

# Eastern Michigan Real Estate Investment Association

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Simple suggestions to help your landlord or property management business run smoothly By NOLO.com

June 2011

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#### 1. Screen tenants.

Don't rent to anyone before checking credit history, references, and background. Haphazard screening and tenant selection too often results in problems—a tenant who pays the rent late or not at all, trashes your place, or lets undesirable friends move in. Use a written rental application to properly screen your tenants.

#### 2. Get it in writing.

Be sure to use a written lease or month-to-month rental agreement to document the important facts of your relationship with your tenants—including when and how you handle tenant complaints and repair problems, notice you must give to enter a tenant's apartment, and the like.

#### 3. Handle security deposits properly.

Establish a fair system of setting, collecting, holding, and returning security deposits. Inspect and document the condition of the rental unit before the tenant moves in, to avoid disputes over security deposits when the tenant moves out.

#### 4. Make repairs.

Stay on top of maintenance and repair needs and make repairs when requested. If the property is not kept in good repair, you'll alienate good tenants, and tenants may gain the right to withhold rent, repair the problem and deduct the cost from the rent, sue for injuries caused by defective conditions, and/or move out without needing to give notice.

#### 5. Provide secure premises.

Don't let your tenants and property be easy marks for a criminal. Assess your property's security and take reasonable steps to protect it. Often the best measures, such as proper lights and trimmed landscaping, are not that expensive.

#### 6. Provide notice before entering.

Learn about your tenants' right to privacy.

Notify your tenants whenever you plan to enter their rental unit, and provide as much notice as possible, at least 24 hours or the minimum amount required by state law.

#### 7. Disclose environmental hazards.

If there's a hazard such as lead or mold on the property, tell your tenants. Landlords are increasingly being held liable for tenant health problems resulting from exposure to environmental toxins in the rental premises.

#### 8. Oversee managers.

Choose and supervise your property manager carefully. If a manager commits a crime or is incompetent, you may be held financially responsible. Do a thorough background check and clearly spell out the manager's duties to help prevent problems down the road.

#### 9. Obtain insurance.

Purchase enough liability and other property insurance. A well designed insurance program can protect you from lawsuits by tenants for injuries or discrimination and from losses to your rental property caused by everything from fire and storms to burglary and vandalism.

#### 10. Resolve disputes.

Try to resolve disputes with your tenants without lawyers and lawsuits. If you have a conflict with a tenant over rent, repairs, your access to rental unit, noise, or some other issue that doesn't immediately warrant an eviction, meet with the tenant to see if the problem can be resolved informally. If that doesn't work, consider mediation by a neutral third party, often available at little or no cost from a publicly funded program.

If your dispute involves money, and all attempts to reach agreement fail, try small claims court, where you can represent yourself. Small claims court is good for collecting unpaid rent or seeking money for property damage after a tenant moves out and the security deposit is exhausted.

### Fall Seminar

will be held on:  
Sept. 23, 2011.  
8:00 am—3:30 pm  
in the MTEC Building  
at SC4.

## President's Letter



From the new Prez

Hi everyone, this is Dianna Maxwell, Associate Broker with JoAnn Wine & Associates.

In case you don't know me, here are a few of my credentials:

Life long Million Dollar Producer, in both residential real estate and commercial.

Returned to college in mid-eighties graduating with A Business Degree with "Highest Honors" from Walsh College in 1996...while working full time.

Accomplished speaker on many real estate topics: Home Staging, first time buyers seminars, economic forums presented through SC4, Short Sales/foreclosures, investment opportunities/APODs, 1031 Tax Free Exchanges, motivational talks

- 18 year member of Hi-Noon Toastmaster's Club, received award for best "Toastmaster President" Spoken for years around town on many topics
- At one time owned 67 rental units with her husband Bill. Now, sells to investment clients as well as other real estate activities.
- Authored and sold to SC4 a 6 week investment class. Radio announcer/submitted Times Herald articles for years
- Authored and Published several articles on real estate related topics
- Twice selected to be Eastern Thumb's "REALTOR of the YEAR" and chosen as "America's most Referred REALTOR by her peers (meaning the REALTOR other REALTORS most like to do business with)
- Elected and served so far 6 years on SC4 Board of Directors-showing her belief in "Life-long education."
- Charter member of National Association of Career Women winning both their local "Career Woman of the Year" and the National "Career Woman of the Year"-first time ever given.
- Numerous chair of many fundraisers for local/county organizations: cancer, heart, scholarships, etc.
- Believes in "Complimentary Health" practices and regularly has "Health Days" at her home and around town bringing in speakers to raise awareness of health issues, and also raises money for local charities/causes.
- Past president of Eastern Thumb Association of REALTORS, and on that Board for 8 years, also twice president of St. Clair County "Womens' Council of REALTORS", and won their "Woman of the Year Award", twice.

Plus, many other service awards, community awards, and business recognition.

I believe in community service, standing up for private property rights, our freedoms under our constitution; including our right to buy/sell/invest in real estate. And, the right for everyone to have good/decent/safe shelter for them and their families.

I am known for my "word" and doing what I say I will do. My personal philosophy is..."You are important, I care."

Let me know how we can further assist you through this organization.

I can be reached anytime on my cell at: 586-801-6068, or at my office at JoAnn Wine's: 810-985-5080, 103.

## Court Stops MERS Foreclosures by David Oppliger

### COURT STOPS MERS FORECLOSURES

By: David Oppliger

The Michigan Court of Appeals reversed the foreclosure of a house in Kent County and one in Jackson County because the wrong party did the foreclosure.

The court ruled that The Mortgage Electronic Registration System (MERS) is not a mortgage lender. It is a business developed by mortgage lenders to provide for the faster and lower cost buying and selling of mortgage debt. It accounts for 60% of the nations \$10.5 trillion in residential mortgages outstanding.

By operating through MERS, the lenders buy and sell loans without having to record a mortgage transfer for each transaction because the named mortgagee never change; it is always MERS even though the loans change hands. MERS purportedly tracks the mortgage sales internally so as to know for which entity it is holding the mortgage at any given time and, if foreclosure is necessary, after foreclosing on the property, it quit claims the property to whatever lender owned the loan at the time of foreclosure.

But the Michigan Court of Appeals ruled MERS lacks the authority to foreclose on houses in this state.

The Court ruled that under Michigan law, in order to foreclose by advertisement, the foreclosing party must have an interest in the debt. MERS does not have such an interest.

The court said that to the degree there were expediencies and potential economic benefits in separating the mortgagee from the note holder so as to speed the sale of mortgage-based debt, those lenders that participated were entitled to reap those benefits. However, it is no less true that, to the degree that this separation created risks and potential costs, those same lenders must be responsible for absorbing the costs.

But in practical terms, people whose foreclosures are finished won't benefit from the ruling. MERS has reportedly stopped foreclosing. The organization will now leave that up to its member-lenders who actually hold the promissory note on the loan.

If there are cases in process where MERS has foreclosed, property owners could perhaps successfully stop the foreclosure and say it's not being done properly.

Across the nation, MERS and its foreclosures are being challenged with mixed results. In California, for instance, an appeals court ruled in February MERS foreclosures are legal.

## Ten Terms to Include in Your Lease or Rental Agreement by NOLO.com

### What should be included in every lease or rental agreement.

A lease or rental agreement sets out the rules landlords and tenants agree to follow in their rental relationship. It is a legal contract, as well as an immensely practical document full of crucial business details, such as how long the tenant can occupy the property and the amount of rent due each month. Whether the lease or rental agreement is as short as one page or longer than five, typed or handwritten, it needs to cover the basic terms of the tenancy.

Here are some of the most important items to cover in your lease or rental agreement.

1. **Names of all tenants.** Every adult who lives in the rental unit, including both members of a married or unmarried couple, should be named as tenants and sign the lease or rental agreement. This makes each tenant legally responsible for all terms, including the full amount of the rent and the proper use of the property. This means that you can legally seek the entire rent from any one of the tenants should the others skip out or be unable to pay; and if one tenant violates an important term of the tenancy, you can terminate the tenancy for all tenants on the lease or rental agreement.

2. **Limits on occupancy.** Your agreement should clearly specify that the rental unit is the residence of only the tenants who have signed the lease and their minor children. This guarantees your right to determine who lives in your property—ideally, people whom you have screened and approved—and to limit the number of occupants. The value of this clause is that it gives you grounds to evict a tenant who moves in a friend or relative, or sublets the unit, without your permission.

3. **Term of the tenancy.** Every rental document should state whether it is a rental agreement or a fixed-term lease. Rental agreements usually run from month-to-month and self-renew unless terminated by the landlord or tenant. Leases, on the other hand, typically last a year. Your choice will depend on how long you want the tenant to stay and how much flexibility you want in your arrangement.

4. **Rent.** Your lease or rental agreement should specify the amount of rent, when it is due (typically, the first of the month), and how it's to be paid, such as by mail to your office. To avoid confusion and head off disputes with tenants, spell out details such as:

Acceptable payment methods (such as personal check only)

Whether late fees will be due if rent is not paid on time, the amount of the fee, and whether there's any grace period, and any charges if a rent check bounces.

5. **Deposits and fees.** The use and return of security deposits is a frequent source of friction between landlords and tenants. To avoid confusion and legal hassles, your lease or rental agreement should be clear on:

The dollar amount of the security deposit (be sure you comply with

any state laws setting maximum amounts), how you may use the deposit (for example, for damage repair) and how the tenant may not use it (such as applying it to last month's rent), when and how you will return the deposit and account for deductions after the tenant moves out, and any legal non-returnable fees, such as for cleaning or pets.

It's also a good idea (and legally required in a few states and cities) to include details on where the security deposit is being held and whether interest on the security deposit will be paid to the tenant.

6. **Repairs and maintenance.** Your best defense against rent-withholding hassles and other problems (especially over security deposits) is to clearly set out your and the tenant's responsibilities for repair and maintenance in your lease or rental agreement, including:

The tenant's responsibility to keep the rental premises clean and sanitary and to pay for any damage caused by his or her abuse or neglect, a requirement that the tenant alert you to defective or dangerous conditions in the rental property, with specific details on your restrictions on tenant repairs and alterations, such as adding a built-in dishwasher, installing a burglar alarm system, or painting walls without your permission.

7. **Entry to rental property.** To avoid tenant claims of illegal entry or violation of privacy rights, your lease or rental agreement should clarify your legal right to access to the property—for example, to make repairs—and state how much advance notice you will provide the tenant before entering.

8. **Restrictions on tenant illegal activity.** To avoid trouble among your tenants, prevent property damage, and limit your exposure to lawsuits from residents and neighbors, you should include an explicit lease or rental agreement clause prohibiting disruptive behavior, such as excessive noise, and illegal activity, such as drug dealing.

9. **Pets.** If you do not allow pets, be sure your lease or rental agreement is clear on the subject. If you do allow pets, you should identify any special restrictions, such as a limit on the size or number of pets or a requirement that the tenant will keep the yard free of all animal waste.

10. **Other Restrictions.** Be sure your lease or rental agreement complies with all relevant laws including rent control ordinances, health and safety codes, occupancy rules, and antidiscrimination laws. State laws are especially key, setting security deposit limits, notice requirements for entering rental property, tenants' rights to sublet or bring in additional roommates, rules for changing or ending a tenancy, and specific disclosure requirements such as past flooding in the rental unit.

Any other legal restrictions, such as limits on the type of business a tenant may run from home, should also be spelled out in the lease or rental agreement. Important rules and regulations covering parking and use of common areas should be specifically mentioned in the lease or rental agreement.

## Top Ten Legal Mistakes That Can Sink Your Landlord Business

by: Janet Portman, Attorney

### Know the laws in your state before you rent out space.

Being a successful landlord requires lots of practical know-how, business moxie, and familiarity with the market. Until about 30 years ago, the law didn't have much to do with it. Now, however, federal law and most states closely regulate nearly every aspect of your business. Not knowing the rules can land you in lots of legal hot water.

#### 1. Using Generic or Outdated Lease Forms

Most landlords know it's important to have a written lease or rental agreement. But using the wrong form can get you into trouble. So-called "standard" forms that are sold everywhere probably aren't compliant with the laws in your state. If you use a stationery store lease that short-cuts tenants' rights, you could find yourself at the losing end of a lawsuit because of an unenforceable lease clause. On the other hand, some standard forms actually impose greater obligations and restrictions on you than your state's law does! (My favorite requires landlords to return security deposits within ten days, which no state requires).

#### 2. Asking the Wrong Questions During Applicant Screening

Thorough tenant screening is the most important part of your business—If you choose poorly, you're in for nothing but headaches, with tenants who don't pay the rent, trash your place, or worse. But there are limits to what you can ask. Many landlords don't realize that even well-meaning questions (such as asking a disabled person about his disability or asking if a couple is married) can be illegal forms of discrimination. If the applicant doesn't get the rental, even though your rejection had nothing to do with the offending question, that disappointed tenant has ammunition for a fair housing complaint (which fair housing watch-dog groups are eager to pursue).

#### 3. Setting Policies that Discriminate Against Families

Although it's been illegal to discriminate against families for over 20 years, many owners' practices are far from family-friendly—and are downright illegal. Excluding families because you feel children cause more wear and tear and you prefer a "mature, quiet" environment is illegal. And while you're permitted to limit the number of residents in a unit (in most situations, two occupants per bedroom), you may not apply that standard differently when dealing with families. The cost of this mistake can be another trip to your lawyer's office, to deal with a fair housing complaint.

#### 4. Making Promises That You Don't Deliver On

It's fine to be enthusiastic about the benefits of your property, and it's necessary to do so in competitive markets, but understand that your enthusiastic promises will become binding if applicants rely on them when deciding to rent. For example, you may have to deliver the goods if you assure an applicant of a parking space, satellite service, or a new paint job. A tenant who feels ripped off may legally break the lease or sue you for the difference in value between what he was promised and what you delivered. Whether the tenant will win is hardly the point—you'll have to respond, which will cost time and money.

#### 5. Charging Excessive Late Fees

Late fees can be a powerful tool to motivate tenants to pay the rent on time. And while a higher fee can be a better motivator, some land-

lords cross the line, by setting fees that bear little resemblance to the actual damages they suffer when tenants pay late. Courts are increasingly invalidating excessive late fees that can't be justified with hard evidence. You're better off setting a modest fee that reflects your true damages, and dealing with chronic late-payers with pay-or-quit notices.

#### 6. Violating Tenants' Rights to Privacy

Most states have detailed rules on when, for what reasons, and with how much notice you may enter a tenant's home. Yet many landlords stop by unannounced, asking to check things over, perform an on-the-spot repair, or show the place to prospective tenants. Repeated violations of a tenant's privacy (or even one outrageous violation) can excuse a tenant from any further obligations under the lease and may also result in court-ordered money damages against the landlord.

#### 7. Using Security Deposits for the Wrong Projects

The most frequent types of cases heard in small claims court are arguments over security deposit retentions. Yet the basic rule that deposits should be used only to cover damage beyond wear and tear, needed cleaning, and unpaid rent—isn't hard to understand. Still, landlords routinely use the deposit to cover appliance upgrades, cosmetic improvements and other refurbishing, not repairs. Not surprisingly, many of these landlords lose these cases in small claims court.

#### 8. Ignoring Dangerous Conditions In and Around the Rental

Landlords in virtually every state are required to offer and maintain housing that meets basic health and safety standards, such as those set by state and local building codes, health ordinances, and landlord-tenant laws. If you fail to take care of important repairs, deal with environmental hazards, or respond when your property has become an easy mark for criminals, tenants may break the lease and, in many states, withhold the rent or make the repair themselves and deduct the expense from the rent.

Landlords who have failed to make their properties reasonably secure in the face of repeated on-site crime are often ordered to compensate the tenant-victim when yet another criminal intrudes. These are expensive ways to learn the law.

#### 9. Keeping Security Deposits When Tenants Break a Lease

When tenants break a lease and leave early, landlords often keep the entire deposit, reasoning that the tenant's bad behavior justifies doing so, and that they'll ultimately need it anyway to cover rent. In many states, this is illegal—you must take reasonably prompt steps to re-rent, and credit any new rent toward the tenant's obligation for the rest of the lease. Keeping a two month's rent deposit and re-renting within a month is not legal.

#### 10. Failing to Return Security Deposits According to Law

This list wouldn't be complete without another reference to security deposits. Not only are they used improperly, they're often not returned according to state law, either. Many states have deadlines by which landlord must itemize their use of the deposit and return any balance. It's not uncommon for tenants to wait many weeks or months for this accounting. In some states, the deliberate or "bad faith" retention of the deposit will result in harsh penalties against the landlord, such as an order that the landlord pay two or three times the deposit to the tenant.

## Learn about the many tax deductions available to rental property owners.

by Stephen Fishman

### Top Ten Tax Deductions for Landlords

Every year, millions of landlords pay more taxes on their rental income than they have to. Why? Because they fail to take advantage of all the tax deductions available for owners of rental property. Rental real estate provides more tax benefits than almost any other investment.

Often, these benefits make the difference between losing money and earning a profit on a rental property. Here are the top ten tax deductions for owners of small residential rental property.

#### 1. Interest

Interest is often a landlord's single biggest deductible expense. Common examples of interest that landlords can deduct include mortgage interest payments on loans used to acquire or improve rental property and interest on credit cards for goods or services used in a rental activity.

#### 2. Depreciation

The actual cost of a house, apartment building, or other rental property is not fully deductible in the year in which you pay for it. Instead, landlords get back the cost of real estate through depreciation. This involves deducting a portion of the cost of the property over several years.

#### 3. Repairs

The cost of repairs to rental property (provided the repairs are ordinary, necessary, and reasonable in amount) are fully deductible in the year in which they are incurred. Good examples of deductible repairs include repainting, fixing gutters or floors, fixing leaks, plastering, and replacing broken windows.

#### 4. Local Travel

Landlords are entitled to a tax deduction whenever they drive anywhere for their rental activity. For example, when you drive to your rental building to deal with a tenant complaint or go to the hardware store to purchase a part for a repair, you can deduct your travel expenses.

If you drive a car, SUV, van, pickup, or panel truck for your rental activity (as most landlords do), you have two options for deducting your vehicle expenses. You can:

Deduct your actual expenses (gasoline, upkeep, repairs), or, use the standard mileage rate (51 cents per mile for 2011; up from 50 cents per mile in 2010). To qualify for the standard mileage rate, you must use the standard mileage method the first year you use a car for your business activity. Moreover, you can't use the standard mileage rate if you have claimed accelerated depreciation deductions in prior years, or taken a Section 179 deduction for the vehicle.

#### 5. Long Distance Travel

If you travel overnight for your rental activity, you can deduct your airfare, hotel bills, meals, and other expenses. If you plan your trip carefully, you can even mix landlord business with pleasure and still take a deduction.

However, IRS auditors closely scrutinize deductions for overnight

travel—and many taxpayers get caught claiming these deductions without proper records to back them up. To stay within the law (and avoid unwanted attention from the IRS), you need to properly document your long distance travel expenses.

#### 6. Home Office

Provided they meet certain minimal requirements, landlords may deduct their home office expenses from their taxable income. This deduction applies not only to space devoted to office work, but also to a workshop or any other home workspace you use for your rental business. This is true whether you own your home or apartment or are a renter.

#### 7. Employees and Independent Contractors

Whenever you hire anyone to perform services for your rental activity, you can deduct their wages as a rental business expense. This is so whether the worker is an employee (for example, a resident manager) or an independent contractor (for example, a repair person).

#### 8. Casualty and Theft Losses

If your rental property is damaged or destroyed from a sudden event like a fire or flood, you may be able to obtain a tax deduction for all or part of your loss. These types of losses are called casualty losses. You usually won't be able to deduct the entire cost of property damaged or destroyed by a casualty. How much you may deduct depends on how much of your property was destroyed and whether the loss was covered by insurance.

#### 9. Insurance

You can deduct the premiums you pay for almost any insurance for your rental activity. This includes fire, theft, and flood insurance for rental property, as well as landlord liability insurance. And if you have employees, you can deduct the cost of their health and workers' compensation insurance.

#### 10. Legal and Professional Services

Finally, you can deduct fees that you pay to attorneys, accountants, property management companies, real estate investment advisors, and other professionals. You can deduct these fees as operating expenses as long as the fees are paid for work related to your rental activity.

#### DID YOU KNOW?

Landlords can greatly increase the depreciation deductions they receive the first few years they own rental property by using segmented depreciation.

Careful planning can permit you to deduct, in a single year, the cost of improvements to rental property that you would otherwise have to deduct over 27.5 years.

You can rent out a vacation home tax-free, in some cases.

Most small landlords can deduct up to \$25,000 in rental property losses each year.

A special tax rule permits some landlords to deduct 100% of their rental property losses every year, no matter how much.

People who rent to their family and friends can lose virtually all of their tax deductions.

## Foreclosed? The tax man may want his cut by Les Christie (CNN Money)

Did you lose your house to foreclosure this year? Did your lender forgive some of your mortgage debt because the house sold for less than the mortgage balance?

If so, you could be facing a big tax hit.

It is IRS policy to tax forgiven debt you are personally responsible for as if it is income. Say, for example, your credit card company settled a \$10,000 debt for 50 cents on the dollar. You'd have a debt forgiveness of \$5,000, which the IRS would count just like your wages.

The same policy held true for most mortgage debt until 2007, when Congress passed the Mortgage Forgiveness Debt Relief Act. That ended the liability for many homeowners—but not all.

In general, if you lose your home to foreclosure or short sale, where you sell your home for less than you owe, the IRS won't add insult to injury by counting the difference as income, at least until 2012, when the act expires.

### 1. You did a cash-out refinance and splurged.

Many homeowners took cash out when they refinanced their homes and used the extra dough to pay for new cars, boats, vacations or other spending.

Say you did that and then got into trouble, losing the house through a foreclosure or short sale. Even if your lender waived the remaining debt, the IRS will treat it as income the portion of the forgiven debt that you took out as cash and spent.

Only the funds used to actually improve your home won't be taxed (plus the costs of refinancing the loan). Yes, even if you spent the money on paying off your student loans or credit cards.

The IRS' reasoning is that only the money spent on home improvements actually added to your home's value. And that, presumably, diminished the difference between what you owed on your mortgage and the value of your home when it was foreclosed.

### 2. You have a home-equity line of credit.

The same rules that apply to refinancing also apply to home-equity loans: The IRS will only forgive the tax liability if the loan money was spent on home improvements. And, tax experts advise, be prepared to show receipts to prove it.

### 3. You lost your vacation home or investment property.

So the market tanked and you lost your vacation home. Unfortunately, if you didn't use it as your primary residence for at least two of the previous five years, you're going to pay the tax man.

More common, however, may be the case of investment properties gone sour. During the housing boom, buying homes for investment purposes soared, accounting for 28% of all sales during 2005, according to the National Association of Realtors. (Vacation homes made up 12%.) And many of these purchases were made with little down payment.

When the bust hit, second home prices cratered. The median price for investment properties fell nearly in half of \$94,000 by 2010, according to NAR. For vacation homes, the median price paid dropped 26% to \$150,000.

If an investor bought a property in 2005 at the median price and sold it in 2010, she could have run up almost \$90,000 in forgiven debt. If she's in the 25% tax bracket, that would add more than \$22,000 to her tax liability. Ouch!

### 4. You owned a multi-million-dollar home.

It may be hard for American struggling in this weak economy to sympathize with anyone wealthy enough, at one time, to afford a multi-million-dollar home, but owners losing one could be on the hook for a huge tax bill.

Only the first \$2 million in forgiven debt will be voided under the relief act; all the overage is taxable as income.

So, say, for example, you're ex-ballplayer and self-styled stock-picker Lenny Dykstra and paid \$18.5 million to Wayne Gretzky for a mansion in Thousand Oaks, California. When you defaulted on the loan in 2009 and the house was auctioned in 2010 for \$10.5 million, you could be on the hook for \$6.5 million of the \$8.5 million in forgiven debt.

Other ways out...

The good news? Even if you fall under any of these four scenarios, you may have a way out, according to Anderson. "If the taxpayer was insolvent at the time of the foreclosure, the forgiven debt can be excluded for tax purposes," he said. "It can also be discharged in a bankruptcy and approved by court order."

People like Dykstra could elude taxes because California is a "non-recourse" state. Lenders there accept homes as the collateral for the debt and when a bank forecloses, the loan is regarded as paid in full. Since there no debt to forgive there's no taxable income.

It's not always that simple, though. Many homeowners in California and other non-recourse states have refinanced their mortgages and refi's are, as a rule, recourse loans, according to attorney Bill Purdy. "A refi destroys your non-recourse status," he said. If a big debt is forgiven, borrowers may owe taxes.

Purdy also explained that banks often file 1099 forms with the IRS that mistakenly list debt forgiveness when there was none.

"People need to regard the 1099s with suspicion," he said. "I've had clients in here who have been making payments to the IRS when they had non-recourse loans."

As long as the Mortgage Forgiveness Debt Relief Act stays in effect, only borrowers for the most expensive properties in foreclosure will have to worry. After that, though, it may pay for any homeowner in foreclosure to be very aware of their tax exposure—and plan accordingly.

**A pet agreement can reduce a landlord's risks in a pet-friendly building. Here's what to include in the agreement.**

Many landlords allow tenants to keep pets in their rentals. They do because they love pets, or see benefits to their property—like a broader pool of tenants, or reduced tenant turnover (because pet owners have fewer options). However, allowing pets on your property can pose risks, from additional property damage to pet-induced injuries. Here's how you can reduce the risks associated with pet-friendly rentals.

**Include a "Pet Agreement" in the Lease**

You can reduce the additional risks created by having pets on your property by creating smart pet policies, putting them into a "pet agreement," and including the agreement as part of your lease. (Your lease should refer to the pet rules and incorporate them as part of your lease.) This provides notice to tenants that their continued tenancy depends on honoring these rules.

Require that all tenants sign the pet agreement, even non-pet owners. That way, if a tenant gets a pet later, she already knows what the rules are and what is expected if she wants to stay in their apartment.

Here are some common provisions to consider including in your pet agreement.

**Policy 1: Identify the Types of Pets Allowed**

Your pet agreement should specify which types of pets are allowed. Some landlords allow only common domesticated animals such as dogs, cats, birds, fish, guinea pigs, rabbits, hamsters, gerbils, and small reptiles. The agreement should also specify any limit to the number of pets allowed.

**"Dangerous" dog breeds.** Some landlords ban certain dog breeds that many people believe have propensity toward violence, such as pit bulls and Rottweilers. Although the question of whether certain breeds are truly dangerous is a topic of controversy, landlords are legally entitled to ban these breeds from rental property. (Fair housing laws apply to human beings, not to dogs.) Before you allow such breeds, check with your insurer. Some companies won't issue liability policies if certain so-called "dangerous breeds" are kept on the property.

**Weight limits.** Instead of, or in addition to, banning certain breeds, some landlords limit the weight of dogs. For example, a landlord might only allow dogs under 20 pounds.

**Tenants' pet only.** In your pet agreement, make it clear that you allow only tenants' pets. You don't want your tenants caring for other people's pets in their rental unit. Also specify whether you will allow guests to bring their pets with them

while visiting tenants.

**Policy 2: Allow Only Pets You Approve**

Require that tenants get your approval for any pet they wish to keep in their apartment. You may wish to forego this approval requirement for certain types of pets that you don't think will cause problems or trigger complaints, such as goldfish.

Before you approve a particular pet, ask questions. For example:

How long has the tenant had the pet?

Where will the tenant get the pet (if not owned yet)

Whether the pet has caused any property damage or other problems, and

Who will look after the pet when the tenant is away?

Finally, state that your approval is conditioned upon the tenants' continued compliance with the terms of your pet agreement. Make clear that you have the right to ask the tenant to remove the pet from your property or terminate the tenancy in the event of serious or repeated violations of the agreement.

**Policy 3: Require Proper Identification, Licenses, and Vaccinations**

Make sure tenants understand that all dogs and cats must wear identification collars or tags, which include proof of current vaccinations. Learn what your local ordinances require concerning regular cat and dog vaccinations and licenses, and insist that tenants give you current proof that they've complied (such as a copy of their municipal license receipt or the vet's bill).

**Policy 4: Make Tenants Responsible for Their Pets**

Tenants should agree to keep their pets under control at all times, so that they don't disturb other tenants and their guests. Require tenants to clean up after their pets, both inside their apartment, and in all common areas and other parts of your property. Tenants should also agree not to leave pets outdoors or unsupervised in their apartment for an unreasonable period of time, and to keep pets in appropriate, contained areas within their apartment. For example, small reptiles such as lizards should be kept in terrariums and birds should be kept in cages.

To further reduce the risk that a tenant's pet will cause injuries to other tenants or their guests, consider requiring your tenants to carry renters' liability insurance (assuming your state and local law allow it).

(cont. pg 9)

**Smart Landlord Policies for Pet-Friendly Rentals  
(Conclusion)** by Ron Leshnow (NOLO)

If you do require this insurance, be sure the policy covers damage caused by pet accidents and that it doesn't contain a dog bite exclusion or other such limitation.

**Policy 5: Consider Charging a Pet Fee**

Many landlords routinely impose a "pet fee," in addition to the normal security deposit, reasoning that pets typically cause added wear and tear to an apartment. Think carefully before implementing such a policy, for these reasons:

A fee might not be legal. In some states, such as California, landlords cannot charge more than a specified sum as a deposit. This sum covers the total of all types of deposits. So, if the total amount of the deposits that you charge to all tenants has reached the maximum, you cannot charge a pet deposit on top of that.

A fee might not be a good idea. Setting aside a certain sum as a deposit to cover pet damage isn't always practical. Suppose a pet is well-behaved but the tenant who owns the pet is a slob. If part of the deposit is marked for pet damage only, you might not be able to use that money to clean up the tenant's mess. Often, it's better to impose a non-specific deposit.

A fee might be unreasonably high. If you decide to impose a specified pet deposit, keep it reasonable, such as \$200 to \$300 per year. Otherwise, if your tenant challenges it, a judge may not enforce it.

Finally, do not impose a pet deposit or fee for a tenant who keeps a service or companion animal. Such animals aren't pets—they are animals needed to accommodate a disability.

**Make it Easy to Change the Pet Agreement**

From time to time, you may want to change your pet policy. For example, you may decide to no longer allow cats. So that you can easily make a change, state in your pet rules that you have the right to amend the rules by giving tenants reasonable notice (typically 30 days).

**Consider a grandfather clause for pet policy changes.**

A "grandfather clause" exempts tenants already in the building from having to comply with the new rules for pets they already had before the changes took place. The rules would apply to any new pets they get. Without a grandfather clause, some tenants might have to get rid of a pet that no longer complies. This is certain to trigger considerable resistance.

**Tenant Injuries: Landlord Liability and Insurance**  
(NOLO)

When is a landlord liable for an injury to a tenant or visitor on the rental property?

To be held responsible for an injury on the premises, the landlord or property manager must have been negligent in maintaining the property, and that negligence must have caused the injury. All of the following must be proven for a landlord to be held liable:

It was the landlord's responsibility to maintain the portion of premises that caused the accident.

The landlord failed to take reasonable steps to avert the accident.

Fixing the problem (or at least giving adequate warnings) would not have been unreasonably expensive or difficult.

A serious injury was the probable consequence of not fixing the problem (the accident was foreseeable).

The landlord's failure—his negligence—caused the tenant's accident.

The tenant was genuinely hurt.

For example, if a tenant falls and breaks his ankle on a broken front door step, the landlord will be liable if the tenant can show all of the following:

It was the landlord's responsibility to maintain the steps (this would usually be the case, because the steps are part of the common area, which is the landlord's responsibility).

The landlord failed to take reasonable measures to maintain the steps (for days or weeks, not if it had only been broken for minutes).

A repair would have been easy or inexpensive (fixing a broken step is a minor job).

The probable result of a broken step is a serious injury, and it was foreseeable (falling on a broken step is highly unlikely).

The broken step caused the injury (the tenant must be able to prove that he fell on the step and that the step is where he broke his ankle).

The tenant is really hurt (the tenant isn't faking it).

A tenant can file a personal injury lawsuit or claim against the landlord's insurance company for medical bills, lost earnings, pain and other physical suffering, permanent physical disability and disfigurement, and emotional distress. A tenant can also sue for damage to personal property, such as a stereo or car, that results from faulty maintenance or unsafe conditions.

## Tenant Injuries: Landlord Liability and Insurance

by NOLO

### How can landlords minimize financial losses related to repairs and maintenance?

You can avoid many problems by maintaining the property in excellent condition. Here's how:

Use a written checklist to inspect the premises and fix any problems before new tenants move in.

Encourage tenants to immediately report safety or security problems such as plumbing, heating, broken doors or steps—whether in the tenant's unit or in common areas such as hallways and parking garages.

Keep a written log of all tenant complaints and repair requests with details as to how and when problems were fixed.

Handle urgent repairs as soon as possible—take care of any safety issues within 24 hours. Keep tenants informed as to when and how the repairs will be made.

Twice a year, give tenants a checklist on which to report potential safety hazards or maintenance problems that might have been overlooked. Use the same checklist to personally inspect all rental units once a year.

Also, your commitment to repair and maintenance procedures should be clearly set out in the lease or rental agreement.

### How can insurance help protect a rental property business?

A well-designed property insurance policy can protect a landlord's rental property from losses caused by many perils, including fire storms, burglary, and vandalism. (Earthquake and flood insurance are typically insured under separate policies.)

A comprehensive general liability ("CGL") policy provides liability insurance, covering injuries or losses suffered by others as the result of defective conditions on the property. Equally important, liability insurance covers the cost (mostly lawyers' bills) of defending personal injury lawsuits.

Here are some tips on choosing insurance:

Purchase enough coverage to protect the value of the property and assets.

Be sure the policy covers not only physical injury but also libel, slander, discrimination, unlawful and retaliatory evictions, and invasion of privacy suffered by tenants and guests.

Carry liability insurance on all vehicles used for business purposes, including the manager's car or truck if it's used on the job.

## Energy Tips for summertime

Courtesy of Consumer's Energy

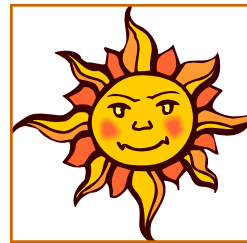
Beat the summer heat and stay comfortable with these energy savers

-Buy an air conditioner with a high-energy efficiency rating. (EER) It's printed on the Energy Guide label attached to the unit. A unit with an EER of 10 will cost half as much to operate as one with an EER of 5.

-Make sure that your central air conditioning system is the right size for the area you want to cool.

-If you have central air conditioning, clean leaves and debris from the unit. To save energy, make sure they're not too close to the compressor because they can block airflow.

-Install your air conditioner in the shade. When it's in direct sunlight, it uses more energy.



The Fall Seminar will be

held on

September 23, 2011.

8:00 am—3:30 pm

at the MTEC Building at SC4.

EMREIA is now set up to do TRAK-1 full tenant screens. See the April Newsletter for details.

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

810-385-2332 or by email at [jgalbraith@innovativehousing.org](mailto:jgalbraith@innovativehousing.org)

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