

Hopkins • Tschetter • Sulzer  
Attorneys and Counselors at Law



# Landlord News

2821 South Parker Road, Pavilion Tower II Suite 228, Aurora, Colorado 80014

htsnews@htspc.com

www.htspc.com

Denver Phone 303.766.8004

FAX Completed Eviction Forms To: 303.766.1181 or 303.766.1819

Colorado Springs Phone 719.550.8004

FAX Completed Eviction Forms To: 719.227.1181

## WHAT TO DO WHEN CHILDREN CAUSE PROBLEMS

With school out for the summer, many clients are reporting that children are causing an unusual amount of problems at their communities. Unsupervised children with too much free time and too little to do are disturbing the peace at some communities. Now is a good time to brush up on what are appropriate community rules for children, and dealing with children causing problems at your community.



Dealing with problems caused by children at your community is difficult for numerous reasons. Supposedly, in June and Ward Cleaver's time if a child got out of line, you just told the parents and that was the end of the problem. Unfortunately, this doesn't seem to work well today. If a parent were present, the child probably wouldn't have gotten into trouble. The reality is that some parents view the community as free day care, and provide little or no parental supervision. Even if it were legal, which it's not, you can't force a resident to supervise and discipline their child. In addressing problems caused by children, you must be aware of fair housing concerns. Frequently, onsite management has difficulty in addressing lease violations by children because management is not certain whose child is causing the problem and don't know which unit the child lives in.

When children cause problems, the most common response is to make more rules. Since we won't tolerate this conduct from a child; we will make a rule preventing this undesired conduct. However, fair housing laws prohibit

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## WE ARE ON THE MOVE

Hopkins Tschetter Sulzer is moving to a new location. Effective Monday July 27 we will be located at 3600 S. Yosemite Street Suite 828, Denver, CO located at East Hampden and South Yosemite. **THE FIRM WILL BE CLOSED ON FRIDAY JULY 24TH TO EXECUTE THIS MOVE.** Nothing will change except the address. Same telephone and fax numbers and the same dedicated HTS team. The Firm is excited about our new office which has been designed to provide for even more efficiencies in work flow. One of the immediate benefits of the move for our clients is the fact that we will now have an amazing new and spacious conference center on the lower level of our building in which to hold our FREE educational workshops. If you are in the neighborhood, drop by and say hello after we settle in.



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communities from making rules that target children. Specifically, fair housing laws prohibit discrimination against families with children. Children have the same right to use and enjoy your facilities and your community as adults do. Any rule that unreasonably or unfairly restricts children's activities, or use of your community



may draw a fair housing discrimination complaint. Overly restrictive child rules may lead residents to conclude that you are prejudiced against children. Rules prohibiting children from playing anywhere at the community, or requiring

children to be supervised by either a parent or an adult at all times, are examples of overly restrictive rules that we see.

While as a general rule you cannot make rules specifically targeting children, you can make rules that apply only to children based on health and safety concerns. We cannot overemphasize that this exception to the general rule is very limited. Any age restrictions based on health and safety must be supported by legitimate nondiscriminatory business reasons, and must be based on solid facts and rationale. Every rule can't be justified because it is designed to protect the "children". You must have some basis for age restrictions. Although setting age restrictions can be difficult, there are some legitimate nondiscriminatory business reasons for setting certain age restrictions.

While saying "I did it because Johnny did" won't get you out of trouble as a kid, what governments, businesses, and other communities do is support for age restrictions at your community. For example, almost all communities require children under a certain age to be supervised by an adult at the community swimming pool. The commonly accepted age is fourteen. There is not much basis for this age, other than it is the commonly accepted age. Similarly, local codes or ordinances may provide justification for age restrictions. If a local code sets an age restriction, you can't set your age restriction at a higher age. For example, if a local ordinance requires a child under the age of 14 to be accompanied by an adult at a swimming pool, you must not set your age restriction at 16 years old.

Many fitness equipment manufacturers recommend that the equipment not be used by children under certain ages without adult supervision. This provides you

with a legitimate nondiscriminatory business reason for setting the age restriction. If you can't find any manufacturer's recommendations, and no local ordinances are applicable, check with surrounding public or private facilities that provide the same amenities or facilities for their age restrictions. For example, what are the age restrictions at the Highlands Ranch Community Center, or at the local 24 Hour Fitness®? The restrictions might not always be ideal, but at least now your restriction isn't being pulled out of the air.

The key to avoiding trouble over rules that children may frequently violate is to target or address conduct, and not classifications of residents. Perform a word search on your lease documents. Search for the words "child", "children", and "parent". If the particular rule found is not based on a health or safety reason, you should substitute the word resident for child. For example, if your community has a rule that children may not play in the hallways, the rules should be rewritten to state that residents should not play in the hallways. If you do have a legitimate safety reason for making a child specific rule, make sure that the rule states that adult supervision is required, and not parental supervision.

When children run amok without adult supervision, communities may crack down by requiring that children be supervised at all times. As discussed, this rule is not going to fly. We have discussed this with the Colorado Civil Rights Division ("CCRD"). The CCRD agrees with our assessment that a property cannot adopt a rule that all children must be supervised at all times. This rule is overly restrictive in the CCRD's opinion, and implies a prejudice against children. A constant supervision rule thus constitutes familial status discrimination under both federal and Colorado fair housing law.

Colorado law does not set an age that the law requires parental supervision. The law only states that it is a form of child abuse or neglect not to supervise the child under such circumstances that a reasonably prudent parent would provide supervision. While the law does not set an age, the law along with your lease provides tools for dealing with children causing problems. If children are not being properly supervised when a reasonably prudent parent would supervise them, you can report that parent to Child Protection Services. Similarly, almost all leases require residents to comply with all laws. If the resident is not supervising their child when a prudent parent



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# HTS AWARDS PRIZES CONGRATULATES WINNERS

The last few months have been busy and filled with many housing provider Association tradeshows and state conferences. Now that the hectic tradeshow season is coming to a close we thought it would be fun to take a look back at these events and the fortunate few that were winners of HTS prize drawings at their event.

Two lucky attendees at the BARHA tradeshow held in April had their names drawn as winners of HTS prizes. This year's BARHA event was the biggest and best ever for the Boulder Association. Our hats are off to



**Sharon Blackmon, Kathy Glass display prizes for Sheila Horton, BARHA Exec Director**

Sheila Horton for hosting this successful event. Kathy Glass who is an owner/manager in the Boulder area won an iPod Shuffle "Small Talk" the newest addition to the iPod family which holds 4GB and is smaller than a AA battery. It features a self-contained sound delivery system and search function. Since acquiring her iPod Kathy has discovered iTunes collection of Audiobooks and is now enjoying them on her "small talk" iPod. Kathy enjoys dealing with her CU student residents, especially since both of her children are currently attending the University. Our second BARHA winner is Sharon Blackmon, Office Manager for Fowler Property Management where she has worked for the last 10 years. Sharon especially enjoys the excitement she sees in her student residents, living on their own for the first time. She loves that she gets to play a part in this experience for so many of her residents. Sharon won a Mino Flip Video mini-camcorder, the world's smallest camcorder weighing only 3.3 ounces. Although small in size it is high in quality with 60 minutes of recording time and it allows Sharon to capture video almost anywhere she goes. Sharon loves her new mini-cam and was excited to use it at the recent Fort Collins Kite Festival.

Jennifer Watkins of Baron Properties who is the Community Manager at Parker Hilltop Luxury Apartment Homes was the lucky HTS prize winner at the recent AAMD 2009 Tradeshow. Jennifer came to Colorado two years ago after 14 years in the property management industry in California. Having spent some time in

California as a Regional Manager, Jennifer finds that she prefers working onsite as a community manager because she considers herself a people person and loves the daily interaction with her residents. Jennifer was the recipient of a Mino Flip Video mini camcorder and was extremely



**Mark, Vic and Rhona Hunter, Assistant Mgr. Parker Hilltop congratulate Jennifer Watkins, Parker Hilltop Property Manager on being lucky winner of a mini-cam.**

excited to use it at her daughter Alexis' first baseball game. She couldn't believe that within 15 minutes of returning home, she was able to email video of Alexis' first home run to her grandparents. We are confident that Jennifer will put her new "toy" to good use taking video of Alexis, her brother Ryan and husband Jim.

Our final tradeshow winner is Judy Wilson, a Broker for Marketplace Realty for six years. Judy is that truly rare person, a genuine Colorado Native. Judy is enthusiastic about the fast paced challenges of being a broker. Her favorite part of her job is that every day brings a new surprise; she loves that she can deal with such a wide variety of issues on a daily basis. Judy was the lucky winner of the HTS prize of a "small talk" iPod at the recent NARPM State Conference and is looking forward to becoming familiar with the iPod culture. She has been involved with NARPM for the past two years.



**Judy Wilson, NARPM prize winner showoff her new i-Pod "small talk" prize.**

HTS congratulates all of our lucky winners and thank you for dropping by our booth at the respective tradeshows and state conferences. We hope they enjoy their prize and remind them to come see us again next year. You never know if you can be a second time lucky winner.

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would, the resident is violating the law, and thus the lease, and an appropriate compliance demand should be issued. For example, "your four-year old child wandered unattended out onto the frozen pond. Failure to supervise your child under such circumstances violates the law, and thus your lease."

If children have taken over your property, enforcing the lease is one way to take control back. Evicting residents for serious breaches of the lease by their children will send a strong message throughout your community that residents will be held accountable for their child's unacceptable behavior. However as previously mentioned



identifying children can be a major obstacle to enforcing your lease. When many children are involved in a property problem, onsite staff sometimes

can't either identify the children, or more importantly can't associate the children involved with their apartment units. Unless you know where a child lives, you can't issue a demand for compliance or possession to their parents. Similarly, in order to investigate a complaint Child Protection Services needs the names and addresses of the parents or adults who are not providing adequate supervision. If you don't know who the child's parents are, you won't be able to provide their names.

If you're not familiar with the children in your community, you need to become familiar. Obviously, this will be more difficult on a large community. Digital cameras are everywhere today. Take digital photographs of residents, including children, when they are breaking your lease to assist in identification. To assist with security related matters, your community could require current photographs of all residents at move-in. Many communities host resident events. Make it a point to regularly attend these events and become familiar with children and their parents.

Your lease can't require that parents or adults constantly supervise children. However, residents (parents) can be held responsible for a child's lease violation if your lease contains appropriate language. For example: "regardless of whether specifically stated in any Lease provision or Addendum, Resident is always and at all times responsible for the conduct of, shall be liable for, and shall also be in default if any occupant, family member, children, guest, invitee, or any other person about the Premises or Agent or Owner's property due to Resident, or with Resident's knowledge or consent, breaches or fails

to observe any of Resident's covenants, promises, or obligations contained in this Agreement or Addendums."

Curfews offer little assistance to onsite child problems for two reasons. First, very few jurisdictions have curfews. Second, most curfews only prevent minors from being out after 11:00 p.m. or midnight. Since many problems occur during the daytime, stepped up courtesy patrols during the daytime, at least temporarily, are more effective. Because many owners won't pay for increased patrols, some properties utilize off duty police officers to monitor the property. The off duty officers receive free or reduced rent in exchange for monitoring the property, reporting, and dealing with problems. A smart aleck nine-year old is less likely to tell an off duty police officer to get lost.

If children have taken over your property, you will only get control back when you consistently take enforcement action. When dealing with child-related issues, don't assume that a child's violation of your lease documents is a unique classification. If an adult did the same thing and you could take action, you don't need any new rules. In fact, you shouldn't make special rules for children except for the limited safety situations. Finally, take consistent enforcement action to avoid charges of discrimination. If you serve a compliance demand when a child does something, make sure you serve a compliance demand when an adult does the same thing.

**IMPORTANT HTS MAY DATES**

- July 3rd - **ALL COURTS CLOSED**  
**4th of July Holiday**
- July 3rd - **HTS Closed**  
**4th of July Holiday**
- July 9th - Carbon Monoxide Briefing  
At AAMD  
1:30 p.m. - 3:30 p.m.  
Call AAMD for Info  
303-329-3300
- July 14th - Advanced Fair Housing  
At HTS  
2851 S. Parker Road  
Tower I Conference Room  
8:30 a.m - Noon
- July 16th - Advanced Fair Housing  
For Office Professionals  
At AAMD  
8:30 a.m. - Noon  
Call AAMD for Info  
303-329-3300
- July 17th - North Client Luncheon  
Dave & Busters  
Westminster  
11:30 a.m. - 1:00 p.m.
- July 24th **HTS Closed**  
**Moving The Office**