



ILA Legislative Report

When this article was written, Rep. Jim Kurtenbach's property tax bill had not been released yet. For those of you who would like to keep up with legislative matters on a more timely basis, contact me at joekelly@qwest.net, and I'll add you to my list. Rep. Kurtenbach's bill is important because it's the only property tax bill which will reclassify rental property as residential instead of commercial. The only rental properties classified as residential today are single family homes and duplexes. There are three other property tax bills which have been introduced (SF 158, SSB1240, and SSB 1243), but none has seen any action. Everyone seems to be waiting for Rep. Kurtenbach's bill. Then there will probably be a process of reviewing all the bills, perhaps taking some elements from each bill, and coming up with a new product. The legislative session is likely to go until late April. The budget and tax legislation will now take center stage. From now until the end of the session, you should take every opportunity to talk to your legislators about the unfair classification of rental properties.



Joe Kelly
ILA Lobbyist

Here is what has happened with other legislation affecting landlords.

SF 116/HF 584 These companion bills were introduced by landlords to deal with property left on the curb after evictions. HF 584 has passed the House on a vote of 95-2. However, it's unlikely the bill will pass the Senate. The Attorney General's lobbyists have registered against the bill. The co-chair of the Senate Judiciary Committee doesn't like the bill. The bill may be unnecessary based upon review of an Iowa Court of Appeals opinion. Landlords would be wise to review their leases. You should have language in the lease stating that property left by the tenant after an eviction or abandonment will not be stored and will be disposed of.

SF 208/HF 361/HF 444 These bills all dealt with

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May 5th. Remember that date. It is our Spring Seminar at the Holiday Inn Downtown in Des Moines. We are doing a Thursday afternoon instead of Saturday morning. Registration will be from 12:00 noon to 12:30PM. The seminar will

DIALOGUE WITH DIRECTORS



consist of a legal clinic and assessing fire risk. The deadline for signing up is Monday the 2nd of May. We looking forward to an informative afternoon. Please fill out the registration form that is enclosed. Lunch is included.

Be sure to read Joe's Legislative Report. There is a lot going on that affects us as property managers and landlords. If you don't receive his e-mail updates, let him know at: joekelly@qwest.net.

Mark's column 'Ask an Attorney' deals with late fees. We receive lots of inquiries about what is allowable and what is not.

A reminder to check out the National Apartment Association's website at www.naahq.org. There are weekly updates on their website that should be of importance to all members. The member section of their website can be accessed by using the seven digit code that is found on your UNITS magazine.

Many of you have read about the legal action filed against the State of Iowa and the Department of Revenue challenging the differential property tax treatment between condos and rental property consisting of three or more units. This will be an interesting case to watch to see how this all plays out. A decision isn't expected until the end of 2005.

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

This Month's April 2005 NewsBrief

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- Montana Impact Fees

- The Welcome Mat
- Ask An Attorney
- Ask An Expert (reprint)

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.
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Q: What does the law say and what should you do if you have been charging more late fees than the law allows.

A: The Landlord and Tenant Law is silent on late charges. Late charges are covered by Iowa Code Section 535.2(7) under Money and Interest which provides in the case of a residential lease, a late payment fee shall not exceed ten dollars a day or forty dollars per month.

Now what happens if you find you have been charging more than allowed? Well the law is silent on that too.

From the point of view of doing the “right thing”, you might consider refunding to the tenant. However that may not be practical or even possible for any number of reasons. For example, tenants address is not known, the high cost of doing so, not wanting to draw attention to the over charging, etc. If that is the case, I would probably advise a landlord to change the late fee to comply with the law, and move on.

What are your exposures? Iowa Code Section 562A.11(2) provides if a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months’ periodic rent and reasonable attorney’s fees. So, your exposure is that a tenant would go after you for the over charges, get a judgment for all overage, for 3 months rent, and attorney fees.

If you go after the tenant for termination of tenancy and eviction or money judgment, I would not use as evidence any claim relating to non-payment of late fees which are in excess of what is allowed. In Polk County, if the landlord were found by the judge to be charging excess late fees, there is high likelihood he/she would throw out the landlord’s legitimate claims.

I would be cautious about the potential counterclaim by the tenant for overpayment and going after 3 months rent and attorney fees. That is why depending on the circumstances of the particular case, I might recommend being up front with the overcharge and make adjustment as to this tenant as appropriate in any claim for money owned. In other situations I might recommend making a claim only for permissible late fees without mentioning the incorrect fees. Or I might even recommend not making a claim for late fees at all. I would certainly not make a claim for possession based on nonpayment of excessive late fees.

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.”

The Welcome Mat

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

Members:

Virginia Hunter and Jeri Ann Brown,
Oak Leaf Properties in Urbandale
Rhonda Hartzler-Stegall of Des Moines
David Pitts of West Des Moines
Jack & Patricia Powell of Norwalk

Associate Members:

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

FYI: Montana Senate Considers Impact Fees for New Developments

Montana SB 185, submitted by Sen. Jeff Mangan (D-Great Falls), would authorize local governments to impose impact fees on new development to fund capital improvement plans. In order to collect the impact fee, the local government must conduct a study to assess whether or not these improvements are necessary. In addition, the impact fees charged should be related to the services and benefits that the new development will receive. This measure also requires the government assessing the fees to use the funds directly for a capital improvement project benefiting the new development within eight to 12 years of collection. This bill has been sent to the Senate Local Government Committee and is slated for a hearing on Jan. 25, at 3 p.m. This measure will likely make it out of committee, as Mangan is the committee Chair. If passed by the full legislature, this measure would become effective July 1. (Carla Lochiatto)

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preventing a landlord from evicting a victim of domestic abuse. The bills were worded such that a phone call to police from a victim would set up a defense of retaliation should a landlord take a victim to court for any reason. A subcommittee meeting was held on SF 208 in the Senate. An alternative amendment was drafted in an attempt to make the bill more palatable to landlords, but in the end, we were able to convince the subcommittee that the bill could not be salvaged.

SF 281/HF 534 These bills have both passed out of the Local Government Committees and are now in the Ways and Means Committees because they deal with increasing penalties and fees. These bills are attempts by the cities to collect late payments of building code penalties, fines, inspection, and enforcement fees. The bills would allow a \$25 late payment fee as well as interest on the total of one and a half percent per month until the bill is paid. Landlords have been mixed in their responses to SF 281/HF 534. Some believe that better collection of fines and fees would help cities hold down their costs. Other landlords believe that cities already have sufficient remedies to collect money owed to them.

HF 366 This bill would have established a safe-housing registry, indicating properties which have been cleaned up from lead paint problems. The problem with the bill is that consumers, not seeing a particular address listed, might incorrectly infer that a property had lead paint problems, when it never had the problem in the first place. HF 366 is dead for the session.

HF 408 This bill would attempt to streamline how property is assessed around the state by imposing property assessment guidelines and the bill would create a state property assessment appeal board to hear appeals of the actions of local boards of review. Today, if you don't like the results of the local board of review, you have no other option than to go to court. This action is very expensive and time consuming. An impartial state appeals board could be a great option. HF 408, or something similar to it, has an excellent chance of getting passed into law.

HF 737 This bill is an attempt by the mortgage brokers groups to keep fly by night people from getting into their profession. The earlier versions of the bill had a negative impact on contract sellers of property. We were able to get the bill amended to exclude contract sellers from having to get a mortgage brokers license.

Ask an Expert: Legal Q & A - Reprint Aug. 2003 - Newsbrief

by Donald DeBone, Carter & DeBone

Legal advisor and columnist to Apartment Association of Indiana, Indiana InSites; July 2003

Q. Is charging higher rent to people with bad credit considered discriminatory?

A. This question directly relates to "fair housing". According to the Fair Housing Amendments Act, there are seven protected classes with regard to housing discrimination. The protected classes include: race, color, religion, gender, physical or mental handicap, national origin, and familial status.

Discrimination relating to any of those classes is strictly prohibited by this act.

Notably missing from the list of protected classes is economic status or credit rating. Therefore, charging higher rent or deposits/prepaid due to poor credit would most likely not be considered discriminatory. However, a landlord, management company or anyone in the housing rental industry would need to be able to show that the difference in rent or deposits was solely based on the poor credit of the tenant. This is where the pitfalls to this question may lie.

In order to be able to prove this non-discriminatory difference, every landlord should adopt strict rental policies. The scale for renting an apartment should be uniform, based on verifiable criteria, and consistent. If challenged, a landlord must be able to verify that each applicant and tenant was held to the same credit standard and scale. To accomplish this, it is recommended that a written policy is drafted and that each person in the decision-making position be trained on the implementation of the rental policy.

In short, rental rates may vary based upon credit. However, the policy and standard must be clear, verifiable, and most importantly consistently utilized. This will enable a landlord to support any difference in rental rate with a non-discriminatory criteria. As always, the creation and implementation of this policy should be formulated with advice of counsel when appropriate.

**Attend The 2005 Spring Seminar
Call Connie For Details
515-255-0675**



**Register for ILA's
Spring
Seminar**

Thursday, May 5th, 2004

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

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!)

