



ILA Legislative Report

The legislature was supposed to have completed their work by April 29th. As you know, that didn't happen. When you're reading this report, the legislature may still be in town. As was reported in January, the margin of power is very slim at the Capitol for 2005 and 2006. The Senate is completely sharing power, with the 25-25 split, and Republicans lead the House with the slim margin of 51-49; and Governor Vilsack is a Democrat. The stall on completing the session has to do with spending. The House budget has increased by 7%. The Senate budget would go up by 9%.

The House is trying to draw the line at 7%. Inflation in 2005 is at 3%. You'd expect the Senate, with shared power, to have a more difficult time with spending.

The House and Senate have different plans with regard to property tax reform. This is certainly no guarantee that anything will pass. The House passed HF 847, which would add commercial/industrial property to the rollback system. In other words, whichever category of property had the lowest increase in valuation, that's what each category of property would increase. The maximum that any category would go up would be 4%.

The Senate has refused to debate HF 847. Instead, the Senate uses the 36 cents per pack cigarette tax increase to buy down property taxes, that is the extra levy that was put on property taxes some years ago for the public school foundation formula. The cigarette tax increase is supposed to raise about 60 million dollars. However, the same bill, SF 416, allows community colleges to raise their local property taxes, which is a separate levy, not by a vote from the voters, but from a vote of the community college trustees. So you can expect the community college taxes to take away a substantial part of the overall property tax savings, some experts place the amount at 40 million dollars.

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Joe Kelly
ILA Lobbyist

We hope you all had an enjoyable and safe Memorial Holiday.

Your committees are hard at work with several projects in the works. A Certified Apartment Manager class is being organized and is planned for the first part of 2006. This course is given one day a week over several weeks with a test at the end of each day. The certification is throughout the NAA. It consists of: management for residential issues, human resource management, marketing, property maintenance for managers, legal responsibilities, risk management, fair housing, financial management, community analysis, and adding value with technology. More details of this class will be forthcoming in following Newsbriefs.

The committee is also putting together a market survey that mailed out to members once it is formulated to benefits you the members of the Association.

A refresher course on leasing, customer service, and resident retention is being offered on Thursday, the 23rd of June. This is an all day course. See the enclosed flyer for more details and to sign up.

We have three members of the Association planning to attend the NAA Education Conference and Exposition in Orlando Florida this month. Delegates are: Tina Busch with Executive Property Management, Melissa Johnson with Olde English Village and Pam Jones with Furniture Options. We wish them well on their trip, and look forward to their report.

We thank all of our members and associate members who attended the 2005 Spring Seminar. A big thanks to the speakers for their knowledge and to N.A.A. President Tom Day, for participating.

Our new and improved website will be up and running sometime this month. Let us know what you think. It should be easier to use.

DIALOGUE WITH DIRECTORS



This Month's June 2005 NewsBrief

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- ILA Legislative Report

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- Ask An Attorney

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Ask an Attorney: Legal Q & A



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Q: Part 1. We have for many years sent our apartment manager to the hearing with no problem. But, we are told recently that we cannot do that.

The case was dismissed, and we were told we had to start over.

Part 2. The rental business is owned by a corporation, and I am the employed manager. I was told by the court attendant that I could not appear on behalf of my employer. My employer needed to appear him / herself or have an attorney appear for him/her

Who may go to the court house when it is time for the hearing?

A: First, the name of the plaintiff should be the legal name of the owner of the property or the name of the entity running the rental - that is to say it must be the proper party bringing the action.

Second, the person appearing at the court hearing must comply with Iowa Code Sections 631.11 The parties may participate either personally or by attorney. and 631.14. Actions may be brought by an individual, partnership, association, corporation, or other entity. In actions in which a person **other than an individual** is a party, that person may be represented by an officer or an employee. . . . Any person, however, may be represented in a small claims action by an attorney. (In the Code when it says "person" it means the party, for example the plaintiff. So in this context when it says that "person" may be represented by an officer or an employee, the word "person" means the party whether the party is a partnership, a corporation, an association, a limited liability company, etc.)

Third, Court attendants are trying to make sure the cases are in order to save the judges time and effort, However, they may have misconstrued what the judges said regarding who needs to represent the plaintiff at the hearing. If you have any question about procedure when you are at the counter, ask to talk to the judge to clarify and get a definitive answer. In Part 2, if this in fact happened, the court attendant appears to have misconstrued what the judge stated.

The only Iowa Code Annotated support or explanation in this topic is the following: "Party in a small claims action may be represented by an attorney who may participate fully as a legal representative of his client in trial of the case. Op.Atty.Gen. (Taylor), Dec. 1, 1977."

Example 1: You, Larry Landlord, own a rental unit or building or operate a residential rental company. You run the business as "Larry Landlord", and you are listed as the landlord on the lease.

You must identify yourself as the plaintiff and you must appear yourself at a small claims hearing, or you may be represented by an attorney.

Example 2: You, Larry Landlord, own a rental unit or building or run a business where you rent out units (for example your spouse owns the building, but you rent it from your spouse and operate the residential rental business.) You run the business as "Larry Landlord doing business as Excellent Property Management Company". Excellent Property Management Company is on the lease as the landlord. You employ a property manager.

You should identify "Larry Landlord dba Excellent Property Management Company" as the plaintiff, and you must appear yourself at a small claims hearing, or you may be represented by an attorney.

Example 3: You have set up a partnership, association, corporation, limited liability company, or other distinct business entity "Excellent Property Management Company, an Iowa General Partnership, LLC / Inc., etc. That entity operates the rental business. That entity has officers and/or employees.

You should identify the plaintiff by name of the entity, and its type of entity - Excellent Property

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The Welcome Mat

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

Members:

Larry Lanham from Clive
Ernest Beetner from Altoona
Knapp Properties of West Des Moines

Associate Members:

The Des Moines Register

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

Our Membership and Associate Member Committees are working to increase our ranks. When they contact you, please give them your thanks for the work they are doing.

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Therefore, with the net difference being substantially smaller, don't expect much of a break in your property taxes. You probably won't notice the difference. Furthermore, since the cigarette money would take away some of the education money from property taxes, that might leave some jurisdictions under their levy limit, and they might decide to increase spending to once again reach their levy limits. Moreover, you can expect the continuation of valuations to go up, further negating any chance of property tax relief.

Which version of property tax reform will prevail, if any? At this point, we don't know. Landlords prefer **HF 847**.

It's not a rosy scenario. Let's hope the property tax lawsuit, filed in Polk County, results in a positive decision sometime later this year. If the decision is written properly, it could cause the legislature to pass some meaningful property tax relief. If not, it might only result in preventing condos from being rented out like apartments.

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 passed the House on a vote of 95-2.

The Senate did not take up this issue. We now believe that landlords can deal with this issue by revising their leases.

SF 208/HF 361/HF 444 These bills all dealt with 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. We were successful in convincing the legislature not to consider the bills this year.

SF 281/HF 534 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. We were able to amend the bills so that landlords would have to be notified, at the landlords' address, 30 days prior to a late penalty being imposed. The landlord would also have to be notified before any lien could be filed in connection with not paying the fee or late penalty. The bill passed the Senate, but was not taken up by the

House. However, the language of the bill has been amended onto another bill, HF 882.

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 was incorporated into HF 847, whose fate is uncertain.

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. **HF 737** passed the legislature and was signed by Governor Vilsack on April 29th.

HF 181 Introduced by Rep. Hogg of Cedar Rapids, HF 181 would have required carbon monoxide detectors in certain multi-unit residential buildings and providing for penalties. HF 181 was not considered by the legislature this year.

Dateline: May 21, 2005 - It appears that the Iowa House, Iowa Senate, and the Governor have reached a deal to end the 2005 session. The House has prevailed in one area: there won't be any tax increase on cigarettes. Consequently, there won't be as much spending in the budget as the Senate and Governor had wanted. The Senate will not be taking up **HF 847**, the bill which would have included commercial property in the roll back and would have afforded some tax relief for commercial taxpayers.

Therefore, there won't be any property tax relief again this year. There is one other area of hope for residential commercial property. Apartment developers have filed

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a lawsuit in Polk County calling into question the disparity in taxation between condos and apartments. If the court renders a decision stating that the two types of housing can't be taxed differently, as they are today, it would have a positive impact and force the legislature to act. However, the legislature could take the easy way out and change the law which currently allows condos to be rented out like apartments. But, if the decision is crafted just right, it could say that all housing has to be taxed in the same manner, meaning that all housing, including rental, has to be classified as residential property. The decision on this case should be out sometime this year, with an appeal expected.

Dateline: May 21, 2005 - The Iowa legislature adjourned at about 11 last night. We picked up a victory in the last hours of the session. The legislature passed a new law, which won't take effect until 2007, that will create a new state property tax assessment board. We supported that concept all during the session. Most states have such a system of appeals. The new board will have 3 tax experts to hear appeals from taxpayers. This development will help taxpayers because we all know that you don't normally find relief by appealing to the local governments. Taxpayers still will have the option of bypassing the state appeals board and going directly to district court. However, going to the state appeals board will be much less costly than going to district court. We don't know what the exact appeals fees will be, but we know that the intent is to keep the fees reasonable.

Ask an Attorney: Legal Q & A

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Management Company, Inc. (Ptntship, LLC, etc.). You may send an officer or an employee to represent your entity at a small claims hearing. Or you may have an attorney participate for you.

Example 4: You, either dba or your distinct business entity own various rental properties. Each of these properties are referred by you informally as particular apartments. For instance "Hanson House Apartments". But Hanson House Apartments is not a distinct business entity. The owner of Hanson House Apartments and the owner of the rental business is Hanson Property Management, Inc.

You should identify the plaintiff as Hanson Property Management, Inc., not Hanson House Apartments.

Example 5: Hanson Property Management, Inc. employs a property manager for each apartment building or complex. The duties of the property manager is to take applications for rental, rent out the units, collect the rent, enforce the rules, terminate leases when the tenant is in default, and evict the tenant when they refuse to vacate after termination.

The property manager is an employee of a distinct business entity, and is qualified to represent the corporation at the hearing. And, is qualified to testify of the tenant's default and termination.

Example 6: Can I send my attorney to represent me and to participate in the hearing for me?

The Iowa Code says yes. The Opinion of the Attorney General says yes. But, the judge may base his/her decision on testimony and the believability of the witness. If your attorney is going to participate for you, there is risk the defendant will provide testimony to contradict the claims of the plaintiff. The key is who is qualified to give credible testimony that will hopefully sway the judge to rule in your favor. The attorney cannot give first hand knowledge testimony of all the facts. So, while the Code and Attorney General opinion allows you to have the attorney participate for you, you may well want someone with first hand knowledge to be available to testify.

You, whether you are an individual, "doing business as", partnership, corporation, association, limited partnership, limited liability company, may send your attorney **and** your property manager. The attorney can participate for you and represent you. And, as your attorney at law he/she can call as a witness the property manager to get first hand knowledge testimony presented to the judge.

If someone other than those permitted as specified above appears for you, there is potential that the court would consider that person as attempting to practice law without a license. That is not a road you or the person attempting to appear for you want to go down.

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."