



ILA Legislative Report

The Property Tax Implementation Committee has held its first meeting. As you'll recall, legislation passed earlier this year has a proposed change to the property tax system in Iowa. However, because of the fear of unintended consequences with the new system, the legislature wanted to try the new system in three counties before deciding whether the entire state will shift to the new system. Residents in the three counties, (Cerro Gordo, Warren, and Woodbury), will not actually pay their property taxes under the new system. The assessor will keep two sets of books and compare the two systems under actual working conditions. Dickinson County also wanted to participate in the new system and will be allowed to do so.

The first meeting of the committee featured an overview of the new legislation and deciding on what subcommittees to appoint. The good news is that a subcommittee on definitions has been appointed and that one of the charges of the subcommittee is to look at defining apartment complexes. What this really means is that the committee will look at whether apartment complexes should be defined as commercial or residential. Serving on this subcommittee will be Senator Bryan Sievers, the co-chair of the full committee, Mike Ralston, director of the Iowa Department of Revenue, Kim Dreher of Knapp



Joe Kelly
ILA Lobbyist

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It's that time of year again. After a very busy summer, it is now time to direct our attention to the

DIALOGUE WITH DIRECTORS



ILA Fall Seminar. And this one is a biggie! We will be having a daylong educational seminar on Saturday, November 15th, 2003 at the Downtown Holiday Inn, 6th and the Freeway, Des Moines.

Everyone will want to attend this one. Landlords, rental



agents, maintenance personal, and support staff are all invited to attend. There will be some fantastic speakers who will talk on subjects that are important to our industry.

Don McNulty from Bio Cleaning Services of America, Inc. located in Blue Springs, Mo. is scheduled to speak on Mold Eradication. This is a very timely subject for landlords. We are sure you will find Mr. McNulty's topic interesting and questions you have about Mold Eradication will be addressed.

From Washington, D. C. we have scheduled a representative from the National Apartment Association to talk to our members.

Debbie Haukenberry is the Executive Officer for the Apartment Association of Kansas City. She is scheduled to be at the seminar and talk about the relationships of a good Association. This interesting speaker has many things to say about how landlords can benefit by participating in the association.

We are looking forward to having these very interesting and qualified guest speakers for this years fall seminar.

We have changed the format a little for the Saturday seminar. We kick things off at 9:00 with registration. A continental breakfast will start at 9:30. We will have different speakers throughout the day. And this year we will enjoy a sit-down lunch so you can have a conversation as well as a good meal.

Along with the aforementioned speakers, we are happy

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**Register for ILA's
 Fall
 Seminar**

*For More Information,
 Call 515-255-0675
 and ask for Connie.*

This Month's October 2003 NewsBrief

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- The Welcome Mat
- Fall Educational Seminar

- Ask An Attorney
- Discrimination Claims
- Looking Our Best
- Advertise with ILA

Directors: • Dennis McDonald • Dave Sollenbarger

• WebSite: www.iowalandlord.org

• Email: ilaservices@iowalandlord.org

Ask an Attorney: Legal Q & A



by **Mark V. Hanson**, Attorney at Law,
Whitfield & Eddy, P.L.C.
hanson@whitfieldlaw.com

Q: When a tenant pays a landlord a rental deposit - who is the owner of that money? One of our members received a letter from a bank attempting to garnish this tenants deposit. They want the rental deposit that the tenant paid the landlord. They say it is the tenant's money and they have a legal right to garnish it.

A: Short answer, the landlord owns the deposits.

Iowa Code Section 562A.12 covers rental deposits. The landlord is entitled to hold a deposit up to equal to two months rent.. The deposits are held by the landlord for the tenant. The deposits should not be commingled with the personal funds of the landlord. But, all tenant deposits can be held in one account. Any interest earned on the deposit during the first five years of a tenancy shall be the property of the landlord. Which of course implies that any interest earned after the first five years is the property of the tenant.

The landlord is also cautioned that he/she is obligated to refund the deposit or provide a written statement why the deposit is not being refunded within 30 days of termination of the lease and receipt of the tenant's forwarding address or delivery instructions. Failure to do this forfeits the landlord's rights to the deposit. Bad faith retention subjects the landlord to punitive damages, actual damages, and possibly attorney fees. If the tenant does not provide a forwarding address or delivery instructions, after a year the landlord can keep the deposit even though he/she would otherwise have had to refund it.

During the term of the lease, it would be my opinion that the landlord owns the money much the same manner as a trustee is the title holder of assets held in trust for a beneficiary. The beneficiary is not the title holder of those assets held by the trustee. The beneficiary is entitled to enjoy the beneficial rights of those assets only as specified in the trust agreement. The beneficiary is not entitled to demand the trustee distribute assets to him/her other than as the trust agreement directs the trustee to pay the assets to the beneficiary. In spend thrift trusts, the individual who

established the trust specifies the assets are not to be used by the trustee to pay creditors of the beneficiary. This protects the trustee from being garnished for the beneficiaries debts.

In the same manner the tenant is not able to demand the deposit from the landlord other than as the Iowa Code states the landlord is obligated to pay the deposit to the tenant at the termination of the lease. Refund is subject to the landlord's right to retain the deposit to 1) remedy a tenant's default in payment of rent, 2) restore the unit to its condition at the commencement of the tenancy (ordinary wear and tear excepted), or 3) to recover expenses incurred in acquiring possession. The burden is on the landlord to prove the reason for withholding any deposit if the tenant contests this in court. The landlord is holding the funds in trust and is the owner of the funds, and might be paying himself some or all of the deposit for the items specified, or might be paying it to the tenant.

The only time the garnishment would apply would be at the point that the lease is terminated, and the landlord is in fact obligated to refund the deposit to the tenant, but has not yet done so. And, then the landlord would only be obligated to the extent he/she is not retaining deposit for the reasons specified.

In response to a garnishment questionnaire while the lease is in existence, the landlord would say that he/she owes no funds to the tenant. In response to a garnishment at the termination of the lease, the landlord would identify how much deposit the landlord will be owing the tenant. If the garnishment is served before the lease is terminated, but extends in time beyond the termination of the lease, the landlord would need to comply with the garnishment for the funds which are refundable to the tenant.

Editors Note: If you have legal questions you would like covered in this article, please forward them to: dennis@iowalandlord.org. Opinions and advice contained should be individually considered, and if you have specific questions concerning your operation or legal responsibility you should seek qualified legal assistance of an attorney of your choice.

"The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. This disclosure is required by the rule of the Supreme Court of Iowa."

Need to Rent ???
advertise your rental at:
www.vacancy4rent.com

The 2003 Fall Seminar
Call Connie For Details
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The ILA Fall Seminar



November 15, 2003

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We have a full slate of very interesting and qualified guest speakers for this years fall seminar.

Don McNulty from Bio Cleaning Services of America, Inc. located in Blue Springs, Mo. is scheduled to speak on Mold Eradication. We are sure you will find Mr. McNulty's topic interesting and questions you have about Mold Eradication will be addressed. Mr McNulty is a specialist who also performs crime & trauma scene cleaning, sewage remediation, unsanitary dwelling clean out, and drug / tear gas cleaning.

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Along with the aforementioned speakers, we are happy to report that Joe Kelly - ILA's Legislative Lobbyist, Attorney Mark Hanson, ILA's Legal Columnist, Directors David Sollenbarger and Dennis McDonald will all be speaking at the seminar as well. They will be discussing Tenant Screening, Legislative Up-date and Legal Issues.

Several vendors will be in attendance for your questions and information. Seminar Fees: Pre-Registered Members - \$25.00 with Paid Membership (\$30.00 after Nov. 7th), Pre-Registered Non-Members - \$35.00 - (\$45.00 after Nov. 7th).

Some of the refreshments will be provided courtesy of Jetz Service Company. Remember, lunch will be provided with paid registration.

**The 2003 Fall Seminar
Call Connie To Register
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DIALOGUE WITH DIRECTORS

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We wish to remind our membership that the Des Moines Primary Election will be coming up October 7th, 2003. Be sure to make your voice heard. The people that we elect are the ones who impact our business. And speaking of elections, have you joined the ILA PAC yet? If not, give Dave or Dennis a call – 515-255-0675.

Two important dates to remember – Oct. 7th to vote, and Nov. 15th for the ILA Fall Educational Seminar. See you there!

ILA Legislative Report

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Properties (Kim is a residential property manager), Mark Schuling, a Des Moines attorney, and Gary Bilyeu. It's not certain whether Bilyeu will remain on the committee since he has recently been fired as Story County assessor. Bilyeu is the third assessor to be fired in recent weeks. It could be a sign that people are getting fed up with high property taxes in Iowa.

The subcommittees, there are four in total, will be working over the next couple of months. The full committee will likely meet again in December. We will be working with the definitions subcommittee so that they have the proper information about the impact of classifying residential rental property as commercial. We'll do our best to gain the support of the full committee. However, it won't be an easy task. Government officials dominate the full committee.

But to save the best news for last, committee co-chair, Representative Jim Kurtenback, in his opening remarks to the committee, told them he believed that apartments should be classified as residential.

We'll be working with the committee on behalf of landlords and will keep you informed throughout the process.

Looking Our Best

With **Vacancy4Rent.com** listings, you have opportunities to showcase your properties right on your ad. What better time to take a pleasing photo of your rental property than Summer or early Fall. The grass is green, the trees are full and dynamic, plus hedges and flower beds look their best.



Why wait until bad weather or bare foliage to get that photo taken? You can pre-purchase a **Vacancy4Rent.com** ad right now, and we will take the photo for FREE. As part of our Fall Photo* special, we will also give you a **Vacancy4Rent.com** yard sign for your property when you actually have a vacancy.

We will archive your image until you place your ad. Then everything will be ready to go. There will be no regrets or second guessing as to why you didn't have that photo taken when your property looked better!



To take advantage of this offer, fill out the form on the back page of the NewsBrief, write "**Fall Photo Special**" at the top of the page, and fill in the information about the property you would like to have photographed. Include your payment, and send or fax your request to



Connie. If you have any questions, give Connie a call at – 255-0675.

*Fall Photo photography offer only available in Polk County. For those of you outside Polk County, photography rates are \$35.00 hour and mileage.



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Discrimination Claims Against Innocent Landlords

by Michael Wilson, Attorney - Lexington, Kentucky

Tenants have the right to rent without being subjected to discrimination based upon race, sex, age, religion, ethnic background, disability, or the fact that they have children. In some states, discrimination based upon marital status or sexual orientation is forbidden.

It is very rare that a landlord would indicate to a prospective tenant that they would not rent to one of these protected groups.

Normally discrimination cases depend upon what is called circumstantial evidence. For example, a government or state agency may send out two potential tenants to your unit, one being African-American and the other Caucasian, or one being disabled and one not disabled to see if they both receive the same type of treatment. If they do not, the inference will be that the landlord is discriminating. Also, if someone in a protected class is evicted or has their rent raised while others that are not in a protected class is not evicted or does not have their rent raised; the fact that each was treated differently implies that discrimination has occurred.

Consequently, it is possible that a landlord will be found guilty of discrimination when in fact the landlord had been innocently inconsistent. It is extremely important to have objective standards that are applied consistently to all potential tenants.

Also, there is potential danger in waiving a late payment or late fee by some tenants but not by others. If you have made exceptions in the past concerning some part of the rental agreement to one tenant but not to someone in the protected class, the inference is again that you have discriminated.

The prospective tenant or current tenant can pursue this through HUD or a state agency and file a lawsuit and] seek damages.

It isn't enough to be innocent; you must be consistent and document your consistency.

Getting Free Credit Reports On Yourself

There are three major reporting agencies: Transunion, Equifax and Experian.

For Transunion, go to [www. Transunion.com](http://www.Transunion.com) and click on 'Personal Solutions' for more information. You can also request a free report by writing to: TransUnion LLC, Consumer Disclosure Center, P.O. Box 1000, Chester PA. 19022. Make sure you include your first, middle and last name, current address, any former address (if you moved within the last two years), your social security number, date of birth, your current employer, a phone number and your signature. If you have been denied credit within the last 90 days, or unemployed, on welfare or believe you have been the victim of fraud, the report is free.

For Equifax, call 800-685-1111 to see if you are eligible for a free report.

For Experian, write to Experian, P.O. Box 9530, Allen, TX. 75013. You can get a free report if you are unemployed or currently on welfare.

You may also get a report free if you live in a state that qualifies you for a free report. Call 888-397-3742 to see if you do qualify. This number is to Experian. Through Experian, you can place a security alert on their file and order a free report through their website: www.creditexpert.com.

The Welcome Mat

The Iowa Landlord Association is pleased to announce the latest members to join ILA.

Members:

Armond DeFino of Des Moines

Associate Members:

QWest Communications - T. J. McCauley

We encourage our members to use the knowledge and expertise of our Associate Members to help solve landlording issues and problems.

Need to Rent ???
advertise your rental at:
www.vacancy4rent.com

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Would you like to list your property on the Iowa Landlord Association Apartment Rental Search but you're not on the Internet?



**Iowa Landlord Association
Apartment Search Service
Listing Form**

Make copies of this form, fill out the form and FAX to: 515-255-0675

You can mail or fax in your listing directly to our office if this would be easier for you.

To list your property, please fill out this form and send a picture of your property to our office.

Have you a rental property you wish to sell? Advertise it on the web site! Call us for details.

Interested in banner ads on our website?

ILA Rental Property Search Listing Rates

- Listing Prices = Members - \$50/mo., Non-Members - \$100/mo.
- Pictures/Logo inclusion = \$10/submission
- Picture/Logo image preparation (if needed) = \$35/hr.
- Photography Services = \$50 trip fee; \$35/hr after 1 hour; Materials at cost; Service available in the Des Moines metro and Polk County surrounding areas; Services are on a scheduled basis; Contact information@iowalandlord.org for arrangements.

Your Company: _____
 Your Name: _____
 Your Company Address _____
 Your Phone number for contact _____
 Property Address: _____
 Property City, Zip: _____

Monthly Rent Price: \$ _____ / Month
Number of Bedrooms: Studio/Efficiency 1 2 3 4+

Type of Housing: Condos, Townhomes, or Duplexes
 Unfurnished Apartments Furnished Apartments
 Single Family Dwelling Short Term Rentals Senior Community

Utility Arrangements: None Supplied Some Paid All Paid

Accommodations and General Amenities – Please check the items associated with this property:

Air Conditioning:	<input type="checkbox"/>	Dishwasher:	<input type="checkbox"/>	Wheelchair Accessible: ..	<input type="checkbox"/>
Microwave:	<input type="checkbox"/>	Stove:	<input type="checkbox"/>	Trash Compactor:	<input type="checkbox"/>
Balcony / Patio:	<input type="checkbox"/>	Refrigerator:	<input type="checkbox"/>	Garbage Disposal:	<input type="checkbox"/>
Dining Room:	<input type="checkbox"/>	Fireplace:	<input type="checkbox"/>	Pet Friendly:	<input type="checkbox"/>
Computer High				Laundry Type:	
Speed Broadband				<input type="checkbox"/> Washer / Dryer	
Internet Accessibility: ..	<input type="checkbox"/>	Cable Ready: ...	<input type="checkbox"/>	<input type="checkbox"/> Washer / Dryer Connections	
		Garage:	<input type="checkbox"/>	<input type="checkbox"/> Laundry Facility	

Community Accommodations and Amenities

Club House:	<input type="checkbox"/>	Storage Facilities:	<input type="checkbox"/>	Gated Access:	<input type="checkbox"/>
Public Transportation: ..	<input type="checkbox"/>	Tennis Courts:	<input type="checkbox"/>	Playground:	<input type="checkbox"/>
Fitness Center:	<input type="checkbox"/>	Swimming Pool: ..	<input type="checkbox"/>	Whirlpool / Spa:	<input type="checkbox"/>

Run Dates of Your Listing

Date Begin: _____ Date End: _____

Your Email Address:

Additional Information About This Rental:

**** Don't Have A F.A.X. - - Just copy and mail your form to us. ****



(HINT! For the cost of an ILA membership - Non-members can purchase their membership, save money and experience ALL the benefits of ILA membership!)

Need to Rent ???
 advertise your rental at:
[**www.vacancy4rent.com**](http://www.vacancy4rent.com)