

SACRAMENTO REPORT

City Bars Rentals to Illegal Aliens

By Greg McConnell, Legislative Advocate

No matter where one stands on the issue of illegal immigration, landlords should all agree that the recently adopted City of Escondido Ordinance is ill conceived, incredibly unfair as it tries to make landlords the policing agent against illegal immigration, and in many ways just down right dumb.

Let's start with dumb. In Section One of the "Findings", the Ordinance states: ***Federal law requires that certain conditions be met before an alien may be authorized to be a lawful permanent resident, or be lawfully present, in the United States.***

Section Two states that: ***Illegal aliens . . . do not normally meet such conditions as a matter of law when present in the City.***

Of course "illegal aliens" do not meet the conditions that are necessary to be lawfully present in the United States. That's why they are called 'illegal aliens.'

In Section Three, the Ordinance states, as if it were a matter of fact that: ***Because illegal aliens do not wish to call attention to their presence, such individuals are less likely to report (illegal) conditions, and notify authorities, or to participate in subsequent proceedings to remedy such conditions. This creates an increased likelihood that housing and property maintenance violations will remain unreported and, because such conditions are unreported, an increased chance that such conditions will multiply in the future.***

Could not the same be said about many groups who try to keep a low profile? In fact, is it not more likely that drug dealers, gang members, prostitution rings and others who would face criminal charges would try to stay on the down low? Don't these other groups create an even greater chance that illegal conduct and bad conditions will multiply in the future? But what happens when owners try to rid their properties of these bad actors – they face jury trials, wrongful eviction suits, 60 day notices, and other major impediments to swiftly terminating their tenancies. On a scale of who threatens public safety, I can think of many more dangerous people than illegal aliens. Why, then, are they singled out?

And then we have the kicker. Section 4 states that this new law is being created because:

The state and federal government lack the resources to properly protect the citizens of the City of Escondido from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens.

How absurd! The state of California and the United States of America with billions of dollars at their disposal do not have sufficient resources to protect the citizens of Escondido from the adverse consequences of illegal aliens, but landlords, the majority of whom are very small investors, do. This is both dumb and unfair, but let's get to the latter in a moment.

The Ordinance makes it unlawful "for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law."

This raises many questions, including the following short list:

1. Just how does a landlord determine whether a person is an illegal alien?

2. Will this new provision require landlords to add residency screening to the list of issues that he or she looks at when evaluating a potential tenant?
3. So as to avoid claims of discrimination, does not the landlord have to independently verify the residency of all applicants no matter their race, color, or spoken language?
4. Is the landlord required to continue monitoring the residency status of every person who is not a permanent US Citizen?
5. How often does the landlord have to update information in order to prove he or she is not in reckless disregard of the fact that the alien remains in the United States in violation of the law?

There are many more issues that come up, but the Ordinance's failure to address even these rudimentary questions puts landlords in an untenable position.

Flawed and Unworkable Enforcement Mechanism

Under the Ordinance, an enforcement action starts with the filing of a written complaint by a city official, business entity, or resident that alleges that the landlord is harboring an alien. The complaint must describe the violator and allege that he or she is harboring an alien. However, the allegation must be based upon something more than the person's national origin, ethnicity, or race. Exactly what that something else might be is not set forth in the Ordinance.

Once the complaint is received, the city verifies with the federal government the lawful immigration status of the person who is using or seeking to use, occupy, lease, or rent a dwelling unit in the City. If it is determined that the person is an illegal alien, the city notifies the landlord and the landlord has ten days to correct the violation either by denying tenancy to an applicant or by removing the illegal resident.

If the landlord fails to correct the violation, his or her business license is suspended. During the period of suspension, the landlord is not allowed to continue collecting rent from the illegal alien or any other tenant in the building.

And this is where the unfairness of the Ordinance glares through. Landlords are supposed to identify who is and who is not an illegal alien. However, they cannot profile either under the Ordinance or under fair housing laws. So, the best they can do is to require every tenant to prove their residency. This will mean that units will go vacant for extended periods as the status of applicants is verified by the city and the federal government. With regard to sitting tenants, this means that landlords will have to investigate the residency status of each of their sitting tenants and try to evict those who they find to be illegally residing in their units.

Just in case you are wondering, yes it is possible for a landlord to do nothing and just wait for the results of an investigation by the city. The problem, however, with that approach is that the city only gives landlords ten days to correct a violation. If they do not comply, they face suspension of their business license and disqualification from collecting rent from any tenant in the building. Everyone who has been in the landlord business in California for even a day knows full well that you cannot remove a tenant from a California apartment within ten days. If you try to do so, you will surely be sued for wrongful eviction.

Bottom line. This is a bad law. It makes landlords responsible for something that is the responsibility of the federal government. The law is ill conceived, and poorly drafted. It creates traps and liabilities that are just plain unfair to landlords.

I will report new laws for 2007 next month. Happy Holidays to all!

[Editor's Note: From the time the City Council voted this law in last month, a lawsuit was filed in the federal court in San Diego on behalf of two Escondido landlords. The lawsuit alleged that this law illegally punishes landlords for renting to illegal immigrants and asked the court to stop the law from taking effect.

As a result, the federal judge temporarily blocked Escondido from enforcing this law (previously scheduled to take effect on Friday, November 17th), claiming that he thought it would inflict "irreparable harm" on both tenants and landlords. The judge will schedule another hearing within the next four months.]

The full text of the Escondido Ordinance can be reviewed at <http://www.escondido.org/ord2006-38.pdf>.

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