Volume 19 • Issue 6 JUNE 2018

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Landlord News

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THE WAR OVER EVICTION (CREDIT) RECORDS IS ESCALATING

The battle over tenant eviction records is being waged in state legislatures across the country. Landlords want a complete picture to determine qualified applicants. Tenants argue that standards are too high, resulting in a lack of quality affordable housing. Tenants want to limit access to negative information. Whether an eviction should count against a tenant, especially when the eviction was settled, has become a hot topic. When trying to address these issues during the application process, applicants often attempt to bypass standard operating procedures. Tenants frequently try to pressure onsite teams to solve their eviction history and credit problems whether during application or after move-out. Usually the onsite team cannot assist because they are not the right persons to address the situation. Because onsite teams often are not clear on how to handle these scenarios and because the battle over the use of eviction records is heating up, this month we discuss eviction records and use a client situation to illustrate how your teams can best handle tenant eviction/credit issues.

Clients bring two main credit issues to us. First, a tenant will claim that a past balance has been addressed (the "I paid that" or the "I took care of that" scenario). Second, tenants will claim that they were never evicted or that an eviction should not be showing on their record. The "I paid that" scenario is pretty straightforward even though, as discussed below, it may not be so easily resolved.

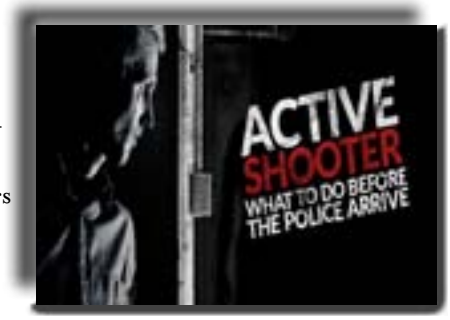
Eviction issues can be more complicated because not everyone agrees on what constitutes an eviction. Most evictions are based on failure to pay rent. Most evictions

CONTINUED ON PAGE 2

ACTIVE SHOOTER EVENT – ARE YOU PREPARED?

Shooting incidents are broadcast almost daily in any news cycle. It is unfortunate that it is a reality. You don't want you or your staffs to become desensitized to this topic or to work in fear. The topic in itself is scary. Given today's climate of more frequent workplace violence, things like this, unfortunately, have become not so out of the ordinary.

An "active shooter" is an individual who is engaged in killing or attempting to kill people in a confined and populated area; in most cases, active shooters use firearms(s) and there is no pattern or method to their selection of victims. Victims are frequently selected at random. The event is unpredictable and evolves quickly. Knowing what to do can save lives.



Recent national tragedies remind us that the risk is real: an active shooter incident can happen in any place at any time. The best way to make sure you and your staff and your residents stay safe is to prepare ahead of time and be ready. Taking a few steps now to educate and train your onsite staff and mentally rehearsing what to do can help everyone react quickly when every second counts. Having all of the staff on your property participate in continuing education on how to deal with an active shooter situation, as well as stressing the importance of training on it regularly, similar to a fire drill at work, cannot be over estimated. "If you see something, say something" is more than a catch phrase, it is an action that should be taken seriously.

Learning how to recognize the dynamics of active shooter events, understanding risk-management strategies, developing awareness of suspicious activity and threatening behavior, and creating proactive measures for reducing the potential of mass violence on your property

CONTINUED ON PAGE 2

THE WAR OVER EVICTION (CREDIT) RECORDS IS ESCALATING CONTINUED FROM PAGE 1

are resolved by the tenant paying the rent. If an eviction is started, but resolved by the tenant paying the rent, has the tenant been evicted? In other words, does just filing an eviction against a tenant mean that the tenant was evicted? Most people think being evicted means being forcibly removed from the property by the sheriff when the sheriff executes the Writ of Restitution and removes the tenant's property from the rental unit.

However, probably less than five percent of all evictions result in physical move-outs by the sheriff. In fact, the majority of evictions are dismissed because the tenant either resolved the situation with the landlord (paid and stayed) or moved out on their own. In between dismissal and a physical move is the judgment for possession. In an eviction case, when the court determines that the landlord is entitled to possession, the court enters a "judgment for possession" in favor of the landlord and against the tenant. A judgment for possession is a prerequisite to obtaining a Writ of Restitution, in order to have the sheriff do a "physical move-out". But again, most judgments for possession don't result in physical evictions. Tenants can have possession judgments on their record for a variety of reasons.

If a tenant fails to appear in court, the court enters a default judgment for possession ("JP"). Sometimes a tenant can resolve their situation with a landlord, but still have a possession judgment on their record. This happens when the tenant pays the rent, but the landlord fails to let us know. If a tenant pays, you should always let us know so that we can either dismiss the case pre-judgment for possession, or vacate the judgment for possession if it was already entered and dismiss the case. If you don't let us know the tenant paid, the tenant may allege that you have wrongfully impacted their credit, by refusing to vacate a judgment for possession after it has been settled. Also, it's much easier to address whether a JP should be vacated and the case dismissed at the time of the eviction as opposed to months or years later when records may no longer be available or you don't own or manage the community where the tenant lived. If the tenant has not resolved a balance owed to the landlord, then the landlord is not obligated to vacate a JP. However, if a tenant comes to a landlord down the road and settles their

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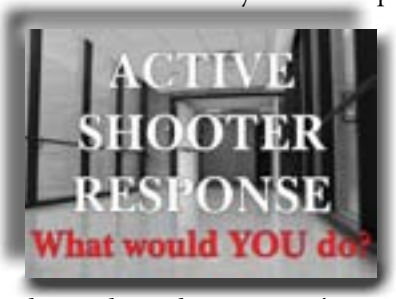
ACTIVE SHOOTER EVENT – ARE YOU PREPARED? CONTINUED FROM PAGE 1

generally and in the office facilities of apartment communities is the goal of effective "active shooter training".



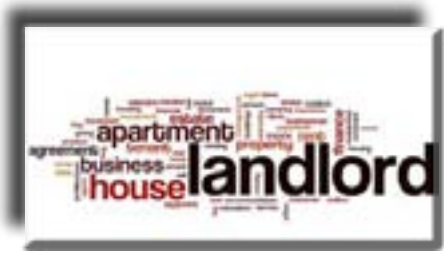
Sometimes you have to push people to go to these types of training because most are skeptical or think it's a waste of time because "it could never happen here". Many people also have the 'I don't need to go; I'll know what to do in that situation' mentality. But effective training will open their eyes to the reality of the situation and after attending a class, employees will usually change their mind about the importance of training. A training class prepares onsite staff for the typically shocking and chaotic situation that could result from a mass-shooting attack with a strong emphasis on the importance of self-awareness, commonsense and preparedness.

It is recommended that all multi-housing community staffs attend comprehensive "active shooter training" because this type of training is designed to help them recognize an active shooter/active threat situation and react appropriately if they are ever faced with an incident because there's a lot you can do to reduce victims, protect people and help minimize the impact of a shooting or violence on your property. Information on 'Active Shooter' training or educational tools can usually be obtained from your local law enforcement authorities; excellent educational material on the subject prepared by FEMA and also by the Department of Homeland Security can be downloaded from the internet; and the NAA can assist apartment associations to locate appropriate speakers and trainers on the subject.

THE WAR OVER EVICTION (CREDIT) RECORDS IS ESCALATING CONTINUED FROM PAGE 2

account, the landlord should vacate the JP.

Regular readers know that tenants are organizing nationally, including here in Colorado. The main focus of these organizational efforts is to pursue an aggressive pro-tenant legislative agenda. Tenant's rights advocates argue that once an eviction is filed (entered into a court's database) it remains on a tenant's record indefinitely, even if the case was dismissed or settled out of court before an eviction takes place. As a result, evictions are often a permanent stain on tenant's background and lessens their chances of finding and securing quality rental housing. To avoid this, tenant's rights groups want eviction records sealed, if an eviction is dismissed or stopped. These groups also want to seal eviction records (possession judgments) for 60 days after the judgment to allow the tenant to seek alternative housing, and eviction records should be sealed permanently if the tenant prevails. Finally, advocates want the law to prohibit the use of dismissed eviction records in making rental decisions. This means the mere fact that an eviction case was filed, couldn't be used to disqualify an applicant. Only a record containing a judgment for possession could be used to disqualify.



The impact of a law prohibiting the use of eviction filings only (cases that are dismissed or no JP is entered) depends on current screening practices. Do landlords regularly deny tenants because an eviction case was filed against them and later dismissed or stopped? Or are landlords only denying applicants if they have a judgment for possession on their record? We don't know the answer to these questions. However, the answer is critical to determine both the impact of current screening practices and proposed legislation. For this reason, we will be reaching out to our clients, in the near future, and ask you to complete a short survey on this subject.

Tenant eviction/credit issues that arise during the application process vary greatly. THS recently assisted a client with a situation that illustrates the most important points about eviction/credit issues and how to handle them. The tenant applicant (the "Applicant") used to live at Old Property. Old Property used ACME Recovery to collect their tenant accounts.

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ACME Recovery had reported the Applicant's outstanding balance from Old Property to the credit bureaus. Applicant was now applying to become tenant at New Property. New Property was declining Applicant because Applicant's balance from Old Property was resulting in New Property's screening vendor denying the application. Applicant then provides New Property with a letter from ACME Recovery that Applicant resolved the debt with ACME. THS did evict Applicant from Old Property but had nothing to do with collecting the balance owed to Old Property.

The key to these scenarios is to identify the source of the information that is causing the problem and instruct Applicant to address it directly with that source. In this case, the information causing the problem is contained in New Property's screening report. When New Property denied Applicant, New Property sent Applicant an adverse action letter as required by the Federal Fair Credit Reporting Act. Under the law, when information contained in a consumer credit report is used to decline a tenant, the landlord is required to tell the tenant that the decline was based on information contained in the report and how to get a hold of the company issuing the report. So, when Applicant tried to drag New Property into resolving the problem, New Property should have directed Applicant's attention to the adverse action letter and told Applicant that they need to contact the consumer reporting agency that issued the report and dispute it with them.

If Applicant does dispute and the consumer reporting agency (CRA) won't drop it, then Applicant would need to get ACME Recovery to contact CRA and inform them that the matter has been resolved, and that they need to report that to New Property's credit screening company. It is Applicant's responsibility to make these things happen. There is nothing New Property can do to address the adverse information in Applicant's report because New Property was not the original creditor to whom Applicant owed money. The ultimate source of the adverse information on Applicant's screening report probably wouldn't even talk to New Property, and certainly is not going to change the entry based on any information provided by New Property. Only the original creditor or the company reporting the negative information can get it changed. Further, New Property should not override its screening company's decision, based on the letter from ACME, in order to be consistent during the application process, and to avoid potential fair

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THE WAR OVER EVICTION (CREDIT) RECORDS IS ESCALATING CONTINUED FROM PAGE 3

housing problems. Finally, THS is in the same position as New Property. THS is not in a position to get the report changed.

THS can only vacate a judgment for possession and move to have the case dismissed. Based on the facts of the case, New Property can't direct THS to vacate the judgment for possession and dismiss the case. Thus, if the eviction were causing a problem as well, Applicant would have to contact Old Property and get them to instruct THS to vacate the judgment for possession and dismiss the case. If this is an old case, this could be problematic. Management of Old Property may have switched (in some cases several times), or Old Property may have been sold.

Because dealing with old possession judgments can be a problem, THS has developed a web form to assist tenants in requesting that judgments be removed. Regardless of anything else, all THS can do in these cases is vacate possession judgments and dismiss cases. We cannot waive our magic wand and change the fact that the case was filed. In other words, THS cannot erase or change the court's records. This brings us full circle. Should the fact that an eviction case was filed count against a tenant if the tenant resolved or otherwise made good, assumably by paying any balances owed?

Tenant's rights groups are aggressively pushing legislation that would prevent resolved evictions from being considered in rental decisions. On the other hand, some landlords believe that whether a previous landlord had to file an eviction is critical information in making a rental decision. The key to analyzing the situation depends on how screening decisions are currently being made. If landlords, for the most part, only factor unresolved evictions, then tenant's argument is much weaker. If mere eviction filings are factoring into rental decisions, including resolved evictions, then perhaps there is some room for discussion. Specifically, in order to have an eviction record sealed, tenants should be required to pay or settle balances with former landlords. Tenants would benefit by getting a fresh start if they made their former landlord whole. Landlords would benefit by getting paid any damages they are owed by their former tenant.

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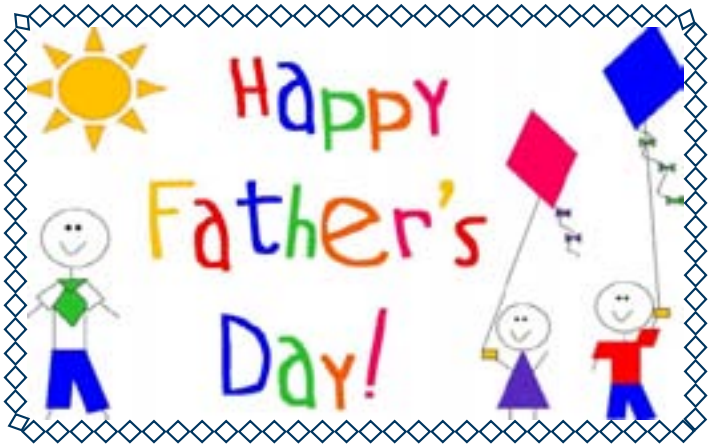
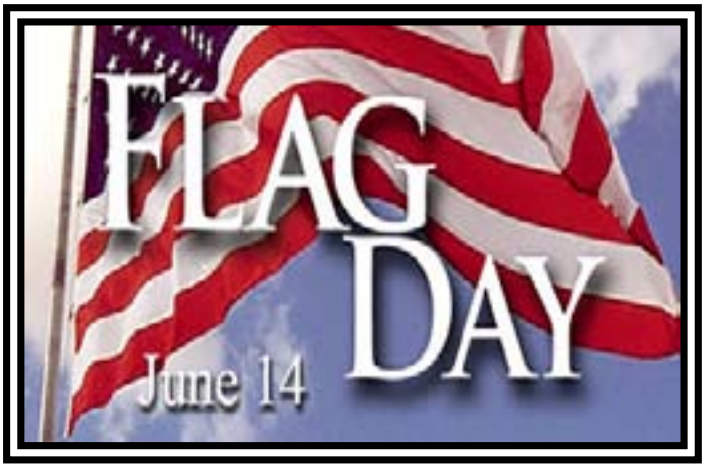
IMPORTANT THS JUNE DATES

June 13th	**AASC Legal Handbook Workshop 545 E Pikes Peak Ave Ste 105 Colorado Spring, CO 1:00 p.m. - 4:00 p.m.**
June 14th	**Flag Day**
June ★17th	**Father's Day**
June 20th	**Webinar Wednesday Topic TBD**
June 21st	**AAMD June Awards Dinner**
June 28th	**Basic Fair Housing Webinar Online 9:00 a.m. - Noon**





Quote of The Month

"Patriotism is supporting your country all the time and your government when it deserves it." — Mark Twain