



ILA Legislative Report

New Bankruptcy Law

Following a ten-year effort by many industries, including the rental housing industry, bankruptcy reform was signed into law by President Bush on April 14. Among the new provisions in the law is one long-sought by the rental housing industry: relief from the current automatic stay provisions. Another aspect beneficial to the industry is less burdensome requirements for creditors to keep payments submitted by bankrupt companies. These provisions, briefly described below, become effective on October 17, 2005. All questions should be directed to your legal counsel.

The exception to the automatic stay provision will allow rental housing providers to recover their property for non-payment of rent, property endangerment, or illegal drug activity where a judgment of possession has been obtained against a resident before he/she/they file for bankruptcy protection. Residents will no longer be able to avoid rental obligations and eviction, as they currently do, by filing for bankruptcy. This change in the law should assist property owners in recovering possession of their property much more quickly.

When a company files for bankruptcy, the court appointed trustee may demand repayment of all monies paid to creditors within 90 days prior to the bankruptcy filing. This provision was intended to address the so-called "brother-in-law payment" situation. To keep these payments, creditors must go to court where bankruptcy judges often consider how long the parties have been doing business; how long the invoice was outstanding before it was paid; and whether the creditor submitted the invoice in a timely manner. Many creditors cannot sustain their claims because, for example, they may be a relatively new supplier or may have submitted their invoices late. The new law will make it easier for creditors to keep their payments if they can show the funds were paid according to ordinary business terms and that there were no preferential terms in the transaction.



Joe Kelly
ILA Lobbyist

The rest of 2005 is shaping up to be a busy remainder of the year. As you have heard by now, the Fall Seminar scheduled for November 10th at the Holiday Inn-Downtown has been cancelled. However, our Educational Committee is currently working on classes and seminars for 2006. We are excited about the N.A.A. Courses that we will be offering. We encourage you and your staff to participate in these offerings when they are available.

DIALOGUE WITH DIRECTORS



On December 13th we will be offering a Spanish 101 Class for apartment managers and owners. This will take place at the training center at the Des Moines Register's location on Army Post Road. For more information on this class, contact Tina Busch at 515-273-9419 or Mary Spain at 515-327-0606.

In January the N.A.A. CAM (certified apartment manager) class starts on the 17th and runs one day a week through March 7th. See the enclosure that came with last month's Newsbrief or contact Tina at 273-9419 or Mary at 327-0606.

On June 15th through the 17th the NAA is having their 2006 Educational Conference & Exposition in Denver. So much for New Orleans.

Many more events are being planned for 2006, so keep an eye on the new website and read those Newsletters. If you haven't already received a copy of the first Occupancy Survey be sure to contact Connie (515-255-0676) for a copy. There is a nominal charge.

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

This Month's November 2005 NewsBrief

- Dialogue With Directors
- ILA Legislative Report
- Tenant accountability law sought again
- Implied Warranty
- 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

Question: Changes are occurring at the Polk County Court House with judges and magistrates. How will this effect me?

Response: Chief Judge Gamble hopes the changes will enable the court and clerk's office to provide you better service and be more accessible to the public.

What are the changes? The State court administration authorized Polk County to hire six new magistrate judges. Additional magistrates will be available to handle work load in the rural counties of Dallas, Clarke and possibly some others.

What types of cases will these new magistrates handle? All small claims. Traffic. Mental health. The district associate judges who have previously handled small claims will be assigned to handle more juvenile, general civil up to \$10,000, and lower level criminal.

Where do I go to file small claims cases and where are the hearings to be held? Until about mid November (target date November 14), you will continue to go to the small claims desk on first floor of the Court House to file your papers. Hearings are presently conducted in the court rooms at the north end of the first floor or overflow in the Midland Building. When the move is made about November 14, all small claims functions will be housed at 500 Southwest 7th, at River Point, south wing, first floor. The facilities will include all the small claims clerk of court personnel, three court rooms, three judges chambers, the mediation offices (this is headed up by Joe Harrison), public waiting room, and conference rooms for attorney client conferences and mediation conferences. The building will be secure, so you will need to go through screening upon entry.

What training and experience do these new magistrates have? With the authorization to hire six new magistrates, the Fifth District Court administration and judges took applications last May and interviewed a large number of applicants. While the Iowa Code does not require they be attorneys, all the six new magistrates are attorneys. They are required to be residents of the county in which they are appointed. They have a variety of ages, gender, years in practice. The job is part time paying \$30,000.00. The attorneys are able to continue to practice law in private practice, however they will not be able to handle any small claims, traffic or mental health cases in Polk County (or their county of residence).

What change will be made with the clerk of court services? The clerk will be authorized to enter a default judgment for a money judgment if the amount is able to be determined by the pleadings. If the amount is not able to be determined by the pleadings, then the magistrate judge will need to make the determination and enter the amount - perhaps after additional evidence or testimony from the plaintiff. To take advantage of this you would plead a specific dollar amount instead of merely claim an "amount not to exceed \$5,000.00" And, I would attach sufficient evidence to verify the claimed amount - whether it is a promissory note, affidavit by you as to the basis of your claim, or some other document which substantiates your claim.

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:

Patricia Amenta of Des Moines
Robert Dubansky -- Property Management of Iowa, LLC in Ankeny
Kathy Siebels--Urban Green Apts. in Urbandale
Charles Hansen LKC Properties, LLC in Johnston
Carol Morrow - C & S Enterprise of Deep River, Iowa
Nawazish Ali of Des Moines, Iowa +

Associate Members:

Rocky Sposato, Tubwrx, Inc of Des Moines

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

Tenant accountability law sought again

By Tom Saul

With the help of Alderman Bill Lynn, 5th Ward, Davenport landlords again have asked city officials to consider passing a law that would hold tenants in the city's 13,600 rental units accountable for some housing code violations.

Among them are infestations of fleas or cockroaches, improper storage of hazardous materials, excessive accumulation of debris inside or outside of an apartment, inoperable smoke detectors and hanging items from electrical conduit or water and gas pipes, according to a draft of the law prepared by Lynn.

"Now, there are people, particularly in Davenport's central city, who think the rules don't apply to them," Lynn said. "That carries over to their dealings with the police. That's why we have the crime problem there that we have."

By holding tenants accountable for some code violations, landlords would have greater leverage to evict bad renters, he said.

But Mary Thee, city corporation counsel, said that was not necessarily so. Unless landlords included language about prohibited behavior in the rental agreements they have tenants sign, a city ordinance that holds tenants accountable for some code violations will offer little help in evicting troublesome renters.

Other alderman and city officials also shot holes in the idea of a tenant accountability law. Alderman Tom Engelmann, 8th Ward, said it would put the city in the middle of what is essentially a private business deal between a landlord and a tenant.

"I'm an accountant," he said. "I wish I could get the city to have taxpayers pick up the bill to help me collect on accounts receivable."

Clayton Lloyd, city director of community and economic development, said the division that inspects rental housing would have to keep records of the names of all those who rent apartments in the city. Enforcement of the proposed law would take additional staff or, if none was approved, his staff would have to cut back on other duties.

One way to make landlords better able to detect and avoid troublesome tenants would be to have the city require all of them to take a one-day class offered by the police department, Capt. Kevin Murphy said. The class focuses on all aspects of running rental property, including screening tenants, evictions and dealing with problem renters.

Implied Warranty of Habitability

(Reprint)

(by Bruce R. Fox from Landlord Tenant Law Bulletin)

Most landlords understand and expect their obligations to residential tenants will be spelled out in the rental agreement. Tenants expect landlords will provide a suitable living area with heat, hot water, unbroken windows, and other amenities that become part of the rented space. Typically, tenants do not spend a lot of time reading the lease to look for these provisions. The law has stepped in and provided tenants with certain rights, with or without a rental agreement or lease, that require landlords to repair and maintain the property. These obligations are called "implied warranties of habitability".

Generally implied warranties require a landlord to provide a residence that is fit for human occupancy, free of conditions that may be dangerous. The landlord will have to make all necessary repairs within a reasonable time, an expense not usually considered when the rent is set. Landlords cannot pass these costs on directly to the tenant through rent increases. Most states, except Alabama, Colorado, and South Carolina have implied warranty laws. These laws prevent landlords from renting residential units 'as is' even if the tenant has inspected the premise prior to renting the unit.

Implied warranties have the unfortunate effect of extending the terms of the lease by requiring landlords to make repairs within a 'reasonable time'. Of course, 'reasonable time' means different things to different people. This is where the landlord can get caught when confronted with an implied warranty complaint. It is difficult for landlords to guess correctly when repairs have to be made.

Implied warranty claims typically occur when the tenant is seeking a return of a security deposit or the landlord is suing a former tenant for damages or back rent. If the tenant is successful, the landlord will be responsible for paying the rental value difference between the rental value of the unfixed unit and the unit's value if it had been fixed, plus the tenant's out of pocket expenses.

The tenant usually must give notice of defects to the landlord within a reasonable period of time after the defect occurred. Landlords are not responsible for defects unless they are aware they exist.

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!)

