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FAA Calendar >>>

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PRESIDENT'S MESSAGE: LEGAL AND LIABILITY ISSUE

Legal and Liability Issue

BY **LINDA PAOLO**, WRH REALTY SERVICES, INC.



Our summer publication deals with legal and liability issues. These issues are the nuts and bolts of our organization. We, as members of the Florida Apartment Association, owe it to ourselves, our owners and employers to stay current on what we can and cannot do on our properties. Not knowing the right thing to do could cost your company or your owner a lot of money. We all need to educate ourselves and stay current on what is happening in our industry.

One item FAA is working to finalize is the Florida Legal Guide. This Guide will be available to our membership and will provide access to literally hundreds of articles, written by Florida attorneys that relate to all aspects of multi-housing. The Guide will include links to various relevant Florida and Federal Statutes. It will have a comprehensive Fair Housing section. I would say that most questions a property manager could have, this Guide should be able to answer. This is a priority for FAA and one we want to get in place.

Many of the local apartment associations conduct legal seminars. These seminars are conducted by local eviction attorneys who are extremely knowledgeable, and I encourage each of you to attend one of these seminars every year. Laws change and we all need to stay current of any changes that affect the way we do business. Take advantage of these educational opportunities.

Our Legislative Conference in Tallahassee was held on April 3-4 and was again well attended. It was wonderful to see so many of you at the conference this year and get actively involved in the issues that affect our industry. We tracked more bills this session than in past years. The bills we most closely watched were: HB 77 and SB 490, which dealt with landlord and tenant issues; HB 481, which dealt with the regulation of the real estate profession; and HB 737 and SB 156; which related to swimming pool and spa contracting. As you can see, the outcome of each of these bills would greatly affect how you do business in your apartment community. You will read more about this in the Legislative Update Section written by Laura Heiselman, the FAA Government Affairs Director.

During the Legislative Conference, we graduated 17 Leadership Lyceum candidates, 14 of which were in attendance at the conference. The Leadership Lyceum program provides a curriculum that increases the understanding of how the industry and the associations operate, further enhances leadership management skills and cultivates camaraderie among the committed volunteers. It was great to see the number of graduates we had, and I look forward to seeing them as our future leaders in the Florida Apartment Association.

The FAA Education Conference Committee is busy finalizing all the details for our Annual Education Conference. This year, the Conference will be held on Oct. 16-18 at the Hilton Orlando Bonnet Creek Hotel in Orlando, Fla. Mark your calendars now and plan to attend this event in Orlando.

I am looking forward to seeing everyone soon. ▲

▼
This Guide will be available to our membership and will provide access to literally hundreds of articles, written by Florida attorneys that relate to all aspects of multi-housing.

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Summer, the Time for Growth

As the summer months bring heat, humidity and afternoon showers, your Florida Apartment Association staff remains cool, calm and collected. We hope you enjoy this issue of the magazine and its new look. Our partners at Naylor have given us a new design that we believe was long overdue.

From my perspective, the biggest news is that our association is fiscally sound and growing. Our locals associations have grown their memberships to more than 456,000 apartment units and our supplier partner (associate/vendor) memberships are up to more than 1,000. The NAA Florida Lease Program click sales hit the one million mark each month this past quarter, with more than 1,600 of our member communities using the FAA lease. Our future will bring the addition of a new member benefit, the Florida Legal Guide. The lion's share of the guide was written by Harry Heist, one of Florida's top-notch landlord tenant attorneys. We expect that the Guide will be available to members this fall.

Ralph Robinson, FAA's Director of Meetings and Affiliate Relations, and I had a blast participating as exhibitors at the First Coast and Greater Orlando Apartment Association Trade Shows. Laura and Ralph were also participants at the North Central Florida Apartment Association trade show in Gainesville. Laura also presented a legislative update for the NCFAA attendees. Check out our Facebook page pictures to see just how much fun we had. It wasn't all fun and games though; we were able to talk with many of you about local, state and national programs and initiatives of benefit to you and your organizations.

FAA's Government Affairs Council (GAC), comprised of our President Linda Paolo (WRH Realty Services); President-Elect/Legislative Committee Chairman Stacey Stuart (Bainbridge); Ron Wenzel (Greystar), Vice President; Susan Truesdale (Winthrop Mgmt.), Immediate Past President; and Cindy Fredlund (Camden), APAC Chairman, held weekly conference calls with Kelly Mallette,

our state lobbyist, Laura Heiselman, FAA Government Affairs Director, and Harry Heist, who worked diligently on the landlord/tenant bill language. For the first time, FAA also employed the services a consultant, Richard Herring, who reviewed and analyzed bill language. Richard was an invaluable resource to the association. The weekly calls throughout Florida's 90 day legislative session provided the members of the GAC a forum to be informed on the progress of the priority bills we tracked throughout session and to strategize ways in which to get these bills passed or stalled. As you'll read in Laura's article, this was a very successful session for the multihousing industry. Thanks, in large part, should be given to the members of the GAC for their dedication and for the time devoted to protect your interests.

I would be remiss if I didn't thank our Education Conference & Trade Show Platinum sponsors for their outstanding support. Each of these companies gave a minimum of \$10,000 in sponsorship to FAA, with several giving way more than the minimum. Our platinum sponsors are **Apartment Finder, Apartment Guide, For Rent Media Solutions, House of Floors**, and new this year, **Massey Services**. These companies, our other conference sponsors, Product Service Council members and local association supplier members are the companies that I encourage you to ask to bid

on your next product or service purchase. Support those who support your association!

Did you know that you can save \$30 just by registering on the FAA website to attend the FAA Education Conference & Trade Show? As we all know, time flies and it will be October before we know it, so go to the website, click on the Annual Conference button and get registered today! You can make your hotel reservations at the Hilton Bonnet Creek while you're there too. I hope you'll join your fellow members at the October conference. It promises to bring **New Frontiers** your way! ▲



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FAA's 2013 Legislative Days – Our Advocacy Voyage



One hundred sixty four attendees descended upon Tallahassee for FAA's 2013 Legislative Days in early April. Our two-day conference was jam-packed with information and activities.

We were fortunate to be joined by NAA's Vice President of Government Affairs, Mr. Greg Brown, who provided us with an update on federal issues as well as shared an overview of NAA's recent public relations initiative.

Greg feels strongly about the importance of member involvement in our industry's advocacy efforts. "One of the most important roles for a member of any apartment association is advocating on behalf of their industry in front of local, state and federal policymakers. At the same time, it is critical that the association itself responds with effective training on both issues and advocacy tactics while also providing its members with tools to help them make the case. During its state lobby day in Tallahassee, FAA hit the bull's eye in all of these areas. The program was both informative and entertaining with role-playing exercises that helped illustrate an explanation of the issues to an elected official. As well, the printed materials were attractive to the eye and powerful in their presentation of key facts and data points. Perhaps most importantly, the event overall generated sustained energy amongst the participants and got them motivated to work on the industry's behalf. This was a fantastic example of how the apartment industry can effectively marshal its forces in state legislatures and make its voice heard."

A unique addition to the conference was our Legislative Days Commemorative Poster. FAA commissioned Central Florida

artist Anna McCambridge to create a custom design to celebrate the 500th anniversary of the state of Florida and the final product was met with great enthusiasm! The poster was given to all current APAC donors who had contributed \$100 individually or \$500 corporately. Attendees who were not eligible for the APAC donor gift were also able to purchase the print at the event. A limited number of our commemorative posters are still available through FAA if you're interested in purchasing one. You can learn more by visiting FAA's website at www.faahq.org.

At our legislative briefing, we discussed our priority issues for 2013. Thanks to our workshop at our January board meeting, we had a clear vision of our key issues and our members felt confident about how best to articulate our needs during their legislative visits. (See below for a recap of the final actions on our priority bills.)

For the first time this year, we incorporated specific advocacy examples for our priority bills during our Legislative Skits. Tiffany Ferguson, Property Manager at Tanglewood Apartments and a first-time Legislative Days attendee, remarked, "I absolutely loved the skits at the legislative days. They were done in such a way that, not only did they give me a better understanding of what to expect, but they also helped me feel more comfortable about our visit to the Capitol."

Our ability to participate meaningfully in the governmental arena is heightened by our participation in the election process. We do this through our political action committee, APAC. During our two-day conference, more than \$14,000 was contributed to APAC by individual members, corporations and by our affiliates. Thank you for all that you

have done and will continue to do to benefit APAC! For those who have yet to invest in our efforts, please consider writing a check or donating online today! We need your support!

At our evening dinner, we were pleased to recognize Senator Kelli Stargel as the 2012 Legislator of the Year. The 2011 recipient, Senator Jack Latvala, joined FAA President Linda Paolo to present the award. Senator Stargel was the Senate sponsor for the 2013 Landlord Tenant bill and had sponsored a similar measure last year in the Florida House of Representatives. The Senator explained her reasoning behind the bill: "Because of the economy, the state of Florida now has many people in the new role of either landlord or tenant. Whether they are renting out a home they could not sell or are now a tenant because they lost their home to foreclosure, this is a new experience they must learn to navigate. This bill gives a clear disclosure of what is expected of both; clarifying each of their responsibilities with regard to the law. For the professional property managers, this legislation cuts down on inefficient and redundant notices and improves the landlord/tenant communications."

We are grateful to Senator Stargel and Representative Porter for their efforts, and we also extend our gratitude to Harry Heist and the FAA Government Affairs Council for their tireless efforts to pass this balanced piece of legislation.

Members were pleased to share their perspectives with lawmakers and staff during their visits and found that our issues were, for the most part, well received. Jonathan McClintock, Senior Property Manager for PRG Real Estate Management, Inc. and Chair of AAGO's Legislative Committee

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LEGISLATIVE REVIEW:

continued from page 11

observed, "Legislative Days is a great example of key members in our industry taking small steps to get a big job done. I felt a great sense of pride during our brief visit to Tallahassee. It was great to see how well respected we are by such key players in the legislative process."

Advocacy is a core function of your Florida Apartment Association but our impact is made greater when we have the strength of our membership beside us. If you participated in this year's Legislative Days, we thank you. We especially want to extend our appreciation to our first-time attendees and to our gracious sponsors: The Apartment Association of Greater Orlando, Branch Reconstruction Group and The Capital City Apartment Association. We also wish to express our gratitude to Ron Book and Kelly Mallette, our Tallahassee lobbying team. We are represented well and the consistent efforts made on our behalf, year after year, continue to result in successful outcomes for our industry!

For those in our membership who were unable to attend this year, we hope you will make plans to participate in 2014. Our industry, and particularly our association, is highly regarded in the halls of our state government. We present a united, concise, pro-business and pro-resident message. Help us continue to protect your ability to provide safe, affordable rental housing to the citizens of Florida. ▲

FAA'S PRIORITY ISSUES FOR 2013

- CS/HB77 and SB490: Landlord/Tenant – PASSED and signed into law by the Governor
- HB481: Licensing of Leasing Agents – Died in Business and Professional Regulation Committee (House)
- HB737/SB156: Swimming Pool & Spa Contracting – Died on third reading in the House
- CS/HB47 and CS/SB264: Fire Safety Devices – Died in House Regulatory Affairs Committee and in Senate Commerce and Tourism
- HB7015/SB1412: Expert Witness Testimony – PASSED and signed into law by the Governor

For more information about the contents of these bills and the status of other bills we were monitoring, please visit our website or you may read the bills in their entirety by going to www.myfloridahouse.gov

FEATURE: 2013 LEGISLATIVE DAYS IN TALLAHASSEE

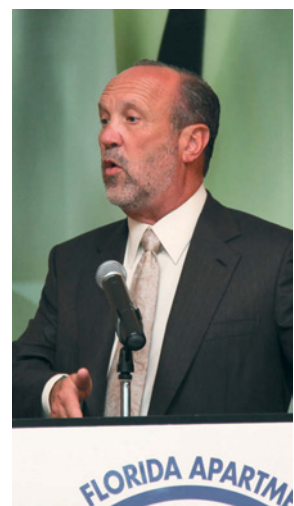
Enjoy photos from the 2013 Legislative Days in Tallahassee

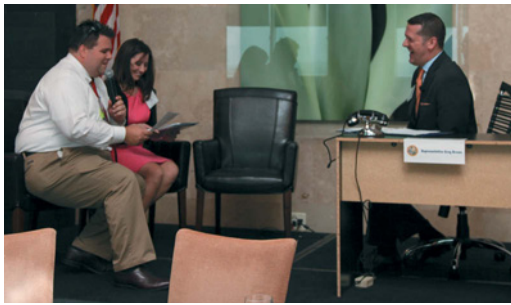
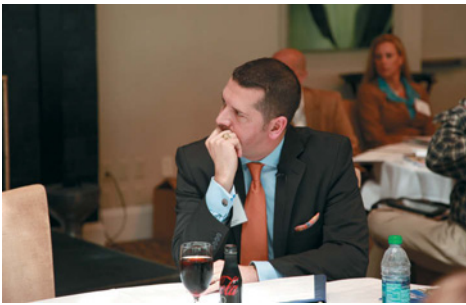


Members of the First Coast Apartment Association lobbying on behalf of our industry.



AAGO members served as advocates for FAA's priority issues during their Capitol visits.





Evolution of the Fair Housing and Americans with Disabilities Acts Provisions



In 1988, Congress added protections to the Fair Housing Act (FHA) to prevent housing discrimination against persons with disabilities. Fair housing complaints alleging housing discrimination because of a disability account for the largest number of FHA claims filed (40 percent).

In 1990, Congress created the Americans with Disabilities Act (ADA) to provide protections for the disabled in virtually every public and work place. The ADA applies mainly to the management office of apartment communities, but not other areas. This year marks the 23rd anniversary of the ADA and the 25th anniversary of the FHA.

THE FAIR HOUSING ACT

The FHA prohibits discrimination in providing housing and home financing based on race, color, religion, sex, national origin, familial status and disability. The FHA applies to both rental housing and sales of single family homes. Florida's state fair housing law is based on and substantially similar to the federal FHA. Some Florida counties and cities have local ordinances



that add other protected categories, such as age, marital status and sexual preference.

Apartment owners and managers are prohibited from discriminatory rental policies or actions based on one of the prohibited factors. For example, an apartment manager cannot deny housing to a disabled person under federal or the Florida FHA, simply because the applicant is wheelchair bound and may have trouble accessing the apartment. If that were the only criteria for refusing to approve a rental application, it would be discriminatory.

Both the FHA and ADA require apartments to provide “reasonable accommodations” to persons with disabilities in order to allow the same rights and privileges as persons who are not disabled. A disability accommodation is a change made to management’s rental policies and procedures in order to assist someone who is disabled. The FHA also requires management to allow the resident to make “reasonable modifications,” at the resident’s expense, to the common areas and interior of the apartment. A modification is a physical change to the apartment or common areas of the apartment community that assists the disabled person to live in the community. Of course, the resident must first request the changes and obtain management’s approval before proceeding. The request does not have to be written. It also does not have to come from a medical doctor if the nature of the disability is apparent. Apartments constructed for occupancy *after* March 13, 1991, must meet certain minimum requirements of accessibility and adaptability for persons who are disabled, primarily focusing on whether a person in a wheelchair can access and use the premises.

GROWTH OF THE FHA AND ADA

Not surprisingly, these disability laws have grown in ways that were hard to foresee. The increasing reach of the FHA and ADA did not come from Congress or the Florida Legislature. Expansion of the laws occurred mostly at the federal level and because of new administrative regulations, judicial interpretation in court cases, and civil enforcement actions by the federal government, disabled persons, and disability advocacy groups. The U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Justice (DOJ) have contributed significantly to this process.

HOW MANY PERSONS IN THE U.S. HAVE DISABILITIES?

In 2010, the total U.S. population was approximately 304 million. Nearly 56 million, or 18.6 percent, of the total population have some form of disability. The 2010 U.S. Census estimates that of the 241.7 million adults aged 15 and older, about 14.9 million or 6.2 percent experienced some level of

A number of accommodation requests now involve animals that have no specific training to assist with a disability. Usually these animals are called “comfort,” “therapy,” or “emotional support” animals.

difficulty with seeing, hearing or speaking. Of those 15 million disabled adults, approximately 3.3 million had a *severe* seeing, hearing or speaking disability. As expected, the likelihood of having a severe disability increases with age. Persons over age 65 have a higher percentage and more severe forms of disability than younger persons.

The U.S. Census defines “difficulty seeing” as experiencing blindness or having difficulty seeing words and letters in ordinary newsprint, even when wearing glasses or contact lenses. “Difficulty hearing” is defined as deafness or difficulty hearing a normal conversation, even when wearing a hearing aid. Approximately 30.6 million people over age 15 had limited use of the lower body and difficulty walking, climbing stairs, or using a wheelchair, cane, crutches, or walker. [Source: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, *Americans with Disabilities: 2010, Household Economic Studies*, Matthew W. Brault, July 2012]

INTERNET ACCESSIBILITY

In 1980, the internet was still in its infancy, and commercial internet service providers were many years away from the explosive growth of email and online research by individuals and businesses. The public was not yet shopping online and did not realize how common internet websites would become for buying and selling products and services.

The ADA has very limited applicability to apartment communities. But one place it does



apply is in the “public” areas of the leasing and management offices. This includes the parking spaces and access into the offices. Not all portions of the management office are open to the public. Most places in the apartment community are private property that is for the private use of residents, their families and guests. So, other than some rooms within the leasing or management offices which the public would ordinarily visit, the remainder of the property is *not* generally open to the public.

The ADA did not specifically address things like the internet, but it did address

signs and other markings pertaining to handicap accessibility. Disability advocacy groups representing persons with disabilities have used the ADA and lawsuits as a method to obtain compliance with the law. A related and developing area of the law deals with the ability of persons with visual and hearing disabilities to use internet websites.

Advocacy groups for persons with disabilities, such as the National Federation of the Blind and the National Association of the Deaf, have won or settled cases against companies such as Target and Netflix. The U.S. Department of Justice may issue guidance

or regulations on website accessibility sometime in 2013. Some website trainers and developers are suggesting companies using the internet be sure that disabled persons with lack of motor skills be able to navigate websites without use of a mouse. Also, websites could have spoken descriptions of photos and text for blind persons and captions with photos for deaf persons when there is an audio component. [Source: *Wall Street Journal*, “Deaf, Blind Sue Over Web Shopping,” Joe Palazzolo, March 21, 2013]

COMFORT, THERAPY, OR EMOTIONAL SUPPORT ANIMALS

Under the reasonable accommodation provisions of the FHA, rental applicants and residents may request that an apartment owner or manager waive leasing policies prohibiting pets or service animals. Traditionally, “service animals” meant those trained to provide a specific kind of assistance to the disabled person, such as a guide dog for a blind person.

A number of accommodation requests now involve animals that have no specific training to assist with a disability. Usually these animals are called “comfort,” “therapy,” or “emotional support” animals. The disabled applicant or resident may ask a physician or mental health professional to prescribe or recommend having the animal, even though it is not trained to provide a specific assistive service. Although many apartments allow animals as “pets,” often management’s policies impose weight limits or restrictions on breeds that are considered to be “dangerous” or “vicious.” Management’s initial reaction may be to deny the accommodation request for a pit bull based upon public attitudes, bias or misunderstanding that such animals are dangerous or because they are not trained to provide a specific assistive service.

However, if a disabled applicant or resident requests an accommodation to the apartment community’s pet or animal policy prohibiting dangerous breeds or imposing weight restrictions, management must evaluate whether such animal can or should be allowed conditioned on adequate assurances by the owner that the animal will not hurt someone or damage property. [Source: *Fair Housing Coach*, “How to Handle Requests for Assistance Animals,” Carol Johnson Perkins, Esq., Vol. 15, Issue 9, Vendome Group, LLC, March 2013]

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It is increasingly common for management to receive requests to keep a pit bull as a comfort or emotional support animal. The FHA allows management to deny applicants whose occupancy would constitute a threat or danger to other residents. While the apartment community may be inclined to deny such accommodations, the better practice is to discuss the request with the applicant or resident to determine whether the pit bull poses a realistic danger and whether the request is reasonable and necessary. The owner or manager may contact the apartment community's liability insurance carrier to determine if restricted breeds, such as pit bulls, are excluded from insurance coverage under the policy. Management should research whether there are any city or county ordinances which prohibit or restrict certain dog breeds. Restrictive local laws or lack of insurance coverage can be used to support denial of the rental application or termination of the lease as a legitimate and non-discriminatory business decision. If there is no exclusion in the insurance policy or no dangerous breed ordinance, the owner or manager should discuss the request with the resident and avoid an outright and unconsidered denial.

In many cases, the applicant's or resident's physician is unaware that the dog requested is a pit bull. Management is allowed to ask the physician how the dog assists with the disability and whether the physician is aware of the dog's breed, history or propensity to attack. Management may have the right to require that the dog be tested by a licensed veterinarian to determine its temperament or sociability and confirm that the dog is not likely a threat to the health, safety and welfare of the management staff and other residents.

UNINTENTIONAL DISCRIMINATION

Most apartment managers and owners know and understand the FHA prohibits *intentional* discrimination. However, the law has progressed beyond that. In the past, the apartment industry believed the best way to avoid discrimination claims was to "treat everyone the same." Ensuring that all rental policies and procedures applied equally to everyone meant less likelihood of discrimination. Past federal case law involving FHA claims indicated that – with the exception of the design and construction requirements



of new apartment buildings – discrimination required some form of intentional act. It could not be just a "mistake" or "negligence."

However, a recent regulation issued by HUD in February 2013 makes it clear that even an *unintended* act that has the "effect" of discriminating against or impacting a minority or protected group can be an FHA violation. [Source: Federal Register, Vol. 78, No. 32, February 15, 2013, Part IV, Department of Housing and Urban Development, 24 CFR Part 100, Implementation of the Fair Housing Act's Discriminatory Effects Standard: Final Rule]

Even when a rule or policy appears to apply equally to everyone but results in a larger impact or effect on a group of persons protected by the FHA, the rule or policy can have an unintended, but "discriminatory effect." But, just because it has a bigger impact on a minority group does not make it unlawful. The rental applicant or resident must show, usually by statistics, that the rule or policy affects, for example, African Americans more than it does Whites or Caucasians. Then the apartment owner or management must demonstrate that the rule or policy had a legally sufficient business reason or justification for the leasing policy or rule. Finally, the rental applicant

or resident can then show that the owner or management could have achieved the same business purpose by adopting another rule or policy that had less discriminatory impact or effect.

By way of example, the U.S. Equal Employment Opportunity Commission (EEOC) has adopted a workplace regulation limiting how and when criminal records can be used in screening employment applicants. The EEOC rule is based on statistical evidence that African Americans are arrested and convicted at a much higher rate than their Caucasian or White counterparts. Therefore, the EEOC reasons that *arrest* records cannot be used, and conviction records can only be considered when the nature of the crime is fundamentally related to the job duties and requirements of the work.

No similar rule has yet been applied by HUD or DOJ to rental and apartment housing; however, such a rule may be a step closer to adoption under the new HUD "discriminatory effect" regulation.

CONCLUSION

The purpose of this article is to highlight developing legal issues under the FHA and ADA which affect how apartment owners and managers conduct business operations. While some of the areas discussed are not yet the law, thought should be given to whether they soon will be and how the apartment industry will adapt and ensure compliance. The issues of internet accessibility, emotional support animals and unintentional discrimination are new and developing. It is not possible to address all aspects of the current state of the law in this article, and you should seek legal guidance from your attorney or FHA trainer. ▲

ABOUT THE AUTHORS

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Don't Hire LUZIRS – Hire Right



You have probably heard the 80-20 rule: 80 percent of your problems are caused by 20 percent of your [fill in the blank]. In the employment context, the equation is even more lopsided: 95 percent of your employment-related problems are caused by 5 percent of your employees. These 5 percent are what we call LUZIRS – Lazy, Undisciplined, Zero-Interest, Irresponsible, Rude, Slackers. In today's economy, hiring one of the LUZIRS can become an expensive proposition. There are, however, some best practices to follow to avoid hiring "problem" employees.

First, take a close look at your current work force and recent history and ask, "Who are my really good workers?" and "Who sucks?" Then, ask yourself the more important question: "Where did I find them?" The answers will tell you where to look – and where not to look – for new workers; in other words, where should you devote your recruiting resources. Think carefully about what hiring criteria you are seeking to fill. Even if you don't use a formal job description, it is often very helpful to write down the traits or qualities that make for a successful employee in a particular job or position. Doing so will help you later when it comes time to analyze applicant qualifications and decide who is the best fit for your needs.

Second, use a good employment application. Always. Every time. Without exception. A good application will ask the questions and get the answers you really need, e.g., education, experience, basic background information, references, etc. It will also have important legal information that you want the applicant to know: this is "at-will" employment; there will be a background check, drug test, credit check, and/or motor vehicle record check; lying on the application or hiding material information will result in termination; an arbitration agreement or jury waiver provision applies to any disputes; as well as required legal disclaimers such as "Equal Employment Opportunity" Employer.

Don't ever accept a resume in lieu of a complete employment application. Don't accept entries on the application stating, "See resume." Why? Well, consider who decided what questions to answer on a resume. In contrast to a well-drafted

employment application, a resume is the applicant's "spin" on his/her background and qualifications. Statistics show that nearly half of all resumes contain some material misrepresentation or outright lie. Because LUZIRS are generally lazy, they frequently put "See resume" on their employment application. Don't fall victim to their trap!

Third, examine the application carefully. Look for gaps in employment. While there is no question that the economy has caused lots of people to lose jobs, individuals with frequent and recurring gaps in employment are probably LUZIRS. Look for a progression of diminishing responsibilities or gradually decreasing pay. These suggest that an individual turned out to be less responsible or less competent than expected.

In today's economy, hiring one of the LUZIRS can become an expensive proposition. There are, however, some best practices to follow to avoid hiring "problem" employees.

You should also look for vague, unspecified reasons for leaving a job. Be wary of these classic reasons: "Disagreed with policy" [which really means fired for rules violation]; "Personality conflict" [which really means couldn't get along with co-workers, supervisor or customers]; "Poor working conditions" [which is code for someone fired for poor performance]; or "Mutual agreement" [management found out s/he was one of the LUZIRS].

Other things to watch out for include lots of "scratch-outs" on the application. This suggests that the applicant is making it up as they go along. Other things that should

raise suspicion include gaps in information about prior employment, toll-free numbers for phone numbers, or post office boxes instead of addresses. Although it is never a certainty, someone with a toll-free phone number and a post office box as an address may well be working for the government in a multi-housing facility more commonly known as a prison.

Look for incomplete or blank responses, as this signals a potential problem. If your application asks about criminal convictions [it should], and the applicant doesn't answer, then guess what that means? There probably is a gap in employment in there too. If the applicant's answer is "No" to each request to contact a prior employer, odds are the applicant is hiding something. While it might be appropriate for an applicant to not want you to contact a current employer, previous employers should be fair game for reference checking.

If the applicant has not signed the employment application, this is a danger signal. You should insist that the application be signed so that you can prove that the applicant was aware of the legal language contained in the disclaimer portion of your application.

Fourth, once you have narrowed the applicant pool to a handful of candidates, interview them carefully. Do this in private where you won't be interrupted. Be prepared for the interview – don't review the application while the candidate is sitting in front of you, as this sends a signal that you don't take the hiring process seriously, and it may be viewed as disrespectful.

Try to ask open-ended questions that get the applicant to talk, and follow the 80-20 rule: let the applicant talk 80 percent of the time. Ask the applicant about likes and dislikes with respect to current or former job duties, supervisors/managers, companies, customers, etc. If the applicant responds with a short answer, follow up with a question designed to get the applicant to explain more. By getting the applicant to talk about how he or she feels about prior employment, you will discover a great deal of information about how that applicant would likely be as your employee. Do spend your 20 percent of the time "selling" your company and the job. You want the candidates you don't

select to say good things about your company too.

Of course, there are some topics that you should definitely avoid in an interview. For example, you should not ask questions directly or indirectly about age, military service, national origin, disability, religion, marital status, or sexual orientation.

Fifth, before you make an offer, check the candidate's references. Always do this. It is often a good idea to talk to personal references too. Try to speak to the applicant's direct manager or supervisor as this is the person who will usually have the most helpful information. If you get diverted to a human resources or personnel office that won't tell you anything helpful [usually all you will get will be dates of employment, job title and last salary], at least ask if the candidate is eligible for re-hire. If the person you ask won't answer or "waffles" then you can probably conclude that the candidate is not eligible for rehire and more than likely is one of the LUZIRS.

Today, most employers use background checks of some kind. Be certain to comply with state and federal law regulating background checks. Note that under the federal

Fair Credit Reporting Act you should have the applicant sign a written acknowledgment of your intent to obtain a background check from a third-party. If the background check reveals information that would lead you not to hire the candidate, you need to give the candidate notice of your receipt of adverse information, a free copy of the background check report, and an opportunity to contest the adverse information.


Sixth, end the hiring process on the right note by giving the new hire a proper welcome and orientation. This is a wonderful opportunity to impress upon the new hire the importance of key company values and principles. Let the new hire meet the "boss" early in the orientation process and make all levels of management part of the orientation process. This helps the new hire feel truly welcome and sets the stage for good communication later.

Be careful not to imply or promise permanent employment during the orientation. Instead, this is another good opportunity to underscore the at-will nature of the employment relationship. In addition, you will want to cover basic legal policies in the orientation to protect the company: harassment

avoidance, problem resolution, pay practices, confidential information, benefits and safety information, as well as behavior and discipline policies.

Finally, make effective use of a probation or introductory period. New hires generally believe that during this time they are "on trial" and not "regular" employees. As a result, they are less likely to complain if dismissed during probation. Normally, a 90-day period is about right, as that gives you sufficient time to determine whether the employee is a "keeper" or one of the LUZIRS. But, it is very important that you actually evaluate the new hire during the probation period. You should strive to be fair and objective in your assessment of the new employee. If you have doubts about whether this new worker has a long-term future with your company, it is probably cheaper in the long run to let the employee go during the probation period.

If you follow these steps carefully, you'll be doing everything you can to avoid the LUZIRS. Oh, every now and then, one will slip through the process, but you will have screened out most of them long before they get on your payroll. ▲



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Dealing with Mold

Personal injury lawsuits involving mold have been on the decline for years. But in the residential context, mold continues to instill fear of respiratory ailments. This article explains why proving a mold-related illness is extremely difficult in a court of law. The article then suggests practical ways for dealing with mold complaints in an apartment community.

THE DIFFICULTY IN PROVING MOLD-RELATED INJURIES

To win at trial, a plaintiff claiming mold-related injuries must prove four elements. First, the plaintiff must prove the apartment contained a harmful type of mold. This element is difficult to prove because the vast majority of molds are completely safe. Some are even edible, such as the mold *Penicillium* contained in blue cheese.

Second, the plaintiff must demonstrate the level of mold to which he or she was exposed inside the apartment was capable of causing sickness in humans. This element is difficult to prove because scientists do not test harmful molds on humans, and therefore we do not really know the level at which harmful mold can cause illness.

Third, the plaintiff must demonstrate the harmful type and harmful level of mold within the apartment actually caused his or her specific illness (not just that it was capable of doing so). This element is difficult to prove because a respiratory ailment could have any number of causes. Even if the illness was caused by mold, it often is difficult to narrow down the culprit to a specific type of mold.

Even if the illness was caused by mold, it often is difficult to narrow down the culprit to a specific type of mold.



Fourth, the plaintiff must demonstrate the apartment community is responsible for the mold entering the apartment in the first place. This element is difficult to prove because mold is everywhere. It is a naturally-occurring component of nature. It grows on exterior and interior surfaces, but its spores and other components float in the air. Every building in the world that has air within it has mold within it, and there is no way to keep it out.

WHAT TO DO WITH MOLD COMPLAINTS

Regardless of the provability of mold claims, mold within an apartment presents a challenging customer relations issue. The first step in addressing this issue should be to visually inspect the unit. If there is no visible surface mold, you should take photographs to document this fact.

If you do find visible mold, photographs are not recommended, because the photos would assist the tenant in building a legal case

If you do find visible mold, photographs are not recommended, because the photos would assist the tenant in building a legal case against you. Instead, try to identify the source of the mold.

against you. Instead, try to identify the source of the mold. Surface mold will almost never occur without a nearby water source. Check for leaking pipes. If the mold occurs near a tub or sink and the connecting pipes are not leaking, the cause could be poor housekeeping.

After identifying the water source, clean the area to remove the mold. Some surfaces will be easier to clean than others. For example, a wall can be repainted if the mold is feint, but a dark mold growth may show through again after repainting. In that case, portions of drywall will need to be replaced.

After removing the visible mold from the area, take photographs of the completed work. If the mold returns, repeat the process of identifying the water source. If no water source is identified on this second occasion, you can use your photos to argue the returning mold is the result of poor housekeeping.

You should avoid the temptation to have a mold remediation company inspect the unit after cleaning. Just as there are no standards for what level of mold is dangerous, there are no standards for "how clean is clean." Therefore, you will be held hostage to the arbitrary criteria of the mold remediator.

Similarly, you should avoid the temptation to have mold testing performed. The apartment is certain to test positive for mold, as is every building ever constructed. More importantly, any test intended to identify the types and levels of mold will be at best unreliable and at worst misleading. Surface testing is of limited usefulness, because the more important issue is how much of the mold is released into the air and available for inhalation. And air testing is unreliable because air patterns constantly change. For this reason, air testing provides only a snapshot of the air quality.

The fact that mold-related personal injuries are difficult to prove in court should give apartment managers some comfort. Still, you should inform your insurance company right away when a tenant claims his or her sickness is due to mold within the apartment. The insurer may not need to take any real action at that stage, but it at least will be able to open a file and maybe set potential settlement reserves. Cleaning the visible mold may be expensive depending on the type of surface involved, but it must be done. If you are able to attribute the mold to poor housekeeping, you may have grounds to try to recoup some of the expense from the tenant.

Michael L. Forte is a partner at the Tampa office of Rumberger, Kirk & Caldwell, P.A. He defends apartment communities and property managers in personal injury lawsuits throughout Florida. ▲

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Horizon Realty Management, Inc.



Horizon Realty Management (Horizon), located in Jacksonville, Fla., is one of the premier multifamily investment service firms in the nation. Led by president and founder Brenda Pritchard, Horizon provides top of the line property management services that protects clients' investments through streamlined efficiencies, industry knowledge and best practices. I recently had the chance to speak with Brenda about her founding of Horizon, its current position and where she would like to see the company go in the future.

I first asked Brenda about her background and the perspective she brought when starting Horizon. During her time in the industry, she had noticed a true need for a management company that served

its investors with the highest level of communication and customer service. Early in her career, Brenda had worked with The Development Group, a high-end development company in Jacksonville. During her time there, she learned to always assess where the industry was, and then build one notch above the competition. Brenda took this one step further by providing customer service that was above industry standards as well. That mentality stuck with her, so much in fact that she built her corporate team around that viewpoint.

I asked her a little more about her management philosophy. She said that she founded Horizon in 2001 in order to provide small-scale quality management for a

▼
Led by president and founder Brenda Pritchard, Horizon provides top of the line property management services that protects clients' investments through streamlined efficiencies, industry knowledge and best practices.

few select clients that she would be able to manage with the utmost attention. I could tell that this was something Brenda was passionate about.

“If this was your personal property, if this was your checkbook, if this was your home, would you do it? Is it necessary? What do we need to do to give the best customer service to our residents, and are our owners getting the best return for our investors?”

Brenda went on to explain that her philosophy is to manage it like you own it and instills this mentality into her team. She built a team with various areas of expertise including renovation, tax credit, and condo management.

Brenda’s philosophy, team building and hard work have paid off. She had always received positive feedback for her property management, but after she founded Horizon, clients seemingly refused to work with anyone else. Clients familiar with Horizon’s level of service enticed Brenda to take her business outside the state of Florida in order to cover their own expanding investment portfolio. Brenda explained that out of state expansion is something they are currently prepared for thanks to a number of previous expansion efforts. She reminisced about a rewarding challenge of taking on as many as eight properties in six different states in one day.

To date, Horizon has more than 100 employees serving more than 4000 units across the country. While the majority of communities Horizon serves are in Florida, they have properties as far away as Spokane, Washington. Horizon has received numerous letters of recommendation stating that the level of communication and service received was far and away better than what was provided by its larger competitors. This type of feedback is what motivates Brenda to continue to grow the business.

I asked her if she was happy with the size of the company and where she thought Horizon could go in the future. She said that, because she has the right team in place and her processes and best practices are streamlined, the company is poised and ready for growth. She went on to say that expansion is not only the goal, but it is what motivates and excites everyone in her office.



One of the keys to continuing her success in the future is to stay on top of industry changes and legal issues that frequently change. At the time of our conversation, Brenda had just returned from speaking with representatives in both Tallahassee and Washington, D.C. “Landlord-tenant laws are constantly changing,” explained Brenda. “Each state is different and people are always trying to alter items such as cancellation fees.” She has learned the benefit of being involved in legislative issues over the years.

Brenda said that she owes a lot to her work with the First Coast Apartment Association as well as the Florida Apartment Association. She explained: “I am a Past President with the Florida Apartment Association which was truly the highlight of my career to date.” She is also involved with the National Apartment Association serving on the membership committee and as a Political Action Committee Ambassador. To round out her accolades, Brenda is a Certified Property Manager through the Institute of Real Estate Management (IREM), the highest designation you can receive in property management. She has led Horizon to become an Accredited Management Organization through the IREM, a prestigious designation of which only elite companies are awarded.

We ended our conversation discussing how important ethics are in the industry. This echoed her views on customer service and satisfaction. Honesty is the backbone of

Horizon. Always doing the right thing allows her to provide the best management possible. Horizon’s work is confirmed through improved levels of resident satisfaction and increased returns on investments. Brenda loves what she does and the difference she is able to make. ▲



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Student Housing Inspections

The Brilliance of a No-Surprise Strategy

once had a boss who told me it was my job to make sure he was never surprised. I thought that was odd, but over time I realized it was brilliant ... because nobody likes a bad surprise.



When it comes to student housing inspections, it's likely that nothing would surprise your team. But your inspection team is probably not your major concern. It's your student residents – and their parents – that should not be surprised.

Housing inspections are animosity-building opportunities. It's human nature; nobody likes to be "inspected." Just the idea puts student residents on the defensive. And if poorly executed, students end up feeling that their privacy has been violated ... and parents end up surprised by an unwelcome fine.

Communications are the key to taking the edge off the inspection process. Here are five tips to help you turn a relationship strain into an organizational gain.

1. Use a reliable means to notify.

Inspections should not be a surprise. Most states, municipalities and universities

require that you give advance notice. But that doesn't mean that students will actually receive advance notice. Posting paper notices doesn't work. Some may actually get read, but they're often removed before everyone gets the message. (Does anyone ever pass that information on to their parents?) Dates and times are easily forgotten. And it can take a lot of time to make the rounds manually posting notices.

Use the communication method your residents and their parents prefer: voice and text messages to cell phones, email addresses and social media sites. Everyone gets and reads text messages. Plus, they conveniently provide a written record for later reference. A message notification service makes it fast and easy to notify all your contacts with one simple message. Use it to send an initial announcement and then send a reminder notice, too. Some services provide automated translations and documentation that shows your messages were received.

2. Set expectations. It's a fact, people aren't happy when their expectations are not met. Compile and publish a list of items that are not permitted (e.g. candles;

flammable substances; items hanging from sprinkler heads, overloaded extension cords; blocked exit maps; items left in hallways and stairwells; etc.) Make your rules short and simple. You want them to be read. If possible, make your inspection list available.

3. Tell them why. Publish a statement that explains the rationale for inspections: legal, safety, quality of life, resource management, etc. Make it short and easy to read and understand. Include a list of frequently asked questions and answers.

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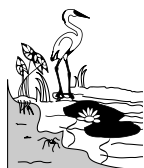


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For example:

- When do inspections happen?
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4. Eliminate the “them versus us” factor. Students are heavily engaged with social media building online communities. Make safety and resource management a community-wide effort within their *residential* community. Or launch a team initiative with teams by building or floor striving for the highest score. Using technology, such as a message notification service, positions you as part of the community. And it also supports a “green” community initiative by eliminating paper mailings and flyers.

5. Consider incentivizing a perfect inspection. Free stuff is good and it doesn't have to drain your budget – free pizza, gas cards, iTunes. Who doesn't love an immediate, tangible reward? If volume is a concern, consider a drawing for five, ten, twenty winners.

You and your staff work hard all year to make your property a safe and desirable place to live. Attracting and keeping student residents takes an ongoing commitment, lots of time and lots of effort. It's about more than just your property. It's also about building relationships. Don't let inspections threaten your hard-earned relationships. Use a proactive communication plan to position them as a legal and practical necessity that promotes a safe and healthy quality of life.

Nick Frantz is the National Sales Manager for Property Management Solutions at One Call Now, where he has worked since March 2011. He specializes in Property Management solutions – commercial and residential – assisting in communications between property managers and staff/residents. Nick holds a Bachelor of Science degree from Miami University. ▲

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