

Landlord News

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HOPKINS TSCHETTER SULZER, P.C.

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This Resident Will Be Trouble

Do you have to rent to a potential resident that appears to be trouble even if he meets all other criteria? **Surprisingly, the answer is NO!** If a potential resident gives the impression that they are going to create problems within the community or for management you do not have to rent to that tenant. What if that individual is a minority or handicapped? You still do not have to rent to that individual if they appear to be a troublesome resident, so long as you deny all potential residents that give the impression they will create problems in the community.



Reported decisions support that conclusion. In a Wyoming case a potential resident, who was a minority resident, was denied an apartment twice. During the same time period, several non-minority potential tenants applied and were offered an apartment. At first glance, this appeared to be a textbook case of housing discrimination. *However, as usual, there was more to the story.* The prospective resident's attitude and mannerisms led the landlord to believe that he would be a troublesome resident and that was the sole reason for his rejection. Because of the prospective resident's aggressive behavior, the landlord preferred to state that there was no apartment available. The federal court found that there were no grounds for a discrimination claim against the landlord because the sole reason for denying the resident prospect was his aggressive attitude.



The lesson learned

from this case is that you do not have to rent to a resident that gives you a strong indication that he will be trouble. It is important to note that if you exclude tenants based on their attitude that you must exclude all tenants with attitude problems. Ideally, the policy of denying troublesome prospects should be in writing. Finally, with most fair housing issues documentation is critical. Document the troublesome or problem behavior and conduct in your files e.g. too aggressive, extremely rude, used threatening or abusive language, mentions the fact that he started a class action lawsuit against his former landlord, etc. If you keep solid documentation, you will be able to prove not only the reasons for denying a particular resident, but more importantly that the policy is consistently applied to all prospects over a substantial period of time.

ELECTRONIC EVICTIONS – WHAT IT MEANS TO YOU

Most all evictions are filed in county court the old fashioned way, by submitting a paper hard copy filing to the court. Colorado district courts are doing away with paper filings and have adopted an electronic filing system. Similar to email, cases that are filed electronically are sent from a computer directly to the clerk of the court. **Currently, the Colorado County Courts are considering and evaluating the adoption of an electronic filing system for eviction cases.** LexisNexis the company responsible for developing the electronic county court system is the leading international provider of legal news, and business information. LexisNexis

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LEXIS NEXIS

also offers an extensive range of online and print legal and regulatory information products and customized Web applications as well as critical filing services all of which help legal professionals to reach confident decisions and comply with the law.

Recently, LexisNexis requested a meeting with Mark to get his input regarding the development and implementation of the county court electronic eviction filing system. LexisNexis

wanted Mark's input because Hopkins · Tschetter · Sulzer files more cases in county court than any other law firm in Colorado. Measured by cases filed, the Firm is the #1 overall law firm not only for evictions but also for the most cases filed by any Colorado law firm. When this new project goes forward the firm will continue to work closely with LexisNexis in its testing phase.

If an electronic filing system is adopted, it will give us the ability to extend our filing deadline from 10:00 a.m. to essentially the close of business. Forgot to send over a case, no problem. Once a computer system is adopted, we will be able to file your case even when the court is closed.

As part of our consultation with LexisNexis, we strongly advocated that any electronic filing system include the electronic issuing of writs of restitution. If this recommendation is adopted, it would eliminate the number one cause for writ delays which is just getting the clerks to issue them. *Because Mark is already hooked on technology, the Firm will be at the forefront of adopting and using any new electronic filing system to the full advantage of firm clients.*

The LexisNexis File & Serve e-filing solutions gives attorneys and law firm staffs more direct control over filing and service – and eliminates uncertainty from the process. It gives a law firm the ability to:

- file with the court and serve all parties in minutes via a secure online connection
- receive a filing receipt and proof of service instantly
- receive service online within seconds of the court's acceptance of a filing



TSCHETTER & SULZER SESSIONS AT AAMD FALL F.E.S.T.

The Apartment Association of Metro Denver 2nd Annual Fall F.E.S.T (Festival of Educational Seminars and Training) will take place on September 23 at the Pepsi Center. This event is an educational event and expo for all professionals involved in the apartment industry. **The main focus of the Fall F.E.S.T. is on learning and teaching opportunities. This event will feature extensive educational programs.** The educational sessions of one hour ten minutes will run all day from 9:00 a.m. until 3:00 p.m. with five alternative selections to choose from in each time period. After the sessions there is a Beer Garden activity which will run until 4:30 or 5:00. In addition to the workshop sessions there will be industry related Education Stations.

The Firm will have an Education Station as well as participation in the Workshops. Mark and Vic will be presenting a program on Evictions, notices, how to terminate a tenancy, dealing with difficult tenants and modern trends in landlord-

tenant law. We will be presenting one session in the 9:00-10:10 a.m. slot and another in the 10:30-11:40 time period. For more information on the AAMD Fall F.E.S.T. you can contact Gayle Gahagan, AAMD Education Director at AAMD (303-329-3300) or ggahagan@aamdhq.org. Drop by our Education Station and/or attend one of the sessions presented by Mark and Vic.



Real Estate Investing and the LLC

Many firm clients own both multi-family and single family residential rental units. If you're one of these clients you should consider forming an entity to hold the real estate. One of the more popular choices for holding real estate is the Limited Liability Corporation (LLC). There are a numerous types of entities available in Colorado, however due to constraints of space and time, this article will briefly address the LLC. If you need more detailed information, contact Mark, Vic, or associate Pete

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Muccio who besides being an attorney also holds an LLM (Master of Taxation). Pete can answer any tax related questions.

LIABILITY

The most obvious benefit of the LLC is its shield against personal liability with regard to the LLC's activity. Because you are always responsible for your own actions (torts), you can never limit your liability 100%. However, you can limit your financial exposure to what the LLC owns, and thus protect your individual separate assets and financial worth. Forming an LLC does not give you carte blanche to commit any wrongs, but if properly organized and run, an LLC will protect your other assets if the LLC is sued.



TAXES

LLC's have to file their own tax returns. However, a LLC is generally not taxed as a separate entity. An LLC is a pass-through entity. What happens at the LLC level is passed along to the members of the LLC. Distribution of profits is generally done according to the Operating Agreement. There is no rigid template for an LLC operating agreement. The agreement can distribute profits in any manner the members agree to adopt. For example: If the LLC has \$10,000.00 profit in year 2, that profit will be distributed to the members Burt and Ernie according to the Operating Agreement. The taxes on that profit are not assessed to the LLC; they are assessed to Burt and Ernie.

Another tax benefit of the LLC is the ability to contribute property to the entity without incurring a tax expense. You can also transfer property from the LLC to the person who contributed the property without creating a taxable event. However, if you sell the property to another party you still have to pay taxes on the gain from the sale of the property.

STARTING AND MAINTAINING

In order to create an LLC, there must be an Operating Agreement. This agreement is unique to the LLC and it establishes how the entity will operate. Colorado requires that you file Articles of Organization, which also serve as notice to everyone that the LLC exists. You must also file annual reports updating the status of the LLC's. The LLC must



also file state and federal tax returns. These are just some of the steps required to form and operate an LLC. One must consider the accounting costs as well. Do you understand the tax code as it relates to LLCs, or are you going to pay someone to handle that paperwork for you?

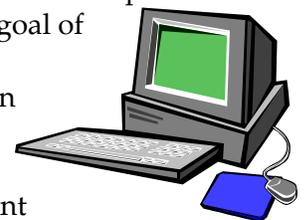
These are a few of the factors to consider when investing in real estate. There are many benefits to incorporating such as limiting liability and creating a flexible structure to deal with profits. There are some drawbacks such as increased cost and the time involved in maintaining the entity. It depends on your particular situation, but for the majority of real estate investors an LLC is the right way to do business.



**PROMISES MADE PROMISES
DELIVERED SEPTEMBER 10TH**

We have been promising our clients for several months that the new expanded and enhanced web site for Hopkins · Tschetter · Sulzer was about to be launched. Well circle the date, Friday September 10th. We are delivering on the Firm promise to have a new web site on that day. Check us out at htspc.com and you will see that the currently existing utilitarian web site will have been magically transformed into something with a little more pizzazz and a lot more information and resources for you, our client. With the exception of our Resource Library Link, which will continue under construction until later in September, we will go live on September 10th.

The Firm will welcome your input and suggestions about the site and we have provided a link for your comments. The goal of the site is to provide you with additional tools to assist you in dealing with your residents; understanding the legal issues; informing you of current industry news and changes; providing you with documents that you can download; informing you about the firm, the attorneys and the staff; and a guide to the expanded services that the firm can provide for you.



The htspc.com web site, just like our newsletter and monthly client luncheon, is just another component of our overall approach to providing our clients with comprehensive support and service.

The History of Labor Day

Labor Day: How it Came About; What it Means

On Monday September 6th we celebrate our national Labor Day holiday. Labor Day differs in every essential way from the other holidays of the year in any country. All other holidays are in a more or less degree connected with conflicts, of glories achieved by one nation over another or the recognition of a single individual. *A unique holiday, Labor Day...is devoted to no man, living or dead, to no sect, race, or nation but is instead a recognition of all who by their labors large or small have contributed to all that is the strength of our country ---the American Worker .*



Labor Day, the first Monday in September, is a creation of the labor movement and is dedicated to the social and economic achievements of American workers. It constitutes a yearly national tribute to the contributions workers have made to the strength, prosperity, and well-being of our country.

The First Labor Day

The first Labor Day holiday was celebrated on Tuesday, September 5, 1882, in New York City, in accordance with the plans of the Central Labor Union. The Central Labor Union held its second Labor Day holiday just a year later, on September 5, 1883. From 1884 through the years the nation became increasingly aware of the industrial centers who began to hold annual "Labor Day" celebrations. *In 1887 Colorado was one of the first 5 states to create the Labor Day holiday by legislative enactment.* By the end of the decade in 1894 Labor Day was recognized throughout the land.

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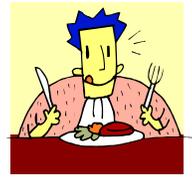
A Nationwide Holiday

The vital force of labor has added materially to the highest standard of living and the greatest production the world has ever known and has brought us closer to the realization of our traditional ideals of economic and political democracy. **It is appropriate, therefore, that the nation pay tribute on Labor Day to the creator of so much of the nation's strength, freedom, and leadership — the American worker.**



THERE IS SO... A FREE LUNCH

The September Firm Lunch will be held on Friday September 24 at Piccolos. The restaurant is located at Hampden and Monaco. Starting at 11:30 we have an informal meet and greet, lunch is served promptly at 12 noon. Mark your calendar now, let us know you are coming. Join us for up to date industry information, stimulating discussion with your peers and of course good food. See you there!



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TRAINING WORKSHOPS SCHEDULED FOR FALL

The Firm has committed to teach a number of landlord tenant workshops. The workshops are primarily focused on the topics of Evictions, Introduction to Fair Housing and Advanced Fair Housing.

Vic teaches the Evictions Workshops while



Mark is the instructor for the Fair Housing Programs. Most of the classes are scheduled at the offices of Hopkins · Tschetter · Sulzer. A few will be held off site in conjunction with the AAMD educational program.

If you are interested in attending any or all of the workshops please contact our office.

- **Evictions Thursday September 30 at AAMD Office (call AAMD)**
- **Fair Housing Advanced Wednesday October 6 at HTS Office**
- **Fair Housing Tuesday October 19 at the AAMD Office (call AAMD)**

How you spend your time is more important than how you spend your money. Money mistakes can be corrected but time is gone forever !

