

What Property Owners Should Know to Keep Out of Legal Hot Water by Jackie Ramstedt

“But we only have 70 units.” “We have never had any problems before.” “Everyone knows how we run our property.” “No one is complaining.” “We have always done business this way. Besides I can’t afford to do all the things the big companies do!”

Sound familiar? In today’s fast paced, highly competitive world of property management, the individual property owner probably doesn’t even realize that costly “potential lawsuits” are lurking in the shadows just waiting for the right moment to strike!

Fair housing discrimination claims, customer service complaints, governmental agencies such as OSHA, EPS, or HUD, and even employee problems are just a few of the issues that if not met with a well thought out, **written** plan of action or policy specifically addressing these matters, can literally cripple cash flow, increase insurance premiums, bankrupt or even shut down a property completely!

Having a company Operational or Procedures Manual is the answer. Running any business demands the owner to have clearly written policies and procedures that reveal how the property handles any matter that is *NOT clearly defined* in their lease agreement or other legal documents. In other words, handling the “what if” situations that can easily be adhered to for good, consistent business practices.

Here are *just a few of the areas* that are potential “hot spots” for lawsuits from not only current residents, but previous and prospective residents AND even employees!

So before we start ...please remember **I am not your attorney**, so have any of your policies or procedures reviewed by the appropriate legal counsel. Remember THEY will be representing you if you go to court! Thank you.

The Application Process:

- Updated and regularly revised “*Resident Qualification Standards*” which address all areas of qualifications including verifiable income, rental history, employment, credit, occupancy standards, and even criminal background. Also address any “out of the norm” situations such as roommates and how they qualify, additional security deposits for those who don’t meet the credit criteria, or if Guarantors or Co-signers are allowed for those who don’t meet your income requirements. Qualifying to live on your property is a HUGE area for potential discrimination lawsuits.
- Either use a *third party verification company*, or have a clear, *written standard of procedure of how to process the application to qualify*. Include what company you use, how many days it will take to complete, and any information regarding application fees, if they are refundable whether the

applicant is qualified or not, and the application deposit on the unit and what happens to it ALSO if they are qualified or not.

The Move In Process:

- Along with the *lease agreement and any other pertinent addenda* that are NOT addressed specifically in that lease agreement, such as pet, utilities, smoke alarm or any other fire / safety issues, security refund upon move out, rental payment policy including late payments, etc., the new resident should have a *Resident Guidelines or Rules and Regulations booklet*.
This booklet of information should include **additional information for the resident** specific to the property such as office hours, emergency contact numbers, pest control dates, visitor policies, parking, towing, package delivery, mail, locked out of unit procedure, cutting of more unit or mail box keys, and permission to release of information regarding the resident or resident's payment history for credit check, mortgage, or other approval purposes.
- A physical *Move In Condition of Unit* sheet should be completed listing all conditions of that unit ON MOVE IN DAY. This listing will be used to compare to the condition of the unit upon move out for cleaning and damages that will be deducted from their security deposit and /or charged to them.

Current Resident Issues:

- *Rental payment policies* should have clearly stated dates for the process prior to eviction procedures.
 - “Rent is due on the **first day of each month** without demand. It is the responsibility of the resident to remember to pay each month.”
 - “Rent payments will be accepted in the form of personal check, money orders, or certified checks. **NO CASH** will be accepted.”
 - “The **third day of each month** is the official late date of all rental amounts not paid in full for that month. On the third, any payments made must be in either certified funds or money orders. NO personal checks accepted after the third of the month for rental payments.
 - “Initial late fees begin on the morning of the **fourth day each month**. A \$_____ amount will be charged to the outstanding rental amount.”
 - “**Daily late fees** of \$_____ will begin on the morning of the fifth each month and continue until the complete rent is paid for that month.”
 - “**Any checks returned from the bank as NSF** (Non Sufficient Funds) will be subject to all late fees including daily late fees until the balance has been completely paid, including the one time NSF of \$_____.”
 - Any outstanding rental payments will be given a “*3 Day Eviction Notice*” per paragraph & line of the lease agreement. Any non-payment of current rental amounts will result in the beginning steps of the *eviction process*. Resident will be charged for all filing, court, and processing fees of eviction process.

- *Service request procedures, contact phone numbers, and what constitutes an after hours emergency call response.*
- *Transferring on site to another unit, whether during a current lease agreement or after that lease has expired, should also have a clear written policy.*
 - This policy should include stipulations as to terms and conditions of that transfer such as
 - All rental payments must be current, and no outstanding delinquency payments such as utility, late fees, NSF fees, etc. owing
 - Current unit will be walked for condition assessment and any cleaning or damages will be deducted from the security deposit and a *new security deposit* will be required on the new transfer unit
 - Time frame for transfer- “date to be out of the current unit”
 - Any transfer fees charged if transferring during a current lease agreement
- *All current files for residents should be kept in locked file cabinets and all previous resident files must be kept in accordance to local or state laws, generally three to five years, for auditing purposes.*

Employee Issues:

- All employees should have an *Employee Handbook* outlining their job responsibilities as an employee that addresses any aspect deemed pertinent as an employee...dress code, smoking, personal conducts, etc.
- *Hiring criteria and process of employment application approval. All applications should be kept up to three years for auditing purposes or as long as your state requires.*
- ***Any and ALL employees living on the property who as part of their Employee Compensation package, receive either a “free rent” unit or a “discounted rental amount” unit, must sign all the appropriate lease agreements, addenda, etc. just as ANY resident would. The only difference would be to put in the “Special Provisions” paragraph on the lease agreement the following verbiage...***
 - “This unit is considered part of this employee’s compensation package and therefore occupancy and the “rent free” status is based solely on current employment. Upon termination of employment, all residents and occupants of this unit will have **14 days to vacate** and pay for any cleaning or damages that go beyond the “normal wear and tear” conditions.
 - **OR** if the employee receives a “rental discount”, make sure to have procedures for rental payments and policy for late payments, NSFs, etc. in writing and given to that employee.

- *Procedures for infractions of conduct* and what constitutes **immediate termination of employment** including theft of community property, money, files, proprietary legal information, etc.

Where Do I Start?

- It's simple. Begin by purchasing a large three ring notebook with dividers. Separate the dividers into categories such as those we mentioned above. Now start writing each policy or procedure in detail.
 - Make sure to *put the date the policy went into effect* and who would be receiving it. As you make changes or modifications to that policy, change the date to read "*Revised as of _____*".
 - This keeps *ALL polices in this one location*, but allows for changes to be made as situations change.
 - *Review policies and procedures regularly.*
 - *Search the Internet for informational updates* to your city's or state's legislative issue changes, fair housing updates (www.fairhousing.com), OSHA, EPA, HUD, ADA (Americans with Disabilities Act), National Apartment Association (www.naahq.org), Mulithousing World Association (www.mhw.com), or your local apartment association or builder's association chapters.
 - *Attend legal seminars or events* in your city or state to maintain an "up to date" concepts to managing your property. Although some policies transcend time such as ethics, some issues change with the times. *Don't be caught running your property with an "1980's mentality" in a 21st century business savvy world!*

Lawsuits have no boundaries! They happen to "one owner, small properties" as well properties owned and operated by some of the nation's largest management companies. *It's all about good communication with clear, concise information written and posted or available upon request or audit.*

As they say ..."**The best defense is a good offense!**" and larger companies have the advantage of entire departments filled with attorneys and marketing personnel to review their procedures and policies for their assets. But for the individual property owner, the **best offense is to begin by having everything in writing.** This alleviates misunderstandings and clarifies reasons for procedures and policies. It may not save you from getting sued, but it can mean the difference between "learning and recovering from a mistake OR loosing your property and your investment altogether!" It's your future!

"Jackie Ramstedt, CAPS, CAM, CAS, is a nationally renowned Motivational Keynote Speaker, Marketing Consultant, and Performance Coach, who has more than 23 years experience in the multihousing industry throughout the United States and Canada. For information on how Jackie can help with your seminar, training, consulting or Keynote

*speaking needs, please contact her offices at 800-925-5169, e-mail
Jackie@jackieramstedt.com. or visit her website www.jackieramstedt.com*