



Practical *Guide* FOR REALTORS®

An overview of principal laws and regulations affecting property management

PRACTICAL GUIDE FOR REALTORS®

This Guide is intended to provide members of the Illinois Association of REALTORS® an overview and description of some of the principal laws and regulations that exist in the realm of residential rental property management. In many instances, additional information or advice may be needed which may require review of the law and consultation with an attorney.



The definition of “Broker” in Section 1-10 of Real Estate License Act of 2000 (RELA) includes a number of property management and leasing activities which require a license under the RELA. The activities requiring a license include the following:

- 1 “rents or leases real estate”
- 2 “offers to... rent, or lease real estate”
- 3 “negotiates, offers, attempts or agrees to... rent or lease real estate”
- 4 “lists, offers, attempts, or agrees to list real estate for... lease”
- 5 “supervises the collection, offer, attempt, or agreement to collect rent for the use of real estate”
- 6 “advertises or represents himself or herself as being engaged in the business of...renting or leasing real estate”
- 7 “assists or directs in procuring or referring of leads or prospects, intended to result in the... lease, or rental of real estate”
- 8 “assists or directs in the negotiation of any transaction intended to result in the... lease, or rental of real estate”
- 9 “... lease real estate at auction”





FEDERAL/STATE AND LOCAL FAIR HOUSING LAWS

A knowledge of fair housing is critically important in property management and leasing. For an overview of the Illinois Human Rights Act's provisions visit www.thehousing.org.

Violation of a federal, state, or local fair housing law will result in the suspension or revocation of your real estate brokerage license.

NOTE: *Keep in mind that some municipalities have their own fair housing ordinances which may include protected classes that are in addition to the ones in the federal or state fair housing laws. Check with the municipality where the rental property is located regarding its fair housing/human rights ordinances.*

KEYS TO EFFECTIVE MANAGEMENT OF RENTAL PROPERTY

- Have and follow a standard application process and verify the application information.
- Screen potential tenants with credit reports and criminal background checks. Use a tenant checking service if you are not familiar with how to handle these situations.
- Make sure your company is aware that the Fair Credit Reporting Act (FCRA) will impact your practice if you request credit reports and/or conduct background checks.
- Be aware of the requirement under the FCRA that you provide a written “adverse action notice” to those applicants who are denied a rental unit or whose terms of lease are adversely affected due to a negative credit report and/or a negative reference.
- Communicate frequently with tenants; be attentive; respond quickly to maintenance calls.
- Use professional accounting and database software to track all the details (e.g., clients, tenants, rents, deposits, lease agreements, repairs, vendors such as plumbers and handyman services).
- Understand Illinois and any local laws related to eviction, screening procedures, security deposits, lead-based paint, carbon monoxide detectors, smoke detectors, fair housing, advertising, and municipal inspections, to name a few.
- Pay close attention to the words that you use in any advertisement. This is the key question in advertising a potential use of a property: “Is the use legally permitted and are the physical characteristics of the property accurately described?”
- It is absolutely critical that you know whether any local landlord/tenant or fair housing ordinances apply.

EVICITION LAW

Eviction actions are governed by the Illinois Forcible Entry and Detainer Statute (735 ILCS 5/9-101). This law lays out the procedures by which a landlord can legally have a tenant removed from the rental unit.

BASICS OF EVICTION LAWS

A landlord cannot forcibly evict a tenant on his own. If a landlord wants to evict a tenant and the tenant does not leave voluntarily, the landlord must file a lawsuit to have the tenant evicted. A landlord can evict a tenant for various reasons including:

- Improper possession after the oral or written lease has expired;
- The tenant has breached some part of the lease including not paying the rent;
- The tenant is doing something illegal in the unit.

REQUIRED NOTICE

The eviction law is very specific about the form and content of written notices and how those notices are to be served upon tenants before a lawsuit evicting a tenant and seeking possession is filed. Even if the facts favor the landlord, the landlord can lose his/her case if the proper notice is not given or the procedures for serving notice on the tenant are not followed precisely.

NON-PAYMENT OF RENT

When the tenant has not paid the rent on time, the landlord must give a written 5-day notice that the lease will be terminated unless the rent is paid. If the tenant pays the full amount of rent due within this five-day period, the landlord must accept it and cannot terminate the lease or proceed with the eviction.

TENANT VIOLATION OF LEASE

If a tenant violates the lease for other than non-payment of rent, the landlord can give the tenant a written 10-day notice, which explains the violation and asks the tenant

to move out if the problem is not fixed within 10 days. The landlord can only pursue eviction if the problem is not fixed within the 10-day notice period.

Notice is not required if the lease automatically ends on a specific date and there is no permitted holding over. If the lease includes an automatic termination provision, and the landlord has not permitted a holdover, the landlord simply asks the tenant to move out. If the tenant refuses, the landlord can file an eviction suit without giving any other notice (although the landlord may want to give a formal notice to avoid any issues after the lawsuit is filed) or waiting any time beyond the end of the lease term. For additional legal information on leases, visit the web site of the Illinois State Bar Association: www.illinoislawyerfinder.com/legalinfo/pamphlets/landlord.html

Typically obtaining possession of the unit so that the unit can be leased again is the key consideration in an eviction proceeding and collecting past due rent is secondary.

NOTE: *The information provided here is just an introduction to the procedures and requirements associated with evictions. Consult with an attorney on the specific steps that must be taken (e.g. service of summons by the Sheriff's office and the filing of the lawsuit).*



SCREENING PROSPECTIVE TENANTS

Credit and background checks on tenants can be the most important step in renting property. Property owners who do not screen tenants can be easy prey for drug dealers and others conducting illegal activities, and can cost the landlord thousands of dollars. It is often advisable to recommend to your client that they retain a tenant checking service to check credit records, criminal background, and other public records. If you are providing these services for an owner client you need specific legal advice as to federal laws and local ordinances that apply. Also, remember documentation related to licensed activities must be retained by a licensee for five years.

THE SECURITY DEPOSIT RETURN ACT

The Security Deposit Return Act provides a procedure for landlords to follow if the landlord/manager will not be returning the entire security deposit to the tenant. The landlord/manager of a building or complex containing five or more units must provide a written estimate of repair costs (including landlord/manager's time) within 30 days of tenant vacating the property and the difference returned within 45 days. If the amounts are not known by a landlord by the time a security deposit must be returned, the landlord needs to return the security deposit and then be prepared to file a separate lawsuit against the tenant. This Act has been amended to allow for email notification to be made which will satisfy the written notice requirement. The effective date of this amendment is January 1, 2013. Below is the main section of the Act with which a landlord/manager should become familiar.

(765 ILCS 710/1) (from Ch. 80, par. 101)

Sec. 1. A lessor of residential real property, containing 5 or more units, who has received a security deposit from a lessee to secure the payment of rent or to compensate for damage to the leased property may not withhold any part of that deposit as compensation for property damage unless he has, within 30 days of the date that the lessee vacated the premises, furnished to the lessee, delivered in person, or by mail directed to his last known address, or by electronic mail to a verified electronic mail address provided by the lessee, an itemized statement of the damage allegedly caused to the premises and the

estimated or actual cost for repairing or replacing each item on that statement, attaching the paid receipts, or copies thereof, for the repair or replacement. If the lessor utilizes his or her own labor to repair any damage caused by the lessee, the lessor may include the reasonable cost of his or her labor to repair such damage. If estimated cost is given, the lessor shall furnish the lessee with paid receipts, or copies thereof, within 30 days from the date the statement showing estimated cost was furnished to the lessee, as required by this Section. If no such statement and receipts, or copies thereof, are furnished to the lessee as required by this Section, the lessor shall return the security deposit in full within 45 days of the date that the lessee vacated the premises. Upon a finding by a circuit court that a lessor has refused to supply the itemized statement required by this Section, or has supplied such statement in bad faith, and has failed or refused to return the amount of the security deposit due within the time limits provided, the lessor shall be liable for an amount equal to twice the amount of the security deposit due, together with court costs and reasonable attorney's fees.

NOTE: *Some municipalities have their own Residential Landlord-Tenant Ordinances which include, among other things, different provisions on security deposits. Always check with the municipality to see if there is a local ordinance. To view the city of Chicago's ordinance, visit www.chicityclerk.com/tenantsVRSlandlords.php*

THE SECURITY DEPOSIT INTEREST ACT

The Security Deposit Interest Act imposes interest payment requirements on landlords and/or their property managers who have 25 or more units in a single building or a complex of buildings located on contiguous parcels of real property.

Such landlords who receive a security deposit must pay interest to the lessee at a rate that changes each year. The rate is based on the passbook savings account rate at the largest commercial bank in Illinois on December 31st of the calendar year immediately preceding the inception of the rental agreement. This interest payment requirement only applies to rental agreements where a security deposit is held for more than six months. The rates are as follows:

- For leases that were entered into in calendar year 2011, the state interest rate is .195%.
- For leases that are entered into in calendar year 2012, the state interest rate is .005%.

NOTE: For the cities of Chicago and Evanston, a different rate calculation is used (one that utilizes a blended rate of various interest rates). For leases entered into in 2012, the interest rate is .057%. These rates differ due to local ordinances that exist. These ordinances might also apply to landlords/managers owning or managing fewer units than the state threshold of 25.



LEAD-BASED PAINT IN RESIDENTIAL UNITS

HEALTH EFFECTS OF LEAD

According to the U.S. EPA website, childhood lead poisoning remains a major environmental health problem in the United States.

People can get lead in their body if they:

- Put their hands or other objects covered with lead dust in their mouths.
- Eat paint chips or soil that contain lead.
- Breathe in lead dust, especially during renovations that disturb painted surfaces.

Lead is more dangerous to children because:

- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.
- Children's growing bodies absorb more lead.
- Children's brains and nervous systems are more sensitive to the damaging effects of lead.

If not detected early, children with high levels of lead in their bodies can suffer from:

- Damage to the brain and nervous system
- Behavior and learning problems, such as hyperactivity
- Slowed growth
- Hearing problems
- Headaches

Lead is also harmful to adults. Adults can suffer from:

- Reproductive problems (in both men and women)
- High blood pressure and hypertension
- Nerve disorders
- Memory and concentration problems
- Muscle and joint pain

LEAD-BASED PAINT IN RESIDENTIAL UNITS *(continued)*

EXISTING LAWS ON LEAD PAINT

Federal law requires property owners to:

- Provide a disclosure form disclosing any knowledge of lead-based paint or lead-based paint hazard when selling or renting a house/apartment built before 1978.
- Include a lead warning statement in leases.
- Use lead-safe work practices when making certain repairs and renovations.
- Provide a copy of the federal HUD/EPA pamphlet on lead paint entitled, “Protect Your Family From Lead in Your Home.”

Members of IAR can obtain the federal lead paint pamphlet and the disclosure forms from the “members only” side of the IAR website. Sign in is required. www.illinoisrealtor.org/downloads

Illinois state law requires property owners to:

- Allow inspection of property by a public health agency when a resident is found to be lead-poisoned.
- Follow regulated mitigation procedures when a lead hazard has been identified.
- Post lead hazard warning signs at work sites when property houses two or more families.
- Disclose any known lead hazard to renters in buildings built before 1978.
- Allow inspection by departments of public health of common areas of multi-family residential buildings when two or more units in the same building have had mitigation notices issued within a five-year period. The law also requires owners of buildings (where two or more hazards have been identified in a five-year period) to allow inspection of units where a child under age six or a pregnant woman resides if the parent or pregnant woman requests such an inspection.
- Post notices in the common area of a building when the property owner has received a mitigation notice. The notice form can be obtained from the local health agency or the Illinois Department of Public Health.

City of Chicago regulations require property owners to:

- Abide by a duty to maintain lead-hazard free property.
- Allow inspections of all units for lead hazards when requested by the Chicago Department of Public Health (CDPH).
- Abide by a duty to maintain property according to any existing mitigation plan.
- Provide a mitigation plan, subject to CDPH approval, when a lead hazard is identified.

For detailed information on how to comply with lead prevention laws and lead safety, visit:

www.hud.gov/offices/lead
www.lead-safe-illinois.org/owners
http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_food/LeadReg.519042.pdf
http://www.cityofchicago.org/city/en/narr/foia/key_performance_indicators0/human_services.html

Federal rule on lead safe work practices in renovation work

Are you renovating, repairing or painting a home, child care facility or school built before 1978?

According to the U.S. EPA website, since April 22, 2010, federal law has required that contractors performing renovation, repair and painting projects that disturb more than six square feet of paint in homes, child care facilities, and schools built before 1978 must be certified and trained to follow specific work practices to prevent lead contamination. If as a REALTOR®, you recommend contractors to your clients, or if as a landlord, you use various contractors, you should make sure that these companies have the training and are certified to conduct repair and renovation work in a manner that complies with these “lead-safe” work practices and procedures. If an owner or property management firm uses an employee to perform repair and renovation work, then that employee must be certified and trained in these required practices.

To read more about this rule, go to:

www.epa.gov/lead and
<http://www.realtor.org/videos/lead-paint-renovation-rule-compliance-guide>

CARBON MONOXIDE ALARM DETECTOR ACT

The Carbon Monoxide Alarm Detector Act (P.A. 094-0741) went into effect on January 1, 2007 and requires that most dwelling units be equipped with at least one carbon monoxide detector within 15 feet of every room used for sleeping.

The Act specifically provides the following:

- The tenant is responsible for replacement of any required batteries in the carbon monoxide alarms in the tenant's dwelling unit, except that the owner shall ensure that the batteries are in operating condition at the time the tenant takes possession of the dwelling unit.
- The tenant shall provide the owner or the authorized agent of the owner with access to the dwelling unit to correct any deficiencies in the carbon monoxide alarm that have been reported in writing to the owner or the authorized agent the owner.

Members of IAR can download a brochure on this from the "members only" side of the IAR website. Sign in is required.
www.illinoisrealtor.org/advocacy/downloads



SMOKE DETECTOR ACT

Every dwelling unit shall be equipped with at least one approved smoke detector in an operating condition within 15 feet of every room used for sleeping purposes. The detector shall be installed on the ceiling and at least 6 inches from any wall, or on a wall located between 4-6 inches from the ceiling. Every structure which (1) contains more than one dwelling unit, or (2) contains at least one dwelling unit and is a mixed-use structure, shall contain at least one approved smoke detector at the uppermost ceiling of each interior stairwell.

In the case of any dwelling unit that is newly constructed, reconstructed, or substantially remodeled on or after January 1, 2011, smoke detectors permanently wired into the structure's AC power line must also maintain an alternative back-up power source, which may be either a battery or batteries or an emergency generator.

Owner and Tenant Responsibilities

It shall be the responsibility of the owner of a structure to supply and install all required detectors. The owner shall be responsible for making reasonable efforts to test and maintain detectors in common stairwells and hallways. It is the responsibility of the tenant to test and provide general maintenance for detectors within the tenant's dwelling unit or rooming unit, and to notify the owner or the owner's authorized agent in writing of any deficiencies which the tenant cannot correct. The owner is responsible for providing one tenant per dwelling unit with written information regarding detector testing and maintenance. The tenant shall be responsible for replacement of any required batteries in the detectors in the tenant's dwelling unit, except that the owner shall ensure that such batteries are in operating condition at the time the tenant takes possession of the dwelling unit.

Single Family Homes: Every single-family residence shall have at least one smoke detector installed on every story of the dwelling unit, including basements.



CRIMINAL ACTIVITY ON THE LEASED PREMISES

Landlords are supposed to include language in their leases (or have a lease addendum) which states that if the lessee or occupant, on one or more occasion, uses or permits the use of the leased premises for the commission of a felony or Class A misdemeanor, that the lessor shall have the right to void the lease and recover the premises. Failure to include this language in the lease does not impair the rights of the lessor to terminate the lease based on the criminal activity.

SAFE HOMES ACT

This Act deals with the rights of tenants who are under threat of domestic or sexual violence. This Act allows tenants to change the locks or break the lease in certain limited circumstances.

To read the entire Act, go to:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2817&ChapAct=765%20ILCS%20A0750&ChapterID=62&ChapterName=PROPERT&ActName=Safe%20Homes%20Act>

ILLINOIS RADON AWARENESS ACT

There is a provision in the Illinois Radon Awareness Act which applies to properties containing residential dwelling units. The section requires that if a lessor is notified by a tenant of a unit located below the third floor of an elevated radon test result that the lessor must either conduct his/her own test that shows no hazard, conduct remediation procedures to eliminate the hazard or disclose the elevated radon level to any new prospective lessee of that dwelling unit.



CHANGING OR RE-KEYING OF DWELLING UNIT LOCK

(Applicable Only in Cook County and effective January 1, 2012)

Landlords are required to change or re-key the lock after a dwelling unit has been vacated and before the new lessee takes possession of the residential unit. To change or re-key means: 1) replacing the lock; 2) replacing the locking cylinder mechanism so that a different key is necessary; 3) changing the combination of a digital lock; 4) changing an electronic lock so the method of unlocking has been changed or 5) any other means of gaining access to an individual unit is changed.

This law applies only in Cook County and does not apply to a rental in a building with 4 or fewer units where the owner is also an occupant of the building.

MUNICIPAL LANDLORD LICENSING AND INSPECTION

Based on a review of case law and the statutory authority granted to municipalities, it is correct to conclude that municipalities have the power to inspect rental units.

Ordinances regarding inspections should be designed to ensure that the rental units are maintained in a manner that is consistent with the municipal building code. Safety and habitability of each rental unit should be the main purposes of such ordinances. However, the power to inspect is not unlimited. The following discussion is intended to provide you with an understanding of some key property owner rights. Members of the Illinois Association of REALTORS® can contact the local Government Affairs Director (GAD) assigned to their local association if there are questions or concerns about the topics and issues discussed in this section. Issues related to enforcement of local ordinances dealing with rental property can be brought to the attention of the local GAD or local association for review.

SEARCH WARRANT AND OWNER CONSENT

Federal courts have dealt with the issue of searches or inspections by governmental units. In any municipal inspection ordinance, there must be a consent provision. The owner/occupant is permitted to deny or not grant consent to the municipal inspector to enter the property. In a situation in which the owner or occupant does not grant consent, the municipality must seek an administrative search warrant in order to gain access to the rental unit to perform an inspection.



MUNICIPAL LICENSE REQUIREMENT AND THE REAL ESTATE LICENSE ACT

The Illinois Real Estate License Act (RELA) contains a provision which preempts any municipality from adopting its own real estate brokerage license ordinance. In other words, no municipality can set up its own licensing scheme for the same “licensed activities” that are regulated by the state RELA. Therefore, no municipality can regulate “licensed activities” (such as managing property or leasing out an apartment on behalf of the landlord) that are covered under the RELA. However, if you are the owner of the property, you could be subject to local requirements.

INSPECTION/LICENSING FEES

Any related fees that a municipality imposes must reasonably reflect the cost of providing such services (the man hours of the physical inspection, the administrative follow-up, etc.).

Members of IAR may view the list of Illinois municipalities that have inspection requirements from the “members only” side of the IAR website. Sign in is required.

<http://www.illinoisrealtor.org/sites/illinoisrealtor.org/files/Advocacy/Inspections.pdf>

OTHER MUNICIPAL REQUIREMENTS

Several municipalities in Illinois impose other kinds of restrictions and requirements on owners of residential rental property. These requirements include the following:

Occupancy Standards - Most municipalities in Illinois have ordinances which put limits on the number of occupants that can inhabit a residential unit based on the size of the unit or the number of bedrooms in a unit.

Crime-Free Requirements - Some municipalities require the use of a “crime-free lease addendum.” This kind of addendum states that it is a violation of the lease to commit a crime anywhere on the property (e.g. sale of drugs). There are a few municipalities in Illinois which encourage or require a landlord or agent to attend a seminar on crime prevention on rental property.

Nuisance Abatement - Several municipalities in Illinois require the owner to take specific steps in regard to property maintenance/care in order to prevent criminal nuisances or activity. These requirements usually are required after the police have identified the occurrence of a nuisance or crime on the property.

Building Registration - The main purpose of this type of ordinance is to obtain contact information for the owner and agent of the owner in case of an emergency or tenant problem on the property. *(Chicago has such a requirement for buildings with four or more units.)*

NOTE: *You should check with the municipality in which the rental unit is located to see if these kinds of ordinances or regulations exist in the town where you own or manage rental property.*

ADDITIONAL WEB RESOURCES

New legislation that affects residential rental real estate is continually being proposed and considered in the Illinois General Assembly. Illinois REALTORS® can stay abreast of these proposals and R VOICE activities at www.illinoisrealtor.org/government

IAR's Housing Site
www.thehousingsite.org

Illinois Department of Financial and Professional Regulation
www.idfpr.com

Institute of Real Estate Management
www.IREM.org

City of Chicago - Housing
www.cityofchicago.org

U.S. Housing and Urban Development
www.hud.gov

Illinois Housing Development Authority
www.ihda.org

Illinois State Bar Association
www.illinoislawyerndr.com



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