



ILA Legislative Report

The Iowa Senate completed their work for the year, at least in regular session, at 2:40 p.m., on April 20th. The House followed suit at 5:21 p.m. A couple of issues came up in the last two days that should interest landlords.

First, the lead paint issue rose again. As you'll recall, I reported to you some weeks ago that the legislature was considering a bill to have the Iowa Department of Health write rules to deal with the voluntary abatement/remediation of residential, rental housing. One of the efforts by the legislature to garner support of landlords was to put a provision in the bill to give landlords who removed lead from the property immunity from future lawsuits. This latter provision became a problem as the Iowa Trial Lawyers Association objected in the Senate after the measure had passed the House. The Senate deleted all the lead paint material from the Department of Health's policy bill.

The issue wasn't dead. As the House debated the omnibus budget bill, SF 2298, Rep. Wayne Ford (D-Des Moines) offered an amendment to require the Iowa Department of Health to create a registry of properties which have successfully abated/remediated lead paint from the properties. The idea was to give tenants a way to find out if properties were safe to rent, especially if there were children involved.

The Iowa Department of Health responded that such

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Joe Kelly
ILA Lobbyist

Back by popular demand is your Spring Educational Seminar. It is again to be held at the Des Moines downtown Holiday Inn on 6th Ave.

DIALOGUE WITH DIRECTORS



It will feature a continental breakfast, a motivational speaker, a discussion on "How to Fill Vacancies", and an update from our lobbyist and legislative columnist of your monthly newsletter, Joe Kelly. After a buffet lunch (included in the registration fee) a speaker from the National Apartment Association will tell us about the history of the N.A.A. and the benefits to you as members of the Iowa Landlord Association which has recently affiliated with the N.A.A.. We will hear Tom Good, a training specialist for the Iowa Civil Rights Commission. Attorney and writer of the "Ask an Attorney" column in your monthly newsletter, Mark Hanson, will also be available to answer your questions. We are pleased to have more new vendor members present to show us their products and services that benefit us in the landlord business. If you have not already registered for the seminar please do so now so that we can arrange for adequate space and food. We are looking forward to seeing you and your employees there!

After having studied the benefits of affiliating with the *National Apartment Association* for many months, the decision has been made to move forward. With increased national exposure, expanded political clout, increased vendor support and expanded educational opportunities with certifications, to mention only a few, we are pleased to announce that starting on April 1st of this year we will begin phasing in membership renewals to reflect not only the ever expanding benefits of the Iowa Landlord Association, but in addition will include all of the added benefits of the National Apartment Association.

We at the Iowa Landlord Association view this affiliation with National as a very positive large step forward. Further detailed information will be mailed to you prior

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**Register for ILA's
Spring
Seminar**
 Saturday, May 8th, 2004

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

This Month's May 2004 NewsBrief

- Dialogue With Directors
- ILA Legislative Report
- The Welcome Mat
- Ask An Attorney

- 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,
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Q: A Landlord got an eviction (judge's signature) but the Landlord did not follow through with a writ of removal. In the meantime, the Tenant paid the Landlord in full (except late fees), and

now the Landlord wants to get rid of the Tenant. Can the Landlord get the writ of removal (three weeks after the court hearing) and get rid of the Tenant?

A: I am going to assume that what was paid by the Tenant was the previously unpaid rent, which was the subject of the forcible entry and detainer (FED) action for possession. I am going to assume the Landlord took the money and let the tenant remain in the premises at least for the time being. I think the Landlord has just either waived the termination of lease and judgment for possession and reinstated the old lease or started a new one. The Tenant when faced with a removal by the sheriff if the Landlord later tries to execute on the judgment for possession and remove the Tenant, could bring an action to quash the execution on the writ of removal. The Tenant's legal basis for quashing the execution would be that the Landlord either accepted the money as a cure and waived the termination and judgment for possession and reinstated the old lease, or alternatively began a new lease with the Tenant. The judge if faced with this issue at least in Polk County, would rule in the Tenant's favor.

How could the Landlord have handled it differently?

A. Well obviously promptly execute and have the sheriff remove the tenant.

B. Don't take any money and don't do or say anything indicating change of your position.

C. If the Tenant offers money, and the Landlord just can't pass it up, the Landlord would need to understand what the Tenant is paying and under what conditions the Tenant is offering money. And the Tenant needs to understand for what and under what conditions the Landlord is accepting money.

For example, if the Landlord is accepting money for compensation of Tenant's occupation of the premises prior to the court date, or an actual money judgment for back rent, but not for cure of the default in the lease, make sure the Tenant understands specifically that the Landlord is accepting money owed, but not accepting cure of the default. It is very important that the Tenant understand that the Landlord is not waiving his/her right to evict with a writ of removal if the Tenant does not vacate voluntarily. I would recommend the Landlord give the Tenant a receipt for the payment specifically stating he/she is accepting money owed for use of the premises or

as payment on a money judgment but is not accepting the money as a cure of default in the lease and is not waiving the termination and judgment for possession, and have the Tenant sign the receipt. On the other hand, if the Tenant is offering money for the back rent as a cure of default under the lease, the Landlord must make a decision. If he/she accepts the rent, the Landlord will know there has been a cure, the termination and judgment are waived, and the tenancy will continue. If the Landlord wants the Tenant out, don't accept the offered money if it is being offered to cure the default and reinstatement of the lease.

Does the non-payment of the late fees make any difference? I do not think so. The Landlord accepted the rent and allowed the Tenant to remain in possession for the present time. I think acceptance of partial payment of the total amount owing and allowing the Tenant to remain is waiver of the termination of the tenancy. It might also be waiver of the full amount owing (the so far unpaid late payments) unless the Landlord specifically informs the Tenant the Landlord is accepting partial payment on the condition the full amount owing (the late payments) will be forthcoming. Further the Landlord will want to inform the Tenant failure to pay the late payments upon demand will result in the Landlord will be able to start a new FED. But, notice I am saying the Landlord would need to start a new FED. That is because the first one was waived when the Landlord accepted partial payment and the Tenant was allowed to stay.

Disregarding the Landlord accepting payment from the Tenant, could the Landlord on his own delay the removal? Yes, but there would be a limit to how long the Landlord could do that. I do not have a problem with delaying a writ of removal for some number of days or even a week or two. You can always argue you wanted to give the Tenant the opportunity to move on their own and not be set on the curb. But, if you start approaching a month, I get more nervous about leaving the Tenant in possession. The aggressive Tenant may raise issues of the Landlord agreeing to continued possession and continuation or reinstatement of the lease, or establishing a new lease. And, one may ask why is the Landlord delaying eviction? If the Landlord allows the first Tenant to remain, there must be another justifiable reason.

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."

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an idea needed some thought. In other words, let's not rush an idea in the last couple of days of the session. The Department is going to review this idea between now and the beginning of the 2005 session.

It places quite a duty on the Iowa Department of Health. How could the department know if it had a complete listing of properties that had performed the work? What are the adverse effects on a property that is inadvertently left off the list? How would consumers really find out about the existence of such a list? I'm sure you'll think of some other questions involved with this idea. In any event, the legislature did not pass Rep. Ford's amendment.

Also, as a part of SF 2298, the legislature has dissolved the former property tax implementation committee which was formed by legislation in 2003. As the committee discussed the issues, it discovered that the property tax system in Iowa cannot be repaired in a vacuum. Changes to the system have implications in other areas of taxes within state and local government. Consequently, SF 2298 has created a much broader 18 person committee, the State Tax Implementation Committee. This committee, as you'll note by reading the material taken from SF 2298, will study all aspects of taxation in Iowa. Because this is such a daunting task, the report from the committee is not due until the end of the 2005 session, meaning that the first action taken by the legislature as a result of the committee's work will be the 2006 session, unless there happens to be a special session in 2005, at which time legislation could be taken up. 2006 could be a difficult year to pass major tax reform because it's another election year. However, if the changes are widely accepted by both political parties and the public understands and wants the changes, legislation could be passed in 2006.

The Welcome Mat

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

Members:

Associate Members:

Apt. Blue Book - West Des Moines
Furniture Options - Urbandale

We encourage our members to use the knowledge and expertise of our Associate Member(s) to help solve landlording issues and problems.

Directors... – Continued from Page 1 ...

to your annual membership renewal date. We thank you for your past support of your Association and look forward to your being part of an expanded, fuller Iowa Landlord Association.

It has been brought to our attention by our new affiliate the National Apartment Association that the committee approach works very well with our type of organization. In following this thought, we believe that we can accomplish more, in a better thought-out manner, if we involve more of our good members and their good ideas by forming committees. Please review this list of committees and let us know which one you would like to volunteer for. Seminar, Education, Awards, Government Action, Membership, Vendor and Public Relations.

The City of Des Moines drastically increased rental housing inspection fees a year ago in spite of strong protest from your Association. At the time of the increase, the City promised to review the increase and adjust it if it did not accurately reflect the City's costs in performing those inspections. After several requests by us to furnish accounting numbers, we only received information on income. No information was received reflecting the City's costs.

It is our belief (backed by intensive study) that we are paying greatly inflated inspection fees prompted by the City's ailing budget and need for money. In response to our pursuits, a committee of your Directors and fellow members was formed to attempt to correct this situation.

We have recently met with the City. They suggested that an unbiased third party (a consulting firm) be hired at City expense to study income and expense related to inspection fees. The results of that study would be presented to the City manager, resulting in a recommendation to the City Council to correct the fee structure if warranted.

It is felt that this is a positive first step by the City to try to work with us to resolve this situation. We look forward to keeping you informed.

The Iowa Landlord Association Breakfasts at the Cubs Club in Des Moines are scheduled to resume for the summer. The breakfasts feature a speaker as well as good camaraderie with fellow members and lively discussions about land lording. Breakfast starts at 7:30 A.M., last for about an hour and costs \$10.

They will be held on Tuesdays June 15th, July 20th, Aug. 17th and Sept. 21st. Reservation are limited by space available, so call Connie no less than the Friday before the meeting to reserve a place (255-0675).

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