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Landlord News

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BRINGING IN A HIRED GUN: The Pitfalls of Hiring Armed Security

Hiring an outside security company that provides armed security guards raises serious liability concerns. One particular armed security company told our client, with great zeal, that their security guards are trained to detain suspects of crimes until the police arrive and that their guards are bonded to carry guns. Some clients have used armed security services for years. The Firm regularly advises clients on various vendor issues. Many clients have asked about hiring armed security patrol services. Hiring armed security is risky. Some properties (owners) have determined that it is a necessity. However, armed security will expose you to legal liability for events you did not cause.

Even prior to consulting us, clients are concerned about the possible liability associated with armed security. The central issue is whether you are liable for the actions of the armed security patrol. Outside security companies are vendors. Generally, a vendor is an independent contractor. An independent contractor is not an employee. An independent contractor is someone you hire to provide a service that you and your staff do not provide directly for the property. Normally, you are not liable for what a vendor (independent contractor) does. However, there are some exceptions. One major potential exception is when the vendor you hire engages in an inherently dangerous activity.

What is an inherently dangerous activity? An inherently dangerous activity is an activity that is always dangerous no matter how carefully it is performed. The very nature of the activity may result in injury to others if certain precautions are not taken. To fall within the inherently dangerous work exception, it is not necessary that the work be such that it cannot be done without a risk of harm to others, or even that it be such that it involves a high risk of such harm. It is sufficient that



April Client Lunch Makes HTS History

On April 20th at Piccolo's, Hopkins Tschetter Sulzer hosted its largest client luncheon to date with 70 clients in attendance! The Firm attorneys and staff were delighted to have the opportunity to meet with so many



Emilio Anaya, Donna Lewis, & Lynne Baca (Renaissance at Civic Center) listen to Mark's presentation

of our clients and friends in such an open and friendly setting. Senior Managing Partner Mark Tschetter spoke to the group about the proper way for property managers to use Payment Agreements, as well as ways to avoid the many pitfalls of handling Fair Housing issues such as parking accommodations. Many attendees were also

relieved to hear that the current Landlord and Tenant Relations Bill has been tabled for the rest of 2007 but were put on notice that this bad legislation will be resurrected in the next session.

For the Firm's clients in El Paso County, HTS was pleased to host its first Colorado Springs luncheon of the year on April 26th. Held at historic Giuseppe's Old Depot Restaurant, this was an opportunity for the Firm to show its appreciation to its Colorado Springs clients and friends who usually travel to Denver to participate in Firm functions.

Don't miss out on the action this May as we hold our next metro area client luncheon at the Rock Bottom Brewery in Westminster on May 18th from 11:30 am until 1 pm. And for our clients in Weld and Larimer, keep an eye open for a soon to be announced client appreciation lunch in your area. As always, these luncheons are FREE for current or potential Firm clients! To register, contact Rebecca at rebecca@htspc.com or 303-699-3484, or you can visit the Events page of our website (www.htspc.com).



Nikki Griswold & Georgia McIlwain (Kennedy Ridge) make conversation with tablemates

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the work involves a risk, recognizable in advance, of physical harm to others, which is inherent in the work itself. This means that if you hire an independent contractor that performs an inherently dangerous activity, you should expect that contractor to take certain precautions to protect the public or those in the vicinity of the work performed. Some textbook examples of inherently dangerous activities including dynamite blasting and bar club bouncing. A bouncer may frequently use physical force to do his job. Unless a bouncer is careful, a bouncer is very likely to injure a patron.

Vicarious liability is when you are liable for the actions of another even though you didn't cause the injury. In Colorado, the law imposes vicarious liability on you for hiring vendors who perform inherently dangerous activities.

This liability is imposed based on public policy reasons. You wouldn't provide firearms to your onsite staff because you and the owner would

never accept the associated risks with an armed onsite staff. When you hire an armed security guard, you know or should know that there are also significant risks involved. You cannot eliminate those risks and the associated liability by hiring an outside security service instead of arming your own employees.

Let's assume that the security company's guards are not just armed; they are trained to detain people on your property and possibly with guns! Is there any liability for the actions of these security guards? If there is an altercation at the property and the security guard fires at a criminal but misses and hits a resident, would you be liable to the resident if she sued your company? Worse, what if the resident dies and her family sues the management company and owner for wrongful death? Could your company be liable then? The answer is probably YES! You will be held liable if the court determines that security services involving armed guards is an inherently dangerous activity.

No Colorado court has ever directly addressed this exact issue. The leading case was decided by an Ohio court. In *Posey v. Bator*, an independent security guard shot and killed a man who he thought was an intruder. The company who hired the outside security company was a manufacturing company. The family of the man who died sued the manufacturing company that hired the security guard company. The Ohio Supreme Court held that armed security work is inherently dangerous and found that the manufacturing company could be held responsible for the death.



While no Colorado court has ruled on the armed security guard issue, the decision in the Ohio case accurately reflects the law in Colorado concerning vicarious liability for inherently dangerous activity. Further, not ruling on the armed security guard issue, a Colorado Supreme Court Justice has commented that armed security work is inherently dangerous. Specifically, in a vicarious liability case that dealt with truck driving, a Supreme Court justice, in a dissenting opinion, commented on security guard work. Justices write dissenting opinions when a justice disagrees with his colleagues about a case. In the truck driving case, the court was trying to define an inherently dangerous activity.



When citing examples, the dissenting justice stated that security guard work is inherently dangerous. The justice reasoned that security guard work, especially with armed guards, can involve situations where a gun or handcuffs may have to be employed out of necessity, and such actions are inherently dangerous and require caution. The justice was also concerned that some security personnel are very tempted to use force. Based upon this dissenting opinion, a future court is very likely to hold that armed security guard work meets the definition of an inherently dangerous activity. Armed security work has great potential to be dangerous if not done with extreme caution. Accordingly, you probably will be held legally responsible for the actions of an armed security guard even if the armed guard works for a vendor.

Your liability is not limited to armed security guards. If unarmed security guards use force to detain people on your property, they are also engaging in an inherently dangerous activity. Security guards have some statutory authority in Colorado to detain suspects for the police to arrive, but they do so at risk to their employer and to the apartment community. As noted by the dissenting justice in the truck case, security companies may frequently employ individuals who are overzealous or think of themselves as an extension of law enforcement. This is not to say that all security personnel are want-to-be police officers. But some security personnel are too easily tempted to use force when force may not be necessary. Using a company that has both armed guards and guards who are specifically trained to detain people with handcuffs is quite a risky proposition.



The Firm's experience has borne this out. We once represented an individual in a negligent hiring lawsuit who was beat up by a security guard. The

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security company hired the guard knowing that he had twice (yes not once, but twice) been convicted of impersonating an officer. The police records we obtained revealed that this security guard had bought a former police car at an auction and placed siren equipment on top. Using this car, he pulled two African American men over on a public street. The men thought he was an officer. The real police arrested this guard for impersonating an officer. This same individual tried to take our client into custody, causing injury and significant humiliation to our client. The armed security guard used both his firearm and handcuffs to detain our client. He then called the



police and lied about our client. The security guard was an out of control security guard. Because of his past, he was never going to be a police officer. However, he wanted to be a policeman so badly that he acted like a policeman. As a result, he was overzealous and dangerous. We settled the case after the owner of the security company admitted that he knew about this guy's

past. During the deposition of this guard, we thought he was just a Barney Fife-type (Mayberry's beloved overzealous deputy). However, when he refused to take off his weapon during his deposition, we knew he was actually a threat to the public. You don't want a guy like this patrolling your property.

Even if armed security is necessary at a multi-family community, hiring an independently contracted armed security guard company does not reduce the risk. If you decide to hire a company that employs armed guards or guards who are trained to detain members of the public, you do so with a definite financial risk. The risk outweighs the benefits in our opinion.



Where's My Newsletter?

What's easier than downloading your monthly copy of Landlord News from the HTS website? Having it emailed directly to you! For your convenience, the HTS newsletter is available to you in three ways: 1) visiting the newsletter page of our website (www.htspc.com); 2)



obtaining a hard copy with your bills; and 3) signing up to receive the Landlord News via email. To receive your monthly newsletter via email, sign up at htspc.com/signup.php or contact Rebecca at rebecca@htspc.com. When you add your email address to

our mailing list, you will not only get the Landlord News, but HTS announcements of upcoming events, such as the FREE client workshops and monthly luncheons! These notices keep you in the know so you can register your employees for events before they fill up! Please note that the Firm will NEVER give out or sell your contact information! The email list is confidential information for Firm use only.

Already signed up and still not receiving your newsletter? This may be due to your company's firewall or spam-block settings. Make sure that your list of accepted email sources includes the Firm email address (law.offices.hopkins.tschetter.sulzer@htspc.com). You may also want to send Rebecca an email so she may verify that your email address has been spelled correctly in the Firm database. For any questions regarding your monthly Landlord News or receiving Firm announcements, contact Rebecca at rebecca@htspc.com or 303-699-3484.



Firm Senior Managing Partner Receives Award

Mark Tschetter was the recipient of the AAMD "Person of the Month" Award at the Apartment Association's April Power Lunch. The Award honors one of its members by naming him or her as "Person of the Month." To earn this prestigious title, the person must demon-



strate excellence in his or her profession and have offered outstanding contributions and service to the AAMD. Active in the Association for many years, Mark contributes his time and expertise to teach Fair Housing Workshops and CAM Fair Housing as well as serving on JLAC (Joint Legislative Action Committee). Both Mark and the

Firm are actively involved and support many, if not all of the AAMD activities, including educational support for IROC.

So You Think You Know Fair Housing

There is no workshop the Firm is asked to present more often than our Basic Fair Housing workshop. The Firm is always happy to educate on the ever-changing interpretations of Fair Housing laws in order to help clients avoid legal trouble. The ever-increasing volume of cases filed with the CCRD or in Federal Court is an indication of how critical it is to keep up on the current issues and rulings that occur in the area of Fair Housing. While it is important to establish a good foundation of basic Fair Housing knowledge, we encourage our clients to also attend our Advanced Fair Housing class in order to build from that foundation. The more you know about the intricacies of Fair Housing law, the better equipped you are to properly handle the various situations that may come your way.



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The Advanced Fair Housing class features extensive testing on real case scenarios that have occurred involving the accommodation and modification requirements under Fair Housing—how they were handled and how they should be handled. Workshop participants are challenged to know the differences between accommodation and modification and develop an understanding that even something like “landlord fees” can be challenged in specific instances as a mandated reasonable accommodation. This area of Fair Housing is far more complex than learning Basic Fair Housing, the protected classes, and the intent of the law.



The next Advanced Fair Housing class will take place on Wednesday, May 23rd from 8:30 am until noon at Pavilion Tower I off Parker Road. All of our workshops including Advanced Fair Housing are presented FREE to our clients and prospective clients. To register and continue your Fair Housing education, contact Rebecca at rebecca@htspc.com or 303-699-3484, or visit the Events page of our website (www.htspc.com).

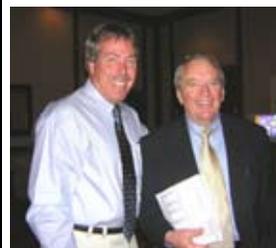


HTS, LEGAL JACK OF ALL TRADE SHOWS

On April 12th, Firm partners Mark Tschetter and Vic Sulzer had the pleasure of hosting a booth at the Boulder Area Rental Housing Association’s Annual Vendor Trade Show. It proved to be an excellent occasion for the attorneys to meet in an informal setting with clients and prospective clients, as well as a tremendous educational opportunity for attendees, as Vic presented a mini Basic Evictions workshop after the trade show. The Firm would like to give its thanks in particular to BARHA Executive Director Sheila Horton for her exceptional generosity and support during this event. In addition, HTS would like to congratulate Betsy Imig, owner of Imig Properties, on winning the 2 GB iPod Nano that HTS donated for the occasion.



Mark Tschetter, Sheila Horton (BARHA), & Vic Sulzer discussing success of Boulder trade show



Tim Howell chats with past NARPM President Paul Irely

The Firm was also happy to participate in the 2007 Colorado State Conference held April 19th for the National Association of Residential Property Managers (NARPM). Senior Associate Tim Howell represented the Firm and enjoyed catching up with longtime clients and friends of HTS, as well as meeting some new friendly faces.

Orchestrated by Anthony Irizarry of Associated Brokers Realty, Inc., the conference was a terrific success for all involved—particularly for Peter Meer of Meer & Company, who was the winner of an HTS drawing for a 2 GB iPod Nano!



iPod winner Peter Meer shows prize to his son Nick

Keep an eye out for the Firm this May as we host booths at both the Apartment Association of Metro Denver (AAMD) Trade Show and Economic Conference on May 10th and the Community Associations Institute (CAI) Spring Showcase on May 11th.



HTS Studies Up for AAMD Tradeshow

The legal team at Hopkins Tschetter Sulzer is getting fired up to attend the Apartment Association of Metro Denver's yearly Trade Show and Education Conference, which will take place on Thursday, May 10th at the Denver Merchandise Mart. We are already hard at work assembling a creative booth to match this year's theme, AAMD's

Bestsellers List: Reading, Writing, and Renting. Although we can't tell you which bestselling book we chose for our theme, we can tell you that we are excited to catch up with our friends, as well as both current and potential clients! This year promises to be as wonderful as 2006,



which was the largest ever AAMD trade show with 161 exhibitors, 21 educational seminars, and over 1,200 owner/management company attendees. So make sure you stop by and say hello to your attorneys, as well as get in on all the fun! As always we will have a terrific prize for participants who

drop by and enter the contest. We are in our usual location, Booth #246, located on the back wall of the show. For more information, contact the AAMD at 303-329-3300.



Multi-Family Housing Dodges 2007 Legislative Bullet

The multi-family housing community dodged a legislative bullet this year when the onerous proposed legislation championed by Representative Michael Merrifield failed to be introduced. But this is not a victory in the legislative war being waged on the Apartment Community, it is more like a win in a skirmish of the ongoing hostilities.

Anti-industry legislation has been introduced in five of the last six legislative sessions, and we can anticipate that Representative Merrifield and his supporters will return in the next session to take up the fray once more. National and State legislatures and elections can and do have a major impact on the multi-family housing industry, as we've found over and over again. And, they will continue to do so. Therefore, it is imperative that members of the multi-family housing industry take both an interest and a proactive stance in supporting their positions on any proposed legislation and be actively involved in helping to elect pro-industry candidates.



It is a widely know fact that, *"Those who participate are likely to have more political influence than those who don't."*



IMPORTANT MAY DATES

May 10th - AAMD Trade Show & Education Conference

May 11th - CAI Trade Show & Spring Showcase

May 18th - North Client Luncheon

May 23rd - Advanced Fair Housing Workshop

May 28th - Memorial Day Firm & Courts Closed

Beat The Heat With HTS Events

Don't let the lazy days of summer cause you to sleep through our 2007 events! Signing up NOW for free Educational Workshops and Client Luncheons will allow you to take it easy when the weather gets hot! Below is a current schedule for Firm workshops and lunches.



On the class schedule, Evictions classes are highlighted in orange and Fair Housing in blue. Mark Tschetter and Wes Wollenweber teach the Fair Housing classes and Vic Sulzer teaches the Evictions classes. HTS workshops are a great way for your employees to escape the sun and learn how to avoid costly lawsuits that burn up your company's assets.

On the luncheon schedule, North lunches are in green and South in purple. The monthly luncheons are free for current and potential Firm clients, and Senior Managing Partner Mark Tschetter will brief you on what's HOT in the multi-family housing industry. The luncheons also provide you with an opportunity to network with your peers.



Before you take your summer break, contact Rebecca at rebecca@htspc.com or 303-699-3484 or visit the Events page of our website (www.htspc.com) and get your employees registered for HTS happenings! As always, space is limited!

Weds, May 23	Advanced Fair Housing
Tues, June 12	Non-Monetary Evictions
Tues, July 17	Basic Fair Housing
Tues, Aug. 14	Basic Evictions
Tues, Sept. 11	Advanced Fair Housing
Thurs, Sept. 13	Non-Monetary Evictions
Fri, May 18	Rock Bottom Brewery
Fri, June 15	Piccolo's
Fri, July 20	Rock Bottom Brewery
Fri, Aug. 17	Piccolo's
Fri, Sept. 21	Rock Bottom Brewery
Fri, Oct. 19	Piccolo's



Funny Letters To Landlords

Alleged excerpts from actual letters from tenants to their apartment managers and owners:

The toilet is blocked and we cannot bathe the children until it is cleared.

I want some repairs done to my stove as it has backfires and burnt my knob off.

This is to let you know that there is a smell coming from the man next door.

The toilet seat is cracked: where do I stand?

I am writing on behalf of my sink, which is running away from the wall.

I request your permission to remove my drawers in the kitchen.

Our lavatory seat is broken in half and is now in three pieces.

Will you please send someone to mend our cracked sidewalk? Yesterday my wife tripped on it and is now pregnant.

Our kitchen floor is very damp, we have two children and would like a third, so will you please send someone to do something about it.

Could you please send someone to fix our bath tap? My wife got her toe stuck in it and it is very uncomfortable for us.

50% of the walls are damp, 50% have crumbling plaster and 50% are plain filthy.

Will you please send a man to look at my water. It is a funny color and not fit to drink.

It's the dog's mess that I find hard to swallow.

I wish to complain that my father hurt his ankle very badly when he put his foot in the hole in his back passage.

