



**ILA Legislative Report**

**Editors Note:** Joe's column will return in future editions of NewsBrief. Look forward to his insights and perspective into the issues facing the 2004-05 legislative session as they pertain to the landlords of Iowa.



**Joe Kelly**  
*ILA Lobbyist*

**Resident Locked Out Procedures**

Do you have a formal policy that you follow when a resident is locked out of one of your properties? You should have a policy in place that will help safeguard against you giving authorized access into your residents' homes. If a resident claims to have been locked out of their property, here are a few guidelines:

Have a clause in your lease that states that residents understands that management charges a lock-out fee to provide a duplicate key or for management to unlock a resident's door. The fee should be one amount for providing this assistance during normal business hours and a higher fee for assistance during non-business hours. This helps to discourage late night phone calls. Resident may stay over at a friend's house one night and wait to call in the morning so they will not incur the higher charge.

Require the resident to show identification prior to allowing access into the home or giving them a duplicate key. Review pictures and identification on file prior to offering key assistance. Document in the resident's file the date and time of the lockout and time assistance was provided and what type of assistance. If the resident does not have proper identification, verify resident's identity by obtaining the correct answer to at least two pertinent questions that can include: social security number, driver license number, birth date, move

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Jaki Samuelson of the Whitfield & Eddy Law Firm was the speaker at our first Cub Club Breakfast

**DIALOGUE WITH DIRECTORS**



of the season. She talked about our negotiations with the City of Des Moines to lower rental housing inspection fees. The nationwide consulting firm of Maximus, Inc. will meet with ILA committee members on June 22<sup>nd</sup> before starting their research and reconciliation of the cities expense records to determine true inspection fee costs.

Because of our recent affiliation with the National Apartment Association, we have been furnished information on similar inspection fee battles that have occurred across the Nation. This information from the NAA has been very helpful in dealing with our negotiations.

We will keep the membership updated on this important issue because this high cost of inspection fees set by the City of Des Moines could be used by municipalities throughout the State as precedence to raise fees unjustly.

Our July 20<sup>th</sup> breakfast meeting will feature Bruce Bergman, Attorney for the City of Des Moines. Call Connie at 515-255-0675 to make your reservation. Cost of the breakfast is \$10.00.

The response of volunteers to our newly formed committees has been great. There is still room on committees for those of you that wish to become more deeply involved in your association. Please contact Connie at 515-255-0675 who will be happy to put you in touch with the committee chairperson of your choice. The following committees are: Fund raising, Membership, Government Affairs, Public Relations, Trade Show and Education.

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***This Month's July 2004 NewsBrief .....***

- Dialogue With Directors
- ILA Legislative Report
- The Welcome Mat
- Ask An Attorney
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- Locked Out Procedures
- Breakfast Meetings

- Directors: • Dennis McDonald • Dave Sollenbarger
- WebSite: [www.iowalandlord.org](http://www.iowalandlord.org)
  - Email: [ilaservices@iowalandlord.org](mailto:ilaservices@iowalandlord.org)

## Ask an Attorney: Legal Q & A



by Mark V. Hanson, Attorney at Law,  
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**Q: I had a process server come into my office and he handed me a legal document against one of my tenants and told me I had to serve it. I said “you are the one getting paid for this service” you serve it! He said by law they could give it to me to serve and that was what he was doing. He said that he tried and no one was home. I just said okay and he said I could put it on the tenants door. If I can put it on the tenants door - why couldn't he do that? If I can serve his papers why can't**

**I do my own service for FEDS and MONEY JUDGEMENTS THE SAME WAY? Doesn't make sense to me. Can you straighten me out on this?**

A: Good questions! I can tell by the questions that have been coming to me that if all of you and I stick with this long enough you will be able to get credit for several law courses at Drake or Iowa Law Schools. This question will qualify for Civil Procedure credit. Another reason I enjoy doing this column is working through the difference between book smart and street smart. I am not the one on the street. But I try to write answers that work for you who are on the street. I have enjoyed a great relationship with a multi-unit housing project manager for about 18 years because she is street smart. She will handle the tenants in a manner which works for her on the street. And when we go to the court house, my book smart becomes important. So, we make a good team.

So, can a process server give the apartment manager the FED Petition or Money Judgment Petition to serve the tenant? This comes from Iowa Rules of Civil Procedure (“IRCP”) for Personal Service. A legal action can always be served by personal service. Some actions can be served in other methods. I previously talked about which matters may be served in what methods - personal service and posting and mailing. So, I am not in this column going to repeat - rather focus on how do you do personal service.

IRCP 1.302(5) provides an Original Notice (for an action such as an FED or Money Judgment) may be served by any person who is **neither a party nor the attorney for a party** to the action. A party or party's agent or attorney may take an acknowledgment of service and deliver a copy of the original notice in connection therewith and may mail a copy of the original notice when mailing is required or permitted under any rule or

statute.

Notice there is a difference between “serving” and “taking acknowledgment of service”. “Serving” in this context is merely handing the papers to the defendant. “Taking acknowledgment” means the defendant signs for having received the papers.

So this is why the person who asked the question cannot “serve” her own Original Notice. If she were to hand deliver the Original Notice to the tenant face to face and had the tenant sign for receipt of it, that would be okay. If she hands the notice to the tenant and asks the tenant to sign receipt for it, what is the tenant going to do? If the tenant throws it back at the landlord and tells her to stick it where the sun doesn't shine, she does not have service. She is not authorized to “serve” her own original notice - that is she can't merely hand the tenant the papers to complete “service”.

Now, why can the process server give papers to her to serve a tenant for someone else's legal action? IRCP 1.305(1) provides personal service may be made upon any adult competent individual by taking the individual's signed and dated acknowledgment of service (hand delivering and having the tenant sign for it); or by serving the individual personally (sheriff deputy or process server but not the landlord his/her self, merely handing the notice to the tenant and signing a return of service under oath); or by serving any person at least 18 years old residing in the defendant's dwelling house; **but if the dwelling house is a rooming house, hotel, club or apartment building, the copy shall be delivered to a person who is either a member of the defendant's family or the manager, clerk, proprietor or custodian of such place;** or by serving the defendant's spouse at a place other than the defendant's dwelling house if the spouse and defendant live together. There are additional rules on how to serve other individuals or companies or agencies, but we will limit the discussion.

Do you notice that all that is legally required is that the process server give the notice to the apartment manager? Notice this Rule does not require the apartment building manager to do anything with the notice. The law does not require her to give it to the tenant or tape to the tenant's door.

The legal theory though is that if the notice is given to the spouse, to the adult co-occupant, or to the apartment manager, those individuals will give the notice to the defendant. So, from a legal requirement basis, the plaintiff and the process server have complied with the Rules for personal service.

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## Committee Communiqué

### LEGISLATIVE

Will hold a meeting of apartment owners and interested parties about how to battle the commercial taxation issue. There will be a rep from another state to tell how they fought to reverse this and won. We plan on having lawmakers and attorneys on hand to hear the story and provide direction for the group. We will discuss drafting a bill to change this law and how it is done. Information will also be made available about what bills were passed that affected us last year and what issues may come before the house this year. Meeting date is August 10th, and place is to be determined. It will be about 6 hours with a break for lunch. Self pay event.

### EDUCATION

First training class in September, Fair Housing using NAA format Mary Spain Instructor. Will get a flyer out to communities to plan for the expense for two training classes in their 05 budgets, and give them approximate amounts. Next meeting the 14<sup>th</sup>.

### PUBLIC RELATIONS

Will have a press release out by Aug 1 announcing the arrival of NAA in Iowa and explain its affiliation with the Iowa Landlord Assoc. Announce the committees and discuss briefly their plans. Next meeting the 13<sup>th</sup>.

### MEMBERSHIP

Each committee member went away with packets for membership drive. They will meet again to better evaluate an organized list of potential members and determine a geographic strategy. I am compiling a vendor list now and will have a list available for them in thirty days of vendors to approach. Next meeting the 7<sup>th</sup>.

### FUNDRAISING

First event most likely a bowling tournament. They will meet again on the 16<sup>th</sup> when more members are present and start working on details.

## Resident Locked Out Procedures

*Continued from Page 1 ...*

in date, rental rate or their emergency contact. This information can be found in the resident's file. Require that any lock out fees be payable at the time service is provided and in the event that a complete lock change is necessary, there will be an additional charge for lock replacement.

Do not allow access or release duplicate keys to anyone who is not a lease holder without proper authorization.

## Ask an Attorney: Legal Q & A

*Continued From Page 2 ...*

Legal theory is one thing, but what if the spouse, adult co-occupant or apartment manager throw it in the waste basket and do not give it to the defendant? That's not the plaintiff's or the process server's problem. It's sort of like mailing a notice by certified mail when allowed to do so. If the plaintiff mails it certified and has the white slip to prove it, it doesn't matter if the defendant goes to the post office to pick it up or not. If the defendant does not, that is not the plaintiff's problem because the plaintiff has done all that was required.

If the defendant claims he never got the notice, can he beat the complaint? Well if shows up in court at the hearing, he will have demonstrated he found out about the hearing somehow. And, since he is there the judge will continue with the hearing. If a default judgment is entered can he attack it later claiming he did not get the notice? If the proof of service for serving the spouse, adult co-occupant or apartment manager is true and properly prepared and filed in the court, then the defendant has no valid excuse to set aside a default judgment.

Does all this make sense? No. But, the Rule allowing service on the spouse, co-occupant or apartment manager under the legal theory that they will give the notice to the defendant has withstood challenge in the courts. So, it is a legal way to get personal service.

Could the process server have posted the notice on the door himself? For an FED, yes. For a Money Judgment, no.

**Editors Note:** If you have legal questions you would like covered in this article, please forward them to: [dennis@iowalandlord.org](mailto: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."*

Don't rely on your memory. Always check the rental agreement as a current resident, such as a roommate or spouse may have been released from the rental agreement.

(from Apartment Association, Van Nuys, CA)

**Need to Rent ???**  
advertise your rental at:  
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## Why Do Residents Rent Your Homes?

Every resident has two reasons for deciding to rent your property. The first is because they need a place to live. The second is more abstract and may be one of the following reasons: Financial-your property is offered at the best rental rate of other comparable properties.

Location-your property is the best location they can find; convenient to key places the resident frequents, ie work, school, stores, bank, church; Upgrades / extras - your property offers features and items that others did not offer.

The next time a prospect calls or looks at one of your properties, try to determine which of the three factors applies to their needs.

From all responses you receive from the prospects, determine which factors are the most appealing for your property. Then make a list of why your property is a great match for those factors. Tailor your presentation to meet those needs. You should be able to easily state reasons that match most of your prospects interest.

(from Rent & Retain Magazine)



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## Breakfast Meetings !

We would like to see you at the next summer breakfast meeting at the Cubs Club. Breakfast Meetings start at 7:30AM and are usually over by 8:30 or 9AM.



On July 20 we have Bruce Bergman, city attorney for the City of Des Moines. Will talk about what the city is doing to answer the ILA's charges about the inspection rates on rental housing.

Next month, on August 17th, Dale Hyman, Chief Assistant Polk County Assessor is scheduled to speak. He will discuss the new assessments that recently came out and their effect on rental housing in Polk County.

Call Connie at 515-255-0675 with your reservations or e-mail us at [ilaservices@iowalandlord.org](mailto:ilaservices@iowalandlord.org). We look forward to hearing your ideas and seeing you at our next activity!

## The Welcome Mat

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

### **Members:**

Olde English Village, West Des Moines  
Craig Jensen, Jensen Investment Properties,  
Story City

Mansions at Hemingway, Johnston with corp. office -  
Management LLC, Lincoln, Nebraska

### **Associate Members:**

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

*ILA Coupon*



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Just place your rental ad for \$50.00 during July, 2004, and we will **run that ad until you rent your property with no additional cost to you.\***

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\* Ads that run under the "High Ad Cost Freedom" offer will run until you rent your property up to and including September 30, 2004 with-out additional charges. You also receive the "Vacancy4Rent" sign for your property!!! Mail this coupon along with your ad (on the back of the newsletter) to the ILA office at: PO Box 13246 - Des Moines, Iowa 50310-0246 or fax to 515-270-0999 or call Connie at 515-255-0675 **Coupon May Be Copied For Additional Listings**