

# **THE CRIME FREE MULTI-HOUSING PROGRAM**

## **KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY**

A Practical Guide for Landlords and Property Managers

A Community Policing project, sponsored by the City of Riverdale

**Bruce Burrows, Mayor**

**Larry Hansen, City  
Administrator**

**David Y. Hansen, Police Chief**

Originally developed for the City of Portland, Oregon, by:

**John H. Campbell, Campbell Resources, Inc.**

Adapted for Riverdale City, Utah by:

**David Y. Hansen and James Ebert**

This edition was adapted in April 20<sup>th</sup> 2005 by the Riverdale Police Department. Various parts of this document provide outlines of legal process. These descriptions are intended only as general guidelines to foster understanding. **No part of this manual should be regarded as legal advice or considered a replacement for the landlord's responsibility to be familiar with the law.** This manual is distributed with the express understanding that neither the publisher nor the author is engaged in rendering legal services. If legal assistance is required, the services of a competent attorney should be sought. An experienced attorney should be hired in any situation that has the potential to become adversarial, or where the landlord requires help or guidance.

## Landlord Training Manual

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## PREPARING THE PROPERTY

*Make the environment part of the solution*

**Advice we were given**

**“Drug people don’t like to be seen. They can set up anywhere, but the farther they are from the managers office, or more hidden the house is from view, the better they like it” – Police Officer**

**“Drug dealing is not a spectator sport” – Author unknown**



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## PREPARING THE PROPERTY

*Make the environment part of the solution.*

*The information provided in this chapter is also the basis for the recommended property modifications for those participating in the Enhanced Safety Properties Program. This chapter describes the general application of crime prevention through environmental design in rental property. For specific "certification" requirements, contact a participating law enforcement agency.*

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### The Basics

Make sure the aesthetic and physical nature of the property is attractive to honest renters and unattractive to dishonest ones.

### Keep The Property Up To Habitability Standards

Maintaining housing standards is important to the public welfare and is a protection against neighborhood decay. In addition, with a substandard house you are more likely to attract drug criminals. The last thing you want to do is announce to potential tenants that you are an irresponsible landlord. When you show drug criminals a substandard house, you might as well tell them outright: "Our operation is illegal too. If you will look the other way, so will we." Also, eviction of a knowledgeable tenant from such a house could be expensive. If you are renting property that isn't maintained, you may have given up many of your eviction rights.

Before renting your property, make sure it meets applicable local maintenance code and the habitability requirements of landlord-tenant law.

### "CPTED" Defined

Crime Prevention Through Environmental Design, known as CPTED (pronounced "Sep Ted"), is a field of knowledge developed in response to research demonstrating that the architecture of some buildings deters crime while that of others encourages it. These concepts were originally designed to help reduce crime to a property (e.g., a burglar breaking in). They are now known also to help prevent crime from a property (e.g. drug dealing, drug manufacturing, illegal gang activity).

*Lighting, landscaping, and building design should combine to create an environment where people who intend to harm the property or commit crimes don't feel comfortable*

Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don't feel comfortable. Basic steps include making it difficult to break in, closing off likely escape routes, and making sure public

areas can be easily observed by nearby people as they go about their normal activity. The four basic elements of CPTED:<sup>1</sup>

Lighting, landscaping, and building design should combine to create an environment where people who intend to harm the property or commit crimes don't feel comfortable.

- ✚ **Natural Surveillance.** The ability to look into and out of your property. Crime is less likely to happen if criminals feel they will be observed. Examples: Keep shrubs trimmed, so they don't block the view of windows or porches. Install glass peepholes so children and adults can see who is at the door before they open it. Prune tree branches that hang below six feet. Install low-energy-usage outdoor lighting along the paths. Install motion-activated lights in private areas such as driveways. Keep drapes or blinds open during the day. Leave porch lights on at night.
- ✚ **Access Control. Controlling entry and exit.** Crime is less likely to happen if the criminal feels it will be hard to get in or that escape routes are blocked. Examples range from something as simple as a locked door to a 24-hour guard station or remote-activated gate. This applies to individual apartments too: deadbolt locks and security pins in windows and sliding-glass doors. In high-rise apartments, the "buzzer" for opening the front door is an access control device.
- ✚ **Territoriality. Making a psychological impression that someone cares about the property and will engage in its defense.** Conveying territoriality is accomplished by posted signs, general cleanliness, high maintenance standards, and residents who politely question strangers. Signs that tell visitors to "report to the manager," define rules of conduct, warn against trespassing, or merely announce neighborhood boundaries are all part of asserting territoriality. In other examples, cleaning off graffiti the very next day or painting a mural on a blank wall both send a message that minor crime won't be overlooked.
- ✚ **Activity Support.** Increasing the presence of law-abiding citizens can decrease the opportunities for criminals. Neighborhood features that are not used for legitimate activities are magnets for illegal activity. Organizing events or improving public services in parks and school yards, holding outdoor gatherings on hot summer nights, and accommodating bicycles, joggers, and fitness walkers are all examples.

How these concepts are best applied in a given property depends on many factors, including the existing landscaping, building architecture, availability of resident managers, management practices, presence of security personnel, desires of law abiding residents, and more.

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<sup>1</sup> Although research on CPTED goes back decades, the description given here is based on information provided by the Tucson, Arizona Police Department's "Safe By Design" program. For more on CPTED, see Crime Prevention Through Environmental Design, C. Ray Jeffery, (Beverly Hills: Sage Publications, 1971); and see Defensible Space: Crime Prevention Through Urban Design, Oscar Newman, (New York: Macmillan, 1972)

## Keep The Property Visible, Control Access

The following are some recommended "first steps" for making "CPTED" changes to rental property. Taken alone, few of the following elements will have a significant impact. Taken together, they will stop some drug dealers from wanting to move into the property, and will make it easier for neighbors (or surveillance teams) to observe and document illegal activity should it start up. Initial steps include:

- Use lighting to its best advantage. Install photosensitive lighting over all entrances. Buyers, sellers, and manufacturers of illegal drugs don't like to be seen. At minimum, the front door, back door, and other outside entrance points should be equipped with energy-efficient flood lighting that is either motion or light sensitive - made to go on for a few minutes when a person approaches or to go on at sunset and stay on till dawn. Backyards and other areas should also be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into house windows - either yours or the next-door neighbor's. Be sure applicants understand that the lighting is part of the cost of renting - that it must be left on.

In apartment complexes make sure that all walkways, activity areas, and parking lots are well lighted, especially along the property perimeter. Covered parking areas should have lighting installed under the canopy. All fixtures should be of vandal-resistant design. Landscape planning should take into account how future plant growth will impact lighting patterns.

- Make sure fences can be seen through. If you install fencing, chain-link or wrought-iron types are best, because they limit access without also offering a place to hide. Wood fencing can also be used effectively, provided you leave wide gaps between the boards. In some cases you might also consider a lower height - for example, four feet high instead of six. Consider replacing, or modifying, wood fences that have minimal gaps between boards. Keep hedges trimmed low.
- Keep bushes around windows and doorways well trimmed. Bushes should not impair the view of entrances or windows. Bushes should also be trimmed up from the ground to discourage the possibility of a person hiding behind them.
- Post the address clearly. Only the drug house operator will benefit if the address is difficult to read from the street. When address numbers are faded, hidden by shrubs, not illuminated at night, or simply falling off, neighbors will have one more hurdle to cross before reporting activity and police will have more difficulty finding the house when called.

Large apartment complexes should have a permanent map of the complex, including a "you are here" point of reference, at each driveway entrance. These maps should be clearly visible in all

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weather and well lighted. If the complex consists of multiple buildings, make sure building numbers can be read easily from any adjacent parking area, both day and night. Also, make sure that rental units are numbered in a logical and consistent manner to make it possible for officers to locate the unit as rapidly as possible if called to it.

- Control traffic flow and access. In larger complexes, control access points to deter pedestrian passersby from entering the property. Then do the same for automobile traffic. People involved in drug activity prefer "drive through" parking lots - those with multiple exits. Consider blocking some parking exits, adding fencing, and rerouting traffic so all automobile and foot traffic, coming and going, must pass the same point - within view of the manager's office.

If more control is needed, issue parking permits to tenants. Post signs forbidding cars without permits to use the lot. Towing companies that specialize in this type of business can provide signs, usually for a nominal setup fee. Depending on the availability of street parking for guests, either deny guest parking altogether or limit it to specific spaces. Be consistent in having violators towed away. Remember, it is your parking lot, not a public one.

- Before building, design for a strong sense of community. Each of the other steps described in this section should be integrated into building plans to help design a safer rental unit from the start. In addition, for apartment complexes in particular, building plans should consider design elements that will help foster a sense of community. Recreational areas and other community facilities can help encourage neighbors to become acquainted. Building layouts should nurture more personalized, neighborhood environments over those that may reinforce feelings of isolation and separation from the community.

### **Keep It Looking Cared For**

- Housing that looks cared for will not only attract good tenants, it will also discourage many who are involved in illegal activity. Changes that communicate "safe, quiet, and clean" may further protect the premises from those who want a place where chronic problem activity might be tolerated. While these approaches are useful in any type of rental, because of the day-to-day control that apartment owners have over the common areas of their property, the following approaches can make a particularly strong difference in multifamily complexes:
- Remove graffiti fast. Graffiti may be the random work of a juvenile delinquent or the work of a gang member marking territory. Regardless, it serves as an invitation for more problems and it can demoralize and intimidate a neighborhood. If you believe graffiti may be gang-related, call police. Then remove it or paint it over. Remove it again if it reappears; do not let it become an eyesore.
- Repair vandalism. As with graffiti, an important part of discouraging vandalism is to repair the problem fast. If the vandalism appears directed against you or your tenants, police should be advised immediately and additional approaches discussed to address the situation.

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- Keep the exterior looking clean and fresh. Fresh paint, well-tended garden strips, and litter-free grounds help communicate that the property is maintained by someone who cares about what happens there.

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## APPLICANT SCREENING

*"An ounce of prevention..."*

*(Note: some "complaints" contain inaccurate or incomplete assumptions about legal rights or procedure.)*

### COMPLAINTS WE HAVE HEARD:

"People say you should screen your tenants. You can't. The applicants lie about their previous **APPLICANT** landlord; they give you a fake address and the phone number of their brother. You call up the brother, he plays along and you never discover they were evicted at the last two houses they rented."

"I thought I was calling the previous landlord and it was the applicant's parents, and the parents played along. It ended up in eviction, some months later."

"We can't screen tenants worth anything. If you don't do it right, you could be sued for discrimination. So you check to see if they have income and that's it."

### ADVICE WE WERE GIVEN:

"I went to a meeting for landlords about these issues. I was surprised - most people in the room couldn't understand why they were getting bad tenants. They just couldn't see that there are ways to keep that from happening."

"Many landlords are frightened of the fair housing laws. Some believe they can't screen at all. If landlords establish a fair and legal screening procedure, and follow it equally for each applicant, they will have a very strong case against discrimination lawsuits."



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*attorney.*

## APPLICANT SCREENING

*"An ounce of prevention..."*

### **MORE ADVICE WE WERE GIVEN:**

"Most landlords, even some 'pros,' are still practicing the old way of doing things. They take a social security number, make one phone call, and rent to the person. Then they wonder where the problems are coming from. Well, the old methods don't work anymore."

"I've just quit relying on character judgment. For managing rental property, it doesn't work. I have a set application process, written down. Applicants must meet all the criteria. If they do, I rent to them. If they don't, I don't. It is simple, legal, and fair. At this point, every one of my properties has good people in it."

"When I call previous landlords to verify an applicant's record, most are surprised to get a screening call from another landlord; apparently it happens too rarely."

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### **The Basics**

Attract honest tenants, while discouraging dishonest applicants from applying. Have a backup system to help discover if a dishonest person has applied. Use a process that is legal, simple, and fair.

- 1. At every step reinforce the message that you are an active manager, committed to providing honest tenants with good housing and keeping dishonest tenants out.**
- 2. Establish written criteria. Communicate those criteria to the applicant. Communicate your commitment to complete applicant screening.**
- 3. Thoroughly screen each applicant. Most landlords don't. At minimum: check photo I.D. and run a credit check, independently identify previous landlords, verify income.**
- 4. Do it. Don't cut corners. Don't believe it won't happen to you. Don't trust an innocent-looking face, and don't accept applicants just because your "gut" says they're okay.**
- 5. Apply your rules and procedure equally to every applicant.**
- 6. Learn the warning signs of dishonest applicants.**

## Overview

There are two ways to screen out potentially troublesome tenants. The goal is to set up a screening process that will attract every good applicant while discouraging, or discovering, every problem applicant. The two basic elements to effective screening:

1. **Encourage self-screening.** Set up situations that discourage those who are dishonest from applying. Every drug dealer who chooses not to apply is one more you don't have to investigate.
2. **Uncover past behavior.** More often than not, even a very basic background check can reveal poor references, an inconsistent credit rating, or falsehoods recorded on the application.

The goal is to weed out applicants planning illegal behavior as early as possible. It will save you time, money, and all the entanglements of getting into a legal contract with people who may damage your property and harm the neighborhood.

For the following steps to be most effective, it is just as important that applicants actually read and understand the rules and process as it is that you implement the process in the first place. Implementing elements of the following suggestions may help protect you legally. Making sure that an applicant knows your commitment to the process may help prevent problems before they have a chance to grow.

Also, a word of caution: If you are looking for a one-step solution, you won't find it here. There are no "magic" phone numbers you can call to get perfect information about applicants and their backgrounds. Effective property management requires adopting an approach and attitude that will discourage illegal behavior, while encouraging the stabilization, and then growth, of your honest tenant base. What makes the following process so effective is not anyone step, but the cumulative value of the approach.

## Applicant Screening, Civil Rights, And Fair Housing

Landlords are sometimes confused over how much right they have to turn down applicants. A few even believe that civil rights laws require them to accept virtually any applicant. This is not the case.

Civil rights laws are designed to protect the way applicants are screened and to make sure that all qualified applicants feel equally invited to apply. Federal Fair Housing guidelines prohibit discrimination based on race, color, religion, sex, disability, national origin, or familial status (presence of children).<sup>2</sup>

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<sup>2</sup> Age discrimination is generally considered illegal in any jurisdiction, since there is a correlation between age and familial status. Legally defined retirement communities have some exemptions.

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The purpose of these civil rights laws is to prevent discrimination on the basis of a person's membership in a protected class. Nothing in the law forbids you from setting fair screening guidelines and applying them equally to all applicants.

Keep in mind that every person belongs to these various classes. Each of us can be defined in terms of our race, color, sex, national origin, marital status, familial status, etc. So any time you deny an applicant, you have, in a sense, denied someone who belongs to a protected class. The question is whether or not you treat applicants (or tenants) adversely because of the class to which they belong. If the criteria you set are blind to class issues ("facially neutral"), and you apply them consistently, you may turn down applicants who do not measure up.

The key lies in making sure your process is fair, that it neither directly nor indirectly discriminates on the basis of one of the classes listed above. (It is also prudent to avoid using criteria that are not reasonably related to important and necessary business purposes.) To comply, you should design a fair process and apply it consistently and equally to all applicants. Examples:

- You may have a rule that requires all applicants to show photo I.D., and you could turn down applicants who cannot produce a photo I.D. The practice becomes illegal when you apply the rule inconsistently, requiring I.D. from people of one class but not from those of another.
- You could give a document to all applicants that outlines rules of the unit and warns against selling drugs on the property. The practice becomes illegal when you hand it to applicants of one class but not of another. (Should you develop such a document, also make sure the language used does not discourage members of a protected class from applying.)
- You could refuse to rent to anyone who lies to you during the application process or provides false information on the application. This is both legal and highly appropriate.
- You could require all applicants who say they intend to park an automobile on your property to show current car registration, proof of insurance, and a valid driver's license along with their completed rental application. You could deny tenancy to those who wish to have a car on the property without showing such documentation. Of course, if the person does not plan to keep a car, the requirement would be waived.

There is nothing illegal about setting fair criteria and holding all applicants to the same standards. By the consistent use of such guidelines you can retain full and appropriate control over who lives in your rental units and who does not.

Finally, as you study the letter of the law, keep its spirit in mind as well. The sooner we remove the types of discrimination that weaken our communities, the sooner we can build a stronger, more equitable society.

## **Regarding Source Of Income Discrimination**

In general, you may continue to set tenant screening criteria based on amount and stability of income. You may also verify the source, amount, and stability. What you may not do is turn down applicants who otherwise meet your income criteria, but gain that income from a legitimate source of which you personally disapprove. For example, it is illegal for a landlord to turn down a qualified applicant - one who meets income, rental history, and other screening criteria - who happens to be a recipient of welfare or alimony. Check with your local public housing authority if you have questions about Section 8 program participation. Also, of course, you may turn down applicants whose income source is illegal.

## **Written Tenant Criteria: What To Post**

The following is intended as a generic example of information a manager might post and direct each applicant to read. The intent is to encourage every honest tenant to apply, while providing dishonest applicants with an early incentive to pursue housing elsewhere. Every drug dealer who doesn't apply is one more you don't have to deal with.

By itself, this information will scare off only a few people involved in illegal activity. Most have heard tough talk before. Many expect landlords to be too interested in collecting rent to care about applicant screening. The important thing is to follow through in word and action. Continue reinforcing the point that you enjoy helping honest tenants find good housing by carefully screening all applicants, and then actually screen them.

While we have attempted to make sure the following section adheres to the goals of Fair Housing, this is not intended to replace your responsibility to understand the law and to follow it. Applying Fair Housing practices involves much more than the language used in the applicant screening process. If you are not familiar with your responsibilities under Fair Housing, you are encouraged to seek information from your local rental housing associations or from an attorney who specializes in the subject.

Also, the following is only an example intended to show various types of rules that might be set. You should adjust the criteria as appropriate for your own needs. Whatever criteria you set, have them reviewed by an attorney familiar with current landlord-tenant issues before you post them.

## Application Process

Here it is important to set the tone for your applicants, making sure that good applicants want to apply and that bad applicants may begin to think twice. Here's one approach:

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other renters in this area [apartment complex] are being screened with equal care, and that the risk of illegal activity occurring in the area is reduced.

Please review our list of criteria. If you feel you meet the criteria, please apply.

Please note that we provide equal housing opportunity: we do not discriminate on the basis of race, color, religion, sex, disability, national origin, familial status, marital status, source of income, age, and sexual orientation.<sup>1</sup>

## Application Screening Criteria

**A complete application.** One for each adult (18 years of age or older). If a line isn't filled in (or the omission explained satisfactorily), we will return it to you.

This requirement helps make sure that every application has enough information for you to make an informed decision. One of the simpler methods for hiding one's financial history is to "forget" to fill in one's social security number or date of birth on the application. Without a name, social security number, and date of birth, credit checks cannot be run. To the person contemplating illegal activity, this requirement will communicate a very basic message: that you will actually screen your applicants. That message alone will turn away some. The bottom line with this requirement is to make sure you get complete information. For example, make sure you get full names, including middle names. It is hard to run a credit check without an accurate name.

This rule also allows you to receive an application from each roommate and not just the one with the good rental history. People involved in illegal activity may have friends and roommates who still have clean credit or a good rental history. The obvious approach for such people is to have the person with the good rental history apply and then follow that person into the unit. You have a right to know who is planning to live in the unit, so require an application and verify the information for each adult.

**Rental history verifiable from unbiased sources.** If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require a qualified co-signer on your rental agreement (qualified co-signers must meet all applicant screening criteria).

It is your responsibility to provide us with the information necessary to allow us to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history.

If you owned, rather than rented, your previous home, you will need to furnish

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<sup>1</sup> See the discussion of civil rights and fair housing on page 16 for more information about this list of protected classes. As noted there, the list of protected classes in your jurisdiction may differ somewhat from the one shown here

mortgage company references and proof of title ownership or transfer. Variations of this rule have been used by many landlords to address the issue of renting to those who do not have a rental history or those who say "I last rented from my mother (or father, aunt, or uncle)." This makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior. While loyal relatives may say a relation is reliable, they might think twice about co-signing if they know that isn't true. If requiring a co-signer seems unwieldy for your type of rentals, you may want to offer a different option: require additional prepaid rent or security deposit from people who don't have a verifiable rental history.

Sufficient income/resources. If the combination of your monthly personal debt, utility costs, and rent payments will exceed X % of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement. If the combination exceeds X+Y % of your monthly income, your application will be denied.

We must be able to verify independently the amount and stability of your income (e.g., through pay stubs, employer/source contact, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.) For Section 8 applicants, the amount of assistance will be considered part of your monthly income for purposes of figuring the proportion.

You can, and should, verify self-employment. Drug dealers may describe themselves as self-employed on the assumption that you will have to take their word as verification. Some will be unprepared to supply tax returns, a copy of a business license, or other verification.

Two pieces of I.D. must be shown. We require a photo I.D. (a driver's license or other government-issued photo identification card) and a second piece of I.D. as well. Present with completed application.

This is a simple and effective rule. Note that the second piece of I.D. could be a social security card or could be something less "official," such as a credit card. People who carry fake I.D. often don't carry two pieces of fake I.D. with the same name on it.

False information is grounds for denial. You will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated. If your applicants are not honest with you, you may turn them down. It's that simple.

Criminal convictions for certain types of crimes will result in denial of your application. You will be denied rental if in the last X. years you have been convicted of any type of crime that would be considered a serious threat to real property or to other residents' peaceful enjoyment of the premises, including the manufacture or distribution of a controlled substance.

This criterion is more controversial than it may seem. In some states people who have been convicted of a crime - and served their time - are protected from discrimination by landlords on the basis of that conviction. Also, don't use this requirement as a crutch - many drug dealers haven't yet been convicted of a crime. In addition, few people who are planning to use a rental for illegal activity, whether or not they have a criminal record, will have a verifiable, clean rental history. So, if you use this requirement, be sure you continue to perform other recommended screening steps conscientiously.

**Poor credit record (overdue accounts) may result in denial of your application.** Occasional credit records showing payments within \_\_\_ to \_\_\_ days past due will be acceptable, provided you can justify the circumstances. Records showing payments past - days are not acceptable.

If you are renting property, you are effectively making a loan of the use of your property to your tenant. Banks don't loan money to people with poor credit. You don't have to loan the use of your property either.

You may also want to have exceptions for specific types of bills. For example, you might wish to allow exceptions if the only unpaid bills are for medical expenses. However, regardless of what other exceptions you define, remember that it is a very poor idea to accept tenants who have a history of not paying the rent - if they didn't pay the last landlord, they may not pay you either. It is also a poor idea to accept tenants who have a history of not paying for other housing services, such as heat or electricity, that are required to ensure a rental unit is habitable.

**Certain court judgments may result in denial of an applicant.** If, in the last X years, you have had unpaid collections, an FED judgment against you (a court-ordered eviction), or any judgment against you for financial delinquency, your application may be denied. This restriction may be waived if there is no more than one instance, the circumstances can be justified, and you provide a qualified co-signer on your rental agreement.

Although, in most cases, you may turn down applicants who have been through a recent court-ordered eviction or have other unpaid financial judgments against them, we recommend maintaining some flexibility here. In the example above, if the person has a single instance and can provide a qualified co-signer, the person is given another chance. It seems inherently more fair to give people who have made a single mistake the chance to improve.

**Poor references from previous landlords may result in denial of your application.** You will be denied rental if previous landlords report significant levels of noncompliance activity, including but not limited to:

- Repeated disturbance of the neighbors' peace.
- Gambling, prostitution, drug dealing, or drug manufacturing.
- Damage to the property beyond normal wear.
- Violence or threats against landlords, other tenants, or neighbors.
- Allowing persons not on the rental agreement to reside on the premises.
- Failure to give proper notice when vacating the property.

Also, you will be denied rental if previous landlords would be disinclined to rent to you again for other reasons pertaining to the behavior of yourself, your pets, or others allowed on the property during your tenancy.

Even when applying these very basic past rental behavior criteria, flexibility in a few specific areas may be appropriate. For example, if the applicant was a victim of domestic violence at the last rental (which could be a cause of some of the above behaviors), and the applicant is taking steps to keep the perpetrator away from this new home, consider renting to the applicant upon

**We will accept the first qualified applicant.**

In the interests of ensuring that you meet the requirements of Fair Housing law, this is the best policy to set. Take applications in order, noting the date and time on each one. Start with the first application. If that applicant meets your requirements, go no further - offer the unit to the first applicant. This is the fairest policy you can set, and it helps make sure that you do not introduce inappropriate reasons for discriminating when choosing between two different, qualified applicants.

**We will require up to X business days to process an application.**

Many landlords specify five business days or seven consecutive days. Generally, it is a good idea to allow yourself at least a week, although you may often complete the process more quickly.

**Rental Agreement**

Some landlords post a copy of the rental agreement next to their screening requirements. Others offer a copy to all who wish to review it. The key is to make sure that each applicant is aware of the importance you place on the rental agreement. In addition, you may want to set a procedure to ensure that every applicant is aware of key elements of the agreement that limit a tenant's ability to allow others to move onto the property without the landlord's permission. One approach:

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental unit or complex. A complete copy of our rental agreement is available for anyone who would like to review it.

Please read the rental agreement carefully, as we take each part of the agreement seriously. For example, along with many other requirements, the rental agreement:

- Allows only those people listed on the rental agreement to live at the property (you'll need our written permission to move someone else in);
- Does not permit subleasing;

- Does not allow disturbing the neighbors; and
- Forbids illegal drug use, sale, growth, or manufacture on the property.

The agreement has been written to help us prevent illegal activity from disturbing the peace of our rental units and make sure that our tenants are given the best housing we can provide.

## **Other Forms and Procedures**

At this point, you may want to post information, as applicable, about waiting list policies, security deposits, prepaid rent, pet deposits, check in/check out forms, and other issues relating to rental of the unit.

## **Regarding "Borderline" Applicants**

The preceding criteria include a number of examples where exceptions are made in borderline cases, if the applicant can provide a co-signer. Alternately, some flexibility can also be introduced by setting rules that require borderline applicants to provide larger deposits or more prepaid rent. Introducing this type of "decision rule" - which, like all other rules, must be applied consistently - gives you the flexibility to help make sure, that you do not turn down otherwise good applicants who have, for example, a single, justifiable problem on their credit report. Use of such "borderline" alternatives can result in a more fair process for your applicants as well. As with all aspects of managing rental housing, apply your written policies for "borderline" applicants consistently regardless of the protected class of the applicant.

## **About Applicant Screening Charges**

Some landlords require an applicant screening charge to defray the cost of screening. While policies vary, most state that if the applicant is screened and accepted, but choose not to rent the unit, the fee will not be refunded. Requiring an applicant screening charge is not for everyone, but for those who wish to use such approaches, these are the benefits:

- Saving time. You are less likely to spend time screening someone who then decides not to rent from you. By requiring the charge, you encourage applicants to make sure they truly desire the unit before you spend time checking references. Also, with a financial commitment involved, an applicant may take a few extra minutes to make sure every line on the application is filled in completely and accurately, making your verification process that much easier. Your best investment of the time you save? Spend it screening each applicant more thoroughly.

- Promoting self-screening. Taking the time to screen an applicant costs money. People who are planning to harm the property or engage in illegal activity may recognize your up-front charge as further indication of your commitment to screen carefully. Such a policy can also discourage people who plan on filling out multiple applications, waiting to start illegal activity with whichever landlord accepts them first.

Charges may be required solely to cover costs directly related to screening, such as personal reference checks, consumer credit reports, and tenant screening reports. The charge may not exceed the landlord's average actual cost of screening applicants nor may it exceed the "customary" amount charged by tenant screening agencies for a comparable level of screening.

While there are instances when the law allows you to keep screening charges from applicants whom you deny, consider setting a policy that ensures the return of fees to all honest applicants who were not given the opportunity to rent the unit, even if you incurred screening costs on those applicants. If applicants are required to pay a charge even when they are not offered the chance to rent, the cost of finding housing can become prohibitive for some tenants and can lead to further regulation of rental practices.

For more information about applicant screening charge policies, as well as guidance on appropriate forms to use, contact a local property management association or an experienced landlord-tenant attorney. For those who are running multifamily units, you may also wish to consult those same sources about a related issue - how to implement a fair waiting list policy for qualified applicants who are willing to wait for an available unit.

## **Application Information: What To Include**

The best approach is to avoid reinvention of the wheel - contact a local rental housing association for copies of appropriate forms.

**1. The following questions,** and others, will be on many standard forms. Also, remember to look at the application and make sure it is filled in completely before you accept it. It doesn't help to ask a question, if the applicant doesn't answer it.

- Full name, including middle.
- Birth date.
- Driver's license number, and state.
- Social security number (you'll need it for the credit check). Names, dates of birth, and relation of all people who are going to occupy the premises.
- Name, address, and phone number of past two landlords.
- Income/employment history for the past year. Income/salary, contact/supervisor's name, phone number, address. (If self-employed, ask for copy of business license, tax returns, bank records, or client references.)

- Additional income - it is only necessary to list income that the applicant wants included for qualification.
- Credit and loan references. Auto payments, department stores, credit cards, other loans.
- Bank references. Bank name, account number, address, and phone.
- As appropriate: Name and phone of nearest relative to call in case of emergency; information about pets and deposit rules; other information required for application.

**2. The following question is not typically on standard forms**, but may be added. If you are going to use it, make sure you attach it to all application forms and not just some of them.

- Have you, or any other person named on this application, been convicted for dealing or manufacturing illegal drugs?" (You could also ask about other types of crime that would constitute a threat to the health, safety, or welfare of other tenants or neighbors - burglary, robbery, sexual assault, and child molestation are common examples.)

Of course, if they do have a conviction, they may lie about it. However, if you discover they have lied, you have appropriate grounds for denying the application or, with the right provision in your lease, terminating the tenancy. Also, it is one more warning to dishonest tenants that you are serious in your resolve.

## How To Verify Information

Did you know many landlords are surprised to receive calls from other landlords inquiring about the quality of a past tenant? Apparently it doesn't happen often enough. As one landlord put it, "you can spend \$100 in time and money up front or be stuck with thousands later." As another put it, "99% of these problems can be avoided through effective screening. There is no better investment you can make."

As you review the following list, keep in mind that you will not have to do every step for each applicant, but the basics, written in bold letters, should be done every time. If you implement no other recommendations in this manual, implement these:

**1. Compare the I.D. to the information given.** Make sure the photo I.D. matches the applicant and the information matches that given on the application form. If the picture, address, and numbers don't match the application information, find out why; you may have cause to turn down the application. Unless obvious inconsistencies can be explained and verified to your satisfaction, you don't have to rent to them.

**2. Have a credit report run and analyzed.** A credit report will provide independent verification of much of the application material. You can find out about past addresses, court-ordered evictions, credit worthiness, past due bills, and other information. The reports are not foolproof, but they provide a good start. Here are your options:

- Join a credit bureau directly. If you are managing a number of units and are likely to be screening multiple applicants every month, you may find it cost-effective to join a credit bureau directly and spend the time to learn how to interpret their reports. While this is an option, note that many very large management companies go through associations or contract with applicant screening firms to gain the benefit of their outside expertise.

**Or:**

- Have a third party pull the report and offer interpretation. If you are not screening a sufficient volume of applicants, or would like assistance in interpreting the reports, contact a local rental housing association, property Management Company, or an applicant screening firm. Services vary from organization to organization and you should shop for the organization that best meets your needs - in effect, screen your screening company. At one end of the spectrum are organizations that handle the entire applicant screening process. At the other end of the spectrum are organizations that simply pull credit reports and mail you a copy. There are many variations in between.

**3. Independently identify previous landlords.** The most important calls you make are to the previous landlords. The best indicator of a tenant's future behavior is a reliable picture of past behavior. To begin, verify that the applicant has given you accurate information.

- Verify the past address through the credit check. If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the tenant actually lived there.
- Verify ownership of the property through the tax rolls. A call to the county tax assessor will give you the name and address of the owner of the property which the applicant previously rented. If the name matches the one provided by the applicant, you have the actual landlord.

If the name on the application doesn't match with tax rolls, it could still be legitimate. Sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord responsibilities. But most of these possibilities can be verified. If nothing else, a landlord who is not listed as an owner on the tax rolls should be familiar with the name of person who is on the tax rolls - so ask when you call.

**4. If possible, cross check the ex-landlords' phone numbers out of the phone book.** This will uncover the possibility of an applicant giving the right name, but a different phone number (i.e., of a friend who will pretend to be the ex-landlord and vouch for the applicant). If the owner's number is unlisted, you will have difficulty verifying the accuracy of the number provided on the application. The local phone company may be

willing to give you the name of the person who uses the number on the application, although in most cases they won't.

Now you have verified the landlord's name, address, and perhaps even phone number. If the applicant gave you information that was intentionally false, deny the application. If the information matches, call the previous landlords.

Remember, if the applicant is currently renting somewhere else, the present landlord may have an interest in moving the tenant out and may be less inclined to speak honestly. In such an instance, your best ally is the landlord before that - the one who is no longer involved with the tenant. *Be sure you locate and talk to a past landlord with no current interest in the applicant.*

**5. Have a prepared list of questions that you ask each previous landlord.** Applicant verification forms, available through rental housing associations, give a good indication of the basic questions to ask. You may wish to add other questions that pertain to your screening criteria. In particular, many landlords we spoke with use this question: *"If given the opportunity, would you rent to this person again?"*

Also, if you suspect the person is not the actual landlord, ask about various facts listed on the application that a landlord should know such as the address or unit number previously rented the zip code of the property, the amount of rent paid. If the person is unsure, discourage requests to call you back. Offer to stay on the line while the information is looked up.

**6. Get co-signers if necessary.** If the applicant meets one of your defined "borderline" criteria, such as having rented from a relative previously, and you have posted the appropriate rule, require that a co-signer apply with the applicant. Verify the credit and background of the co-signer just as you would a rental applicant. To ensure the legal strength of the co-signing agreement, you may wish to have your attorney draw up the document.

**7. For Section 8 renters,** call the housing authority and request an information/reference report. All housing authorities are now required to give prospective landlords the applicant's current address and, if known, the name and address of the owner at the applicant's current and prior addresses. Further, HUD regulations permit local housing authorities to provide other types of information, such as tenant history, so ask your local housing authority about the availability of such information. This is a valuable way to verify the accuracy of the application and confirm the honesty of your applicant.

**8. Verify income sources.** Call employers and other contacts using phone numbers from the directory. If an applicant is self-employed, get copies of bank statements, tax returns, or a list of client references. Don't cut corners here: many drug distributors wear pagers, have cellular phones, and generally appear quite successful, but they cannot verify their income with tax returns, bank statements, or references from established clients.

**9. Consider checking for criminal convictions.** There are various ways to obtain criminal background information. Regardless of the one you use, resist the urge to rely too heavily on this screening technique - there are many drug criminals who have not yet been convicted of a crime. To obtain criminal background information, here are your options:

- Statewide information. Your best approach is to request a state-wide criminal background check from the same organization you use for running credit checks. Most screening companies in Utah are now "on-line." Using this process you will get statewide conviction information covering every county in the state.
- If your applicant is from out of state, you will need to use a different process for conducting a criminal background check. The credit check/screening organization that you use may have additional information about the state you are interested in.
- Countywide information. You can also get information on criminal background by doing a search of court records (or locating an applicant screening firm that will do the county court records search for you). The information gained will be limited to court activity within the specific county where the search is conducted. Some counties will provide basic criminal background information over the phone; others will not. For some out-of-state searches, a local court record search is the only option, because some states do not permit access to state-wide records or do not have a sufficiently rapid process for doing so in place. Some screening companies will provide this type of county-by-county search for a fee.
- However, note this caution: when you conduct such a check, you may receive conviction and arrest information. Because patterns of arrest have proven to be discriminatory against protected classes, it may be inappropriate to use arrest information as a basis for screening applicants. So your safest approach may be to avoid collecting information on arrests in the first place. That's another reason why the statewide process, which provides only conviction information, may be a better approach.
- Citywide information. Applicants must get this information themselves and bring it to you.

**10. Verify all other information as per your screening criteria.** Remember, before you call employers, banks, or other numbers listed on the application, verify the numbers through your local phone book or long distance directory assistance.

## A Note About Hiring Employees

Many rental property owners hire employees to assist with tenant screening, routine maintenance, and other tasks. It is critical that resident managers and other "agents" of the landlord be screened even more thoroughly than applicants for tenancy. In general, when an employee breaks the law while on duty, both the employee and the employer can be held responsible by the party that is harmed by the action. When the employee violates an element of rental housing law, the liability you will hold for employee misbehavior should be reason enough for extra screening efforts.

One screening tool that you will want to consider for job applicants is a criminal conviction check, even if you don't check criminal backgrounds on prospective renters. Once property managers are hired, make certain they are trained in effective applicant screening, along with the warning signs of dishonest applicants. Also, be sure they understand, and follow, the requirements of housing laws.

## How To Turn Down An Applicant

In general, if you have posted fair rental criteria and you screen all applicants against those criteria, you may safely reject an applicant who does not meet your guidelines. Opinions vary regarding the amount of information that is required to be given to an applicant who is denied a rental unit. (Note: if you are managing public housing or publicly subsidized units, your disclosure requirements may be greater than the ones described here.) We recommend, at the minimum, following the guidelines defined by the federal government in the Fair Credit Reporting Act for denial of credit.

The following is intended as a general overview of how it works for two different types of applicant rejections. See the law itself for an exact description: I

- **If the rejection is based on information, in whole or in part, from non-paid sources (the word of a previous landlord, for example):** While you are not required to disclose immediately your reason for rejecting applicants in these situations, you are required to advise applicants of their right to submit, within 60 days, a written request for that information and their right to a response from you, within a reasonable period of time, disclosing the nature of the information upon which the adverse decision was made.

Sample wording: "Based on a check of information you provided in your application, you do not meet our posted rental criteria. If you have questions about this decision, you may submit a request in writing to (your name and address) within 60 days, and we will explain the basis for the decision within a reasonable period of time."

Of course, if you receive such a request, then report the nature of the information upon which the adverse decision was based. Again, if your screening criteria are

free of illegal discrimination and you have applied your criteria consistently, then you may safely reject applicants who do not measure up.

Note this small additional requirement if the rejection is based on information from a person who is your "affiliate" (e.g. a co-worker or co-owner): The process is identical to that described above, except that the required response time is specifically stated: 30 days or less from the date the landlord receives the rejected applicant's written request.

Of course, when possible, keep it simple. For example, if you are turning down an applicant simply because you accepted an earlier applicant, just say so. Or, if one look at the application indicates that the person doesn't have nearly enough income to rent the unit, don't make the applicant wait a week to find out - again, just say so.

- **If the rejection is based, in whole or in part, on information from a credit report, screening company, or other organization that you pay to provide screening information:** Because of the potential for abuse of, or misinformation in, credit reports the Fair Credit Reporting Act requires that very specific information be provided to applicants who are rejected based on information obtained from a "consumer reporting agency." While federal law permits the information to be provided orally. It is a very good idea to give written notification of all of the following information to make sure you are in full compliance with the Act. The following is only intended as a brief orientation. The screening company or other consumer reporting agency you work with should be able to answer your questions and provide you with a simple, written form to help ensure your are in full compliance with the Act. In situations where adverse decisions are based, in whole or in part, on information from a consumer credit report, a landlord is required to provide the rejected applicant all of the following information:
- Notice of the rejection. Sample wording: "Based on information we have received from your credit report (or other paid source) you do not meet our written rental criteria and we have therefore chosen to deny your application for tenancy."
  - The name, address and telephone number (including a toll-free number if the agency is one that keeps nationwide consumer files) of the consumer reporting agency used that furnished the information.
  - That the consumer reporting agency did not make the decision to reject the applicant and therefore it is likely that they will not be able to explain the reason for the adverse decision.
  - That the applicant has the right to contact the consumer reporting agency within 60 days to receive a free copy of their report.

- That the applicant has the right to dispute the accuracy or fairness of information in a consumer report furnished by the consumer reporting agency.

In the interests of proving you have met disclosure requirements you may want to hand out an information sheet with the disclosure process described and appropriate addresses provided. Contact a local property management association for more details, and again, check your local law for additional disclosure requirements.

## **Other Screening Tips And Warning Signs**

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the chapter on Warning Signs of Drug Activity.

- **Consider using an "application interview."** Some landlords conduct a brief oral interview, often at the same time they accept the written application. Landlords who use this approach find it has these advantages: First, applicants don't know which questions are coming, so it is harder to make up a story - something that shouldn't bother an honest applicant, but may uncover a dishonest one. Second, the landlord has the opportunity to watch responses and take mental notes of answers that seem suspicious. For example, honest applicants usually know their current phone number, middle name, or date of birth without having to look it up.

The interview involves, at minimum, making sure the applicant can repeat basic information requested on the application form without reading it. For example, the landlord might ask the applicant to verify his or her full name, current phone number, current address, and other pieces of information that most honest applicants will be familiar with without having to look up.

As with all policies you set, if you decide to do application interviews, you should include a commitment to making reasonable accommodations for those who cannot comply due to status in a protected class - e.g., a disability that causes a speech problem, or possibly language skills associated with a particular national origin.

If you choose not to use an interview approach, at minimum observe the way the application is filled out. Applicants may not remember the address of the apartment they were in two years ago, but they should know where they live now or just came from. Generally, honest applicants can remember their last address, the name of their current landlord, and other typically "top-of-mind" facts about their life.

- **Consider a policy requiring applications to be filled in on site.** Some property managers require all application forms to be filled in on the premises - they may

not be taken off site. Applicants who are unsure of some information should fill in what they can and come back to fill in the rest. Such a policy should not be a barrier to honest applicants; in most cases, they would have to return to bring back the signed application anyway. However, the policy can dampen the ability of dishonest applicants to work up a story.



Assuming you have communicated your commitment to keeping illegal activity off your property, such a rule may also allow dishonest or dangerous applicants to exit with minimal confrontation - without an application in hand they are less likely to pursue making up a story and, once off the premises, they may simply choose not to return.

Again, if you use such a policy, make sure it includes making reasonable accommodations for people whose particular disability, or other protected characteristic, would otherwise result in the policy being a barrier to application.

- **Watch for gross inconsistencies.** When an applicant arrives in a brand-new, high priced, luxury automobile and fills out an application that indicates income of \$1,000 a month, something isn't right. There are no prohibitions against asking about the inconsistency or even choosing to deny the applicant because the style of living is grossly inconsistent with the stated income. You may also deny the applicant for other reasons that common sense would dictate are clearly suspicious (credit reports can also reveal such oddities - for example if the applicant is paying out much more per month to service credit card debts than the applicant is taking in as income, something isn't right). Many don't realize it, but unless such a decision would cause a disproportionate rejection of a protected class (e.g., race, color, religion, and others) the law allows room to make such judgment calls.

While you may not discriminate on the basis of race, color, religion, sex, disability, national origin, familial status (the presence of children), marital status and source of income, as well as sexual orientation and age in some communities, you may discriminate on the basis of many other factors, provided the effect is not a disproportionate denial of a protected class. If you deny the applicant for such a reason, record your evidence and the reason for your decision. Be careful when making decisions in this area, but don't assume your hands are tied. The law is written to prevent discrimination against protected classes. You are not required to look the other way when gross inconsistencies are apparent.

- **Watch out for Friday afternoon applicants who say they must move in that very weekend.** Drug house operators know you can't check references until Monday, by which point they will already be in the house. Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. Will it cost you some rent in the short run? Yes. Could it save you money in the long run? Absolutely. Ask any landlord who has dealt with a drug house. It is worth avoiding. (Some landlords allow weekend applicants to move in if they can independently verify their story. But you are better off waiting until you can verify the entire application.)

- **Observe the way applicants look at the house.** Do they look in each room? Do they ask about other costs, such as heating, garbage service, or others? Do they mentally visualize where the furniture will go, which room the children will sleep in, how the sun lies on the backyard? Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning an honest living care about their home and often show it in the way they look at the property. Some who rent for illegal operations forget to pretend they have the same interest. Also, if the applicant shows little interest in any of the property except the electrical service, take note - both meth labs and marijuana grow operations can include rewiring efforts.

Across the nation, it is the permission given by tenants to guests and illegal subtenants that result in the greatest harm to the livability of rental housing communities – both public and private

- **Be aware that people involved in illegal activity may use "fronts" to gain access to your property.** You may rent to someone who has an acceptable rental history and no record of illegal activity, yet once that person moves in, boyfriends, girlfriends, or other acquaintances or family members move in and begin dealing drugs, damaging the property, and generating other crime or nuisances. In some cases, the people you thought you rented to don't move in at all- after using their good references to rent the unit, they give the key to drug dealers for a fee. Across the nation, it is the permission given by tenants to guests and others who have not signed the rental agreement that causes the greatest degradation in the quality of life in rental housing communities, both public and private.

Warning applicants that they will be held accountable for their guests, and then enforcing such a requirement with your tenants, is a cornerstone of protecting your property and the surrounding neighborhood. Make sure your tenants know that they must control their guests and, if they cannot, that they should ask for help quickly. Further, most rental agreements specify that only people named on the agreement are allowed to use the unit as their residence. Make sure such a stipulation is in your rental agreement and point it out to all applicants, emphasizing that having another person move in requires submitting that person's application and allowing you to check references before permission is granted.

If you make it clear you are enforcing these rules only to prevent illegal activity, you may scare away potential drug dealers, but keep good renters feeling more protected. You may further calm concerns of good renters if you assure them that you will not raise the rent because an additional person moves in. For more about this issue, see Rental Agreements.

- **Consider alternate advertising methods for your property.** Houses that are within a few miles of a college may be desirable housing for students. Some

landlords have found success in posting advertising at such locations, thus targeting people who already have a credible connection with the community.

If you are going to consider such an approach, keep in mind that Fair Housing guidelines apply in all aspects of managing rental housing, including advertising selection. Advertising exclusively through a community college may be acceptable, because such colleges typically enroll a broad cross-section of the community. But, for example, it would be inappropriate to advertise exclusively through a church newsletter or the newsletter of a private club whose membership is not representative of the broader community. Such approaches could set up patterns of inappropriate discrimination. Either expand your media selection or change it altogether to make sure you are reaching a fair cross-section of the public.

- **Consider driving by the applicant's current residence.** Some property managers consider this step a required part of every application they verify. A visual inspection of applicants' current residences may tell you a lot about what kind of tenants they will be. Be sure you are familiar with drug house warning signs before looking at previous residences.
  
- **Announce your approach in your advertising.** Some landlords have found it useful to add a line in their ads announcing that they do careful tenant screening or that they run credit checks. The result can be fewer dishonest applicants choosing to apply in the first place. Select your wording with care. Don't use expressions that might be interpreted as "code" for telling people of a protected class that they need not apply. Again, it is important to make sure that the opportunity to apply for your units, and to rent them if qualified, is open to all people regardless of race, color, religion, sex, disability, national origin, familial status, marital status, source of income, and in some communities, sexual orientation and age.

As a general rule, when you write your for-rent advertising, you are on safer ground if you describe characteristics of the rental unit and avoid describing the imagined tenant - "one-bedroom apartment" is fine; "bachelor pad" is not. Also, avoid descriptions that suggest a possible preference for one group within a protected class over another - "next to the park" is fine; "next to the church" (or mosque or temple) is not.

## RENTAL AGREEMENTS

*Get it in writing*

### **Advice we were given:**

“ We’ve solved a lot of problems by using the right paperwork at the Beginning of the rental term. It improves our legal position and lets The tenant know we are serious from the start.”



*This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice. If you need legal advice, contact a skilled landlord-tenant attorney.*

# RENTAL AGREEMENTS

*Get it in writing.*

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## **The Basics**

Minimize misunderstandings between you and your tenant, thus building a basis for clean and fair problem resolution down the road.

1. Use a contract consistent with current law or you will lose options.
2. Point out key provisions that address "loopholes" and make sure the tenant knows you take them seriously.
3. Get the tenant's signature on property condition, smoke detectors, and other issues.

## **Use A Current Rental Agreement**

Many landlords continue to use the same rental agreements they started with years ago. Federal and state law can change yearly, and case law is in constant evolution. With an outdated rental agreement, you may give up some of your options for eviction. If a tenant chooses to fight you in court, an outdated rental agreement may cost you the case.

Various rental housing associations provide rental agreement forms (as well as other management forms) and consider it their job to make sure their forms are consistent with current law. Unless you are planning to work with your own attorney to develop rental agreement provisions, purchasing updated forms from one of these associations will be your best bet.

## **Month-To-Month Or Long-Term Lease?**

In many parts of the country, year-long leases are standard. A month-to-month rental agreement gives you the additional option of serving the 30-day no-cause eviction notice. If you want the maximum ability to remove tenants involved in illegal activity, this is the type of rental agreement to use.

However, there are also benefits to leases that both parties can enjoy. Good tenants may appreciate the stability of a longer term commitment, and you may benefit if you have tenants who respect the lease term as a binding agreement. It is true that you give up your right to serve a no-cause eviction notice during the period of the lease. However, you may serve one of the for-cause notices defined in landlord-tenant law if tenants are in violation of that law, or are not in compliance with the lease. Landlords who are familiar with the process for enforcing for-cause evictions can succeed with these notices as well

as they do with the no- cause approach. The decision about which type of rental agreement to use is up to the individual landlord; either approach can work.

Also, remember that while the terms of your rental agreement are important, even the best rental agreement is not as valuable as effective applicant screening. The most important part of any rental agreement is the character of the people who sign it. No amount of legal documentation can replace the value of finding good tenants.

## **Elements To Emphasize**

Inspect the rental agreement you use to see if it has language that addresses the following issues. If they are not in the rental agreement, consider adding them. To gain the most prevention value, you will need to point out the provisions to your tenant and communicate that you take your rental agreement seriously. This list is not at all comprehensive; it only represents elements that are occasionally overlooked and are particularly important for preventing and/or terminating drug house tenancies.

**1. Subleasing is not permitted.** Make it clear that the tenant may not assign or transfer the rental agreement and may not sublet the dwelling. If you like, add this exception: unless the sublease candidate submits to the landlord a complete application and passes all screening criteria.

You must maintain control over your property. Too often the people who run the drug house are not the people who rented it. This provision will not stop all efforts to sublease, but it may prevent some, and it will put you in a stronger position if you have to evict an illegal sub lessee.

**2. Only those people listed on the rental agreement are permitted to occupy the premises.** If the tenant wants another person to move in, that person must submit a completed application and pass the screening criteria for rental history.

To make this provision work, you will need to define the difference between a "guest" and a "resident" - typically this is done by stating the number of days a guest may stay before permission for a longer stay is required from the property manager. While there is little consensus over how limiting the number of days may be, 14 days in a calendar year is the most commonly accepted limit, with some landlords setting shorter periods. Check with a local property management association or your own legal advisor to confirm the current approach before setting this criterion.

Again, you must maintain control of your property. Assuring your tenant that you will take this clause seriously may curb illegal behavior by others. Having the stipulation spelled out in the rental agreement will put you in a better legal position should that become necessary.

**3. No illegal activity.** Make it clear that the tenant must not allow illegal drug activity, other criminal behavior, or allow other activities on or near the premises that constitute

violations of applicable local law, including any chronic nuisance codes. Such behaviors are already illegal, but spelling it out never hurts.

**4. The tenants are responsible for conduct on the premises.** Tenants should understand that they will be held responsible for the conduct of themselves, their children, and of all others on the premises under their control. This requirement is already in landlord-tenant law, but it doesn't hurt to spell it out in the rental agreement as well. You might also encourage your tenants to contact you should dangerous or illegal activity occur that is out of their control.

For people who plan to "front" for illegal activity, this underscores the point that they will be given as little room as possible to protect themselves by complaining, after months of reported drug dealing, that while it happened on the premises, they weren't involved or that people out of their control performed all the activity.

Wording on this provision should be done with care - the law won't allow you to hold victims responsible for the behavior of people who abused or intimidated them into silence.

**5. In apartments: the landlord is the "person in charge" of the common areas.** This "lease enabling" provision ensures that the landlord will retain the power to exclude nonresidents from the common areas of the property, should they violate the rules of the complex. There is legal theory to suggest that without this clause in the rental agreement of every occupant, a police officer could not enforce trespassing laws in the common areas at the landlord's request. While not all police departments in the state require this clause in order to enforce trespass laws on common areas, even if the district attorney in your county doesn't require it, it won't hurt to include it. An example of a lease enabling provision:

Note that "common areas" are shared facilities such as laundry rooms, courtyards, hallways, and entryways. This clause does not give a landlord or property manager the right to exclude tenants from common areas. When tenants are not obeying the rules, and requests to correct the behavior don't solve the problem, the legal options are either a no-cause eviction notice or a for-cause notice (see the chapter on Crisis Resolution). Also, the above clause does not give the landlord the right to exclude people from a tenant's unit - as with any rental in Utah, the tenant remains the "person in charge" of his or her own rental unit.

Landlords should also develop rules of behavior for common areas so that conditions for trespass exclusion and tenant violations are clearly understood by all parties.

Landlords who use a lease enabling provision also have the option of granting local law enforcement officers "person in charge" status for the purpose of excluding nonresidents from common areas. For more on how you can set up such an agreement, and contact your local law enforcement agency to determine if such a practice is in place.

**6. The tenant will not unduly disturb the neighbors.** Make it clear that the tenant will be responsible for making sure that all persons on the premises conduct themselves in a manner that will not interfere with the neighbors' peaceful enjoyment of the premises. This requirement is also already in the law, but it doesn't hurt to repeat it in the rental agreement.

If you receive substantial complaints, particularly if they are from more than one neighbor, a for-cause notice is appropriate, requiring the tenant to remedy the situation within 14 days or move out within 30. If similar, significant disturbances recur during the following six months, you would have cause to serve an eviction notice with no provision for tenant remedy. (Of course, with a month-to-month rental agreement, you also have the option of a no-cause eviction notice, which you could serve at any point.)

What does disturbing the neighbors have to do with drug crimes? It doesn't necessarily. But we know that managers who attend to their own obligations and require tenants to meet theirs are far more effective in preventing drug activity than those who look the other way as complaints of noncompliance roll in. It is almost never the case that a drug criminal's first observed, evictable offense is the dealing or manufacturing of narcotics.

**7. Written notices from either party may be served by "posting and mailing."** All mailed landlord-tenant notices, regardless of type, begin at midnight of the day they are mailed; however, the length of the notice must be extended by three days. There is also a third option, but it only applies if you have the proper rental agreement provisions: With the right clause in your rental agreement, written notices from either party could be served by fixing the notice securely to the tenant's or landlord's front door' and, on the same day, mailing a copy by regular first-class mail. Although the law is not clear on this point, it is possible that courts will consider the notice served on the day that both steps are completed. However, because this law is not entirely clear on when "posted and mailed" notices are deemed served, landlords are urged to speak with a qualified landlord-tenant attorney prior to using "post and mail" to accelerate service.

## **Lease Addendum Forbidding Illegal Activity**

Many rental owners have begun to attach an addendum to their rental agreements spelling out specific crimes under state and local law that will be considered violations of the lease. A version of such an addendum is typically provided at the trainings that accompany this manual. Before using such an addendum, have your attorney review it.

While the behaviors proscribed in such addenda are generally already against the law, spelling it out in the lease may give you additional legal choices should you have to evict on the basis of criminal behavior. Further, announcing your commitment to safe housing through the use of such a lease addendum can help discourage those planning criminal activity from moving in.

## **Pre-Move-In Inspection**

Prior to signing the rental agreement, walk through the property with the tenant and make a visual inspection together. Agree on any repairs that need to be done. Write it down and sign it. Make any agreed-upon repairs and document that those have been completed. Give copies to your tenant and keep signed and dated copies in your files. Now, should tenants damage the property, you have a way to prove it happened after they took possession of the unit. If you are so inclined, an even better record may be kept by taking pictures or video taping the walk-through with the tenant.

The pre-move-in inspection can reduce the likelihood of some tenants causing damage to the premises. It can also protect you against the rare case of a tenant who chooses to damage the property and then complains to a code enforcement agency that the damage was a preexisting condition, thus potentially blocking an otherwise legitimate eviction attempt.

Again, while you can develop such forms yourself, the simplest approach is to contact a property management association for check-in/check-out inspection forms.

## **Smoke Detection Device Contract**

Utah landlord-tenant laws require that you provide your tenant with a unit in "habitable condition" that includes "safety from fire hazards." In addition, landlords must:

- 1. Supply and install a working smoke detection device for each unit**
- 2. Provide written instructions for testing the smoke detection device.** The instructions must be given to the tenant at the time the tenant first takes possession of the unit.
- 3. Provide working batteries (if the device is solely-battery operated) at the start of any new tenancy.**
- 4. Provide maintenance of the device (other than replacing dead batteries) upon written notice from the tenant of any deficiency.**
- 5. Test and maintain smoke detection devices located in the common areas of any multifamily rentals.**

### **Tenants must:**

1. Test the smoke detection device(s) in the rental unit at least every six months. Tenants must also notify the landlord in writing of any deficiency.
2. Replace batteries as needed.

3. Not remove or tamper with functioning smoke detection devices. This includes removal of still working batteries for any purpose other than immediate replacement.

Some landlords have tenants sign a copy of the notice that describes how and when to test the smoke alarm or detector and states the tenant's responsibility to do so. Remember that this is more than a paperwork exercise. Without a properly working smoke detector, if there is a fire, lives could be lost. Make sure that if a fire breaks out, your tenants will have an early and effective warning.

## **Resident's Handbook**

Many apartment managers provide a "resident's handbook" that spells out rules specific to the property being rented. Landlord-tenant law places various restrictions on what types of rules can be added by landlords, but generally property managers have found success with development of guidelines that restrict excessive noise levels, define behavior for common areas of the premises, and spell out rules for use of unique facilities such as pools or common laundry areas.

For details, refer to rental housing associations, screening companies, or other sources that may advise on or teach general property management techniques.

## **Exclusion Criteria**

In multifamily property, it is important to set rules for the common areas to ensure, in particular, that the manager has the ability to exclude nonresidents from the common areas of the property. The chapter on The Role of the Police discusses the trespass exclusion process in more detail. The following is an example of exclusion rules suggested the Riverdale Police Department and used successfully in public housing in other states:

Any nonresident will be directed to leave and may be barred from returning to the premises if that person does one or more of the following:

- Makes unreasonable noise.
- Engages in fighting or in violent, tumultuous, or threatening behavior.
- Substantially interferes with any right, comfort, or convenience of any (Name of premises) resident or employee.
- Engages in any activity that constitutes a criminal offense.

- Damage, defaces, or destroys any property belonging to the property owner or any resident or employee
- Litters on premise
- Drives in a reckless manner
- Consumes or possesses an open container of any alcoholic beverage in the common areas without being accompanied – meaning actual physical presence of an adult resident of the property
- Violates any applicable city or state ordinance

If any person who fails to leave the premise after being directed to do so, or who returns to the premise after being given such direction, will be subject to arrest and prosecution for criminal trespass.

If you want to ensure assistance from your local police agency in enforcing these rules, be sure to contact them, prior to implementing these polices.

### **Key Pick-Up**

As a final prevention step. Some land lords require that only person listed on the written agreement may pick up the keys. This is one more step in ensuring that you are given possession of the property to the people in the agreement and not to someone else.

## ONGOING MANAGEMENT

*What to do to keep the relationship working.*

**(Unless noted, all quotes are from landlords or professional property managers. Note that some "complaints" may contain inaccurate or incomplete assumptions about legal rights or procedure)**

### COMPLAINTS WE HAVE HEARD:

"The tenant moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal tenants, even though they never signed a lease."

### ADVICE WE WERE GIVEN:

"You need to follow one basic rule - you have to actively manage your property. The only landlords who go to court are the ones who don't actively manage their property."

"For most property managers the experience is one of putting out brush fires all day long. If property managers can take a more proactive approach to the process, they can build an ever improving set of renters, avoid a lot of legal hassles, and have fewer brush fires during the day."

"If your training teaches landlords nothing else, teach them that the neighbors in an area are not their enemies."



*This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice. If you need legal advice, contact a skilled landlord-tenant attorney.*

## ONGOING MANAGEMENT

*What to do to keep the relationship working*

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### The Basics

Maintain the integrity of a good tenant-landlord relationship.

**1. Don't bend your rules.** By the time most drug houses are identified, they have a history of noncompliant behavior that the landlord ignored.

- Don't accept rent after you are aware of a breach without noting the circumstances in writing and serving the appropriate notices.
- Serve the appropriate notices quickly to reinforce your commitment.

**2. Know your responsibilities as a landlord.**

**3. Conduct periodic inspections.**

**4. Watch for utility problems and keep a paper trail of all activity.**

**5. Open communication channels so you hear of problems early.**

- Trade phone numbers with neighbors.
- In multifamily properties, build a sense of community with apartment watch and apartment organizing techniques.

### Don't Bend Your Rules

A key to ongoing management of your property is demonstrating your commitment to the rental agreement and to landlord-tenant law compliance. Once you set the rules, don't change them. Make sure you meet your responsibilities and hold tenants accountable for meeting theirs. By the time most drug houses are positively identified, there is a long history of evictable behavior that the landlord ignored. Examples of active management steps include:

- If you are aware of a serious breach, take action as promptly as possible. If you accept rent during two or more separate rental periods while knowing that your tenant is breaking a rule, but take no action to correct the behavior, you may have effectively lost your right, in most circumstances, to serve notices for the

behavior. To protect your rights, you could serve a "termination" notice (such as the 30-day with 14 days to remedy a problem). You could also start by sending the tenant a note describing the problem and requesting that it be remedied. Then, if the tenant doesn't correct the problem, follow up promptly - certainly before accepting rent in two separate rental periods - with one of the for-cause (or no-cause) notices defined under landlord-tenant law. Note that, should you accept rent in the second of two separate rental periods during which you were aware of a breach without acting to enforce the agreement, you can protect your right to enforce the rental agreement for that breach by refunding the rent within six days after receiving it. Your best approach is to avoid such a situation by enforcing rental agreement rules more promptly.

- If someone other than the tenant tries to pay the rent, get an explanation. Also, note on the receipt that the payment is for your original tenants only. Otherwise, by accepting rent during two or more separate rental periods from people other than the tenant named on the rental agreement, you may be accepting new tenants or new rental agreement terms.
- If you have reason to believe that a person not on the lease is living in the unit, pursue the issue immediately. If you take no action to correct the behavior, and you accept rent during two or more separate rental periods knowing the tenant has allowed others to move in, you have accepted the others as tenants as well. Alternately, you could require that the subtenant fill out an application and pass your screening process in order to stay or proceed with eviction steps
- If you have habitability or code violations at your property, fix them. Maintaining habitable housing for tenants is the most important of a landlord's responsibilities. In addition, if your tenant complains to a code enforcement agency, or makes a good faith complaint to you about issues related to the tenancy, some of your rights as a landlord may be compromised. For example, if your tenant complains in good faith about issues related to the tenancy, serving a 30-day no-cause notice would be considered an act of retaliation by the landlord and thus not allowed.
- If a tenant doesn't pay the rent, address the problem. This sounds obvious, but for some it isn't. Some landlords have let problem tenants stay in a unit, not just weeks after the rent was overdue, but months. While flexibility is important in making any relationship work, be careful about being too flexible. There is a difference between being willing to receive rent late during a single month and letting renters stay endlessly without paying. For notice options in a nonpayment situation, see the chapter on Crisis Resolution.
- If neighbors call to complain of problems, pursue the issue; don't ignore it. Although it does happen, few neighbors call landlords about minor problems. If a neighbor calls, find out more about the problem and take appropriate action. If there are misunderstandings, clear them up. If there are serious problems with your tenants, address them. The chapter on Crisis Resolution gives additional

information about steps to take when a neighbor calls to complain. (Also, if the problems reported by neighbors include domestic violence or child abuse, remember the obligation of every good citizen to help put a stop to such violence. A list of domestic violence resources is provided in the Appendix of this manual.)

Overall, if you respect the integrity of your own rules, the tenant will too. If you let things slide, the situation can muddy fast. It may mean more work up front, but once the tenant is used to your management style, you will be less likely to be caught by surprises.

## **Landlord Responsibilities**

The basic requirement for landlords is to provide the tenant with a "habitable" unit at the time the tenant moves in and provide such repair and maintenance as is necessary to keep the unit habitable. Of course, if a problem is caused by the tenant's negligence or deliberate acts, the landlord may hold the tenant financially responsible for the cost of making repairs and may also serve eviction notices to address the problem behavior - the type of noticed used will depend on the severity of the tenant's behavior.

### **Overall, landlords must provide:**

- A weatherproof exterior. Water and weatherproofing of roofs, exterior walls, doors, and windows.
- Basic components in sound condition. The floors, walls, ceilings, stairways, and railings must be maintained in good repair.
- Supply and maintenance of required systems. An adequate heating system, electrical lighting and wiring system, and plumbing facilities. Also a water supply that is under either the landlord's or the tenant's control, provides hot and cold water, offers safe drinking water, and is connected to a maintained sewer system. In general, each required system must, at minimum, comply with building codes that were in place at the time of installation.
- Safe and clean premises. At the beginning of the rental agreement, both the building and the surrounding property must be safe for normal and foreseeable uses and the premises must be clean, sanitary, and free of rubbish, vermin, rodents, and garbage. Also, any areas of the property that remain in control of the landlord after the rental agreement begins (e.g., common areas on multifamily property) must be maintained in that condition by the landlord.
- Garbage removal. An adequate number of garbage receptacles and assurance that garbage will be removed on a regular basis.

- Appropriate maintenance of other supplied systems. Maintenance of ventilating, air conditioning, and other facilities or appliances, if supplied or required to be supplied (such as elevators in a high rise) by the landlord.
- Safety from fire hazard. This includes providing an installed, working smoke detection device at the beginning of the tenancy.
- Door locks and window latches. Working locks for all dwelling entrances and keys for the locks. Working latches for any windows that could permit access into the tenant's rental unit, unless a local code does not permit window latches (generally, local codes permit such latches so long as they can be operated without the use of separate tools or any special knowledge or effort).

## **Tenant Responsibilities**

The essential requirements for tenants are to take care of the property through basic housekeeping, behave as good neighbors, and at the end of the tenancy, return the property to the landlord in the same condition they received it, less only normal wear and tear. In addition to other applicable rental agreement provisions, tenants are required by state law to:

Use the property appropriately. Use the various parts of the premises - bedrooms, kitchens, bathrooms, etc. - in a reasonable manner considering their intended purpose and design. Also, the unit may only be used for dwelling purposes (and not, for example, to run a business) unless the tenant and the landlord agree otherwise (see ORS 90.340). Of course, in addition to the landlord's consent, the tenant may also need a local permit to operate a business from a residential dwelling.

Keep it clean and take out the garbage. Keep the premises clean, sanitary, and free from accumulations of debris, rubbish, filth, and garbage, as well as rodents, and vermin (to the degree this is controllable by a tenant in a single unit). Dispose of garbage, ashes, rubbish and other waste cleanly and safely. Keep plumbing fixtures clean.

- Use appliances and facilities appropriately. Use in a reasonable manner the various systems and appliances provided at the premises such as electrical, plumbing, sanitary, heating, ventilating, and others. This applies to the common areas also, so elevators and other shared facilities must also be used appropriately.
- Cause no damage. Tenants must not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit another person to do so. Note that a "negligent" act could include a tenant's failure to notify the landlord of a problem. For example, if a tenant is aware that a pipe has broken during a cold spell but does not tell the landlord, structural rot and other water damage resulting from long-term use of the broken pipe could be considered a result of the tenant's negligence.

- Test the smoke detection device and replace batteries. Tenants are obligated to test the smoke detection devices in their units at least once every six months, to replace batteries as needed, and to notify the landlord in writing of any operating deficiencies in the devices. They also may not tamper with a functioning smoke alarm or detector, including the removal of still working batteries for any reason other than immediate replacement.
- Be respectful of the neighbors. The tenant, and others on the premises with the consent of the tenant, must behave in a way that does not disturb the peaceful enjoyment of the premises by neighbors. Note that tenants are responsible for the behavior of their guests. From an enforcement standpoint, it makes little difference whether the actual tenant is disturbing the neighbors or guests of the tenant are disturbing the neighbors. Either way, the landlord can require the tenant to "cure or quit" - stop disturbing the neighbors or move out.

As you review the rights and responsibilities of both landlords and tenants, remember also who enforces landlord-tenant law: Enforcement is primarily up to the parties in the relationship, the landlord and the tenant. So, while the law identifies various tenant responsibilities, if tenants are not following the law, it is up to the landlord to enforce it, by requesting that the tenant correct the behavior or by serving one of the notices defined in the law. Likewise, if a landlord is not following landlord-tenant law, it is generally up to the tenant to take appropriate action to cause the landlord to correct the problem.

## **Other Responsibilities**

A landlord's responsibilities are defined throughout the Residential Landlord and Tenant Act and elsewhere in state, federal, and local law. A landlord's responsibilities typically fall into three areas: the condition of the premises as delivered to the tenant, the obligation to maintain the unit once it is occupied, and the obligation to respect the rights of the tenant. In addition to meeting the habitability requirements described in the previous section, landlords are generally required to:

- Respect the tenant's right to private enjoyment of the premises. It has been a basic characteristic of landlord-tenant relationships for hundreds of years that once the tenant begins renting property; the tenant has the right to be left alone. With some specific exceptions for such activities as serving notices, conducting maintenance inspections, doing agreed-upon or necessary repairs or yard maintenance, or showing the unit for sale or rent, the landlord must respect the tenant's right to private enjoyment of the unit in much the same way that an owner-occupant's right to privacy must be respected. In those areas where a landlord does have a right to access, the landlord must follow the legal notification process (see Property Inspections, page 52).
- Avoid retaliation against a tenant. Generally, a landlord may not retaliate against a tenant who is legitimately attempting to cause the landlord to meet his or her responsibilities. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a tenant making a good

faith request of the landlord to repair a worn-out furnace, fix a rotting step, or take other actions that fall within the landlord's responsibility under the law. For a complete list of behaviors that are protected from retaliation, see ORS 90.385.

- Avoid illegal discrimination. As discussed earlier, you may not use protected class distinctions to screen applicants or to treat tenants differently once you enter into a rental agreement. For information about the application of civil rights laws, see page 16 in the chapter on Applicant Screening.
- Enforce the terms of the rental agreement and landlord-tenant law. While both the rental agreement and the law will identify various required behaviors of tenants, it is generally up to the landlord to make sure the tenant complies. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem tenants. If the tenant is not in compliance, it is up to the landlord to request that the tenant correct the behavior or to serve the appropriate notices defined in the law. The reverse is true as well - when landlords are not complying with their responsibilities, it is typically up to the tenant to take the initial action to cause landlords to comply.

Of course, if your problem tenants are involved in criminal behavior for which there is enough evidence to make an arrest, the police may be able to arrest the tenant as well. However, while arrest may remove a tenant from the dwelling, you may still need to serve an eviction notice to regain possession of the property. For more information on these issues, see the chapters on Crisis Resolution and The Role of the Police.

## **Property Inspections**

A cornerstone of active management is the regular inspection. Unless you inspect, you can't be sure you are meeting your responsibility to provide safe and habitable housing. In addition, maintaining habitable property protects your ability to pursue eviction, should you need to do that. If a tenant can claim that you are not meeting your responsibilities, you may have difficulty succeeding with an eviction attempt. Conversely, if it is clear you make every effort to meet your responsibilities (and document it), a tenant will be less inclined to fight an honest eviction effort.

While the purpose of an inspection is to care for the unit and ensure its habitability, regular maintenance inspections can also help to deter intentional property damage and other types of illegal activity. For example, if tenants know that the landlord actively manages the property, they aren't likely to make illegal modifications to the rental. Further, visits can help catch problems associated with illegal activity before they get out of hand. For example, it is common for drug dealers to cause damage to a rental unit that is way beyond "normal wear and tear" - a problem that could be observed, documented, and addressed through the process of a regular maintenance program. Though early discovery of such damage is a possibility, the more frequent impact of a maintenance program on illegal activity is basic prevention. Illegal activity is less likely to happen at property where the landlord has a reputation for concerned, active management.

The key to a successful property inspection program is avoiding the adversarial position sometimes associated with landlord-tenant situations. An inspection program, done properly, should be welcomed by your honest tenants. Begin by setting an inspection schedule and following it. Many active landlords recommend inspecting property at least every six months. The basic steps include:

1. **Serve a 24-hour notice for inspection of the property.** With such a notice, the tenant must not "unreasonably" withhold consent to your entry onto the property. If the inspection is routine, keep the approach friendly - perhaps call the tenant in advance and then mail the notice by regular first-class mail, allowing the required extra three days for delivery time. If your tenant requests that you come at a different time from the one you suggested, work out a better, mutually-agreeable time to enter the unit - good tenants will value your understanding and flexibility.

Also, if time is a particular concern, and you want to enter the unit more quickly, you can hand the notice directly to the tenant, allowing you to skip the three extra days for mail delivery. While you can develop the form yourself, we suggest using forms already developed by a property management association.

Recognize also that tenants do have the right to deny a landlord entry. However, if the denials become "unreasonable" - for example the tenant consistently refuses to negotiate a different entry time with the landlord - the landlord may serve a notice that requires the tenant to permit the landlord's entry or face eviction (see the chapter on Crisis Resolution for more information).

2. **Find and address code and habitability problems.** When you inspect the property, check for maintenance problems and handle any routine maintenance, such as replacing the furnace filter. Discuss with the tenants any concerns they have. Make agreements to remedy problem areas. Then repair what needs to be fixed.

Note: If a tenant is going to handle repairs or minor remodeling, make sure you specify the terms and conditions in writing, including spelling out the tenant's compensation for the work to be done. Do not pressure tenants to handle repairs for you or ask them to do it for free.

## Apartment Watch Promoting Community

*How to turn an apartment complex into a community*

### COMPLAINTS WE HAVE HEARD:

“ We already have an apartment watch.  
The tenants get together and watch the manager to see if I screw up!”

### ADVICE WE WERE GIVEN

“Please each the landlords that their good tenants can help”

“We started doing apartment watch because we wanted to reduce crime.  
We’ve kept it up because it is good business.”

“We hold monthly watch meetings. I give my tenants a discount off the  
next months rent whenever they attend meeting,  
one discount per unit. I know it sounds incredible but it works.”



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## APARTMENT WATCH/PROMOTING COMMUNITY

*How to turn an apartment complex into a community*

*The information provided in this chapter is also the basis for the recommended steps for participating in the Enhanced Safety Properties Program. This chapter describes the general application of apartment watch & community building in rental property. Contact a participating law enforcement agency to find out about specific "certification" requirements for your area.*

### The Basics

Good landlords and good tenants must learn to work together for the common goal of a safe community.

### Benefits

In multi-family units, unless your tenants report suspicious behavior, you may not find out about illegal and property damaging activity until the problem becomes extreme. Some people, tenants and homeowners alike, are frightened to report illegal activity until they discover the "strength in numbers" of joining a community watch organization. Whether you call your efforts "apartment watch," "community pride," or "resident retention programs," the goal is the same: transforming an apartment complex into a community.

*Organizing efforts can lead to profound changes as the manager and the residents get to know each other and a sense of community starts to develop.*

Organizing a community is more than just encouraging tenants to act as "eyes and ears." In the absence of a sense of community, the isolation that residents feel can lead to apathy, withdrawal, anger - even hostility - toward the community around them. Organizing efforts can lead to profound changes: As apartment residents get to know each other and the manager, a sense of community, of belonging, develops, and neighbors and tenants are more willing to do what it takes to keep a neighborhood healthy.

Apartments where a sense of community is enjoyed often have more stable tenancies and lower crime problems than similar complexes that are not organized. Managers who have initiated such efforts note these benefits:

Lower turnover, leading to considerable savings.

Less damage to property and lower repair bills.

Reduced crime.

A safer, more relaxed atmosphere for the tenants.

A positive reputation for the complex, leading to higher quality applicants and, over time, increased property values.

The key to effective cooperative community building is to have the property manager take the lead and make sure the efforts are ongoing. Community organizing that is run entirely by tenants may have less long-term stability, simply because it is the nature of rental housing that tenant turnover will occur and key organizers will move on. For this reason, having the manager keep the program going is an important part of a successful program. Further, if management waits until the tenants are so fed up that they organize themselves, the relationship may be soured from the start. If management takes a proactive role in helping tenants pull together for mutual benefit, the opportunity for a positive working relationship is great. Tips include:

1. **Clean house.** If you have tenants who are involved in drug activity, illegal gang activity, or any other dangerous criminal behavior, resolve the issue before you invite tenants to a building-wide meeting. Your good tenants may be frightened to attend a meeting where they know problem tenants might show up. In addition, they may question your motivation if you appear to encourage them to meet with people involved in illegal activity. So before you organize, you will need to evict problem tenants and make sure that improved applicant screening procedures are in place. Until then, rely on informal communications with good tenants to help identify and address concerns.
2. **Make community activities a management priority.** Budget for the expense and consider promotion of such activity a criterion for management evaluation. It is not an afterthought. It is not something that resident managers should "get around to" if there is time. Unless managers make community organizing a priority, it will not get done.
3. **Hold meetings/events quarterly.** Don't expect great results from the first meeting, but do expect to see significant differences by the time the third or fourth is held.
4. **Meet in the common areas if possible.** While small meetings can be held in the manager's office, a vacant unit, or - should a tenant volunteer - in a tenant's apartment, more people will feel comfortable participating if they can meet on "neutral" territory. Also, if you can hold events in courtyards or other outdoor locations, you may have more room to structure special events for children in the same area.
5. **At each event, encourage people to meet each other.** Regardless of other specific plans for meetings, take basic steps that encourage people to meet each other. Simple steps done faithfully can make a big difference over time.  
At each event :
  - **Use name tags in order to break down the walls of unfamiliarity for newcomers.** Begin any formal meeting by having people introduce themselves by name.
  - **Allow time at each event for people to socialize, especially after introductions have happened and the meeting agenda is underway.**

Once the event is underway, participants will have the shared experience of the meeting with which to start a conversation.

- **Offer refreshments.** Whether it is as simple as coffee and pastries or as involved as a potluck or a summer barbecue, free food can attract many to a meeting who might not otherwise have attended.
- **Include activities for children and teenagers, as well as for adults.** Getting children involved in games and other events will provide a positive experience for the children and help encourage parents to meet each other. Also, like adults, when children and teenagers get to know their resident manager better, they are more likely to share information. This is important because teenagers, in particular, may have information about a community problem of which the adults are unaware.

6. **Hold "theme" events and special meetings as appropriate.** There is a balance between holding a purely social event and a meeting for the purpose of addressing an agenda. The balance at each meeting can vary, but it is important to provide some of both. At least one of the meetings held each year should be primarily for the purpose of celebration, a holiday party in the winter or a "know your neighbor" barbecue in the summer. Others can offer a time for socializing and a time for covering an agenda. Meeting agendas can be as varied as the types of apartments and people who populate them. Tenants should be involved in selecting the agenda. In general pick topics that either:

- **Represent a direct concern to a number of tenants.** If there are immediate concerns, such issues should take priority over other agenda items. If tenants are concerned about gang violence in the neighborhood, less pressing topics may seem irrelevant.
- **Provide new information about the local community.** This could take any number of forms. You might invite merchants from the area, fire fighters, police officers, members of neighborhood associations or other community groups, social workers, employment counselors, or any number of other people who could share useful information with tenants.

Also, remember the importance of keeping meeting agendas on track, interesting, and focused on tangible, measurable outcomes. If tenants experience that meetings rarely address the published agenda, interest will shrink quickly.

7. **Nurture a sense of shared responsibility.** While it is important for management to support the community-building process, it should not be a one-way street. Leadership in the complex should be nurtured and volunteers recruited at each meeting to assist with the next meeting, program, or event. The more that residents experience the community-building process as a joint

effort of management and tenants, the more they will appreciate it. Promoting a sense of shared responsibility can be accomplished in many ways. Here are just a few tips:

- Ask for volunteers to serve on an advisory council. The council could meet informally once a month to discuss issues of concern in the complex and plan upcoming community-wide events. Don't be discouraged if only one or two people get involved initially. With success, more will join.
  - Whenever possible, have tenants set meeting agendas. Whether it is through a tenant councilor simply by collecting suggestions at community events, make sure tenants know they play a key role in defining the direction of community-building efforts.
  - Give tenants a chance to comment on plans for the property. Even the simplest issues can be turned into opportunities for community-building. For example, if a fence is going to be built or replaced, before going ahead with the work, discuss the plans at a meeting and allow tenants to air concerns or suggestions. You may hear some new ideas that can make the end result more attractive. In those situations where you cannot act on a suggestion, you have the opportunity to explain your reasons to your tenants and at least have them experience a level of participation that they did not previously have. Along similar lines, by listening to tenant concerns, you may discover that a relatively simple adjustment in policy can result in a significant increase in overall tenant satisfaction.
8. **Pick projects that can succeed.** Don't promise more than you can deliver. Make sure that easily implemented changes are done promptly so that tenants can see the results. While it is important to take on the larger goals as well (such as getting rid of drug activity in the rest of the neighborhood), short-term results are needed to help tenants see that change is possible.
9. **Develop a communications system.** This can be as elaborate as quarterly or monthly newsletters, complete with updates from management, articles from tenants, advertisements from local merchants, and referrals to local social service agencies. Or it may be as simple as use of a centrally located bulletin board where community announcements are posted. Whatever the process, the key lies in making sure that your tenants are aware of the information source and that they find it useful enough to actually read.
10. **Implement basic crime prevention measures.** In addition to the general community-building techniques described earlier, various basic Crime Watch techniques can also be implemented. Apartment Watch training should be provided to your involved tenants prior to getting underway. Contact a crime

prevention coordinator in your area for more details. Crime prevention specialists can help facilitate the first Apartment Watch meeting and discuss the practices of local law enforcement. Examples include:

- **Make sure tenants have the manager's phone number readily accessible, and that they know to call if they suspect illegal activity.** Of course, tenants should call 9-1-1 immediately if they witness a crime in progress, domestic violence, child abuse, or any life-threatening, emergency situation. They should also contact police non-emergency services to discuss illegal activity that is not immediate in nature. Encourage tenants to contact the manager after they have contacted 9-1-1, in the case of immediate and life-threatening situations, as well as to contact management any other time they suspect illegal activity in the complex. The sooner your tenants advise you of a problem, the more opportunity you have to solve it before the situation gets out of hand.
- **Encourage tenants to develop a list of phone numbers for each other.** By sharing phone numbers, tenants will be able to contact each other with concerns, as well as able to organize reporting of crime problems by multiple tenants. Note that sharing phone numbers among tenants should be done on a voluntary basis only. Those who do not want to participate should not be required to do so.
- **Distribute a list of local resources.** The resource list should include numbers for police, fire, and medical emergency services (9-1-1 in most areas) as well as phone numbers for local crime prevention assistance, substance abuse hotlines, employment assistance, and any number of other services and organizations that may be able to assist your tenants.
- **Purchase a property engraver for each complex.** Encourage tenants to engrave their driver's license number on items of value such as video recorders, cameras, televisions, and similar items. Then post notices of the fact that tenants in the complex have marked their property for identification purposes. Burglars would rather steal property that can't be traced.
- **Teach crime awareness/crime prevention.** You can help your rental community become a safer one by making sure tenants have information about such issues as:
  - **How to contact police, both emergency and non-emergency numbers.**

- **Recognizing and reporting domestic violence or child abuse/neglect.**
- **Burglary prevention.**
- **"Street smarts" - how to walk, shop, bank, and drive with a reduced chance of becoming a crime victim.**
- **How to spot the warning signs of illegal drug activity and where to report such activity.**

Apply "Crime Prevention Through Environmental Design" changes. If tenants cannot see the problem, they cannot report it. The chapter on Preparing the Property covers environmental design approaches in detail. Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and other criminals don't want to be. Make it difficult to break in, close off escape routes, and make sure accessible areas can be easily observed by people throughout the complex.

11. Encourage nearby neighbors and apartment complexes to get involved. Solving the whole problem may require encouraging similar steps in adjacent apartment complexes or making sure neighbors in nearby single-family homes also get involved. As a starting point, invite area neighbors to some of the community events held at the complex each year.

## WARNING SIGNS OF DRUG ACTIVITY

*The sooner it is recognized, the faster it can be stopped*

### COMPLAINTS WE HAVE HEARD

“The neighbors tell me my tenant are dealing drugs. But I drove  
By *three* different times and didn’t see a thing!”

### ADVICE WE WERE GIVEN:

“ You’ve got to give up being naïve. We could stop a lot more of it  
if more people knew what to look for.” – Narcotics detectives



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# WARNING SIGNS OF DRUG ACTIVITY

*The sooner it is recognized, the faster it can be stopped.*

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## The Signs

The following lists describe signs of drug activity that either you or neighbors may observe. As the lists will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.

Also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.

This list is primarily targeted to tenant activity. For information on signs of dishonest applicants, see the chapter on *Applicant Screening*.

## Dealing

Dealing locations are like convenience stores; there is a high customer traffic with each customer buying a small amount.

### *Neighbors may observe:*

- **Heavy traffic.** Cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical, increasing on weekends or late at night. Or it may be light for a few weeks and then intense for a period of a few days, particularly paydays.
- **Exchanges of money.** Cash and packets traded through windows, mail slots, or under doorways.
- **Lack of familiarity.** Visitors appear to be acquaintances rather than friends.
- **People bringing "valuables" into the unit.** Visitors regularly bring televisions, bikes, VCRs, cameras, and leave empty-handed.
- **Odd car behavior.** Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits. Visitors may also park around a corner or a few blocks away and approach on foot.
- **"Lookouts."** Frequently these will be younger people who tend to hang around the property during heavy traffic hours.

- **Regular activity at extremely late hours.** For example, frequent commotion between midnight and 4:00 in the morning on weeknights. (Both cocaine and methamphetamine are stimulants. Users tend to stay up at night.)
- **Various obvious signs.** This may include people exchanging small packets for cash, people using drugs while sitting in their cars, syringes on the lawn, or other paraphernalia lying about.

*Landlords may observe:*

- **Failure to meet responsibilities.** Failure to pay utility bills or rent, failure to maintain the house in appropriate condition, general damage to the property. Some dealers smoke or inject much of their profits. As they get more involved in the drugs, they are more likely to ignore bills, maintenance, or housekeeping.

**Distribution**

Distributors are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the "wholesale" component, while dealers are the "retail" component. If distributors are not taking the drugs themselves, they can be difficult to identify. A combination of the following indicators may be significant:

- **Expensive vehicles.** Particularly when owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved; so they might drive a \$50,000 car while renting a \$20,000 unit.
- **Regular car switching.** Especially at odd hours - the people arrive in one car, leave it at the premises, and use keys already in their possession to get into another car and drive off.
- **A tendency to make frequent late-night trips.** Many people work swing shifts or have other legitimate reasons to come and go at late hours. However, if you are seeing a number of other signs along with frequent late-night trips, this could be an indicator.

**Marijuana Grow Operations**

Grow operations are hard to identify from the street. They are more likely to be found in single-family residential units than in apartments. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below.

*Neighbors may observe:*

- **Electric wiring that has been tampered with.** For example, evidence of residents tampering with wiring and hooking directly into power lines.

- **Powerful lights on all night in the attic or basement.** Growers will be using powerful lights to speed the development of the plants.

*Landlords may observe:*

- **A sudden jump in utility bills.** Grow operations require strong lighting.
- **A surprisingly high humidity level in the unit.** Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe peeling paint or mildewed wallboard or carpet.
- **Rewiring efforts or bypassed circuitry.** Again, grow operations require a lot of electricity; some use 1,000-watt bulbs that require 220-volt circuits. The extra circuitry generally exceeds the power rating for the house and can bum out the wiring, resulting in fires in some cases, or often the need to rewire before you can rent the property again.
- **Various obvious signs.** For example, basements or attics filled with plants, lights, and highly reflective material (e.g., tinfoil) to speed growing.

**Meth Labs**

Methamphetamine labs can do very serious, and expensive, harm to a property in a short period of time. Once the lab operator has collected the chemicals and set up the equipment, it doesn't take long to cook the drugs. Depending on the method used, a batch can be "cooked" in as little as four hours. Clandestine labs have been set up in all manner of living quarters, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that are secluded. In rural settings it's barns or houses well away from other residences. In urban settings it might be houses with plenty of trees and shrubs blocking the views or apartment or hotel units that are well away from the easy view of management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

*Neighbors may observe:*

- **Odd chemical odors.** The smell of chemicals or solvents not typically associated with residential housing.
- **Chemical containers.** Chemical drums or other containers with their labels painted over.
- **Strong ammonia smell.** Very similar to cat box odor. (This is associated with the amalgam process of methamphetamine production, which has fallen out of favor with meth cooks.)

- **Smoke breaks.** If other suspicious signs are present, individuals leaving the premises just long enough to smoke a cigarette may also be an indicator. Ether, which is highly explosive, is used in meth production. Methamphetamine "cooks" need to get away from it before lighting up.

*Landlords may observe:*

- **Many empty containers of over-the-counter cold or allergy medicines.** New, faster methods of cooking methamphetamine require the use of large quantities of over-the-counter cold medicines that contain the drug ephedrine. The average cold sufferer may leave one or two empty cold medicine containers in the trash. The presence of many such empty boxes, bottles, or blister packs is a definite warning Sign.
- **Strong ammonia/chemical odors.** A particularly strong cat box/ammonia smell within the house. May indicate usage of the amalgam process for methamphetamine production. The odor of ether, chloroform, or other solvents may also be present.
- **Chemistry equipment.** The presence of flasks, beakers, and rubber tubing consistent with high school chemistry classes. Very few people practice chemistry as a hobby. If you see such articles, don't take it lightly.
- **A maroon-colored residue on aluminum sashes or other aluminum in the unit.** The ephedrine process of methamphetamine production is a more expensive process, but it does not give off the telltale ammonia/cat box odor. However the hydroiodic acid involved does eat metals and, in particular, leaves a maroon residue on aluminum.
- **Bottles or jugs used extensively for secondary purposes.** For example, milk jugs and screw-top beer bottles full of mysterious liquids.
- **Discarded chemistry equipment. Garbage containing broken flasks, beakers, tubing, or other chemical paraphernalia.**

*If you have reason to believe there is a meth lab on your property, leave immediately, wash your face and hands, and call Police. If you have reason to believe your exposure has been extensive, contact your doctor. Some of the chemicals involved are highly toxic.*

## General

The following may apply to dealing, distribution, or manufacturing.

### *Neighbors may observe:*

- **Expensive vehicles.** Regular visits by people in extremely expensive cars to renters who appear to be significantly impoverished.
- **A dramatic drop in activity after police have been called.** If activity stops after police have been called, but before they arrive, this may indicate usage of a radio scanner, monitoring police bands.
- **Unusually strong fortification of the unit.** Blacked-out windows, window bars, extra deadbolts, or surprising amounts spent on alarm systems. Note that grow operators and meth cooks, in particular, often emphasize fortifications - extra locks and thorough window coverings are typical.
- **Firearms.** Particularly assault weapons and those that have been modified for concealment, such as sawed-off shotguns.
- **Secretive loading of vehicles.** Trucks, trailers, or cars being loaded and unloaded late at night in a hurried, clandestine manner. This type of behavior may be an indicator of drug distribution, a grow operation, or a clandestine drug lab.

### *Landlords may observe:*

A willingness to pay in advance, particularly in cash. If an applicant offers you six months' rent in advance, resist the urge to accept, and require the person to go through the application process. You might have more money in the short run, but your rental will likely suffer damage, and you could be damaging the livability of the neighborhood and your long-term investment. If they run a meth lab out of your property, you may lose every penny paid and much more.

- **A tendency to pay in cash combined with a lack of visible means of support.** Some honest people don't like writing checks, so cash payments by themselves certainly don't indicate illegal activity. However, if other signs are also noted, and there are large amounts of cash with no apparent source of income, get suspicious.
- **Unusual fortification of individual rooms.** Deadbolts and alarms on interior doors, for example.
- **Willingness to install expensive exterior fortifications.** If your tenant offers to pay surprisingly high dollar amounts to install window bars and other

- fortifications, they may be interested in more than prevention of the average burglary.
- **Unusually sophisticated weigh scales.** The average homeowner might have a grocery scale or a letter scale, accurate to an ounce or so. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated, accurate to gram weights and smaller. (There are legitimate reasons to have such a scale as well, so don't consider a scale, by itself, as an indicator.)
  - **Large amounts of tin foil,** baking soda, electrical cords, or many cold remedy containers. Tinfoil is used in grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations. Cold medicines containing the drug ephedrine are often used in the cooking of methamphetamine.
  - **Presence of any obvious evidence.** Bags of white powder, syringes, marijuana plants, etc. Also note that very small "Ziploc" plastic bags - the type that small jewelry or beads are sometimes kept in - are not generally used in quantities by most people. The presence of such bags, combined with other factors, should cause suspicion.

## The Drugs

While many illegal drugs are sold on the street today, the following are most common:

1. Cocaine and Crack. Cocaine is a stimulant. Nicknames include Coke, Nose Candy, Blow, Snow, and a variety of others. At one time cocaine was quite expensive and generally out of reach for people of low incomes. Today, the price has dropped to the point that it can be purchased by all economic levels. Cocaine in its powder form is usually taken through the nose ("snorted"). Less frequently, it is injected.

"Crack," a derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as "rock." Crack is manufactured from cocaine and baking soda. The process requires no toxic chemicals, nor does it produce any of the waste problems associated with methamphetamine production. Because crack delivers a high using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes. Crack is typically smoked in small glass pipes.

Powdered cocaine has the look and consistency of baking soda and is often sold in small, folded paper packets. Crack has the look of a small piece of old, dried soap. Crack is often sold in tiny "Ziploc" bags, little glass vials, balloons, or even as is, with no container at all.

In general, signs of cocaine usage are not necessarily apparent to observers. A combination of the following are possible: Regular late-night activity (e.g., after midnight on weeknights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine).

**2. Methamphetamine.** Methamphetamine is a stimulant. Nicknames include Meth, Crank, Speed, Crystal, STP, and others. Meth is usually ingested, snorted, or injected. A more dangerous form of methamphetamine, "crystal meth" or "ice," can be smoked.

"Pharmaceutical" grade meth is a dry, white crystalline powder. While some methamphetamine sold on the street is white, much of it is yellowish, or even brown, and is sometimes of the consistency of damp powdered sugar. The drug has a strong medicinal smell. It is often sold in tiny, sealable plastic bags.

Hard-core meth addicts get very little sleep and they look it. Chronic users and "cooks" - those who manufacture the drug - may have open sores on their skin, bad teeth, and generally appear unclean. Paranoid behavior combined with regular late-night activity are potential indicators. Occasional users may not show obvious signs.

Because of the toxic waste dangers associated with methamphetamine production, we have included an additional chapter on what to do if you discover a clandestine drug lab, as well as resource information in the Appendix. For more information about meth, refer to those sections.

**3. Tar Heroin.** Fundamentally, heroin is a powerful painkiller, both emotionally and physically. Nicknames include Brown Sugar, Mexican Tar, Chiva, Horse, Smack, "H," and various others. Heroin is typically injected.

Tar heroin has the look of creosote off a telephone pole, or instant coffee melted with only a few drops of water. The drug has a strong vinegar smell. It is typically sold in small amounts, wrapped in tinfoil or plastic. Paraphernalia that might be observed include hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and blackened cotton balls.

When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. While heroin began as a drug of the wealthy, it has become a drug for those who have little income or are unemployed. Heroin addicts don't care about very much but their next fix, and their clothes and demeanor reflect it. When they are not high, addicts can become quite aggressive. As with most needle users, heroin users rarely wear short-sleeved shirts.

**4. Marijuana.** Marijuana is also known as Grass, Weed, Reefer, Joint, "J," Mary Jane, Cannabis, and many others. Marijuana is smoked from a pipe or a rolled cigarette, and typically produces a "mellow" high. However, the type and power of the high varies significantly with the strength and strain of the drug. (Note that hashish or "hash" are variants, also smoked, that deliver the same drug, with the same type of high.)

The marijuana grown today is far more powerful than the drug that became popular in the late 1960s and early 1970s. Growers have developed more sophisticated ways to control growth of plants and cause high output of the resin that contains THC (tetrahydrocannabinol), the ingredient that gives marijuana its potency. Today's marijuana is often grown indoors to gain greater control over the crop and to prevent detection by competitors, animals, or law enforcement. It takes 90 to 180 days to bring the crops from seed to harvest.

Users generally appear disconnected and nonaggressive. The user's eyes may also appear bloodshot or dilated. Usage of marijuana crosses all social and economic levels.

Marijuana is generally sold in plastic bags or rolled in cigarette paper. The smell of the smoke has been described as a "musky" cigarette smoke.

## **IF YOU DISCOVER A CLANDESTINE LAB...**

### ***COMPLAINTS WE HAVE HEARD:***

"There was a time when I didn't even know what a 'precursor chemical' was. Now I know all about methamphetamine labs. So far it has cost me more than \$10,000 to deal with one property with a meth lab on it. And we're still not done."

### **ADVICE WE WERE GIVEN:**

"Some of the acids used in meth production don't have any 'long term' effects. It's all immediate. They damage your lungs if you breathe the vapors, and they'll burn your skin on contact." - Narcotics detective



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## **IF YOU DISCOVER A CLANDESTINE LAB...**

*Because methamphetamine labs represent a potential health hazard far greater than other types of drug activity, we have included this section to advise you on how to deal with the problem. This information is intended to help you through the initial period, immediately after discovering a meth lab on your property. For information about warning signs of methamphetamine labs and other drug activity, see the previous chapter, The Warning Signs of Drug Activity.*

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### **The Danger: Toxic Chemicals In Unpredictable Situations**

There is very little that is consistent, standard, or predictable about the safety level of a methamphetamine lab. The only thing we can say for sure is that you will be better off if you leave the premises immediately. Consider:

- Cleanliness is usually a low priority. "Cooks" rarely pay attention to keeping the site clean or keeping dangerous chemicals away from household items. The chemicals are rarely stored in original containers. Often you will see plastic milk jugs or screw-top beer bottles containing unknown liquids. It is all too common to find bottles of lethal chemicals sitting open on the same table with the cook's bowl of breakfast cereal, or even next to a baby's bottle or toys.
- Toxic dump sites are common. As the glass cooking vessels become brittle with usage, they must be discarded. It is common to find small dump sites of contaminated broken glass, needles, and other paraphernalia on the grounds surrounding a meth lab or even in a spare room.
- The chemicals present vary from lab to lab. While some chemicals can be found in any meth lab, others will vary. "Recipes" for cooking meth get handed around and each one has variations. So we cannot say with certainty which combination of chemicals you will find in a lab you run across.
- Booby traps are a possibility. Other meth users and dealers may have an interest in stealing the product from a cook. Also, as drug usage increases, so does paranoia. Some cooks set booby traps to protect their product. A trap could be as innocent as a trip wire that sounds an alarm or as lethal as a wire that pulls the trigger of a shotgun or causes the release of deadly chemical gases.
- The risk of explosion and fire is high. Ether, commonly used in some drug labs, is highly explosive. Its vapor can be ignited by the spark of a light switch. Under some conditions, a bottle could explode just by jarring it. Meth lab fires are generally the

result of an ether explosion - the result can be instant destruction of the room, with the remainder of the structure in flames.

- Health effects are unpredictable. Before law enforcement agencies learned of the dangers of meth labs, officers went into them without protective clothing and breathing apparatus. The results varied - in some cases officers experienced no ill effects, while in others they developed "mild" symptoms such as intense headaches. However, in other cases, officers experienced burned lung tissue from breathing toxic vapors, burns on the skin from coming into contact with various chemicals, and other more severe reactions.
- Many toxic chemicals are involved. The list of chemicals that have been found in methamphetamine labs is long. Some are standard household items, like baking soda. Others are extremely toxic or volatile like hydroiodic acid (it eats through metals), benzene (carcinogenic), ether (highly explosive), or even hydrogen cyanide (also used in gas chambers). For still others, like phenylacetic acid and phenyl- 2-propanone, while some adverse health effects have been observed, little is known about the long-term consequences of exposure. If you desire more information about the chemicals found in methamphetamine labs and their health risks, see the Appendix for a list of resources you may wish to contact.

## **What To Do If You Find A Lab**

**1. Leave.** Because you will not know which chemicals are present, whether or not the place is booby- trapped, or how clean the operation is, don't stay around to figure it out. Do not open any containers. Do not turn on, turn off, or unplug anything. Do not touch anything, much less put your hand where you cannot see what it is touching - among other hazards, by groping inside a drawer or a box, you could be stabbed by a hypodermic needle.

Also, if you are not sure you have discovered a clandestine lab, but think you may have, don't stay to investigate. Take mental notes of what made you suspicious and get out.

**2. Check your health and wash up.** As soon as possible after leaving the premises, wash your face and hands and check your physical symptoms. If you have concerns about symptoms you are experiencing, call your doctor, contact an emergency room, or call a poison control center for advice. Even if you feel no adverse effects, as soon as is reasonably possible, change your clothes and shower. Whether or not you can smell them, the chemical dusts and vapors of an active meth lab can cling to your clothing the same way that cigarette smoke does. (In most cases, normal laundry cleaning, not dry cleaning, will decontaminate your clothes.)

**3. Alert your local police.** If the situation is one where immediate response can stop a threat to life or property, call 9-1-1. Otherwise, contact the narcotics or drugs and vice unit of your local law enforcement agency. If you are unsure of whom to call, contact

your police services through their nonemergency numbers listed in your phone book. Because of the dangers associated with clandestine lab activity, such reports often receive priority and are investigated quickly. Typically, law enforcement will coordinate with the local fire department's Hazardous Materials team. (Once law enforcement secures the premises, they may bring in the "Haz Mat" team to assist.)

**4. Arrange for a certified clean-up.** Before you can rent the property again, you must comply with clean-up requirements. Begin by getting any appropriate information from the law enforcement and hazardous materials officials who deal with your unit. Also, if there are remaining issues to be addressed with your tenants, do so. (Note that, typically, the premises will be declared unfit for use, and your tenants removed. So, while there may be other issues to resolve, physical removal is usually not one of them.) Next, contact the Weber County Health Department and ask for their list of licensed contractors who have been trained in the clean-up of lab sites. You will need to select one of the listed contractors and hire them to perform the work. Once a certified clean-up is complete, you will be permitted to rent the unit again. A brief summary of the law governing clean-up is described in the next section.

## **Lab Clean-Up And The Law**

The law makes it difficult to sell and unlawful to rent property that has been used as a meth lab. Essentially, until the property is certified as "fit for use" by the Weber County Health Department, you may not sell it without first disclosing that the premise is a contaminated lab site, and you may not rent the property at all. Should you fail to follow the procedure, laws allow potential buyers to void contracts and grant renters the right to terminate the tenancy quickly, recover deposits and any prepaid rent, and collect damages from the landlord. In addition, if you rent contaminated property (or sell it without disclosure), you risk substantial legal action from anyone who suffers adverse health effects.

In order to re-rent the structure (or sell the property as "fit for use" rather than "contaminated"), you must decontaminate it in accordance with guidelines established by the Weber County Health Department. Depending on the level of contamination present, clean-up may be as simple as a thorough cleaning of all surfaces or as complex as replacing drywall. On very rare occasions demolition of the entire structure is required. Whether the process is simple or complex, you may be required to use a contractor licensed by the Health Division to make sure the work is done correctly.

After you decontaminate the structure, you and your contractor will need to have necessary paperwork signed showing that you have met state requirements. Once you do that, barring the existence of other problems or penalties, you may re-rent the property. Because of the range of chemicals involved, and the differing levels of contamination possible, we cannot accurately predict the length of time involved to get a contaminated property back into use.

## **How Can The "Cooks" Live There?**

If lab sites are so toxic, how can meth lab "cooks" live there? The short answer is: Because they are willing to accept the risks of the toxic effects of the chemicals around them. Meth cooks are often addicted to the drug and under its influence during the cooking process. This makes them less aware and more tolerant of the environment, as well as more careless with the chemicals they use and more dangerous to those around them.

Meth cooks are frequently recognized by such signs as rotting teeth, open sores on the skin, and a variety of other health problems. Some of the chemicals may cause cancer - what often isn't known is how much exposure it takes, and how long after exposure the cancer may begin. Essentially, meth cooks have volunteered for an uncontrolled experiment on the long-term health effects of the chemicals involved.

Also, there are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire officials to discover the presence of a lab - while fighting the fire, they discover the evidence of drug lab activity.

Finally, you face a different set of risks in a meth lab than does the cook. The cooks know which compounds they are storing in the unmarked containers. They know where the more dangerous chemicals are located and how volatile their makeshift setup is likely to be. When you enter the premises, you have none of this information, and without it, you face a much greater risk.

## CRISIS RESOLUTION

*Stop the problem before it gets worse.*

*(Unless noted, all quotes are from landlords or professional property managers. Note that some "complaints" contain inaccurate or incomplete assumptions about legal rights or procedure.)*

### COMPLAINTS WE HAVE HEARD:

**"The problem is these landlord-tenant laws don't give us any room. The tenants have all the rights and we have hardly any. Our hands are tied."**

**"The system works primarily for the tenant - for-cause evictions are very difficult to do."**

### ADVICE WE WERE GIVEN:

**"Serving eviction papers on drug house tenants is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers than for a lot of it afterwards."**

**"Don't put it off. The sooner you act, the easier it is to solve the problem."**

**"If you do the process correctly, your odds of losing in court are extremely low."**



*This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice. If you need legal advice, contact a skilled landlord-tenant attorney.*

# CRISIS RESOLUTION

*Stop the problem before it gets worse.*

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## The Basics

Resolve problems quickly and fairly. If eviction is required, do it efficiently, Minimize court time.

- 1. Don't wait.** Act. If a tenant is not in compliance, address the situation immediately.
- 2, Know how to evict.** Get a copy of landlord tenant law and read it. If you're not sure, don't guess- get an attorney experienced in landlord-tenant relations. Cases are often lost on technicalities. You should:
  - Know the types of termination notices available to you.
  - Know the process for serving notices correctly.
  - Understand the eviction process, including the difference between the potential full-length process, and the typical, more rapid outcome.
- 3. If a neighbor calls with a complaint, know how to respond.**

## Don't Wait - Act Immediately

Effective property management includes early recognition of noncompliance and immediate response. Don't wait for rumors of drug activity and certainly don't wait for official action against you (e.g., property closure related to code health violations or police mailing you a warning letter about criminal activity), Prevention is the most effective way to deal with drug houses. Many drug house tenants have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, dishonest tenants will stop believing they won't pay penalties. The most common reasons why landlords put off taking action include:

- Fear of the legal process. Many landlords don't take swift action because they are intimidated by the twists and turns of the legal process. However, the penalty for indecision can be high. If you accept rent during two or more rental periods after learning that a tenant is in noncompliance, you may lose your legal ability to evict

for that cause. You will be in the best shape if you consistently apply the law whenever tenants are not in compliance with the rental agreement or not meeting their responsibilities under landlord-tenant law. Your position is weakened whenever you look the other way.

- Fear of damage to the rental. Some landlords don't act for fear the tenant will damage the rental. Unfortunately, such inaction generally makes the situation worse. Problem tenants may see your inaction as a sign of acceptance and may even increase the problem behavior. You will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged rental anyway - if they are the type who would damage a rental, sooner or later they will.
- Misplaced belief in one's tenants. While developing this manual, we heard this story, and similar ones, with considerable frequency: "The people renting the property aren't dealing the drugs. We haven't had any problems with them. The drug dealers are their friends who often stay at the property. So what do we do? The tenants aren't making trouble. It's these other people." Ask yourself: Did your tenants contact you or the police when the activity first occurred? Or did they wait to tell you about their drug-dealing guests until after you received phone calls from upset neighbors or a warning from the Police? Also: Is your tenant breaking your rental agreement guidelines by allowing guests or subtenants?

Unless the tenant contacted you, and the police, when the illegal activity started and has since made a genuine effort to address the problem (such as evicting subtenants or getting restraining orders), there is a strong likelihood that your tenant is a classic "enabler" of illegal activity and, by allowing the behavior, is in violation of landlord-tenant laws. If such is the case, pursue your options to terminate the rental agreement.

## **The Secret to Good, Low-Cost Legal Help**

If you are not familiar with the process for eviction, contact a skilled landlord-tenant attorney before you begin. By paying for a small amount of legal advice up front, many landlords have saved themselves from having to pay for a lot of legal help further down the road. The law may look simple to apply, but as any landlord - or tenant - who has lost in eviction court can attest, it is more complicated than it seems. While researching this manual, we repeatedly heard from both landlords and legal experts that the vast majority of successful eviction defenses are won because of incorrect procedures by the landlord and not because the landlord's case is shown to be without merit.

With a crisis tenant Problem, contact a skilled landlord-tenant attorney before you serve the eviction notice.

If you don't know a good landlord-tenant attorney, find one. If you think you "can't afford" an attorney, think again. Too often, out of fear of paying an attorney fee,

landlords make mistakes in the eviction process that can cost them the equivalent of many months rent. Yet many evictions, when done correctly, are simple procedures that cost a fraction of a month's rent in attorney's fees.

Finding a good landlord-tenant attorney is relatively easy. Check your yellow pages phone directory for those attorneys who list themselves as specialists under the subcategory of "landlord and tenant." Generally, you will find a very short list,<sup>1</sup> because few attorneys make landlord-tenant law a specialty. Call at least three and interview them. Ask about how many evictions they do per month and how often they are in court on eviction matters. In our experience, the safest bets are those attorneys who do many evictions per month - they see it as a major part of their practice, not a sideline that they advise on infrequently. Once you find attorneys who have the necessary experience, pick the one you feel most comfortable working with and ask that person to help.

## Choices For Eviction

### Type of Rental

In order to determine your options for eviction, consider the type of rental you have. While most rentals fit the first option described below, if yours do not, it is important that you become aware of the different rights and responsibilities involved.

**1. Standard month-to-month or fixed-term lease.** In the most common situations a tenant rents an apartment or house from a private landlord on a month-to-month or longer term basis, with no government subsidy involved. If that description matches what you provide, skip to the discussion of Types of Notices, following this section.

**2. Subsidized rental units or subsidized tenants.** Federal housing subsidies often carry restrictions on the type of notices that can be served, as well as on the methods for serving notices. For example, tenants on the Section 8 program - subsidized tenants - cannot be served a no-cause eviction notice during the initial term of the lease and some cannot be served a no-cause eviction notice ever. In subsidized rental units, no-cause notices are also generally not allowed and, for some notices, more time must be given than the minimum waiting period permitted under the law. We have given some examples of differences in the descriptions that follow, but have not attempted to cover every variation associated with each program. If you have subsidized rental units, or subsidized tenants, read your contracts carefully. And, as in any rental situation, if you are not sure, contact a qualified landlord-tenant attorney.

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<sup>1</sup> In some communities you may not find any attorneys listed as specialist in this type of law. In such a case try, contacting a local property management association for referrals or call a few local property management companies and find out who they use, then interview the attorney to find the one you feel comfortable with

**3. Week-to-week tenancies.** If you are renting on a week-to-week basis, you must meet specific qualifications in order to use the shorter notices for such tenancies. A qualifying "week-to-week" rental is one in which all of the following apply:!

- The rent is charged by the week and payable on a weekly, or more frequent, basis.
- There is a written rental agreement in use that defines the landlords and tenant's rights and responsibilities.
- No nonrefundable fees or security deposits have been collected (although applicant screening charges that meet the requirements of landlord-tenant law may be collected).

If your weekly rentals do not meet all the qualifications, the law considers your rental a month-to-month tenancy, and you must use the longer notices - for example, a 30-day no-cause notice, instead of a 10- day no-cause notice. Such distinctions make it important that innkeepers who become "landlords" by taking on weekly renters familiarize themselves with the requirements for week-to-week tenancies and other applicable landlord-tenant law.

**4. Manufactured dwelling parks or floating home facilities.** Landlords of manufactured dwelling parks or floating home moorages also have limitations placed on their eviction options. In general, the added regulations apply only to the relationship between a landlord and an owner of a manufactured dwelling or floating home who rents space in a "facility," A facility is, essentially, a park or moorage that has four or more of that same type of living unit.

Note that these added regulations do not apply to space rented out for use by a "recreational vehicle" or "residential vehicle" as defined in the law, nor do they apply in any situation in which the landlord rents out both the land (or moorage) space and the living unit. Generally speaking, if the added regulations do not apply, the law will treat the rental like any other standard, month-to-month or lease tenancy. (One significant exception: if you are renting space for a manufactured dwelling or floating home that is not in a "facility" a longer no-cause notice than allowed for standard month-to-month renting is required.

If you have a manufactured dwelling park or floating home facility, and your tenants own their homes and rent the land from you, note that:

- 30-day no-cause evictions are not allowed. Landlords of manufactured dwelling parks or floating home facilities may not evict a tenant unless they can show that the tenant is not in compliance with the terms of the rental agreement or responsibilities as deemed in landlord-tenant law. The only point at which a landlord could evict a tenant who is in compliance is if the landlord elects to close the facility entirely and convert the space to a different use. In such cases, unless special conditions are met by the landlord, a minimum of a full year's notice is

required to remove tenants. Because of this limitation, the conditions of your rental agreement take on particular importance; so take the time, and purchase the necessary legal help, to make sure you have an effective, up-to-date rental agreement.

- With some modification, most for-cause notices are allowed. While landlords of manufactured dwelling parks or floating home facilities may not serve a 30-day no-cause notice, they may serve most other notices defined in landlord-tenant law. For example, a landlord of such a facility may serve 72-hour notices for nonpayment of rent, 24-hour notices for physically threatening behavior, or 24-hour notices for acts which are outrageous in the extreme.

Landlords may also serve a modified version of the noncompliance 30-day for-cause notice - in this case, the tenant must be given the full 30 days to remedy a problem (instead of the 14-day remedy period in most other landlord-tenant situations). In addition, the repeat violation notice that can be served for committing substantially the same act any time in the next six months must allow at least 20 days to vacate, instead of the 10 days allowed in most other landlord-tenant situations.

For owners of such facilities, the key is this: Tenants who obey the rules are better protected than are comparable tenants in standard rental situations. However, those who break the rules are only marginally more protected. If you can show that the tenant has broken the rules, you have the power to enforce the rules by serving for-cause termination notices - whether for nonpayment, disturbing the neighbors' peace, physically threatening yourself or other tenants, dealing drugs out of the rental unit, or any other prohibited behavior.

**5. Tenancies in legally defined "Drug and Alcohol Free Housing."** In brief, rental properties, including facilities, that meet the definition for drug and alcohol free housing have additional notices available to them. First, they may enforce some regulations regarding the use of drugs, alcohol and other behaviors with a 48-hour notice to comply or vacate. Second, such a landlord may also serve a 24-hour notice to quit for certain repeat violations in a six month period. For more about these notices, unless your organization meets the very specific criteria defined in the law, these notices may not be used in your rentals

- **Unauthorized possession of the premises.** The tenant has vacated the premises, and contrary to a written rental agreement that prohibits subleasing or occupancy without the landlord's written permission, people not on the rental agreement are in possession of the premises, and the landlord has not knowingly accepted rent from them.
- **This situation comes close to criminal trespassing,** but it isn't. Since the landlord was not "in charge" of the unit when the unknown person moved in (that

is, had not yet taken possession of the unit after the original tenant left), the landlord would not have the right to direct a police officer to enforce criminal trespass laws on the occupants. Therefore, a 24-hour notice for unlawful occupant must be served.

- **Physical injury.** The tenant, someone in the tenant's control, or the tenant's pet seriously threatens to inflict substantial personal injury or actually inflicts substantial personal injury on a person on the premises other than the tenant or inflicts such injury on any neighbor living in the immediate vicinity.
- **Reckless endangerment.** The tenant or someone in the tenant's control recklessly endangers a person on the premises, other than the tenant, by creating a serious risk of substantial personal injury.
- **False information about criminal background.** The tenant intentionally provided substantial false information on the application for the tenancy within the past year that meets these conditions: 1) The false information regarded a criminal conviction of the tenant that would have been material to the landlord's acceptance of the applicant for tenancy, and 2) The landlord Terminates the rental agreement (i.e., serves the 24-hour notice) within 30 days after discovering the fact of the false of the information.
- **Substantial damage.** The tenant or someone in the tenant's control intentionally inflicts substantial damage to the premises. Note that the damage here must be both substantial and intentional. If a tenant punches a hole in a wall, use the noncompliance notice described earlier. If the tenant tears out the whole wall, serve this notice. This type of notice may also be served if the tenant's pet inflicts substantial damage to the premises on more than one occasion.

Of course, the individual who does the actual damage may also be guilty of a crime. If sufficient proof can be established that links a specific person to an act of intentionally damaging the property, an arrest of that person may also be possible. However, as the chapter on The Role of the Police explains, arrest does not take the place of eviction.

- **Other acts "outrageous in the extreme."** The tenant or someone in the tenant's control, or the tenant's pet, commits any act that is "outrageous in the extreme."
  - Prostitution or promotion of prostitution. This includes paying for it, offering it for sale, and inducing others to engage in prostitution. It also includes owning, controlling, managing, or otherwise supervising a place of prostitution.
  - Manufacture, delivery, or possession of a controlled substance. All growing, manufacturing, and selling of illegal drugs qualifies for serving a

24-hour notice. A 24-hour notice may now also be served for possession of any illegal non-prescription drug, with the exception of certain types of marijuana possession.

- Intimidation. This would include, for example, the act of seriously threatening, or physically harming, people or property out of a perception regarding a person's race, color, religion, national origin, or sexual orientation.
- Burglary This includes both first and second degree burglary.

While violations of criminal statutes are given as examples of acts that are outrageous in the extreme, the law clarifies that a civil level of proof is all that is necessary to prove the landlord's case for eviction. While criminal acts are given as examples, other acts can also be proven to be outrageous, even if they do not violate a criminal statute.

Twenty-four-hour eviction notices were designed to address the most dangerous and extreme situations. Do not serve this notice lightly. While it is always important to consult an attorney when you are unfamiliar with the law, it is particularly important to contact an attorney if you face a situation that may merit serving a 24-hour eviction notice.

Equally, your failure to act if you have grounds for serving such a notice may put you at risk. If your tenants act on a threat or continue to carry out extreme behaviors that endanger the community, you could face legal action by harmed neighbors or a local government for not taking action once you had knowledge of the problem.

- **Mutual agreement to dissolve the lease.** A frequently overlooked method. Write the tenant a letter discussing the problem and offering whatever supporting evidence seems appropriate. Recommend

Dissolving the terms of the lease, thus allowing the tenant to search for other housing without going through the confrontation of the eviction process. Let Section 8 renters know that mutual agreement to dissolve the lease is permissible - that is, in most circumstances, it will not threaten a resident's eligibility for the program.

Make sure the letter is evenhanded. Present evidence, not accusations. Make no claims that you cannot support. Have the letter reviewed by an attorney familiar with landlord-tenant law. Done properly, this can be a useful way to solve a problem to both your tenant's and your own satisfaction without getting tied up in a lengthy court process. Done improperly, this will cause more problems than it will solve. Don't try this option without doing your homework first.

Again, if illegal activity is going on, most tenants will take the opportunity to move on.

## How To Serve "Written Notice"

When a landlord serves an eviction! notice, quite often the tenant moves out and the procedure is complete. However, in those cases where a tenant requests a trial, the details of the eviction process will be analyzed. As one landlord put it: "90% of the cases lost are not lost on the bottom-line issues, but on technicalities." As another points out: "Even if you have police testimony that the tenants are dealing drugs, you still have to serve the notice correctly."

Each of the eviction options includes a legal process that you must follow. In addition, the process may also be affected by the provisions of your rental agreement or, if applicable, your Section 8 contract or other subsidized housing agreement. Begin by reading your rental contracts and landlord-tenant law. One of the best tools you can develop is a comfortable, working knowledge of the law. In any eviction, take the following steps:

1. **Start with the right form.** When available, use forms already developed for each eviction option. Forms that have been written and reviewed for consistency with state law are available through the organizations noted in the Appendix.
2. **Fill it in correctly.** If it is a for-cause notice, you must cite the specific breach of landlord-tenant law or section of the rental agreement that the tenant has violated. In addition, briefly describe the tenant's noncompliant behavior. You will need to have the correct timing of the notice recorded. There will be other elements to include. For example, if it is a Section 8 rental, you may need to note that a copy of the notice has been delivered to the local housing authority as well.
3. **Time it accurately and serve it properly.** Many cases are lost because a landlord did not extend the notice period to allow for delivery time, did not wait the correct number of days to serve a nonpayment notice, did not accurately note the timing of the process on the notice itself, or otherwise served the notice incorrectly. Check landlord-tenant law, your rental agreement, and your Section 8 contract (if applicable) to make sure you are timing the notice properly. Also, make sure that you specifying, in writing, when the notice expires. This is particularly useful for avoiding any confusion with tenants who receive 72-hour and 144-hour notices for nonpayment.
  - Technically, the first notice a landlord serves is one that will "terminate" the lease or rental agreement. Should the tenant fail to comply with the landlord's notice, a court-ordered "eviction" is a possible result.
  - Hand delivery. Place the notice directly into the tenant's hands. Do not slip it under the door or place it in a mailbox. While not required, it is a good idea to

bring along a person who can witness the process in the event that you must prove that the notice was delivered.

- For hand-delivered notices that count hours (e.g., 24-hour, 72-hour, and 144-hour notices), the countdown begins immediately upon service; so a 24-hour notice hand delivered by 1 :00 p.m. on Monday can expire at 1:00 p.m. on Tuesday. For hand-delivered notices that count days (e.g., a 30-day notice), the countdown starts at midnight on the service date, counts consecutive calendar days, and ends at midnight of the last day.
- First-class mail. If you don't want to go onto the property, you can mail the notice by regular first-class mail. Mark the outside of the envelope with a return address and "please forward." Do not use certified or registered mail; You may, however, want to get a certificate of mailing from the post office as evidence that a letter was sent.

All mailed notices must be lengthened by three days. Regardless of whether the notice counts hours or days, all notices served by regular first-class mail begin at midnight on the day of mailing but are extended by three days; so a 24-hour notice that is postmarked on Monday can expire no earlier than midnight on Friday. In addition, you may need to add another three days if a mailed response is required - for example, a 72-hour nonpayment notice requiring payment sent to a post office box. You will shorten the length of notices considerably if you hand deliver.

- Post and mail. If your rental agreement allows it, all termination notices may now be served by "post and mail" This is a change in the law introduced by the 1997 legislative session. Mail a copy of the notice by regular first-class mail and secure a second copy to the tenant's front door. Do both on the same day. Make sure you get a same-day postmark and that the envelope is marked as noted above. The intent of the change in the law is that, when allowed by the rental agreement, posting and mailing these notices permits the countdown to begin without adding the additional three days for mailing time. However, the law does not explicitly state this.

**4. Don't guess;** get help. As mentioned earlier, unless you are comfortable with the process, consult with an attorney who is well experienced in landlord-tenant law before serving an eviction notice. If you have drug activity on your property, you already have a major problem. Now is not the time to cut corners in order to save money. Using the correct legal process could save you thousands in damages, penalties, and legal fees down the road.

## The Eviction (FED) Process

Pronounced "FED," the letters stands for "forcible entry and detainer." Technically, you are suing for recovery of your property because the tenant has wrongfully detained it. The following is intended as a generalized overview of the process. It is only an introduction. Read landlord-tenant; consult an attorney who specializes in the subject.

1. Serve the notice. Begin by serving the notice in the manner described earlier. Make sure you do it correctly.
2. Wait for the tenant's response. If the tenant remedies the problem (if allowable) or moves out, you are done. If not, after 24 hours, 72 hours, 10 days, 30 days, or whichever other length of notice, go to step 3. However, most evictions are resolved at this stage.
3. File FED papers with the county clerk. The clerk will provide the forms. Note the reason for the eviction and attach a copy of the notice you served. Pay a filing fee and a fee for service of summons. The clerk will set a court appearance date that is generally eight to ten days in the future and mail a summons to your tenant. In addition, a "process server" will deliver the summons and complaint, handing it to the tenant (if in) or fixing it securely to the tenant's front door (if not in).
4. Go to the "first appearance." On the appearance date, the judge gives the parties the chance to resolve the issue through private discussion and through mediation. If a resolution is not reached, the judge may give the tenant a two-day continuance to get an attorney and reappear. After either the first or second appearance, depending on the circumstances, if no resolution is reached, the judge sets a trial date no more than 15 days after the appearance date. If you, or your legal representative, should fail to show for your appearance date, you will lose by default. If the tenant, or a legal representative, doesn't show, you win by default.

Of the cases that make it to the first appearance in FED court, most are resolved without a trial, either by default or by mutual agreement of the two parties. Quite often these agreements define a date for vacating the premises and determine which party will cover the court fees. The court then issues a "judgment of restitution" consistent with that agreement.

5. The trial is held. Few cases make it this far. The most frequent tenant defenses are: the notice was not served legally, the eviction is a retaliation by the landlord for a legitimate action taken by the tenant, or there are habitability problems at the unit. Examples of other defenses include: the cause of action is not legitimate or the eviction is based on illegal discrimination by the landlord.

If the decision is in your favor, a "judgment of restitution" is issued which orders the tenant to move out and directs repayment of various court costs. If you lose, you will likely pay the tenant's legal costs and you will not be permitted to file a no-cause eviction notice against the tenant for at least six months. Essentially, unless the tenant fails to pay

rent or commits a significant violation of landlord-tenant law, evictions attempted within six months after a failed FED attempt would be considered retaliatory. However, assuming that the judgment is in your favor, but the tenant still doesn't move out, go to step 6.

6. The county sheriff removes the tenant. If the tenant still doesn't move out, the landlord would return to the county clerk and file for a "notice of restitution," fill out the necessary papers, and pay a fee. The landlord would then have the sheriff (or a process server whom the landlord would hire) serve the tenant with a four-day notice, allowing another day for delivery (the notice can be longer if weekends or holidays are involved). If the tenant doesn't move out by the expiration of the four-day notice, the landlord would go back to the county clerk, pay another fee, and file for an "execution of judgment of restitution" that directs the sheriff to remove the tenants.

If you add it all up, it can take a month or more after the end of the notice period to remove tenants who choose to fight your eviction, assuming you win the case. But again, very few evictions make it all the way to a trial. If you meet your responsibilities as a landlord and serve your notices correctly, defense attorneys will be unlikely to advise their clients to fight. Again, if you serve the notice correctly, you may save considerable expense in the long run.

The most compelling point we can make about the entire eviction process, from service of notice to arguing in court, is this: Eviction is an expensive, time-consuming way to "screen" tenants. You will save much heartache and considerable expense if you screen your tenants carefully before you rent to them, instead of discovering their drawbacks after you are already committed.

## **"Abandonment" and "Abandoned Personal Property"**

The following questions about the end of a tenancy have been raised in many trainings. Because these issues are somewhat beyond the scope of this program, they will be addressed in only abbreviated form here.

**How can a landlord be sure that a tenant is no longer in possession of the dwelling unit (that "abandonment" of the property has occurred)?** For landlords, the critical issue is that the law is clear on when you can presume that the tenant has "relinquished possession" of the premises, thus allowing the landlord to go in, clean up the unit, change the locks, and prepare the unit for re-renting. In brief, if the tenant gives "actual notice" of giving up the right to occupy the unit and, especially, if the tenant returns the keys, then the landlord may assume that possession has been "relinquished." Other "reasonable belief" tests are defined in the law for situations where the landlord reasonably knows of the tenant's abandonment of the dwelling unit and can therefore enter the unit, for example, without serving a 24-hour notice for entry.

**What is a landlord required to do with personal property that departing tenants have left behind ("abandoned personal property")?** In brief, the landlord must serve a 5 to 8-day notice, depending on the method of service, to request that the ex-tenant recover personal property left at the premises. If you are unsure about the correct notification process, contact a skilled landlord-tenant attorney for assistance. In the event the tenant fails to respond to the notice, or responds but then fails to pick up the personal property within 15 days after responding to the notice, assuming the landlord has followed the appropriate procedures, the landlord's options are then dependent on the value of the property in question. For example, if a

Personal property does not include recreational vehicles, manufactured dwellings, or floating homes that have been abandoned by a tenant. These items, when abandoned, will require a longer, and more involved, process by the landlord.

landlord reasonably determines that the current fair market value of the abandoned property is not more than \$500 or determines that the cost of storage and conducting a sale probably exceeds the amount that could be realized from the sale, the landlord may exercise an option to "dispose" of the property where "reasonably appropriate" by throwing it away or giving it (without compensation) to a nonprofit organization or an unrelated individual. The landlord may not keep the property for personal use or benefit. The landlord may charge the tenant for the cost of disposal. In cases where the disposal option cannot be exercised, the landlord will need to hold a sale of the unclaimed property and may retain moneys earned from the sale up to an amount equal to the cost of storing the goods, holding the sale, and recovering unpaid rent. The rest goes back to the tenant, or if the tenant can't be found, to the county treasurer.

## **If A Neighbor Or Other Tenant Calls With A Complaint**

If a neighbor calls to report drug activity, or any other type of dangerous or illegal activity, at your rental, take this action:

1. With the initial call, stay objective and ask for details. Don't be defensive and, equally, don't jump to conclusions. Your goal is to get as much information as you can from the neighbor about what has been observed. You also want to avoid setting up an adversarial relationship; if it is drug activity, you need to know about it.

Also, make a commitment that you will not reveal the caller's name to the tenant without permission (unless subpoenaed to do so). In the past, some landlords, perhaps believing that neighbor reports were exaggerated, have treated dangerous situations too casually and told criminals the names of neighbors who called to complain. If the neighbors have exaggerated, you do no harm by protecting their names. If they haven't, you could put them in real danger by revealing too much.

Ask the caller for:

- A detailed description of what has been observed.
- A letter documenting what has been observed, sent both to you and to your police narcotics division. If you have Section 8 tenants, have a copy sent to your local housing authority also.
- Name, address, and phone number, if willing to give it. If neighbors don't know you, they may be unwilling to give you their names on the first call. This is one reason why we recommend meeting neighbors and trading phone numbers before a crisis occurs. Consider: If the only thing neighbors know about you is that you have rented to a drug dealer, they will have reason to be cautious when they call.
- Names of other citizens you can call who could verify the complaint, or ask that they encourage other neighbors to contact you. You will need more evidence than the phone call of a single neighbor to take action. Explaining this need may help further encourage the neighbor to ask others to call. Also, having multiple complaints can help protect the caller by taking the focus off of a single complainant as the "cause" of the drug dealer being discovered.

2. A single call from one neighbor doesn't necessarily mean your tenants are doing anything illegal. However, a single call is justification to pursue the matter further. You need to find out: Do you have drug activity or don't you? And you need to find out quickly. From this point on, if you have a drug house, your inaction could lead to fines or closure of the property.

Find out more. Go to other sources for additional information and assistance. Your goal is to collect enough information to verify whether or not there is a problem at the rental and then to take whatever action is appropriate.

- Get in touch with other involved neighbors and find out about their perceptions. It is likely, even if your tenant is running a high-volume dealing operation, that some neighbors will suspect nothing; many citizens are unobservant or give their neighbors a wide benefit of the doubt. However, it is also likely that, while some neighbors may be unaware of the scope of the problem, others will have a lot to tell.
- Contact the police. Get in touch with a district officer for your area and contact your local police narcotics unit. Determine what if anything they have on record that can be revealed (see the chapter on The Role of the Police for details).
- Call a neighborhood crime prevention coordinator in your area. Explain who you are and find out if they have received reports of problems. Neighborhood crime prevention staff may also have additional information that can help you address the situation most effectively.

- If you feel comfortable doing it, consider a 24-hour notice to inspect the property for maintenance. Again, few tenants involved in serious illegal activity are model renters.

3. Once you have identified the problem, address it. If you determine that your tenant's behavior is not related to dangerous, threatening, or illegal activity, contact the neighbor who called and do your best to clear up the matter. If you discover no drug activity but strong examples of disturbing the neighbors' peace or other violations, don't let the problem continue. Serve the appropriate notices. If you discover that problems reported are related to domestic violence or child abuse, consider approaches that will most effectively accomplish the twin goals of stopping the harm to the neighborhood and providing appropriate support for the victims. (A list of domestic violence resources is provided in the Appendix of this manual.) And if you become confident your property is being used for drug activity, don't wait for someone else to force the issue. Pursue it yourself. Advise police of your findings and your plan and then do it. The following are examples of options you might pursue.

- If you have the option, you could deliver a no-cause notice. It is a legal, non-adversarial approach. The tenant has little to fight over because you are not claiming any noncompliant action.
- If the evidence allows it, you could serve a 24-hour eviction notice for "outrageous behavior." While this notice is an option, given the seriousness of the charge, always contact an attorney before serving it.
- For other situations, consider a noncompliance notice (30-day for-cause). "Cause" in this case may be drug activity if you have neighbors or police willing to testify, or it could be disturbance of the right of neighbors to peaceful enjoyment of the premises, or other significant issues of noncompliance that you have recently become aware of. If you have drug activity, an inspection will likely reveal a failure to maintain the property as provided in the rental agreement, additional people living in the house, or other noncompliant behavior. As has already been discussed, for most breaches of a rental agreement, prompt action is required to protect your right to serve termination notices for the noncompliant behavior.
- Consider mutual agreement to dissolve the lease. This option is described in more detail earlier in this chapter.

Of course, if the tenant isn't paying rent, you should have already served a notice for nonpayment of rent.

Finally, if you evict someone for any type of criminal activity, for damaging your property, or for other actions that cause serious harm to the livability of a neighborhood, share the information. Landlords who are screening tenants down the road may not find out about it unless the information is documented. If it is a Section 8 renter, make sure

the housing authority has a letter from you on file. Also, contact the credit reporting service you use to advise them of the circumstances.

## **If You Have A Problem With A Neighboring Property**

When chronic problem activity is present in a neighborhood, every affected citizen makes a conscious or unconscious choice about what kind of action to take. The choices are to move away, to do nothing and hope the problem will go away, or to take action to stop the problem. Doing nothing or moving away usually means the problem will remain and grow larger; somebody, someday will have to cope with it. Taking action, especially when it involves many neighbors working together, can both solve the problem and create a needed sense of community.

Many neighbors are under the impression that solutions to crime are the exclusive responsibility of the police and the justice system - that there isn't much an individual citizen can do. Actually, there is a lot that citizens can do, even must do, to ensure they live in a safe and healthy neighborhood. Getting more involved in your neighborhood isn't just a good idea; it is how our system of law and civic life was designed, and the only way it can really work. With that in mind, the following is a list of proven community organizing techniques to help you begin.

- 1. Find others concerned about the problem and enlist their help.** As you consider the steps described below, keep in mind that multiple neighbors following the same course of action will magnify the credibility and effectiveness of each step. In particular, several neighbors calling a government agency separately about the same problem will usually raise the seriousness of the problem in the eyes of the agency. Involvement of multiple neighbors also increases safety for everyone. People involved in illegal activity might target for revenge one neighbor they perceive as causing them problems, but are less likely to try to identify and harass multiple people.
- 2. Make sure police are informed in detail.** It doesn't matter how many police we have if people don't call and tell them where the crime is. Even if you have had the experience of calling without getting the results you expect, keep calling. Even as you also follow other recommendations of this section, keep working with police throughout the process.

Establishing a connection with a particular officer who works the area regularly is often a key to success. Here are some more strategies for working with police most effectively:

- **Report incidents when they occur.** Call 9-1-1 if it is an emergency or call police narcotics detectives, gang units, and other special enforcement units as appropriate. You may need to do some research to find out which part of what agency deals with a particular type of problem.
- **Keep activity logs or diaries about the address when disturbances are frequent,** and encourage neighbors to do the same. Share copies of these logs with an officer, in person if possible.

- **Encourage civil abatement action.** When speaking with enforcement officials, be aware that both state law and some local laws provide civil mechanisms for fines and closure of nuisance property, particularly when it is involved in illegal drug activity.

3. **Consider direct contact with the property owner.** Many activists contact the owner directly and ask for help in solving the problem. While police officers may do this for you, it is also an option available to any citizen directly. Understand that there may be a risk to your personal safety in contacting some irresponsible owners, so be sure to plan your approach carefully. In general, try a friendly, cooperative approach first - it usually works. If it doesn't, then move on to more adversarial tactics. Here are some tips for the friendly approach:

- Use tax records to find the owner. The county's assessment and taxation records will identify who owns the property.
- Contact the owner. It is amazing how often this simple step is never taken. Discuss the problem and ask for assistance with stopping it.
- Suggest this training. If the property is a rental, consider delivering a copy of this manual and encourage the owner to attend the Landlord Training Program.
- Describe events. Provide the owner with specific descriptions of events: Answer the questions who, what, where, when and how about each event.
- Give police references. Give the property owner the names of officers who have been called to the address. (Names of specific officers are far more useful than general statements like "The police have been out frequently.")
- Help locate criminal records if appropriate. Learn how to access criminal background information, or how the property owner can. For example, if an occupant has a criminal record in the county, the courthouse will have records. Also, property owners may be able to get a report from local police that lists the number and nature of calls-for-service at their property in the preceding few months.
- Share activity logs. Give copies of activity logs to the landlord, if it appears the landlord will use them to support lease enforcement actions.

4. **Enlist the help of others.** If it becomes apparent that the problem will not get resolved without more effort, it may be time for more aggressive action. This may take a higher level of organization and structure for the neighborhood. Here are some approaches to apply more pressure:

- Remind others to call. After any action you take, call several other neighbors and ask them to consider doing the same thing, whether it is reporting an incident to police, calling the landlord, or speaking to a city official. Do not ask neighbors to call and repeat your report. Do ask neighbors to make an independent assessment of the problem you have observed and, if they also consider it a problem, to report it as well.
- Call the Public Housing Authority. If the residents are receiving public housing assistance, contact the local housing authority and report the problems observed.
- Call for a code inspection. Call your local housing maintenance code enforcement department to report maintenance code violations. Maintenance codes address exterior building structure and appearance, interior structure and appearance, as well as nuisances in yards such as animals, abandoned cars, trash, and neglect. Most properties with problem residents will have many violations of maintenance codes as well.
- Consider calling the mortgage holder. Sometimes the holder of the mortgage on a property can take action if the property is not in compliance with local law. Generally, if a financial institution is holding a mortgage on real property, the name of the institution will be listed on the title records kept by the county.
- Write letters. Citizens have the power to write letters to anyone - mayors, council members, chiefs of police, building inspectors, and others. Your written documentation can add credibility and legitimacy to a problem that may not have received as much attention as it required. The first letters should be to those in a position to take direct action - a police officer, code inspector or other person tasked with addressing problems like the one you are working on. Do not write letters to managers or political leaders until you have given the "chain of command" a chance to work. Do write letters to such authorities if it becomes apparent that the help your neighborhood needs is not forthcoming. When necessary, follow up calls or letters with personal appointments.

5. **Two strategies of last resort.** Generally, these activities should be undertaken only by a well-organized group, and only when consistent, diligent work with police, neighbors, and city officials has made little or no progress.

- Consider getting the media involved. After making a concerted effort to get results through other means, discussing the problem with the media can be a way to focus more attention, and sometimes resources, on a problem. However, going to the media with your complaint before communicating clearly to the accountable organization can be counterproductive. It can cause justifiable resentment in public officials who feel blind-sided by the media attention on an issue about which they had no prior warning. Also, be aware that if the problem is associated with criminal drug or gang activity, attracting media attention that

results in your being the featured interview subject can increase the risk to your personal safety.

- Start legal action against the property owner. Citizens harmed by a nuisance property can also pursue lawsuits directly. In the final analysis, even the most negligent property owners will act when they are made to understand fully that it will cost more money to ignore the problem than it will to stop it. This is not an easy process and should be considered only as a last resort.

## THE ROLE OF THE POLICE

*Building an effective partnership.*

*(Unless noted, all quotes are from landlords or professional property managers. Note that some "complaints" contain inaccurate or incomplete assumptions about legal rights or procedure.)*

### COMPLAINTS WE HAVE HEARD:

"The problem is the police won't get rid of these people when we call. We've had dealers operating in one unit for four months. The other tenants are constantly kept up by the activity, even as late as 2:00 or 3:00 in the morning on weeknights."

"I called police about one of my properties. They wouldn't even confirm that anyone suspected activity at the place. A month later they raided the house. Now I'm stuck with repair bills from the raid. If they had just told me what they knew, I could have done something."

### ADVICE WE WERE GIVEN:

"In almost every case, when the police raid a drug house, there is a history of compliance violations unrelated to the drug activity for which an active landlord would have evicted the tenant." - Narcotics detective



*This manual is intended as a guide to community-oriented property management. It should not be regarded as legal advice. If you need legal advice, contact a skilled landlord-tenant attorney.*

# THE ROLE OF THE POLICE

*Building an effective partnership*

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## The Basics

1. Know how to work with the system to ensure rapid problem resolution. Have a working knowledge of how the police in your area deal with drug houses.
2. Know how to work with the police, but don't expect cooperation when your (civil) concerns and their (criminal) concerns conflict.
3. If your police agency sends you a letter warning of illegal activity on your property, don't treat it as an early warning. Treat it as a final warning. Take action immediately.

## Defining The Roles: landlords And Police

It is a common misconception that the police can evict tenants involved in illegal activity. In fact, only the landlord has the authority to evict; the police don't. The police may arrest people for criminal activity. But arrest, by itself, has no bearing on a tenant's right to possess your property.

Eviction, on the other hand, is a civil process - you are suing a tenant for possession of the property. Note the differences in level of proof required: Victory in civil court requires "a preponderance of evidence," the scales must tip, even slightly, in your favor. Criminal conviction requires proof "beyond a reasonable doubt," a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to evict your tenants, but police do not have enough evidence to arrest them. Further, even if police arrest your tenants, and a court convicts them, you still must evict them through a separate process or, upon release, they have the right to return and live in your property.

Many landlords are surprised to discover the degree of power they have to close drug houses and eliminate their threat to the neighborhood. As one police captain put it, "Even our ultimate action against a drug house - the raid and arrest of the people inside - will not solve a landlord's problem, because the tenants retain a legal right to occupy the property. It's still their home until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long. It's surprising, but the person in our community with the most power to end an individual drug house

problem is the property owner - the landlord. Ultimately, [the landlord] can make the people not be there anymore. The police can't do that"

The only time law enforcement may get involved in eviction is to enforce the outcome of your civil proceeding. For example, when a court issues a judgment requiring a tenant to move out and the tenant refuses, the landlord can go to the sheriff (or other appropriate law enforcement agency) and request that the tenant be physically removed. But until that point, law enforcement cannot get directly involved in your eviction process. However, the police may be able to provide information or other support appropriate to the situation - for example, testify at the trial, provide records of search warrant results, or stand by while you serve notice.

Again, criminal arrest and civil eviction are unrelated; the only connection being the possibility of using arrest or conviction records as evidence in an eviction trial. No matter how serious a crime your tenants have committed, eviction remains your responsibility.

## **What To Expect**

Police officers are paid, and trained, to deal with dangerous criminal situations. They are experts in enforcing criminal law. They are not authorities in civil law. As such, if you have tenants involved in illegal activity, while you should inform the police, do not make the common but inaccurate assumption that you can "turn the matter over to the authorities" and they will "take it from there." Because landlord-tenant law is enforced only by the parties in the relationship, when it comes to removal of a tenant, landlords are the "authorities." With that in mind, you will get best results from the police by providing any information you can for their criminal investigation, while requesting any supporting evidence you can use for your civil proceeding.

In order to get the best cooperation, remember the rule of working with any bureaucracy: The best results can be achieved by working one-an-one with the same contact. Further, while this rule applies to working with any bureaucracy, it is especially important for working with a law enforcement agency where, if police personnel share information with the wrong people, they could ruin an investigation or even endanger the life of an officer. So if an officer doesn't know you, the officer may be hesitant to provide information about suspected illegal activity at your rental.

Your best approach, therefore, is to make an appointment to speak with a narcotics officer in person or to call your local police station or precinct and arrange to speak directly with an officer who patrols the district where your rental is located. There can be a huge difference between the type of information available through a single, anonymous phone call and the amount of assistance possible if you arrange an in-person meeting.

The type of assistance possible will vary with the situation, from advice about what to look for on your property to documentation and testimony in your eviction proceeding. But remember that it is not the obligation of the police to collect information necessary for you to evict problem tenants. Again, eviction is your responsibility, while criminal

arrest is the responsibility of law enforcement. While you can get valuable assistance from the police, don't wait for the police to develop an entire criminal case before taking action. If neighbors are complaining that you have drug activity or other dangerous situations in your rental, investigate the problem and resolve it as quickly as possible. Do not assume that the situation at your unit must be under control simply because the police have yet to serve a search warrant at the property.

## **Trespass Exclusion**

According to law enforcement attorneys, owners of multifamily complexes who use a "lease enabling" provision<sup>1</sup> may exclude nonresidents from the common area of the property and have such people arrested for criminal trespassing if they refuse to leave, or if they return after being excluded. Owners may empower police officers to act on their behalf for the purpose of enforcing trespass exclusion laws.

Landlords who wish to set up such a partnership will need to use a lease enabling provision, and write a letter to the local chief or precinct commander that gives police officers permission to enforce the nonresident exclusion criteria in the common areas of the property. There are other elements, such as agreements about record keeping, that you will need to have in place in order to set up this partnership. Contact the Riverdale Police Department to find out about participation and specific procedures that apply for your facility

## **Nuisance Abatement Laws**

New laws have been developed in recent years that give law enforcement agencies greater ability to pressure property owners (rental and owner-occupied) to abate problems associated with chronic illegal activity on their property<sup>1</sup>. While various local ordinances have been adopted, there is also a statewide version.

The laws are designed to ensure that, in situations where landlords (and other property owners) do not take appropriate action to address problem activity on rental property, recourse exists to force the landlord to act. Remember: While the police can arrest for criminal activity, only the landlord can evict. Essentially, that is why these laws exist.

If you are a responsible landlord, it is unlikely that these laws will be used against you. Each law has built-in safeguards designed to ensure that landlords who act in good faith, and are responsive to the problems identified, will not suffer penalties designed for those few landlords who truly do not care if they rent to tenants who harm the neighborhood. If you have reason to believe that your tenant's conduct could lead to such action, contact your local law enforcement agency and speak to neighbors, and possibly your tenants, to make sure the issues are addressed quickly and appropriately.

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<sup>1</sup> Riverdale ordinance 4-5-3 Defines Nuisance and outlines the general requirements

## THE SECTION 8 PROGRAM

*The term "Section 8" describes a number of federal subsidy programs that allow people of limited means to rent housing. The tenant pays a portion of the rent, while the federal government pays the rest. The Section 8 program is under the control of the U.S. Department of Housing and Urban Development (HUD) and administered locally by Public Housing Agencies.*

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### **The Basics**

In order to have the same success rate as can be expected with private rentals, you must understand the legal and practical differences between publicly subsidized and private renting. The Section 8 program is a valuable means to help low income people finding good housing. Participation in the program by good landlords is highly beneficial to program participants and to the community at large. For landlords, the key to success is understanding how the program works and recognizing that the landlord-tenant relationship will be somewhat different from typical private rental situations.

1. Before renting through Section 8, learn about how the program works. Start by requesting a landlord information packet from your local housing authority and finding out about any landlord information trainings that your housing authority offers.
2. Understand your responsibility to screen Section 8 applicants just as thoroughly as private market applicants are screened.
3. Make sure you understand the meaning of the lease addendum which the housing authority will require the landlord and the tenant to sign.
4. Make sure you use a lease that incorporates the type of requirements noted in the chapter on Rental Agreements.

### **Benefits**

1. **Reliable rent.** A large portion of the rent is guaranteed by the federal government. So, once the paperwork is processed, you'll get the subsidized portion on time, every month. Also, assuming you screen your applicants responsibly, your tenants should be able to pay their portion on time since the amount is predetermined to be within their means.
2. **"Fair Market Rent."** HUD and local housing authorities work to ensure that subsidized rents do not exceed comparable private rentals in the area. For landlords who are not aware that higher rents are more typical, it may be a pleasant surprise to discover the room to raise your rates. Those who are charging rates comparable to other nearby rentals will receive similar amounts under Section 8. Those who attempt to "lead" the market in price may suffer somewhat.

3. Payment will continue during certain disputes. Local housing authorities are required to continue paying the rent subsidy to the landlord until the resident has physically moved out of the unit, except in situations when housing assistance is terminated as a result of the resident(s) violating Section 8 program obligations. This means for example, that should you and your tenant become involved in a protracted eviction dispute and you begin a court action against your tenant, you typically will be assured of receiving the subsidy portion of the rent up until the tenant moves out. Also, if the tenant "skips" out - leaves without giving notice - the owner may keep the subsidy through the end of the month in which the tenant skipped.

In a related matter, note that housing authorities no longer provide vacancy loss or damage protection assistance. However, new regulations do allow a landlord to collect full security deposits from Section 8 tenants. In general, you may now require security deposits from a Section 8 tenant using the same guidelines you use for a non-subsidized tenant. The possible limits are these: A local housing authority may set rules that limit security deposits to an amount which a landlord typically charges unassisted tenants or forbid security deposits from being above private market practices.

4. Social service referrals. Most housing authorities provide referrals for tenants who experience a period of personal crisis. For example, should an otherwise reliable tenant develop problems making payments on time, the housing authority may be able to connect the tenant with an agency that can help solve the problem and get the person back on more stable footing.

5. Landlord support trainings. Many housing authorities provide trainings for participating landlords. Examples of topics include: program procedures, housing quality standards, and review of available property improvement programs (such as weatherization loans). Topics are, in part, selected by requests from participating landlords, so you are encouraged to call in your recommendations.

6. Serving the public good. Those landlords who meet their responsibilities and require Section 8 tenants to do the same provide a valuable service to the community, by renting decent housing to good citizens who otherwise could not afford it.

7. Annual inspections help maintain the property. Annual inspections by the local housing authority will help ensure that your rental units stay in safe and sanitary condition. This can help protect the health and safety of your tenants and the value of your investment.

## **Cautions**

1. The lease addendum provided by the housing authority may lack some valuable conditions. The housing authority's lease requirements are designed primarily to match HUD's requirements and won't necessarily include all provisions you consider important. For example, without the necessary lease provision, you may not "post and mail" notices

(see Crisis Resolution). While landlords have been allowed to attach lease provisions to the "model lease" provided by the housing authority, new guidelines have established that landlords may use the same lease they use in the private market, provided that they also use a lease addendum approved by the local housing authority. Although the lease addendum provided by the local housing authority will modify the landlord-tenant relationship, by starting with the same rental agreement signed by non-subsidized tenants, the landlord will usually be in a stronger position to control problem behavior. The chapter of this manual on Rental Agreements discusses valuable lease provisions which can be incorporated into rental agreements to help address such issues.

2. No-cause evictions are not allowed in some, but not all, Section 8 tenancies. Under Section 8, all evictions during the initial term of the lease (typically the first year) must be "for cause." During this period, landlords must use one of the for-cause notices outlined in landlord-tenant law to terminate the lease (see Crisis Resolution). After the initial lease term, depending on the rental agreement the landlord is using, the landlord may be able to serve a no-cause notice similar to that served with private tenants. In instances where a landlord does not have the no-cause option, after the initial lease term a landlord would still have a few additional "good cause" eviction options such as personal, family, or nonresidential rental use; or a business reason such as property sale, renovation of the unit, or desire to raise the rent. Note that the tenant is bound by the same type of for-cause termination during the initial term of the lease, but is allowed to submit a 30-day, or 60-day, no-cause notice any time afterward.

3. Evictions can be more complicated. As discussed in the chapter on Crisis Resolution, there are some limitations placed on the type, and timing, of eviction notices that may be served on a Section 8 tenant. In addition, there is a somewhat greater possibility of going to court in a Section 8 eviction. This is in part because Section 8 tenants are sometimes better informed of their rights than are non-subsidized tenants (housing authorities do not act as advocates for tenants, but they do make sure that renters are aware of their basic legal options and recommend that they seek the advice of an attorney). Also, the opportunity for error in the eviction process is higher since the landlord must comply with both state landlord-tenant law and with HUD regulations in order to serve the notice correctly. For example, evictions have been successfully blocked because a landlord failed to provide the local housing authority with a copy of the notice that was served on the tenant.

The key to success is knowledge. An owner who understands the process, or is working with an attorney or property manager who is familiar with issues that are unique to the Section 8 program, can generally expect a success rate equal to that of renting to private market tenants. Therefore, until you are familiar with the requirements, the best way to avoid eviction complications is to consult an experienced landlord-tenant attorney prior to beginning the process.

## **Misconceptions**

Housing authorities prescreen their applicants along the same guidelines that a landlord should use.

False. Housing authorities generally screen only for program eligibility (primarily income level), although some housing authorities have increased the level of screening they conduct. It remains the job of the landlord to do a complete tenant screening - make sure they can pay the remainder of the rent, check their rental record through previous landlords, and run all other checks the same way you would with non-subsidized applicants. You are not only legally permitted to, you are expected to. In fact, HUD regulations require housing authorities to inform owners that screening is the owner's responsibility and that the housing authority has not screened the applicant. Screening applicants, subsidized or not, is both your right and your responsibility; you are entitled to turn down Section 8 applicants who do not meet your screening criteria and accept those who do.

If you evict tenants for drug activity or other very serious lease violations, the housing authority will simply let the same people rent again elsewhere.

False. HUD guidelines allow local housing authorities to terminate assistance to tenants involved in the manufacture, sale, distribution, possession, or use of illegal drugs. The same guidelines also apply to tenants involved in violent criminal activity. Further, HUD guidelines permit housing authorities to terminate assistance to program participants for any serious or repeated violation of the lease. This means that tenants, who are evicted for serious violations of the lease, will not automatically be eligible to continue as participants in a subsidy program. A local housing authority now has more latitude to terminate housing assistance in these and other instances and to permit another family, perhaps a more deserving one, to move off the housing authority's waiting list and onto housing assistance.

Also, there are instances when a housing authority could decide to terminate a participant's assistance while she or he is still a tenant. For example, a housing authority might terminate assistance after receiving reports from local police regarding proof of illegal drug activity. Remember: termination of payments doesn't automatically terminate the lease. A housing authority can't do your work for you; even if payments are terminated, evicting the tenant remains your responsibility.

## **Screening Section 8 Applicants**

In addition to following the steps described in the chapter on Applicant Screening, you may also want to check a Section 8 applicant's background with the local housing authority. The availability of such a process will vary depending on the policies of the Public Housing Agency you are working with. However, all housing authorities are now required to give prospective landlords the applicant's current address and, if known, the name and address of the owner at the applicant's current and prior addresses. Further,

HUD regulations permit local housing authorities to provide other types of information, such as tenant history, so ask your local housing authority about the availability of such information.