

## **Jury Orders Landlord to Pay \$6 Million!**

By Michael K. Elson, Esq.

Successful high award lawsuits against landlords are becoming more common. Though you may have good business practices and care for the needs of your tenants, you can still be successfully sued and placed in a potentially catastrophic financial situation. Landlords have become fertile grounds for lawsuits because they possess valuable business and personal assets, which can be seized to satisfy a judgment. Furthermore, juries are becoming more sympathetic toward tenants and harsher against what they view as landlord negligence, abuse or discrimination. For example, a Los Angeles jury recently ordered the owner of a Hollywood apartment building to pay nearly \$6 million to a boy who was burned while warming his hands on the open flame of a gas stove, because the apartment's heater was inoperative.

As a landlord, you are subject to unlimited financial liability and exposure arising out of the operation of your rental property. Lawsuits concerning mold, lead, asbestos, disabilities, discrimination, wrongful termination, and harassment have become alarmingly common. Liability can arise from numerous sources including managers, guests, tenants, tenant applicants, contractors, vendors, dog bites, slip and falls, and other premises liability. Unfortunately, most insurance policies contain exclusions for mold, lead, and other environmental hazards. Additionally, they rarely cover judgments arising out of discrimination claims. As a result of high profile lawsuits and large damage awards topping \$20 million, many insurers have sharply reduced or eliminated mold coverage in their policies. Even with expensive high-limit insurance coverage, a disabling injury, homicide or rape, or an incident such as a fire or balcony collapse resulting in numerous claims, can create liability far exceeding your policy limit.

Fortunately, there is more you can do to protect yourself as an owner of a rental property. By forming a separate business entity and transferring ownership of the property to that entity, your personal assets will be shielded from attack. As a result, the business, rather than you personally, becomes the title holder of the individual rental property. In the same way that shareholders of a corporation are not personally liable for debts and judgments against the corporation, the owner(s) of the business are not personally liable for incidents involving property held by the company. Without such protection, your home, bank accounts, investments, vehicles and other personal assets can be taken from you to satisfy a judgment, potentially leaving you bankrupt.

For most property investors, the Limited Liability Company (LLC) is the business entity of choice. Like a corporation, an LLC is a separate and distinct business entity requiring its own bank account and taxpayer identification number. The LLC is generally more attractive to property investors than the traditional corporation, because there is no double taxation and there are fewer formalities.

The State of California requires the LLC to pay an annual \$800 franchise tax fee, the same as a regular corporation or limited partnership. This fee, however, can be viewed as a yearly "insurance" premium, which provides vastly more protection than private insurance with an equivalent premium amount. The beneficial result is that the maximum financial exposure to the owner(s) of the LLC, including liability from acts of its employees, is limited to the individual property held in the LLC, and nothing else.

There are other methods to preserve your assets, however, do not confuse asset protection with asset preservation. While a revocable trust will preserve your assets by saving many thousands of dollars in estate taxes and probate fees, alone it will not protect those assets against lawsuit judgments. Fortunately, a living trust and LLC can work together to protect and preserve your assets.

In today's threatening legal environment, good intentions and liability insurance may not provide adequate protection for your business and personal assets. A properly formed LLC, however, will significantly enhance the level of protection for you, your family or your investors. Every landlord must seriously consider utilizing this valuable business tool.

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