



# Professional Practices

## Lesson 18

# Property Management Essentials

45 Hour Louisiana Post-Licensing

## Property Management Essentials

### GETTING STARTED

Property management is a specialty field that combines real estate knowledge with management skills. It typically involves the managing of property that is owned by another party or entity. A reasonable knowledge and understanding of the general principles and responsibilities of the property manager are mandatory to success.

As a property manager, you will be the voice of the property owner. You will act on behalf of the owner to ensure that business is conducted to an acceptable standard and to preserve the value of the property, while generating income.

Property management encompasses all aspects of running an income property, from finding and screening tenants to maintaining the property, collecting rent, and handling any other issues that may arise. A main function of property managers is to act as a liaison between owners and tenants. This creates a dual responsibility to both the owner, who is interested in getting the highest return from the property, and to the tenants, who want the best value for their money.

The many and varied roles that a property manager must assume to effectively serve owners and tenants can be likened to that of the proverbial "jack of all trades." These roles require much attention to detail, and organizational skills are essential, but that discussion will come later. First, there is the matter of law to consider. Before you do anything, you must know how to legally proceed.

### KNOW THE LAW (and adopt policies that exceed the letter of the law)

It is an absolute necessity that a property manager be current with applicable municipal, parish, state and federal fair housing laws and practices. Special attention should be given to landlord/tenant laws.

Evictions, non-payment, harassment, reduction of pre-arranged services, and public nuisance are legal subjects that gain the most amount of attention from property managers. Knowing the law and acting accordingly is critical to maintaining your business.

### STATE LAWS RELATED TO PROPERTY MANAGEMENT

#### **Louisiana Real Estate License Law; Rules and Regulations of the Louisiana Real Estate Commission**

##### *R.S.1431. Definitions*

*(31) "Property management" means the marketing, leasing, or overall management of real property for others for a fee, commission, compensation, or other valuable consideration.*

To be a property manager in Louisiana, you must have the appropriate license, as required by the Louisiana Real Estate Commission (LREC). While some states actually require a "property manager" license to manage a property, the State of Louisiana is different, in that there is no license specific to property managers.

Because key components of property management, such as managing, renting and leasing, are considered real estate activities under Louisiana law, property managers must obtain a Louisiana real estate license to manage real property for others.

The Louisiana Real Estate License Law (R.S. 37:1430 et seq.) and the Louisiana Real Estate Commission Rules and Regulations (Title 46.LXVII.Professional and Occupational Standards:Real Estate) are two important resources available to you for performing real estate activities such as property management. It is important to remember that the rules are an extension of the law and cannot be ignored. Rules carry the same weight in terms of the consequences imposed for violations.

Operating within the bounds of the law and rules is essential to maintaining your real estate license, as well as your professional reputation. If you are in doubt about any of your policies, procedures, or anticipated actions, refer to the law and rules and regulations. It is better to be safe than sorry.

(See Attachment A for the Louisiana Real Estate License Law and the Rules and Regulations of the Commission that are related to property management and pertinent to maintaining your real estate license. Note the **exceptions** that allow unlicensed, salaried employees, working under the direct supervision of a licensed broker, to perform certain duties related to property management.)

### **Louisiana Landlord and Tenant Laws**

Louisiana landlord and tenant laws are regulated by the Louisiana Department of Justice through the Office of the Attorney General. ***Movin' In... Movin' Out... And Everything In Between*** is a guide to landlord and tenant laws that is published by the Attorney General. This guide contains legal citations and information on a variety of topics ranging from security deposits to evictions that will educate both landlords and tenants. Simply written and easy to understand, this publication is a must for your property management library.

#### Security Deposits:

A security deposit is money given to a landlord when the tenant moves in. The landlord can use it to cover any unpaid rent or damages. A tenant may not use the security deposit to cover the last month's rent unless the landlord agrees. All agreements should be in writing.

Louisiana civil code provides specific provisions regarding security deposits. The "**Lessee's Deposit Law**" is located in Article 9, Section 3251 of the Louisiana Revised Statutes. It requires a landlord to return a deposit within 30 days of the date the tenant moves out. If any part of a deposit is not returned, the tenant must be sent a list of the things they are being charged for and the rest of the deposit.

The act penalizes the willful failure of the landlord to obey the law by permitting the tenant the right to recover actual damages or \$200, whichever is greater. Failure to remit within 30 days of a tenant's written demand for a refund shall constitute willful failure. If you are taken to court, the judge may award costs and lawyer's fees to the side that wins. The law provides that this right cannot be given up, or waived, even in a lease.

A security deposit cannot be kept for "normal wear and tear." Examples of "normal wear and tear" could be:

- a worn carpet
- chipped paint
- worn finish on wood floor
- faded or dingy paint

This means that you cannot charge a tenant for routine upkeep, such as periodic cleaning and painting.

A deposit may be kept for unreasonable wear to the property. The Louisiana landlord can deduct the cost of fixing damages which are beyond "normal wear and tear." Examples of these damages could be:

- broken windows
- holes in the wall
- leaving trash or other items that have to be thrown away
- leaving your apartment so dirty that it's unhealthy or unsafe

There may be limits on security deposits for subsidized tenants. Subsidized housing is owned and operated by private owners who receive subsidies in exchange for renting to low- and moderate-income people. Owners may be individual landlords or for-profit or nonprofit corporations.

There are no limits for unsubsidized tenants; however, if a security deposit is unusually large, a tenant may feel that you are unlawfully discriminating against him or her because of race or other reasons. Proceed with care.

**Public housing is not the same thing as subsidized housing. Public housing is owned by a housing authority, and the housing authority is the landlord.** In a few cases, a private company may manage the building for the housing authority or may be part of the ownership, but the building is still controlled by the housing authority. Housing authorities operate in most cities and towns in Louisiana.

Unless otherwise agreed, a Louisiana landlord does not have to pay interest on the deposit; however, different rules may apply for subsidized housing.

For more information about subsidized or public housing, contact the United States Department of Housing and Urban Development (HUD) or your local housing authority.

#### Return of Security Deposits:

A landlord has one month *after* a tenant moves out to either (1) return the deposit or (2) send a letter telling the tenant why the landlord is not giving back all or part of the deposit.

If the landlord sends a statement, this letter has to be "itemized." That means the landlord has to list the specific things covered by the money the landlord is keeping.

A tenant that wishes to protect his or her right to get the deposit back at the end of a lease must give the landlord the right kind of notice that the tenant is moving out. The tenant must also give the landlord a forwarding address where the landlord can send the deposit or an itemized statement.

A landlord with a **tenant at will** (no written lease) must give back the deposit or send a letter within **21 days** after the tenant moves out *and* returns the key. In cases of a **lease**, if there is nothing in the lease about this, or if the lease gives more than 30 days, then the landlord has **30 days** to return the deposit.

### Filing an Eviction in Louisiana

In Louisiana, a landlord can only evict a tenant through judicial process. Lock-outs, removal of the tenant's property, utility terminations or otherwise rendering the premises uninhabitable or inaccessible are prohibited, as they are in most states.

The notice used may be either court-drafted or individually drafted similar to the court's model form. The notice should state why the tenant is being evicted and when the tenant is expected to leave the unit. Usually notices of evictions state failure to pay rent, breach of the lease on behalf of the tenant or expiration of the lease term with the tenant still residing in the unit. Louisiana courts have required the reason of eviction to be attached or included in the eviction notice in order to comply with constitutional due process. This allows the tenant to prepare his or her defense to the eviction in court.

**Month-to-Month Tenants** are tenants that rent by the month and do not have an agreement as to how long the rental will last. A landlord can evict a tenant for "no cause" or reason, but notice must be given in writing within **10 days** before the end of the current rental period. Failure to give the right notice could result in having to start the eviction process over. Defenses to these 10-day "no cause" evictions are limited. If a tenant does something to break an agreement, such as not paying rent, a landlord can generally evict the tenant with only a **5 day** notice.

If there is a written lease, or if the property is subsidized housing, the landlord usually needs a good reason to evict the tenant, e.g., failure to pay rent or another violation of the lease. If a lease has run out, a tenant may be evicted without a good reason, unless the tenant lives in public housing or certain types of subsidized housing.

A **Notice to Vacate** means that a landlord plans to file a lawsuit for the eviction of a tenant, if the tenant does not move out by the end of the notice period. This is not a court order to move out. As previously stated, the landlord cannot get a court order for eviction until there has been a trial before a judge. As in most states, a landlord cannot legally change the lock, shut off utilities, or try to keep a tenant out of his or her home. If the landlord locks the tenant out of the leased property, puts the tenant's possessions on the street or otherwise takes the law into his/her own hands, the landlord may be liable for damages for wrongful eviction.

A landlord may file a separate suit to collect past due rent and may seize personal items, such as furniture and appliances, found in the property. If the landlord is unable to locate the tenant, the court has a procedure which will still allow the landlord to get a judgment against the former tenant. The landlord may get a court order to seize personal property in the property without posting a bond or other security. Remember, however, if the landlord does not follow proper legal procedure, the tenant may be entitled to damages.

If a tenant does not move out by the end of the Notice to Vacate period, a landlord may have the tenant served with court papers called a "**Rule for Possession.**" A Rule for Possession is a lawsuit by the landlord asking that a tenant be evicted. The Rule for Possession should include the date, time, and place of the trial and the reasons why the landlord wants to evict the tenant.

The Rule for Possession asks the court to hold a trial and decide whether a tenant can be evicted. If a tenant wants to fight the eviction, he or she has the right to be heard in court to present a defense.

For example, a landlord generally does not have to accept late rent unless it was within a grace period. The landlord may refuse the rent and sue for eviction. But, if a landlord later accepts the rent, or had a custom of accepting late rent, a tenant may have a defense to an eviction for nonpayment of rent.

Examples of other eviction defenses:

- Inadequate Notice to Vacate (less than 10 days before the end of rental month or period);
- A 10-day eviction is not allowed because there is a lease that has not ended or the tenant lives in public housing or certain subsidized housing;
- Retaliation for complaining to the government; and
- Unlawful housing discrimination.

## **FEDERAL LAWS RELATED TO PROPERTY MANAGEMENT**

### **The Fair Housing Act**

The Fair Housing Act prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, national origin, sex, familial status, or handicap. Penalties for violating the Fair Housing Act are stiff, and include revocation of any license held, and possible federal prison.

Federal and state laws prohibit rental owners, property managers, and landlords from discriminating against certain groups in any aspect of renting residential real estate, including advertising and tenant screening. However, these laws exempt certain properties.

Single-family homes rented without the use of a real estate agent or advertising are exempt from the federal Fair Housing Act as long as the private landlord/owner doesn't own more than three homes at the time.

Apartments of four units or less are also exempt if the owner lives in one of the units. However, even if this multifamily exemption applies to you, your rental advertising must still comply with the Act.

Other exemptions include the rental of a single room in a home, qualified senior housing, and housing operated by religious or private organizations, if certain requirements are met.

Regardless of the federal exemptions, many local and state jurisdictions have their own fair housing laws, often with additional protected classes and different exemptions. For example, California's fair housing law covers any form of housing which can be described as a "business establishment" – a term which courts have broadly interpreted to include almost every type of housing. Accordingly, the owner-occupied multifamily homes and the single-family homes exempted under the federal fair housing law are not exempt from the California law.

Even if you are exempt under state or federal fair housing laws, those laws were enacted to prevent discrimination in the provision of shelter – a basic human need. Renting in a way that is consistent with the spirit of the law is always good business.

## **The Equal Credit Opportunity Act**

The Equal Credit Opportunity Act prohibits the denial of a loan or an extension of credit (rental leases are considered an extension of credit) based on race, color, religion, national origin, sex, marital status, age, or public assistance status. What this really means for property managers is that all lease applicants must be evaluated using the same criteria. Potential problems can be warded off by simply using the same tenant application and the same approval criteria for each applicant. No exceptions.

## **The Sherman Antitrust Act**

The Sherman Antitrust Act is designed to promote competition in the open marketplace. While property managers do need to know competitor's pricing, managers must avoid the appearance of conspiring to fix prices in order to thwart the competition. Only the courts can determine if price fixing has occurred, and a conviction can result in both civil and criminal penalties, including time in a federal penitentiary. That simple verbal agreement between property management companies agreeing to maintain similar rents will send a red flag. Remember, all that is necessary is that it looks like price fixing, and you may find yourself in federal court. Avoid even the appearance of price fixing at all costs.

## **The Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act (ADA) rules are complex and multi-tiered. Briefly, the ADA states that no person may be discriminated against on the basis of disability. The ADA mainly affects commercial property managers, but the Act also covers property management offices, which must be made available to all handicapped individuals. Take some time to familiarize yourself with the basics and be sure to keep your office in compliance.

## **The Lead-Based Paint Hazard Reduction Act**

The Lead-Based Paint Hazard Reduction Act is applicable only to property managers who currently manage or potentially will manage properties constructed prior to 1978. The act requires property managers currently managing a property built prior to 1978 to disclose to all tenants the presence of any known lead-based paint. Property managers must also provide tenants with copies of any and all available records or reports which pertain to lead-based paint. Managers will also have to provide all tenants with a copy of an information pamphlet published by the Environmental Protection Agency. **(It is also available on the LREC website at [www.lrec.state.la.us](http://www.lrec.state.la.us).)**

## **The Uniform Residential Landlord and Tenant Act**

The Uniform Residential Landlord and Tenant Act was designed to regulate the relationship between property owners/managers and tenants. Under the umbrella of the Uniform Residential Landlord and Tenant Act are a variety of provisions of which property managers must be aware, including security deposit guidelines, such as the time limit property managers have to return security deposits to former tenants, guidelines on property owners/managers right to re-enter the property, and no retaliation provisions, which state that property owners or managers cannot retaliate against a tenant for reporting a violation to state or federal officials. The consequences for violating any of these provisions vary and can include license forfeiture and monetary penalties.

While some of the state and federal laws may be more relevant to your particular type of property management business than others, educating yourself and any staff you may have about the laws and the repercussions of violating them will help to ensure compliance, which is the most important thing of all.

## **DUTIES OF A PROPERTY MANAGER**

### **Finding and Screening Tenants**

Tenants are the lifeline of any rental property so it's important that a property manager knows how to advertise rental properties effectively and choose excellent tenants. A property manager has to market vacant rental properties, so you need to know the most far-reaching and cost-effective methods of finding potential tenants.

Once prospective tenants come knocking at the door, it is the property manager's responsibility to screen the applicants. The aim here is find tenants who are both cooperative and punctual in rent payments.

Property management responsibilities at this stage include preparing rental application forms and conducting interviews with applicants. The purpose of the interview is to uncover their income source, family status, attitude and reason for renting. Tenant interviews can either be handled by phone to save time or conducted face to face for a more thorough screening. Naturally, part of the tenant screening involves showing prospective tenants around the rental property.

Next it's time for the property manager to run credit checks on tenants to make sure that they are willing and able to afford their rent payments. To accomplish this, you will need to know where to get tenant credit reports and how to interpret the results.

### **Managing Tenants and Settling Disputes**

Managing tenants and understanding their needs also falls under the job description.

It goes with saying that collecting rent from tenants on time is one of the most crucial duties of a property manager. A good property manager needs to have a solid rent collection plan in action - deciding on the best payment method, dealing with late rent payments and chasing after unpaid rents.

Property management responsibilities also include attending to the (reasonable) needs of tenants. Such needs include requests for property maintenance and repairs, disputes with neighbors and co-tenants and rent delays.

Not all disputes can be resolved amiably and sometimes bad tenants slip through the screening process. When that happens, a property manager is responsible for resolving disputes by legal means and evicting bad tenants.

Dealing with these ugly situations requires property managers to have a good grasp of the local landlord tenant law and rights.

Managing tenants well is a delicate balancing act that requires good communication and good people skills. On one hand, a property manager has to make sure that tenants are cooperative and respect their authority. On the other hand, tenants need to be content with the way they're being treated.



## **Property Maintenance and Repair**

Making sure that the rental property and its outdoor areas are well-maintained is also a big part of the property management job description. A well-maintained rental property tends to enjoy higher rental returns and lower vacancy rates.

Common problem areas that property managers should pay attention to: electrical wiring, plumbing, walls, paint, flooring, roofing and the surrounding lawn. If the owner provided furniture and appliances, then it's also up to the property manager to upkeep them. This means repairing and replacing any faulty or worn-out furnishings.

For larger rental properties such as a multiplex, it is also the property manager's duty to make sure that the common areas such as the corridors, stairways, lifts and void decks are in proper working condition.

The physical upkeep of a rental property can be separated into 2 types: routine maintenance and property repairs.

Routine maintenance has to be carried out on a regular basis to ensure the rental property stays in good shape. Such duties include: conducting regular property inspections, mowing the lawn, replacing worn-out furnishing, servicing the heating, cooling and electrical systems and cleaning common areas.

While a property manager can perform routine inspections and simple fixes by himself, he will have to enlist the help of professionals for bigger repairs. For this purpose, a property manager needs to have a list of reliable contractors on standby.

## **Property Accounting and Taxes**

Managing a rental property is almost like running a business. Being able to maximize rental income, while lowering expenses, can mean the difference between a profitable cash cow and a money-sucking liability. Property managers need to have basic accounting skills so that they're able to prepare income and expense statements for the owners. These statements serve as report cards for rental properties. They give the owners a clear idea of how well their property investments are doing financially.

To ensure accurate and updated accounting, a property manager has to be meticulous when it comes to bookkeeping. All property bills and expenses have to be filed properly and receipts must be issued to tenants whenever rent is collected. Filing property taxes also falls under the rental property management job description.

Filing tax returns is much more than filling a bunch of forms. A property manager who is worth his salt needs to have a firm grasp of the local tax laws so that he can give the owners advice on how to lower their property taxes.

Since a property manager should put the interests of the owner first, it is also his responsibility to maximize the amount of rental property tax deductions that the owner can claim.

## **Policies and Procedures Manual**

It is good practice to have a policy and procedures manual, so as to provide consistent guidelines for the operation of your property management business. It will help you make decisions that align with your company practices and that comply with laws and regulations. Standard operating procedures provide instructions for completing responsibilities and are useful in training new people. A policies and procedures manual will not be a static document. Instead, it will change as laws and rules change, or when business trends change the way the property management field conducts business activities.

## **IN CONCLUSION**

As a first-year licensee, the laws and rules that regulate property management and the numerous duties of a property manager may seem overwhelming and a lot to absorb. Do not let that steer you away from the idea of becoming a property manager. As with any endeavor, time, knowledge, and experience will help pave the way in your real estate career.

Finally, to reinforce the importance of knowing the law and rules, and adhering to them, the following are the real life experiences of what happened to property managers who did not:

## **LOUISIANA HUD PRESS RELEASE 05-10-13**

### **LOUISIANA**

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FOR RELEASE  
Friday  
**May 10, 2013**

### **ST. BERNARD PARISH, LOUISIANA, AGREES TO \$2.5 MILLION SETTLEMENT TO RESOLVE HOUSING DISCRIMINATION LAWSUITS**

WASHINGTON – The Justice Department and the U.S. Department of Housing and Urban Development (HUD) announced today that St. Bernard Parish, La., has agreed to a **settlement** valued at more than \$2.5 million to resolve separate lawsuits by the United States and private plaintiffs alleging that the parish sought to restrict rental housing to African Americans in the aftermath of Hurricane Katrina.

The United States' lawsuit alleged, among other things, that the parish: (1) passed a law, known as the permissive use permit ordinance, that prevented homeowners from renting single-family homes in residential zones without first obtaining a permit from the parish; (2) revised its zoning code to reduce dramatically the amount of land available for multi-family apartments; and (3) interfered with individuals' housing rights. The lawsuit further alleged that these actions were done to limit or deny rental housing to African-Americans in violation of the Fair Housing Act. These actions came on the heels of the parish's other efforts after Hurricane Katrina to restrict rental housing opportunities, including halting the re-establishment or redevelopment of rental housing and enacting a permit requirement for single-family rentals but exempting renters who were "related by blood" to the homeowners. The parish later rescinded these restrictions.

"The Fair Housing Act is clear that local governments cannot use their zoning and land-use laws to discriminate on the basis of race," said Eric Halperin, Senior Counsel and Special Counsel for Fair Lending in the Civil Rights Division. "People should have the freedom to choose where they live, without regard to race, and this innovative settlement will create greater housing opportunities in the New Orleans area."

"The right of all of our citizens to enjoy fair and equal access to housing opportunities is guaranteed by our laws," said Dana Boente, U.S. Attorney for the Eastern District of Louisiana. "The U.S. Department of Justice is committed to fiercely protecting those rights in order to ensure the quality of life all Americans deserve."

"No community has the right to keep people from living in that community because of their race," said John Trasviña, U.S. Department of Housing and Urban Development (HUD) Assistant Secretary for Fair Housing and Equal Opportunity. "HUD and the Justice Department are committed to taking action against municipalities that violate the Fair Housing Act by instituting discriminatory zoning and other housing practices."

Under the settlement, which still must be approved by the U.S. District Court for the Eastern District of Louisiana, the parish must pay \$275,000 to eight aggrieved persons identified by the United States and \$15,000 to the United States as a civil penalty, establish a new Office of Fair Housing and hire a fair housing coordinator with a gross annual salary of at least \$40,000, spend \$25,000 each year in a marketing and advertising campaign to attract renters and developers of multi-family rental housing to the parish, and establish a rental land grant program through which the parish will transfer lands in its possession, free of cost, to qualified persons or entities who are willing to create or rehabilitate housing for rental purposes. The land grant program, which requires the parish to offer lands worth up to \$83,000 each year, will last for five years; other programmatic features will last for three. Parish officials must also

undergo fair-housing training and provide periodic reports to the United States. In a separate agreement, the parish agreed to pay \$1.65 million in compensation, costs and attorneys' fees to two sets of private plaintiffs.

On Jan. 28, 2011, HUD initiated a fair housing complaint against St. Bernard Parish alleging it adopted and implemented zoning ordinances that denied or restricted housing to persons based on their race. HUD demanded the parish rescind two key discriminatory ordinances and on April 8, 2011, the parish complied. Following its investigation, HUD referred eight complaints from parish homeowners to the Justice Department alleging that the parish's zoning processes were discriminatory. In January 2012 HUD referred the secretary-initiated complaint to the Justice Department as well. The Justice Department conducted its own investigation and filed suit in January 2012.

## **CASE STUDIES**

### **Groome and United States v. Jefferson Parrish, (E.D. La.) – Persons with Disabilities**

In June 1999, the United States District Court for the Eastern District of Louisiana held that Jefferson Parish violated the Fair Housing Act when it refused to permit the operation of a group residence for five adults with Alzheimer's disease. The Parish zoning ordinance required the group home provider to seek an accommodation to house five persons instead of the permitted four. The court held that the Parish broke the law when it failed to act on the request because of opposition from neighborhood residents and a member of the Parish Board.

The Parish appealed the decision to the Court of Appeals for the Fifth Circuit, arguing that the Fair Housing Act protections for persons with disabilities are unconstitutional. The Civil Rights Division intervened and filed a brief arguing that Congress had power to pass the legislation under both the Commerce Clause and the Fourteenth Amendment to the Constitution. The United States also filed an amicus brief in the district court. On November 20, 2000, a unanimous three-judge panel joined three other Courts of Appeal holding that the Commerce Clause authorizes Congress to regulate the housing market.

### **United States v. Bouchon (E.D. La.) – Race and Color**

On August 29, 2011, the United States filed a complaint and consent decree in *United States v. Bouchon* (E.D. La.), a pattern or practice case alleging that the owners and operators of a 16 unit apartment complex in New Orleans, Louisiana denied housing to African American prospective renters on the basis of race and color. The allegations were based on fair-housing testing conducted by the Greater New Orleans Fair Housing Action Center (GNOFHAC). The lawsuit alleges that the building manager, Betty Bouchon, failed to return phone calls from African-American testers while returning phone calls from white testers, made statements to white testers indicating that she would not rent to African-Americans, and falsely told an African-American tester that an apartment was not available for rent when in fact it was available. The consent decree requires the defendants to pay **\$50,000** to GNOFHAC and a total of **\$20,000** in civil penalties to the United State. The defendants must also adopt non-discriminatory policies and procedures and comply with specified reporting and recordkeeping requirements. The court entered the consent decree on September 2, 2011.

### **United States v. Champagne (E.D. La.) – Race**

On March 16, 2001, the United States filed a complaint alleging that the defendants made statements to a tenant indicating a preference or discrimination because of race in violation of the Fair Housing Act. This election case was referred by HUD after the complainant elected to proceed in federal court. The evidence showed that the defendant landlords harassed and ultimately evicted the complainant, who is white, from her apartment because African American friends assisted her in her move into the unit. The victim received **\$8,000** as part of the consent order, which also included injunctive relief and a note of apology from the defendants.

### **United States v. Collier (W.D. La.) – Race**

On September 28, 2010, the court entered judgment in favor of the United States in *United States v. Collier, et al.* (W.D. La.). After a two day trial, the court found that Collier implemented "a scheme or device to exclude blacks" from Camp Joy Marina and engaged in a pattern or practice of discrimination. The court credited the testimony of one government witness who operated the marina restaurant and bar, and who testified that Collier threatened to cancel his lease if he allowed African-Americans on the property. The court also found that when a couple living at the marina tried to sell their home, Collier caused the sale to fall apart and then repossessed the house because he was afraid they would sell it to an African-American. The lawsuit, which resulted from an investigation conducted by the Department of Housing and Urban Development (HUD), alleged that Collier engaged in a pattern or practice of discrimination by excluding African-Americans from the Camp Joy Marina, located outside Shreveport, and by interfering with the sale of a home based on the perceived race of the buyer. The court ordered Collier to pay a **\$25,000** civil penalty to the United States, and to pay more than \$25,000 to compensate the victims of the discrimination.

### **United States v. Pecan Terrace (W.D. La.) – Familial Status**

On September 30, 2008, the United States filed a complaint and a consent decree in *United States v. Pecan Terrace* (W.D. La.). The court entered the consent decree on October 8th. The complaint alleged that the owner and manager of a Pecan Terrace Apartments in Lafayette, Louisiana discriminated against families with children in violation of the Fair Housing Act. Specifically, the defendants had and exercised a policy of refusing to rent second floor units to families with children and discouraging families with children from renting at the complex. Under the agreement the defendants will pay up to **\$115,000** to compensate victims of discrimination at Pecan Terrace Apartments, as well as pay **\$30,000** in civil penalties to the United States. The settlement also calls for numerous corrective measures, including training on the requirements of federal housing law, a nondiscrimination policy, record keeping and monitoring. Evidence for this case was developed through the Housing Section's testing program.

### **United States v. Apartment and Home Hunters, Inc. (E.D. La.) –Race and/or Familial Status**

In this case, the United States claimed that a housing referral agency in New Orleans, Louisiana, had honored the requests of several housing complexes to screen out prospective tenants based on their race and/or familial status. The matter settled before trial and the consent decree provided for mandatory training, self-testing, advertising targeting the minority community, and a ban on the use of an occupancy standard more restrictive than two persons per bedroom. In addition, the defendants agreed to pay a total of **\$180,000** in damages, including a **\$50,000** victim compensation fund, a **\$10,000** civil penalty, **\$30,000** to a victim, and **\$90,000** to the Greater New Orleans Fair Housing Action Center.

## OUT-OF-STATE

### **United States v. Sawicki, et al. (D. Mass.) – Lead-based Paint**

In this HUD election case, filed on January 18, 2001, we alleged in our complaint that the defendants discriminated on the basis of familial status by refusing to rent or show apartments containing lead-based paint to families with young children. The complainant who called to inquire about an apartment she had seen advertised. When the defendant heard the complainant young daughter in the background, she said the apartment could not be rented because it was not de-lead. State law requires the owners of dwellings containing lead-based paint to de-lead any property in which a child under the age of six lives, and specifically prohibits familial status discrimination on this basis. Nonetheless, the defendants, who were property owners as well as rental agents, consistently told testers that lead-containing apartments could not be rented to families with young children. They also offered unadvertised but available apartments to testers who did not have children, but failed to mention these apartments to testers with young children. In addition to injunctive relief, the consent order, entered on April 4, 2001, requires the defendants to pay **\$9,000** to the complainant

### **United States v. Acme Investments, Inc., et al. (E.D. Mich.) – Race**

On July 7, 2010, the court entered a consent decree resolving all claims in *United States v. Acme Investments, Inc., et al.* (E.D. Mich.). The complaint, filed by the United States and the U.S. Attorney's Office for the Eastern District of Michigan on March 3, 2010, alleged a pattern or practice of racial discrimination in violation of the Fair Housing Act by the owner and property manager, Laurie Courtney of Ivanhoe House Apartments located in Ann Arbor, Michigan. The complaint alleged discrimination against African Americans in the rental and inspection of apartments. The case was developed through testing conducted by the Fair Housing Center of Southeastern Michigan, which filed suit on July 16, 2009, alleging the same violations. The cases were later consolidated by the court. Under the settlement, the defendants will pay **\$35,000** in damages to three victims who the United States contends were discriminated against because of their race at Ivanhoe House Apartments; pay **\$7,500** in a civil penalty to the United States; and pay **\$40,000** to the Fair Housing Center of Southeastern Michigan as damages for the non-profit's efforts in testing and investigating the apartment complex. The settlement also requires the defendants and their employees to undergo fair housing training, conduct self-testing of the apartment complex, and provide periodic reports to the Justice Department and the Fair Housing Center of Southeastern Michigan. This case was handled jointly by the United States and the U.S. Attorney's Office for the Eastern District of Michigan. The consent decree will remain in effect for three years.

### **United States v. Midtown Development, LLC (S.D. Miss.) – Reasonable Accommodation and Retaliation**

On July 10, 2008, the court entered a consent decree in *United States v. Midtown Development, LLC* (S.D. Miss.). The complaint, filed on June 20, 2007, by the U.S. Attorney's Office alleged that the defendants, the owner and property manager of an apartment complex in Biloxi, Mississippi, violated sections 3604(f)(2), 3604(f)(3)(B) and section 3617 of the Fair Housing Act by failing to provide complainant an assigned accessible parking space and by taking steps to evict him in retaliation for his reasonable accommodation requests. Before the eviction process was complete, Hurricane Katrina decimated the property. The consent decree requires the defendants to pay the complainant **\$2,000**, to undergo fair housing training and to adopt a reasonable accommodation policy and comply with various reporting requirements if they go back into the residential property rental business. The case was referred to the Division after the Department of Housing and Urban Development (HUD) received a complaint, conducted an investigation and issued a charge of discrimination.

### **United States v. MEM Property Management Corp., et al. (D. N.J.)**

On May 16, 2005, the court entered the consent order resolving *United States v. MEM Property Management Corp. et al.* (D. N.J.). The Defendants in this case are a condominium association, its president, its retained management firm, and the management firm employee responsible for the complex. The complaint alleged that the defendants refused to allow the complainant to install a clothes washer and dryer in her condominium, and thereby denied her a reasonable accommodation, in violation of 42 U.S.C. § 3604(f)(3)(B). The complainant alleged that she needed these appliances because of her disabilities, including carpal tunnel syndrome and asthma, which made it impossible for her to carry loads of laundry to the common laundry room located on the ground floor. The consent decree requires the defendants to: allow the complainant to install the requested appliances; pay her **\$2,000** in compensatory damages; adopt a nondiscrimination policy, and conduct training for employees and members of the board of the condominium association. The consent order will remain in effect for three years.



# Suppliments

## Property Management Essentials

## Attachment A

### LOUISIANA REAL ESTATE LICENSE LAWS RELATED TO PROPERTY MANAGEMENT:

#### §1438: APPLICABILITY

A. The provisions of this Chapter shall not apply to:

- (1) Any person, partnership, limited liability company, association or corporation, foreign or domestic, which has not been granted a real estate license in Louisiana and in which, as owner or lessor, either individually or through an employee or representative and performs acts of ownership with reference to property owned by him, except person in the business of selling or managing timeshare interests.
- (2) The service rendered by an attorney at law on behalf of a client which may be required in the normal course of other legal representation.
- (3) A receiver, trustee in bankruptcy, administrator, executor, tutor, or civil sheriff for any parish of this state.
- (4) A trustee selling under a deed of trust or a mortgage.
- (5) Any individual, corporation, partnership, trust, limited liability company, joint venture or other entity which sells, exchanges, leases, or manages its own property, except persons, corporations, partnerships, trusts, limited liability companies, joint ventures and other entities who are in the business of selling timeshare interests.
- (6) Any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to:
  - (a) Delivering a lease application, a lease, or any amendment thereof to any person.
  - (b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment for delivery to and made payable to a property manager or owner.
  - (c) Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker, including the execution of leases or rental agreements, provided the broker is responsible for the actions of his employees.
  - (d) Providing information about a rental unit, a lease, an application for lease, or the status of a security deposit or the payment of rent to any person.
  - (e) Assisting in the performance of property management functions by carrying out administrative, clerical, or maintenance tasks.

B. Repealed by Acts 1995, No. 1207, §2.

C. Repealed by Acts 1995, No. 1207, §2.

Acts 1978, No. 514, §1. Amended by Acts 1979, No. 404, §1; Acts 1984, No. 552, §2; Acts 1986, No. 835, §1; Acts 1989, No. 655, §1, eff. Jan.1, 1990; Acts 1990, No. 893, §1; Acts 1995, No. 1207, §1.

#### §1455. Causes for censure, suspension, or revocation of license, registration, or certification

A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:

\* \* \*

- (4) Failure to account for any money coming into his possession belonging to others.
- (5) Failure to properly disburse money which belongs to others upon its coming into his possession.
- (6) Commingling the money or other property of his principals with his own.
- (7) Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal.

\* \* \*

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller or lessor of property that he owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent and the same is disclosed to the buyer or tenant.

\* \* \*

(11) Offering real estate for sale or lease without the written consent of the owner or his authorized agents. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

(12) Offering real estate for sale or lease on terms other than those authorized by the owner or his authorized agent.

\* \* \*

(17) Failure by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his licensed broker any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker or in connection with any transaction involving the sale, lease, or management of real property.

\* \* \*

## **RULES AND REGULATIONS RELATED TO PROPERTY MANAGEMENT:**

### **Chapter 25. Advertising; Disclosures; Representations**

#### **§2503. Owner Authorization**

A. No broker or licensee sponsored by said broker shall in any way advertise property belonging to other persons as being for sale or rent or place a sign on any such property offering the property for sale or rent without first obtaining the written authorization to do so by all owners of the property or their authorized attorney in fact.

B. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

### **Chapter 27. Escrow and Trust Accounts**

#### **§2701. Resident Broker Requirements**

\* \* \*

B. A resident broker, including corporations, partnerships and limited liability companies, engaged in the management of property owned by other persons shall open and maintain a rental trust checking account in a financial institution in the state of Louisiana. All rental trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Rental Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental payments from or on behalf of clients in connection with the management of properties owned by other persons shall be deposited into this account.

C. A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental security or damage deposits in connection with property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security or damage deposits from or on behalf of clients shall be deposited into this account.

### **§2715. Withdrawal**

A. Funds deposited into a sales escrow checking account, rental trust checking account, or security deposit trust checking account shall not be withdrawn for any purposes except:

1. upon the mutual written consent of all parties having an interest in the funds;
2. upon court order;
3. to deposit funds into the registry of the court in a concursus proceeding;
4. to disburse funds upon a reasonable interpretation of the contract that authorizes the broker to hold such funds, provided that the disbursement is not made until 10 days after the broker has notified all parties and licensees in writing;
6. to return the funds to a buyer at the time of closing;
7. to cover the payment of service charges on sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts;
8. upon approval by the commission in connection with the sale or acquisition of a licensed entity;
9. to comply with the provisions of R.S. 9:3251 or any other state or federal statute governing the transfer of rents, security deposits or other escrow funds.

B. Deposits shall be disbursed within 30 days of an agreement between the principles in a real estate transaction.

### **§2717. Deposits**

A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

## Attachment B

### **NATIONAL TRADE ORGANIZATIONS FOR PROPERTY MANAGERS**

This is a sample list of national trade organizations for property managers. It is not all inclusive, nor does it serve as a recommendation of these organizations over other organizations of a similar type.



#### **IREM Institute of Real Estate Management**

IREM Headquarters  
430 North Michigan Avenue  
Chicago, Illinois 60611  
Phone: (800) 837-0706  
Fax: (800) 338-4736  
[custserv@irem.org](mailto:custserv@irem.org)



National Association of Residential Property Managers  
638 Independence Parkway, Suite 100, Chesapeake, VA 23320 | Phone: (800) 782-3452 | Fax: (866) 466-2776 | Email:  
[info@narpm.org](mailto:info@narpm.org)



*Value Through Professional  
Asset Management*

National Property Management Association  
4025 Tampa Road  
Suite 1203  
Oldsmar, FL 34677  
Telephone: 813.475.6998  
Fax: 813.749.0812  
Email: [hq@npma.org](mailto:hq@npma.org)



10955 Westmoor Drive, #400  
Westminster, CO 80021  
866-579-AAOA (2262)  
Fax: 303-484-5508



Building Owners and Managers Association  
1101 15th St., NW Suite 800  
Washington, DC 20005  
Phone: (202) 408-2662  
Fax: (202) 326-6377  
e-Mail: [info@boma.org](mailto:info@boma.org)