

# REQUESTS BY THIRD PARTIES FOR TENANT INFORMATION OR ENTRY TO THEIR UNIT

There are situations where third parties may appropriately have access to information that has been exchanged between you and your tenants and there are some instances when government agencies or third parties may have a right of entry into the apartment unit. Because of the wide variety of requests an owner/ manager may receive and the numerous laws applicable to the release of tenant information, it is sometimes difficult to know how each situation should be handled.

Some of the most frequent third-party requests received by owners or managers for information about a tenant, or access to a tenant's unit are:

- police officer may request access to a unit or a copy of a tenant lease;
- a property management company may request tenant information in connection with a rental application a tenant submitted to another community;
- a census taker may request information about the residents in a unit after being unable to contact the residents; or
- tenant records may be subpoenaed in litigation in which the landlord is not a party

Let us consider whether or not these items are appropriate to share with third parties under specific circumstances.

## **Entry into the Apartment**

Requests by a third party for entry into an apartment that are legally appropriate are:

- Law enforcement with a valid search warrant can enter a unit.
- Law enforcement officials may enter a unit without a search warrant:
  - when in "hot pursuit" of a fleeing criminal
  - when in emergency situations involving immediate hazards to life and limb or serious damage to property (i.e. generally in situations fire, smoke, odors of gas or hazardous chemicals, indications of physical distress such as cries of pain
  - prevent the imminent destruction, removal, or concealment of evidence.
- Some subsidized housing programs administered by HUD require annual unit inspections. As a condition of qualifying for the subsidy, the tenant is contractually required to grant access to the premises for the annual inspection.

***In the absence of one of the situations above, a conservative landlord may not want to provide access to the unit.***

Another situation that arises with some frequency is when the Tenant has been hospitalized or has passed away. In the event of a Tenant Death, please contact the firm to discuss the issues and get a copy of the Firm's Tenant Death Memorandum. In the event of a hospitalized Tenant, access may be provided to someone with a valid power of attorney, again contact the firm to discuss before allowing access in this situation as well.

## Document Requests

- **Taxing Authorities.** In some instances, the IRS may be entitled to view records without a subpoena for purposes of tax administration, provided that the tenant, as the taxpayer, is given prior notice of the inspection. Title 26, United States Code §7602 allows the IRS to “examine any books, papers, records, or other data which may be relevant...for the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax...of any transferee or fiduciary, or collecting any such liability.” This power is subject to giving the taxpayer “reasonable notice in advance” that contacts with the lessor/ manager will be made for these purposes, and is unlikely to result in a surprise inspection.
- **Census Takers.** Title 13, United States Code §223 requires third parties to assist census takers seeking information about residents in apartment buildings. The owner or manager must “furnish the names of the occupants of such premises, or ... give free ingress thereto and egress therefrom.” Refusal or willful neglect to comply with this inquiry subjects the lessor/ manager to a fine of \$500.00. The census taker is entitled to general access to the entryways of individual units and not the units themselves.
- **Subpoenas Issued in Lawsuits.** When the tenant is a party to a lawsuit, the other party may have the right to compel property owners and managers to provide information concerning their tenancy through a subpoena. Materials to be produced by the property owner or manager will be described in the subpoena. Generally, the opposing party will have given the tenant or their attorney notice of the material being sought. It is recommended that our client owners/managers refrain from responding to the subpoena until discussing this request with an attorney at the Firm.
- **Subpoenas Issued by Governmental Agencies.** Some governmental agencies, such as the DEA, have subpoena powers. The subpoena will describe the documents to be provided to the agency.
- **Tenant Authorizations.** A landlord may provide tenant information when authorized by the tenant in writing.
- **Law Enforcement.** In light of tenant privacy rights, cautious landlords may decline to provide law enforcement officers with direct information or documents about tenants (particularly name, social security number, signature, physical characteristics or description, address, telephone number, passport number, insurance policy number, education, employment history, bank account number, credit card number, debit card number, driver license number, state id card number, or any other financial account number or medical information unless the officer provides a subpoena.

Rental property owners/managers who don't want to risk breach of privacy claims should adopt policies of not providing tenant information, or access to tenant units unless the person requesting the information or access has the legal right to the information or access.

*If a property owner or manager is not certain whether he or she should provide information or access, even if the request falls within the accepted legal categories listed above, you should call the Firm to clarify the appropriate action that you should take.*