

**A New Year: Prepare Yourself**  
**by Susan Burnett Luten, Esq.**

Do you begin each year with a list of New Year's resolutions? We are all so busy that it is difficult to find the time to reflect on what we do and how we do it. So, even if you have never followed up on New Year's resolutions before, this year, it's time!

Many, if not most, landlords and even professional property managers tend to go from year to year without paying attention to their forms and procedures. They may read articles and keep up-to-date on what they know, and what is new, but that rarely transforms into appropriate action. Quite simply, it is rare for a property owner or professional to read an article or see a news item and then review relevant forms and procedures to make necessary changes.

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In fact, the majority of serious problems can be traced back to an old form, or an outdated procedure. In many cases, property owners knew they needed to make changes, but just never bothered to do it. So, call it a New Year's resolution, and let's get it done! Here are some of the details.

***Review and revise your rental agreement.*** Does your rental agreement date from the 1980s, the 1970s, and even the 1960s? Landlords seem to assume that if it isn't broke, don't fix it. There are lots of old terms that just should not be in your agreement, and new ones that should be included. The AOA office can provide you with an up to date rental agreement form for your use.

***Consider some of your standard practices.*** Do you hold enough in security deposits? Are you satisfied with your attorneys' fees provision? (Get them OUT!) Do you need to update your subleasing terms? (Prohibit it absolutely!) Does your agreement permit inspection for any reason on reasonable notice? (Put that IN!)

If you decide to make changes in the terms of tenancy for existing tenants, remember you can do so only if the previous lease has expired and the tenancy is now month-to-month. Then, you can change the terms by preparing a notice pursuant to Civil Code section 827, giving the tenant 30 (or 60) days' notice. (This is the same type of notice you would give to increase the rent.) You can also change terms of tenancy if the month-to-month tenancy is oral.

***Make sure your rental agreements contain the required forms.*** Do you have lead brochures required for properties built before 1978? Do you have asbestos forms? Megan's law language? Do you have a move-in form showing the condition of the unit on move-in that you can refer to on move-out? If you are in a rent-controlled jurisdiction like Oakland, you need to give notices about the rent law to tenants at the inception of each tenancy. Take an hour or so and make sure you are ready for new tenants, or to update the terms for existing tenants.

***Review and revise your house rules.*** After you have considered the state of your rental agreements, think about the types of problems you may have had over the past year. Tenants dumping too much garbage in the dumpster? Too much noise late at night? Parking problems?

These problems can be anticipated, and usually controlled, using house rules. Every rental agreement should contain a reference to house rules, which are part of the rental agreement, and that can be changed from time to time. That way, a landlord who suddenly starts having a problem—usually with a particular tenant—can try to solve it by revising the house rules rather than by the more costly and risky route of an eviction. House rules also discourage disputes between tenants: if everyone knows what the rules are, there is less room for conflict and controversy.

Unlike rental agreements, there are no standard house rules. Every set is different. They range from how to use the shower curtain in an old Victorian flat subject to bathroom flooding, to which part of the garden and driveway, and which flowers are for tenant use.

***Update procedures files.*** That means look at your tenant application verification system—are they complete and current? Do you use the AOA service to check credit histories? If you haven't yet, why not get set up to do so now and have that information ready when a vacancy

occurs? And do you have forms to give tenants who are rejected because of a bad credit report? Again, you can get this required form at your AOA office.

Do you have current and complete forms ready for 24-hour notices of inspections? Do you have proofs of service forms to show that notices were properly served? A good landlord book to refer to for the proper methods of service? Do you have forms for tenants to turn in if they have a problem or a condition requiring inspection or repair?

**Inspect your property.** It is astonishing that landlords and even managers may go for years without inspecting their property. You should inspect at least three times a year. (This is up from twice a year, since so many issues today arise out of habitability claims of which the landlord was entirely unaware!) Make it your New Year's commitment to do it now. And along those lines, do you have a copy of the inspections forms used by your local codes enforcement department? (Many cities have not only forms, but also brochures describing what they look for and how the various code violations are evaluated.) Do you have a form for each unit and the common areas showing the last time you made a complete inspection, the conditions at that time, and any repairs or maintenance done since then? While you are inspecting, you can use your new form!

**Tenant files and information** – Do you have a file for each unit containing the current tenant's application and rental agreement, any notices of changes in terms, all correspondence, any requests for repair, and a check-in sheet showing the condition of the unit at the inception of the tenancy?

Do you have a form letter for references, and/or an authorization form ready for tenants to sign to enable you to give a complete reference if asked by a prospective landlord?

**Check your insurance coverage.** Do you have a file with current policies? Have you checked to make sure they are current? (Think about that unlucky day when you find out that they weren't!) Many insurance companies are eliminating coverage for actions against landlords by tenants for wrongful or attempted wrongful (retaliatory) eviction; what about yours? Have you considered whether the coverage amount you chose years ago is still enough, and whether the deductible might be raised or lowered for your current circumstances? Or would an umbrella policy extending the amounts of coverage for all of your policies be better protection at less cost?

Do you have an apartment owners' policy, or just fire protection? (Think about that unlucky day, too.) Does your policy have any special limitations? Does it prohibit use of the roof which the tenants have been using for parties and sunbathing? Any injury on the roof might not be covered!

**Think about your long-range goals:** is this what you want to be doing with your life and your time? In some cases, the answer is no. Landlords find themselves managing property in an era that is increasingly litigious, and increasingly hostile. No longer a gracious occupation of proud landowners, property ownership has become a sometimes vicious occupation that involves a lot of mean-spirited people. Many landlords find that the local and state governments not only do not value the housing services they provide, but are acting to prevent landlords from operating their businesses through rent control and other limitations.

Many property owners find themselves enmeshed in a process they no longer enjoy. Their management shows it. Rather than check references that may be negative, they rent to avoid looking for another tenant. Rather than confronting a new tenant about a security deposit or signing the lease, they let the tenant move in without them—and you can guess what invariably happens. If you see yourself in this description, it may be time to investigate professional management, or even consider a sale or exchange to another type of investment. And, if you don't have a plan for the future, think about it. If professional property management is not a good move now, when? Or are you interested in some other type of investment?

**And if you were to leave the scene tomorrow, whether by death or illness, would your family be able to swiftly carry on in your absence?** Would all of these documents and files be ready for your family to take over in an emergency?

Don't put off the organization and documentation that is required in such a circumstance. Just as we are reminded to make a will and keep copies at home and with friends for easy access, we also need to keep our other affairs in order.

**Get legal advice when you need it.** A very high percentage of landlords who consult with an attorney admit that they knew they had a legal problem, but decided to ignore it. The situation is invariably worse by the time an attorney is finally consulted. Landlords will say that it was too much trouble—or, they thought, too much money—to find out what to do. We're not talking about an eviction or a lawsuit filed by a tenant—that's pretty obvious. But issues arise: an unauthorized

subtenant moves in, a window leak damages tenant property, tenants fight with each other, or neighbors complain of a nuisance. And you know the rest: by the time they get to an attorney, they did have an expensive problem that many times could have been entirely avoided.

These situations require legal advice. We are years past the day when a landlord could follow his instincts, be nice and accommodating, and have things work out. Much of the law today is counter-intuitive, the obviously civilized thing to do is actually the wrong choice.

With increasing rents and pressures on tenants, tenants have become more hostile and quite litigious. They often know more than the landlords about the law, and will "set-up" a situation to get the upper hand before the landlord even knows there is a problem.

Getting legal advice is very much like getting medical advice. It is far better to consult your physician when the symptoms first appear, and deal with them, rather than ignore a problem until it is serious. With the management of your property, it is also less expensive. Get advice when you need it—the fortune you save may be your own.

So, whether it is New Year's Day or Superbowl Day, as you watch football games and old movies, celebrate the New Year and go through a few files and documents, and make a few lists. We'll be thinking of you!

*The information contained in this article is not intended as legal advice. Always consult an attorney if you have a particular problem or question.*

*Susan Burnett Luten, Esq., has represented landlords and real estate professionals since 1980. She is now retired from practice, but her website, [www.luten.com](http://www.luten.com) is still active and has many interesting and useful articles for landlords.*