



**ILA Legislative Report**

*Editors Note; The Iowa Legislature is not in Session. Joe will return in future NewsBriefs, however he would like for you to understand the issues, to know the candidates, and exercise your right to vote for the candidate and issues of your choice in the upcoming election in November.*



**Joe Kelly**  
*ILA Lobbyist*

**Fair Housing Laws and HIV**

The Fair Housing Act is a federal law prohibiting discrimination based on race, color, national origin, religion, sex, familial status or disability. Under this law, being HIV positive and having AIDS are considered disabilities. This means that a landlord cannot refuse to rent to an individual because they believe the person contracted HIV through sexual activity of which they disapprove, because they fear catching the disease, or because they are unwilling to accommodate the disabled individual's legitimate needs. This law is often misunderstood.

Some state and local housing laws add additional protections, which may include prohibiting discrimination based on marital status, sexual orientation, or age. The following rules apply throughout the country:

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**Register for ILA's  
 Fall  
 Seminar**  
 Saturday, Dec 4th, 2004

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

Looking forward to the holidays? There is still plenty to do before they come. After the elections is a good time to talk to

**DIALOGUE  
 WITH  
 DIRECTORS**



your legislator about the inequities of property taxes for apartment buildings. If you still don't know who your legislator is, go to: [www.legis.state.ia.us](http://www.legis.state.ia.us) and click on 'Find Your Legislator'. It would be especially helpful to contact those legislators on the Property Tax Implementation Committee. They are: Rep Jim Kurtenbach from Nevada, Rep. Doug Struyk from Council Bluffs, Rep Don Shoultz from Waterloo, Senator Bryan Sievers from New Liberty, Senator Pat Ward from West Des Moines and Senator Herman Quirmbach from Ames. Let them know your concerns about the inequities that you face. This problem must be addressed by all members of the Association. We need to keep this on the front burner!

It is not too early to sign up for the ILA Fall Seminar on Dec 4th. Go to our website at: [www.iowalandlord.org](http://www.iowalandlord.org) and click on the Educational Banner. The topic will be 'Drug and Crime Prevention in Apartments'. This will be the most important seminar we have held to date. The lineup of speakers include: Becky Swift from the Governor's Office of Drug Control Policy, Mark Hanson and Nick Cooper, attorneys with Whitfield, Eddy, Jerry Nelson, Special Agent with the Iowa Division of Narcotic Enforcement, Larry Rogers with the DMPD, and Dan Voogt, Assistant Polk County Attorney, Drug and Gang Unit.

Also, The first class sponsored by the National Apartment Association will be held on the 15th of December at the Regency Builders Office Complex Conference Center in West Des Moines. Coursework includes: fair housing, people with disabilities, families with children and government housing programs. Cost is \$25 for ILA members and \$50 for nonmembers. For more information contact: Mary Spain ([mSpain@apartmentfinder.com](mailto:mSpain@apartmentfinder.com))

If you want to be on an Association Committee, there is still plenty of room. Contact Connie at 515-255-0675 or at: [ilaservices@iowalandlord.org](mailto:ilaservices@iowalandlord.org) for a complete list and contact person.

Enjoy the Fall while it lasts. Happy Thanksgiving to all of you!

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

- Dialogue With Directors
- ILA Legislative Report
- The Welcome Mat
- Ask An Attorney
- Fair Housing
- Fall Educational Seminar
- WDsM Ordinance
- **Next Month:** DsM Inspection Fee Refunds

- 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, Whitfield & Eddy, P.L.C.  
*hanson@whitfieldlaw.com*

**Q:** If a landlord tries to remove a tenant using the clear and present danger, must they have a witness to the clear and present danger event before the judge can rule in your favor?

**A:** Short answer - Iowa Code Section 562A.27A does not require a witness or specific evidence to prove the tenant created a clear and present danger. Like so many aspects of going in front of a judge to evict a tenant, it comes down to what evidence the landlord has to prove its case, and the judge's belief of that evidence.

For instance, non-payment of rent is typically the landlord testifying the rent was not received. The landlord's testimony is the best evidence. On the other hand, what event occurred that falls in the category of clear and present danger? Who committed the act? To whom was it directed? If the tenant is the one who commits the act, and if the landlord is the one to whom it was directed and no one else was present, then the landlord's testimony is the only and best evidence available. But, when the testimony is presented to the judge, if the tenant also testifies and denies it, the judge will weigh the credibility of the landlord and tenant.

What can you offer as additional evidence to convince the judge your story is the correct one? What would be good evidence? Testimony of other disinterested tenants, other employees. Any physical evidence. Pictures if the tenant smashed or broke something. Police reports. Police testimony. Anything which you can show the judge, something he/she can use to justify his/her believing your version of the story and deciding in your favor.

Getting other tenants to testify may be a hard sell. They are reluctant for any number of reasons: fear, they don't want to get involved, it doesn't affect them directly, etc. But, if they are the target they should testify. As well as any other witnesses, including the landlord if the landlord is a witness.

Getting police to testify is a possibility if they were present or investigated. In Des Moines you would need to subpoena them through the police department, and pay the required fee up front. If you want their police report, you need to go to the police department, fill out their request form, and pay appropriate fee.

If the person who committed the act is a guest of the tenant, be prepared to also provide evidence that the person was in fact a guest of the tenant. Be prepared for the tenant to deny the person was present as a guest or with the tenant's permission. You will want testimony or evidence to support your contention the person was in fact a guest of the tenant. I had a boyfriend shoot a pistol through the front door of his girlfriend tenant's apartment. Her testimony to the judge was that he was immediately at the point of shooting the gun, not her guest. The judge took her side.

I am not going to go through the whole statute for what procedures must be followed. The statute itself follows: 562A.27A. Termination for creating a clear and present danger to others

1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after a single three days' written notice of termination and notice to quit, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

a. Physical assault or the threat of physical assault.

b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed

## Landlords Active In WDsM Ordinance

Two of our members, Keith Denner (Sun Prairie Apartments) and Melissa Johnson (Olde English Village), were involved in a successful effort to update the West Des Moines Solicitor Ordinance.

Many of us have had problems with door-to-door, especially magazine, solicitors. Usually, other than asking the solicitor to leave, there is not much that we can do. The reality is that most cities have ordinances that regulate solicitors by requiring them to get a permit, but typically the solicitors do not do so. They annoy and inconvenience our tenants, and they often times deface our buildings.

The new West Des Moines ordinance provides for a penalty for the people who bring in the solicitors. There is a fine of \$500 per solicitor and \$500 per person that they talk to. Information regarding this ordinance has already been posted on national websites. Keith is optimistic that magazines solicitors should just skip West Des Moines.

You may want to consider lobbying your city to adopt something similar so that the magazine solicitors will just skip the entire Golden Circle.

If you would like to view a copy of the West Des Moines ordinance, you can access it at the city's website: [www.wdm-ia.com](http://www.wdm-ia.com) It is Ordinance 1592 under: Mayor and City Council, City Code, Ch. 7, Ordinances Pending Codification.

If you would like to view articles about the inappropriate things that magazine solicitors do around the country, log into website [http://www.travelingsalescrews.info/mainpage\\_1.html](http://www.travelingsalescrews.info/mainpage_1.html) (click on "Breaking News" to view newspaper article that was in the Des Moines Register) Just a few of the article topics include:

- 1) Teen Door-To-Door Salesperson Arrested For Assault/ Police: Many Individuals On Sales Crews Have Criminal Records;
- 2) Cops: Magazine Salesman Stabs Elderly Woman To Death;
- 3) More West Boise Neighbors Complaining Of "Door To Door Scam";
- 4) Door-To-Door-To-Jail Peddler Arrested: Know who is at your door, A convicted sex offender has been arrested while selling magazines door-to-door.

If you would like copies of the letter that Keith submitted to the West Des Moines City Council outlining his frustrations and problems, please feel free to contact his assistant at [alissa@ppm-inc.com](mailto:alissa@ppm-inc.com)



## MARK YOUR CALENDARS!!

ILA Fall Educational Seminar

- Date: December 4, 2004  
9:00AM to 2:00PM (lunch included)
- Location: Holiday Inn-Downtown  
1050 6th Ave.  
Des Moines, Iowa 50314
- Topics: Methamphetamine problems in Iowa, and other drug concerns in rental property. Will include 'show and tell'
- Speakers: Beckey Swift, Assistant Director  
Governor's Drug Control Policy  
Mark Hanson, Attorney at Law;  
Whitfield & Eddy, P.L.C.  
Nick Cooper, Attorney at Law;  
Whitfield & Eddy, P.L.C.  
Jerry Nelson, Special Agent in Charge;  
Division of Narcotics Enforcement, Iowa Department of Public Safety  
Larry Rogers, Senior Police Officer;  
Vice/Narcotics Neighborhood Office,  
Des Moines Police Department  
Dan Voogt, Assistant Polk County  
Attorney, Drug & Gang Unit
- Seminar Fee: Pre-registration: member \$20, non-member \$25. (by Dec. 1st.)

## The Welcome Mat

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

### **Members:**

Michael McCoy, McCoy Properties Altoona, IA  
Rod Dupen, King I Properties, LLC Denver, CO  
Sequoia Group, LLC - Kirk & Amy Enwright Clive, IA

### **Associate Members:**

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

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

## Ask an Attorney: Legal Q & A

*Continued from Page 2 ...*

medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph "a" or "b" or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph "a" or "b" to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs "a" through "c".

**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."*

## Fair Housing Laws and HIV

*Continued From Page 1 ...*

Do not ask prospective tenants if they have a disability or illness or to see their medical records. Even if a person is obviously disabled (i.e. in a wheelchair) do not inquire about the extent of the disability.

Do not treat an applicant differently because of a disability. For example, if there are two units available—one on the ground floor and one on the third floor—you must show both units to an applicant in a wheelchair, however reasonable it seems for that person to consider only the ground floor.

Do not refuse to adjust rules, procedures, or services to give a disabled tenant an equal opportunity to use their unit or common spaces. Reasonable accommodation requests from a disabled tenant may include a spacious parking space, close to his or her unit for a tenant in a wheelchair, or an exception to a no pets policy for a tenant who uses a seeing-eye dog.

Do not prevent tenants from making reasonable modifications to their units at their own expense. Disabled tenants have the right to modify their unit to the extent necessary to make their spaces safe and comfortable, as long as the modifications do not interfere with your ability to run your business. A landlord is entitled to ask for proof that a requested modification is necessary.

What to do: consider all potential renters equally. To screen applicants without creating the appearance of discrimination follow these simple policies:

Ask all potential tenants to fill out a written rental application and check their references. If you are challenged about a decision, you can show you have a documented, non-discriminatory reason for turning them down, such as a history of overdue rent, unpaid rent or damages or a criminal conviction.

Make sure all rules and policies are grounded in sound business practices. A rule that appears arbitrary or disproportionately affects a certain group of people, such as people with disabilities, may not hold up in court. Then, apply the rules equally to every applicant and tenant.

*from: Landlord Tenant Law Bulletin, May 2004*

**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](mailto: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)**