



# Landlord News

3600 South Yosemite Street Suite 828, Denver, Colorado 80237

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

## TAKING THE TIME TO REVIEW YOUR RENEWAL PROCESS AND LETTERS CAN SAVE HEADACHES

The business axiom that it costs less to keep a customer than to get a new customer certainly applies to the rental industry. Every community wants good residents to



stay forever and always sends good residents renewal letters. However, communities are also sending out too many renewal letters by mistake to problem residents. Because

we have handled over twenty-five situations regarding renewal letters (offers) in the last couple of months, this month we address renewal letter problems, and how to avoid them.

Renewal letter horror stories run the gamut. However, renewal letter problems generally fall into two categories. One, you accidentally send a renewal letter to a resident that should not be renewed. You were planning on serving this resident with a Notice to Vacate, but instead sent a renewal letter. Two, after you send a renewal letter that you meant to send; the resident becomes a significant problem. With more and more management companies adopting sixty-day notice periods, this has become more common. When a resident has to give sixty days notice, communities are sending out renewal letters as much as three months prior to the end of the lease term.

Three months is a long time. Even an ideal resident's circumstances and conduct can change significantly in ninety days. This problem is especially true for residents who have been marginal problems, but become huge problems after the renewal letter goes out. Now all your options are bad. You can go through with renewing a problem resident, and then you may have to pursue a

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## IDENTITY THEFT

Because nearly 10 million Americans have fallen victim to identity theft, the Fair and Accurate Credit Transactions Act of 2003 (FACTA) amended the Fair Credit Reporting Act (FCRA) and mandated that financial institutions and creditors develop and implement a comprehensive, written identity theft program aimed to protect businesses and consumers from identity theft. The FACTA establishes new rules referred to as "Red Flags" that require financial institutions and creditors to develop policies and procedures for identifying, detecting, and responding to any practice or activity that may indicate potential identity theft. The compliance date for these Red Flag rules is now December 31, 2010.

Although, the Federal Trade Commission determined in 1999 that the landlord-tenant relationship was not a creditor relationship under the FCRA, there are concerns that future interpretations of the legislation may broaden its scope to include property managers and owners as creditors. Prudent property managers and owners may want to voluntarily comply with the regulations not only to protect themselves and tenants (former, current, and potential) from the harms of identify theft but also to protect themselves from potential future civil liability. Property managers and owners often have access to personal identifying information including names, addresses, telephone numbers, social security numbers, and income and credit histories. A successful, written identity theft program will ensure that this information is handled efficiently and securely. While FACTA provides businesses with a great deal of flexibility in developing their identity theft programs to accommodate the specific needs and potential risks that present themselves to each unique business, every plan must:



1. Identify the "Red Flags" of identity theft you're likely to come across in your business.
2. Set up procedures to detect those red flags in your day-to-day operations.

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## TAKING THE TIME TO REVIEW YOUR RENEWAL PROCESS AND LETTERS CAN SAVE HEADACHES

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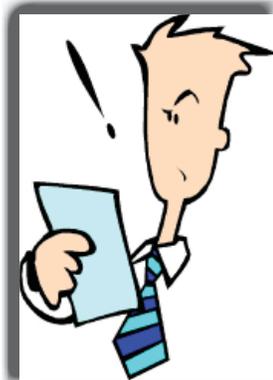
difficult non-compliance eviction. If you evict, the resident will attempt to club you over the head with the renewal letter. “Your honor, if I am such a bad resident, why did they offer to renew me?”

When these renewal problems surface, the situation board at Hopkins Tschetter Sulzer lights up. Managers regularly ask us whether they can rescind or take back the renewal offer if it was sent by mistake, or circumstances have changed to the point that the property is justified in not renewing. Can you? Maybe. The answer depends on the language of the renewal letter. Unfortunately, most of the renewal letters we have reviewed do not allow the manager to retract a renewal letter.

Basic contract law governs renewal letters. Contracts are formed when there is an offer and acceptance. You start the ball rolling by making the resident an offer to renew their lease. Firm offers have no conditions other than for the other party to accept. Firm offers cannot be withdrawn. If a renewal letter is a firm offer, it cannot be revoked. It is either accepted, or dies when it is not accepted by the deadline. If no deadline is placed on when the resident can accept a renewal offer, the resident can accept the renewal offer within a reasonable time. A reasonable time means up to and including the last day of the resident’s current lease term. If a renewal offer only requires the resident to accept, and has no time limit for acceptance, the renewal offer (letter) cannot be withdrawn.

Many renewal letters are clearly offers to renew. For example, many renewal letters state that the property is “pleased to offer” the resident a renewal, or “invite the resident to renew”. By using such language, the community is clearly making an offer and many times such offers lock you into specific rates for an extended period of time. Similarly, some communities use combination renewal letters. The renewal letter has both an offer to renew, and the resident can accept by signing the letter in the designated space. Almost all of the combination renewal letters that we have reviewed use language that makes the renewal letter a firm offer that cannot be revoked, and will only die with the passage of time.

The first step to avoiding renewal letter problems is to tighten down your renewal process. Your system should be able to flag problem residents so that you don’t send renewal offers to problem residents. In theory this should be easy, in practice it is not. You will never be able to eliminate human error. However, you can elimi-



nate software shortcomings. If your property management software can’t flag problem residents to prevent the automatic generation of a renewal letter, you should talk to your software provider about adding this feature. If you have one hundred percent confidence that renewal letters will only go to residents that deserve to be renewed, you’re a long way home.

However, even if your renewal process is airtight, this still doesn’t resolve the issue of residents who are sent renewals and then become a major problem. This problem can only be addressed by the renewal letter itself. A solid renewal letter should meet a number of goals. You should consider drafting your renewal letter so that it does not make an offer, but rather is an invitation to accept offers from the resident. Your renewal letter language should never create an unconditional firm offer. Rather, a renewal letter should be drafted more as a reminder and marketing letter. For example, “we invite you to discuss renewing your lease with us”.

If you have decided to make an offer, the renewal letter should give you an out if circumstances change. If you make an offer, you should consider placing appropriate conditions on the renewal. For example, “our offer to renew is open for thirty days, and can only be accepted as long as you are in good standing (not in default), and by executing a new lease”. A good renewal letter should also remind a resident of the disadvantages of not renewing. Specifically, the letter should remind the resident that if they don’t renew, the much higher month-to-month rates go into effect.

A carefully drafted renewal letter can meet the dual goals of having flexibility of not being locked in to set rates for extended periods if conditions change, and also effective marketing. To illustrate this point, let’s com-



pare two renewal letter approaches that go out ninety days prior to the end of a resident’s lease. The first renewal letters states, “We invite you to meet with us to discuss renewing your lease. Our current rate for a one bedroom is \$700

per month, but rates are subject to change.” The second renewal letter states, “we are offering to renew your one bedroom for \$700 per month”.

The first approach is not an offer, but an invitation to discuss a new lease. If the resident becomes a problem, you don’t have to sign a new lease with them. The first approach also creates a sense of urgency on the resident’s part. The resident may likely conclude that they better get into the leasing office, and get this done, or the

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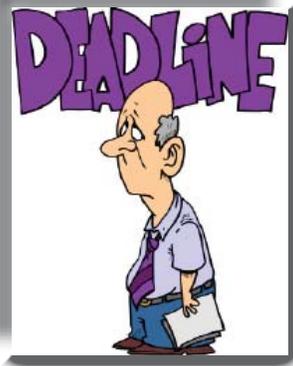
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price might go up. The second approach creates no sense of urgency. The resident may conclude that they can accept it at anytime during the next three months. Given the human tendency to keep options open and put things off, the resident will put off dealing with renewal as long as possible.

If you to decide to stick with the second approach, it could be substantially strengthened by minor changes. Specifically, the second approach could be changed from “we are offering to renew you” to “we are currently leasing to qualified residents”. If you make this one minor change, you now have an out if the resident becomes a problem. You can explain to a troublesome resident that “qualified residents” means residents that are not currently in default of their lease.

If a resident situation blows up, and you want to withdraw the renewal, you should always do so in writing. “Because of the incident, we are withdrawing our offer to renew.” It may not fly legally, depending on the renewal letter that was sent, but it is better than nothing, and many times a resident will just accept the revocation. Also, keep in mind guarantor, or co-signer issues when sending renewal letters. When renewal comes up, frequently guarantors or co-signers won't sign. The renewal of residents with guarantors, or co-signers should always be conditioned on the guarantors and co-signers re-signing as well.

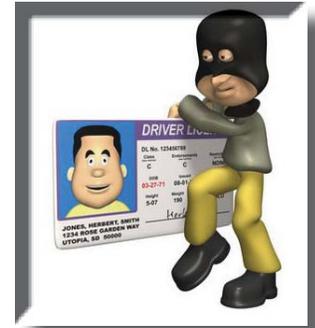
Similar to all resident-related legal documents, renewal letters illustrate the constant tension between legally advantageous language and resident friendly documents. Because legally ironclad language can negatively affect leasing, you can't have a five page renewal letter written in legalese. On the other hand, overly simplistic renewal letters that are not well thought out can lead to unnecessary legal battles and associated costs. However, with knowledge of the key legal principles that apply to renewals, you should be able to strike a proper balance, and write renewal letters in a resident-friendly fashion that also serves the community's marketing goals and strategies. Finally, Fair Housing concerns dictate consistency. If a resident becomes a problem after a renewal letter goes out, you don't have to renew if your renewal letter gives you options. However, you need to follow through and not renew all other residents that have the same or similar issues.



## IDENTITY THEFT CONTINUED FROM PAGE 1

3. If you spot the red flags you've identified, respond appropriately to prevent and mitigate the harm done.
4. Keep your program current and educate your staff

Before developing a written identity theft prevention program, determine what personal identifying information is currently being collected and stored, and decide whether there is a legitimate business need to do so. Minimizing the amount of unnecessary information collected reduces an unnecessary risk. Establish a time limit for retention of records consistent with your legal obligations and your business needs. Do not retain information that is unnecessary to the operation of your business after the established time period has expired. Information you deem unnecessary should be destroyed appropriately. Once it has been determined what information is relevant, a comprehensive identity theft prevention program will need to be devised in order to establish policies and procedures to safeguard that information. Identify Red Flags that may be indications of possible identity theft. These Red Flags may include address discrepancies, suspicious documents, or any other unusual activity. A successful identity theft program should detail how to detect these Red Flags as well as how to appropriately respond to them.



There are other components of this current legislation that apply to property managers and owners. For example, the new law also requires users of consumer reports to develop reasonable policies and procedures to utilize when reviewing a notice of address discrepancy from a consumer reporting agency. Additionally, if the user reports information to a consumer reporting agency, the user must develop and implement reasonable policies and procedures for furnishing an address regarding the consumer. An identity theft prevention program will prepare you for any future interpretations of the law, which may make compliance mandatory, and it makes good business sense. Individuals are more likely to do business with trusted property managers and owners who they believe will keep their information confidential and secure.

**For more information on the Red Flags Rule and how to comply, including a free Do-It-Yourself Template for Businesses at Low Risk For Identity Theft, visit <http://www.ftc.gov/bcp/edu/microsites/redflagsrule/index.shtml>**

# Things To Ponder

Living on Earth is expensive, but it does include a free trip around the sun.

**Birthdays are good for you: the more you have the longer you live.**

How long a minute is depends on what side of the bathroom door you're on.

**I have noticed that the people who are late are often so much jollier than the people who have to wait for them.**

If ignorance is bliss, why aren't more people happy?

If Wal-Mart is lowering prices every day, how come nothing in the store is free yet?

Some mistakes are too much fun to only make once.

**Don't cry because its over; smile because it happened.**

Why do they call it "chili" if it's hot?

Why do we sing "Take me out to the ball game," when we are already there?

Why is the time of day with the slowest traffic called rush hour?

**How do you get on or off a nonstop flight?**

If peanut butter cookies are made from peanut butter, then what are Girl Scout cookies made out of?

If swimming is good for your shape, then why do the whales look the way they do?

Do people in Australia call the rest of the world "up over"?

**Does killing time damage eternity?**

We could learn a lot from crayons: some are sharp, some are pretty, some are dull, some have weird names, and all are different colors, but they all have to learn to live in the same box.

Happiness comes through doors you didn't even know you left open.

## IMPORTANT HTS AUGUST DATES

August 4th	<b>DOUGLAS COUNTY COURT CLOSED</b>
August 11th	Non-Monetary Evictions HTS Conference Center 3600 South Yosemite Street Lower Level 8:30 a.m. - Noon
August 11th	<b>DOUGLAS COUNTY COURT CLOSED</b>
August 18th	Advanced Fair Housing AASC Colorado Springs 2790 N. Academy Blvd Suite 227 9:00 a.m. - Noon
August 20th	South Client Lunch Dave & Busters Colorado Blvd. 11:30 a.m. - 1:00 p.m.
August 24th	CHFA Collections Workshop 1981 Blake Street Denver, CO Call - Karen Black @ CHFA 303-297-2432 8:30 a.m. - 12:00 p.m.

**A Thought!**



**Never be afraid to try something new.**

**Remember Amateurs built the Ark.**

**Professionals built the Titanic.**