



ILA Legislative Report

After a procedural roadblock, the property tax lawsuit in Polk County is ready to resume. Three apartment owners, one in Polk, Story, and Linn counties, filed suit this Spring to test the constitutionality of the Department of Revenue's administrative rule which taxes condos as residential property and apartments as commercial property. Many condo developers use their condos just like apartments: renting them out instead of selling the condos. This point is the crux of the lawsuit. Both properties are used in the same manner. Why aren't the taxes the same?

The procedural roadblock was that the judge ruled that the plaintiffs had not exhausted all their administrative remedies before filing the lawsuit. The plaintiffs then had to file for a declaratory order from the Iowa Department of Revenue (DOR). The agency was required to rule on the same issue as the court will eventually rule: is it constitutional to have two different taxing classifications for properties with the same use?

The DOR has responded with a twenty-page ruling concluding that the agency is not being unconstitutional in its determination. The essence of the ruling is that the use of the property is not the primary event of determining the property's classification. The DOR ruling focuses on the market for the property. Since condos are platted as single-family units, they can be sold as single-family units. Apartments are almost always sold as income producing properties. Condos can be sold just like houses. They can also be rented out. DOR stated that it is not reasonable to expect the department to determine which properties are owned or rented each year. DOR stated that, especially with properties which are older, there could be construction code differences between the two types of properties.

The DOR declaratory order also cites court cases that indicate there may some difficulty ahead in winning the district court case. There is a heavy burden on the plaintiffs to prove that the DOR's rule is not constitutional. In addition, the Iowa Supreme Court has already ruled on a similar, but even broader case. In *Sperfslage v. Ames City Board of Review*, the plaintiffs argued the difference in taxation from single-family houses and duplexes used for rent against the taxation of apartments. The plaintiffs used the same constitutional argument: it was a violation of their equal protection rights not to have their



Joe Kelly
 ILA Lobbyist

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The first ILA Occupancy Survey is complete and available. To get copies, call or e-mail Connie 515-255-0675 (ilaservices@iowalandlord.org) or fax a request to: 515-270-0999. The cost is \$12 for members and \$24 for nonmembers.

DIALOGUE WITH DIRECTORS



The fall seminar on November 10th is shaping up. It is on terrorism and you the apartment manager. It will include speakers from the FBI (Mark Betten), the INS, Iowa Homeland Security and others. See the enclosed registration form for details and to sign up. This promises to be an extremely important topic. Look at your latest UNITS magazine and read the article on page 60, "Thwarting Terrorism With Planning". In fact there are several excellent articles of interest this month in the magazine.

Also included with this Newsbrief is all the information on our first NAA class - CAM- Certified Apartment Manager. Sign up before November 15th and save.

Thanks to Mark Harpenau of A+Lawn and Landscaping for chairing the ILA Vendors Council. They will be meeting monthly to plan new events for 2005 and 2006 that will help the industry that helps your business.

The new ILA website should be up and running sometime next month. Gary Hendricks from Thelowa.Net is working on this new website. It should be easier and more efficient to use.

Be sure to read Mark Hanson's article concerning deposits and retention of deposits. Also be sure to read Joe's article on what is happening in the court system regarding property taxes, duplexes, condos and apartment buildings. It sounds as if the remedy for equal treatment is through the Iowa Legislature. We should be gearing up for that approach with the ILA-PAC next year.

See YOU at the Seminar on November 10th.

This Month's October 2005 NewsBrief

- Dialogue With Directors
- ILA Legislative Report
- Mold Resistant Apartments

- The Welcome Mat
- Ask An Attorney

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.
hanson@whitfieldlaw.com

Q: Is there a state law about holding a deposit for a period of time, like there is for buying a car or purchasing a house, and having to give it back in three days if the buyer changes their mind? Many property managers believe that there is such a law in Iowa.

A: Quick answer, No. Iowa Code Chapter 562A, which is the Iowa Landlord Law, contains no such requirement. Once an individual signs a lease, whether it is the landlord or the tenant, the contract is made. And, once the contract is made, the security deposit would normally be due. And once the deposit is paid, there is no requirement to hold it pending a waiting period for the tenant to change his/her mind.

If one side wants to get out of the contract what are the options. Let us assume the dwelling unit is presently vacant and available. If the landlord wants to get out of the contract and refuses to give possession to the tenant (assuming there is not a rejection of the tenant because of the screening process that becomes known and the landlord can claim the tenant withheld information), the tenant could sue for specific performance. This would only be practical under a lease which had some length to it. A short lease would not be worth suing. The tenant could sue for damages suffered for expenses of finding another unit, maybe personal property storage, maybe moving expenses, etc.

If the tenant wants to get out of the lease and refuses to take possession, the landlord could seek reimbursement for damages of re-letting the unit and perhaps lost rent. However, the damages would be minimal if the time period between signing the lease and refusing to take possession is short. Let us assume the next day the tenant called the landlord and said they changed their mind and would not move in. Let us assume they paid the security deposit, and they want it back. What do you do? Can you keep it? Can you go after the tenant for even more?

The landlord can only keep security deposit or sue for more damages if damages were actually suffered. Unless the landlord can validly assert there were damages, the landlord would mostly have obligation to return the rental deposit. What damages were suffered in that day? What expense did the landlord need to incur purely due to the tenant's backing out. Will the landlord need to run advertising again? Did the landlord turn down another prospective tenant and might there be little opportunity for rental to someone else? Perhaps the lease was for a year, and the landlord wants the value of the year's rent lost. Can the landlord prove it took steps to mitigate damages.

The landlord might treat the situation as termination of least under 562A.12 and give the tenant notice of withholding security deposit if a permitted reason can be made to fit, but this situation doesn't fit well within 562A.12 permitted reasons to withhold refund. Default in payment might be the closest. Restoration of the unit and expenses incurred in acquiring possession do not apply. There is also some risk in this approach. Sub-section 7 addresses bad faith retention of a deposit by a landlord and provides for punitive damages of up to \$200.00 in addition to actual damages suffered by the tenant. You are at risk the judge doesn't buy your argument you retained the deposit for a valid reason.

The question raised the issue of waiting period and opportunity to get out of other contracts. There is no right to cancel a house purchase once you sign the contract. There is no right to cancel a motor vehicle purchase once you sign the contract. There might be certain financing arrangements for which you have the right to cancel the loan, but I am not aware of any right to cancel the purchase of a house or motor vehicle itself. There are some contracts which are of the type where the State protects the consumer and provides by statute a waiting period during which the consumer has the ability to rescind or cancel the contract.

Perhaps a couple of the more well know are:

- a. Consumer credit loans secured by a second mortgage or home equity loan or refinance of your original primary loan. Under federal law you have a three day right of rescission. You do not have the right to cancel the purchase of a house. What you have is the right to cancel certain loans which are a lien on your home.
- b. Door to door sales. You must be given the right to cancel a purchase of goods sold to you by a door to door sales agent. There are some exceptions, but generally you have the right to cancel.
- c. There are other protected sales for which you have the right to cancel: credit service contracts; physical exercise clubs; time shares; and membership campgrounds to name a few.

In summary, the backing out tenant does not have a three day period to cancel and right to get the security deposit back. But the landlord only has a right to keep the deposit if there is basis in suffered damages to do so.

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."

NMHC/NAA Publish Best Practices to Design and Build Mold-Resistant Apartments

WASHINGTON, DC - Continuing their leadership role on the issue of healthy indoor environments in apartment properties, the National Multi Housing Council (NMHC) and the National Apartment Association (NAA) have published a new white paper to acquaint property developers with construction materials and techniques that will maximize a building's potential to resist damage by excessive moisture and mold growth.

"Mold is an all-too-familiar problem for anyone who owns, manages or develops real estate," noted Eileen Lee, NMHC/NAA Vice President of Environment. "While it is impossible to make a building 'mold proof,' building owners and design and construction professionals can minimize the risk of mold growth through proper planning and the use of appropriate building materials and construction techniques."

NMHC/NAA's white paper, Best Practices for Reducing Moisture Intrusion and

Excessive Mold Growth during Construction and Renovation, offers comprehensive guidance from pre-construction considerations to selecting building products and designing building components such as wall systems, foundations, heating and air conditioning, and much more.

It includes chapters on new mold- and moisture-resistant building materials as well as sophisticated new computer modeling programs that can be used to analyze the moisture potential of a particular property given its design, height, location, exposure to wind and other factors.

Because efforts to control moisture and mold must be

part of the initial building planning and design phase, the white paper includes a "Discussion Checklist" that property owners can use with their architects and contractors to make sure all the possible risk mitigating practices have been considered.

In 2002, NMHC/NAA published an Operations and Maintenance (O&M) Plan for

Mold and Moisture Control to help apartment owners develop formal mold/moisture control procedures and integrate those practices into their existing maintenance procedures. That document covers training, routine maintenance, remediation techniques, recommended documentation and sample communications plans to educate residents about mold.

Both documents are available at no charge for members of the National Multi-Housing Council at www.nmhc.org/Content/BrowseContent.cfm?IssueID=472. Members of the National Apartment Association can download them at www.naahq.org.

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NMHC and NAA operate a Joint Legislative Program and represent the nation's leading firms participating in the multifamily rental housing industry. NMHC/NAA's combined memberships are engaged in all aspects of the development and operation of apartment communities, including ownership, construction, finance and management. Together, the organizations operate a federal legislative program and provide a unified voice for the private apartment industry. Nearly one-third of Americans rent their housing, and almost 15 percent of all U.S. households live in an apartment home. For more information, contact NMHC at 202/974-2300, e-mail the Council at info@nmhc.org, or visit NMHC's web site at www.nmhc.org.

The Welcome Mat

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

Members:

John Rullestad - Rullestad Equity Holdings, LLC - Ankeny

Dave Hein

Cynthia Pollard from Newton

James Spicer of Ankeny

York Taenzer of Des Moines

Associate Members:

Geri Huser, Attorney

Midwest Futures, Inc. Altoona, Iowa

Shane Madison - Pro Team Carpet Care - W. DesMoines

Stitzell Electric Supply Co., Inc. -Des Moines

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

ILA Legislative Report

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apartments taxed as residential properties. The Iowa Supreme Court, in the Sperflage decision, accepted the argument that one and two family dwellings "fall into the same market as owner-occupied properties." The court concluded that any property with three or more units would always be marketed and sold as an income producing property.

Given those kinds of precedents from the court, it now appears that the legislature will have to act. Even if the district court, or ultimately the Iowa Supreme Court, reversed the DOR's administrative rule, the Iowa legislature would have to act anyway to implement the decision and adjust its ramifications. As many of you have heard or read before, until 1978, it didn't matter what your classification was. Every class of property paid the same tax rate. It was the legislature that created the current problem with the rollback system. It now appears that only the legislature will be able to correct its own problem.

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!)





Certified Apartment Manager Classes (CAM)

The following is the schedule for the Certified Apartment Manager's classes being held in Des Moines. The classes will run for eight consecutive Tuesdays Testing Daily;

DATE	CLASS	INSTRUCTOR
January 17, 2006	Property Maintenance For Managers	Christopher Grimsley, AIMCO
January 24, 2006	Management For Residential Issues	Deb Haukenbury
January 24, 2006	Community Analysis	
January 31 2006	Legal responsibilities And Government Relations	Ross Barnett, Abenroth & Russell, P.C.
January 31, 2006	Adding Value Through Technology	Qwest
February 7, 2006	Financial Management	Becky Yontz, Timberland Partners
February 14, 2006	Marketing	TBA
February 21, 2006	Risk Management	Jamie Krist, Krist Services
February 21, 2006	Insurance	
February 28, 2006	Human Resource Management	TBA
March 7, 2006	Fair Housing	Mary Spain

All class scheduled dates are subject to change within these eight weeks, as well as instructors. Final schedules and instructors with bios will be provided with completed registration.

CAM Class is sponsored by the National Apartment Association / ILA, and vendors from the ILA Vendor Council.

Price is as follows with -

Registration received by November 15, 2005:		Registrations after November, 15, 2005:	
ILA/NAA Member	Non-Member	ILA/NAA Member	Non-Member
\$450.00	\$750.00	\$525.00	\$825.00

All classes are being held at the regency building corporate office conference room:
 6600 Westown Parkway
 West Des Moines
 Lower Level West Entry

Assume all class schedules will be 9AM-6PM unless otherwise notified.

Mail registration with check to:

ILA/NAA
 P.O. Box 13246
 Des Moines, Iowa 50310-0246

Questions:

Tina Busch - 515-202-3936
 Mary Spain - 515-327-0606

Registration Form

Student's Name _____

Company _____

e-Mail Address _____

Phone # _____

FAX # _____