest rates should rise gradually to 5.5 percent by the end of the year and average 6.0 percent in 2012 -- still relatively affordable by historic standards.

"A huge volume of cash sales, supported by the recovery in the stock market, show that smart money is chasing real estate. This implies that there could be a sizeable pent-up demand if mortgages become more readily accessible for qualified buyers," Yun said. "The problem isn't with interest rates, but with the continuation of unnecessarily tight credit standards that are keeping many creditworthy buyers from getting a loan despite extraordinarily low default rates over the past two years."

Yun said that if credit requirements returned to normal, safe standards, home sales would be 15 to 20 percent higher. He added that some parents are buying homes with cash for their children, and offering them loans which provide better returns than bank accounts or CD's.

Yun projects the Gross Domestic Product to grow 2.5 percent this year and 2.7 percent in 2012, adding 1.5 million to 2 million jobs yearly over the next two years. The unemployment rate should decline to 8.8 percent by the end of 2011 and average 8.6 percent next year, returning to a normal level of 6 percent around 2015.

Housing starts are forecast to rise but remain below long-term trends, reaching 603,000 in 2011, up from 595,000 last year, and continue growing to 908,000 in 2012. New-home sales are seen at a record low 320,000 this year, rising to 487,000 in 2012, "A recovery in new homes will be slow because of the extra price discount in the existing home market," Yun noted. In March, the typical new single-family home cost \$53,300 more than an existing home.

Inflation appears to be relatively modest for now, with the Consumer Price Index rising 2.9 percent this year. "We'll be closely watching the impact of fuel costs on consumer

spending and inflation—that would slow economic growth, job creation and home sales," Yun said.

Apartment rents are trending up, and are likely to rise at faster rates as vacancies decline. Following the correction in home prices, it has now become more affordable to buy in most of the country. "Twice as many renters had enough income to buy a home in 2010 in comparison with 2005, so we have a much larger pool of financially qualified renters," Yun said. "Rising rents and excellent housing affordability conditions will encourage potential buyers who've been on the sidelines."

Yun expects the median existing-home price to remain near \$170,000 over the next two years of essentially no meaningful price change.

Frank Nothaft, chief economist at Freddie Mac, holds similar views on the outlook. "Economic activity will accelerate this year—there will be no double dip in the economy," he said. Nothaft is more optimistic on job growth, expecting 2.0 million to 2.5 million jobs created in 2011 with unemployment dropping to 8.4 percent by the end of the year.

Nothaft expects the 30-year fixed rate mortgage to trend up to 5.25 percent by the end of the year, and for home sales to rise 5 percent. "National home price indices are close to a bottom sometime this year," Nothaft said.

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jgalbraith@innovativehousing.org
That way you will be included when a mass email goes out.

SLIP AND FALL ACCIDENTS SLA

Two common types of injury claims are “Slip and Fall” and “Trip and 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
- Snow that’s not cleared
- 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 and fall/trip and 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 must also prove that a dangerous condition on the property directly caused the fall 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 owners can argue that he or she is not responsible for the injury. **(Landlords, please note: if there is a question about conditions on your property causing an accident or an injury, contact your attorney and make sure that he/she 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 not direct connection to the 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(s) 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 had “notice” of a dangerous condition, he may try to use a legal defense call 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 premise 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 obligation 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.

These are points to ponder landlords. Remember to be diligent about maintain your property. Prevention is less hassle, expense and grief!

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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