

Welcome



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ATTORNEYS AT LAW

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LANDLORD'S GUIDE FOR AVOIDING LAWSUITS

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KEY SUBJECTS

- THE “MOVE-IN” PROCESS
- LEASES
- DISCRIMINATION
- CLAIMS AND LAWSUITS



THE “MOVE-IN” PROCESS



Best practices in the “Move-In” Process

- ❑ Avoid costly lawsuits with potential residents
- ❑ Avoid disputes during the tenancy
- ❑ Understand the rights and responsibilities of landlords and residents
- ❑ Find the best tenants



BE CONSISTENT

- Even if you don't have a rental plan, be consistent when dealing with prospective tenants
- When answering questions, all answers should be somewhat similar to everyone



An advertisement should be
HONEST



What does this mean?

- ❑ Do not LIE
- ❑ Do not suggest a lower rent and hope for a bidding war
- ❑ Do not advertise for rental units that are unavailable



What should not be in an ad?

- An ad may not be discriminatory
- Discrimination (even unintended) is illegal and can be a costly mistake



What is a discriminatory ad?

**An ad should not mention age,
gender, race, religion, disability,
adults only, marital status**



Examples Not to Use

“Spanish speaking neighborhood”

“No kids”

“Young, single female preferred”

“Adults only”

“Perfect for a young married couple”

“Nurses only”

“Prefer . . . ”

“Hispanic neighborhood”



Rental Applications

- Require every adult resident to fill out a rental application completely
- Always accept a rental application from any prospective resident



Should applications be rejected?

- ❑ It is **legal** to reject (not accept) incomplete applications
- ❑ You should **not** reject complete applications, even if it's unlikely you will rent to that person
- ❑ All applications must be completed fully by all adult residents



Applicant identification

- Request Social Security Number
- If no SSN, use an Individual Taxpayer Identification Number



Immigration Status

Never ask a prospective tenant (or current tenant) his or her immigration status



Sex Offenders

- You may not use Megan's Law Website to screen residents
- A background check that results in finding out that a potential resident is a sex offender is valid



Denial Based Upon Credit Report

- If you refuse to rent to someone based upon a bad credit history, you must:
 - Tell the prospective tenant your reason
 - Provide the name, address, and telephone number of reporting agency
 - Provide statement that prospective tenant can receive copy of credit report



Other Legal Methods

- Check Court Records (Time Consuming)
- Criminal background checks
 - Time Consuming
 - Requires Additional Disclosures
- Contact Employer
- Confirm bank account information
- Check with prior landlord
- Others



Be Careful

- No Megan's Law Database
- Don't interfere with existing relationships
 - ▣ Care in contacting employer
 - ▣ Care in contacting current landlord
 - ▣ Care in contacting friends/families
- Don't violate privacy



Making a Decision

- Stick with your rental plan
- If everyone is equal, select the first in line
- Large landlords who frequently never select a protected class are opening themselves to lawsuits (i.e. never renting to residents with children)



Why not me?

- Point to a solid, non-discriminatory reason why you selected one person over another
- Inform tenants of the agency that conducted the credit report
- Be consistent
- Keep records



What to do with old credit reports?

- ❑ Safe retention
- ❑ Destroy unneeded reports
- ❑ Destroy records routinely
- ❑ Computer files too!



LEASES



In Writing

**Always have a Lease
Agreement in writing!**



Types of Leases

- Month to month
- Fixed term



What should you do?

- Require one year lease and then the agreement becomes month to month
- Require one year lease and then require a one year renewal
- Do not provide for automatic renewals



Foreign Languages

- If you negotiated the lease in another language, the lease should be in that language unless the resident brings his own translator who can speak and read the language and English
- Do not hire the translator
- The translator should not be a minor



Medical Marijuana

- California Law: medical marijuana is **legal**
- Federal Law: marijuana is **illegal**, even if medicinal



Medical Marijuana

ISSUES TO CONSIDER:

- Smoking
- Growing/cultivating
- Selling/exchanging
- Verifying



Medical Marijuana

- Although you may be able to prohibit smoking, there may be issues related to disabilities
- Consider non-smoking forms of use
- Is the person a qualified patient or just smoking illegally?
- NOTE: This is **unchartered territory** in California



Medical Marijuana

- Probably okay to restrict growing and cultivation
 - ▣ BUT – apply rules **uniformly**
- Okay to restrict selling and exchanging of medical marijuana on the premises
- If you believe illegal activity is occurring, contact law enforcement



Medical Marijuana

VERIFICATION

- In California, marijuana must be prescribed by a physician to be subject to medical marijuana exceptions
- How to verify?
 - Medical marijuana card
 - Prescription
 - Other confirmation



Medical Marijuana

- NOTE: This can be a tricky subject!
 - ▣ May intrude on disability rights/patient protections
 - ▣ May intrude on privacy rights
- NOTE: May intrude on criminal issues
 - ▣ Always okay to contact law enforcement if you believe criminal activity is occurring
- Consult an attorney if there are questions or concerns



Home Businesses

- You can prohibit home businesses
- Insurance provisions
- Zoning laws



PETS

- Describe pets that are allowed
- Enforce all “no pets” clauses when you find out about the pets
- You may charge a higher deposit for pets
- Do not charge a special “pet deposit” but merely make it a larger deposit



Illegal Provisions

- ❑ Cannot waive rent control laws
- ❑ Cannot waive habitability rules
- ❑ Cannot waive repair and deduct rights
- ❑ Cannot waive inspection notices
- ❑ Cannot waive liability if guest gets injured



Illegal Provisions

- ❑ Cannot grant landlord self-help eviction rights
- ❑ Cannot waive right to legal notice, trial, jury, or appeal
- ❑ Cannot waive right to deposit refund
- ❑ Cannot waive notice provisions



Use AOA forms
(make sure they're current)

**Do not attempt to write your own
Lease Agreement**



DISCRIMINATION



Discrimination

- ❑ Legal reasons vs. non-legal reasons to refuse to rent to a person
- ❑ Be consistent
- ❑ Do not apply generalizations to people
- ❑ Document legal reasons why you chose one tenant over another



What is discrimination?

- ❑ Denial
- ❑ Representing that there are no available units, when in fact there are
- ❑ Providing inferior terms or different terms for different groups
- ❑ Harassment



Criminals

- You **are** allowed to refuse to rent for criminal convictions
- Do **not** use Megan's Law Database in rental applications
- Arrests are a little more complicated



Telephone Calls

- Always provide the same information over the phone
- Housing advocacy groups use test callers with various accents to see how landlords will answer questions



Disabled Tenants

The law requires you to accommodate the needs of a disabled tenant at **your** expense, and allow the tenant to make reasonable modifications to their unit at **their** expense, if it would allow the tenant to live comfortably and safely in the unit



What's an accommodation?

- ❑ Providing a closer parking space
- ❑ Allowing a guide dog
- ❑ Allowing live-in assistant/nursing
- ❑ Arranging to read all written agreements/notices to a blind tenant
- ❑ Granting exceptions to occupancy limitations



What's a modification?

- ❑ Lowering countertops
- ❑ Installing special faucets or door handles
- ❑ Modifying kitchen appliances
- ❑ Installing a wheelchair ramp



Modifications

- You **can** require the tenant to restore the unit to its previous condition prior to the modification (excluding reasonable wear and tear)
- You **cannot** require any additional security deposit
- You **can** require a reasonable estimate to restore the unit into an escrow account



Verification of Disability

- You can require documentation
 - ▣ Credible statements from tenant or third parties
 - ▣ Doctor's note
 - ▣ Documents
 - ▣ Government agencies



What's a disability?

- Physical
- Mental
- Substance abuse



Smokers

- Addiction to tobacco (smoking) is **not** a disability
 - You can legally reject smoking applicants
- Medical Marijuana?



Public Assistance

- You **cannot** reject an applicant for receiving public assistance, but ...
- You **can** reject an applicant solely on the basis that he/she participates in Section 8 Program
 - ▣ *Sabi v. Sterling*
 - ▣ Source of income to tenant = no rejection
 - ▣ Source of income from other party = ok to reject



Occupancy Limits

- Be reasonable with occupancy limits
 - It is unlawful to implement a 4-person limit in a 3 bedroom apartment
 - Do not have a “one-person one-bedroom” rule
 - In general, a 2 + 1 policy works:
 - 1 bedroom = 3 people
 - 2 bedrooms = 5 people
 - Treat children and adults the same
- Avoid evictions based upon new births



Personal Characteristics or Traits

- Avoid “discriminating” against a group:
 - Students
 - Particular jobs



Remember the Rule

- BE CONSISTENT – will help avoid claims
- Discrimination claims can be **expensive**:
 - Government fines
 - Damages to disabled claimants
 - Attorney fee awards
 - Punitive Damages



CLAIMS AND LAWSUITS



What can landlords face when tenants allege a violation?

- Small Claims Court
- Court of “Unlimited” Jurisdiction
- Criminal Court
- State Agency
- Local Agency (city/county)



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Small Claims Court

- Most landlord-tenant disputes end up in small claims
- \$7,500 maximum; \$5,000 if you are a corporation
- Try to settle even after you receive a complaint
- Although you don't need an attorney (and in fact, can't have one), it may help to get the issues straight and prepare you for the hearing



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“Normal” Court

- Would handle larger landlord disputes
 - ▣ Significant damages or serious allegations
 - ▣ Class action lawsuits
 - ▣ Discrimination claims, personal injury claims, etc.
 - ▣ Disputes between landlords
- Damages must exceed Small Claims amounts
- An attorney is **strongly** recommended



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Criminal Court

- Highly unusual, but it happens
- Only when a criminal charge (misdemeanor or felony) is filed
- May face jail time, fines, restitution, or a combination of the three
- An attorney is **strongly** recommended
- Not covered by insurance



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State Agency Adjudications

- Administrative Proceeding
 - Not a civil court proceeding
 - Not a criminal court proceeding
 - Involves agency investigators, agency judges, etc.
- Investigate claims of discrimination, fair housing violations, and other statutory allegations
- Mediation/informal resolution an option
- An attorney is recommended



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Local Agencies

- Handle a broad array of issues
 - ▣ Building Code, Housing Code, habitability
 - ▣ General property standards
- Rent Control
- May issue administrative citations, criminal infractions or misdemeanors
- Attorney is often not needed, unless issues are serious or complex



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When do you need an attorney?

- If you don't understand how to defend yourself
- If the issues are serious or complex
- If there is a lot of money at stake
- If criminal charges are at issue

IT NEVER HURTS TO CONSULT FOR AN OPINION



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ABOUT US



About Alvarez-Glasman & Colvin

- A full service law firm founded in 1986
- Specialize in all aspects of real estate law
 - Landlord-Tenant Matters
 - Eviction and Unlawful Detainers
 - Collections
 - Commercial Lease Negotiation and Representation
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Thank you



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