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Landlord Tenant Law Bulletin

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WEST®

Termination—Notice

Landlord and tenant dispute whether lease requires notice of termination for nonpayment of rent

Citation: *T-3 Martinsville, LLC v. U.S. Holding, LLC, 911 N.E.2d 100 (Ind. Ct. App. 2009)*

T-3 Martinsville, LLC and MS Martinsville, LLC (collectively, "Martinsville") owned the Grandview Convalescent Center ("Grandview"). Martinsville leased the Grandview to US Holding, LLC ("USH"). USH subleased the Grandview to Hoosier Enterprises IX, Inc. ("Hoosier"). Hoosier operated a comprehensive nursing facility at the Grandview.

All parties apparently performed their obligations under their respective agreements until September 2006. From September 2006 to February 2008, USH did not make rent payments to Martinsville.

In February 2008, Martinsville brought a legal action against USH and Hoosier. The action alleged that USH failed to pay rent. It also sought ejectment of USH and Hoosier and immediate possession of the Grandview.

Relevant to the legal dispute was the provisions under the lease between Martinsville and USH (the "Lease") that related to USH's alleged default. Section 10.1.1 of the Lease provided that it would be an "Event of Default," allowing Martinsville the remedy of terminating the Lease, if USH failed "to pay within five (5) business days of the date when due any Rent … or payments required of [USH] under [the] Lease." Section 10.1.2 provided that "any other material default" by USH would be an "Event of Default" if not cured within any applicable cure period. Section 10.1.9 provided that it would be an "Event of Default" for USH to: fail "to perform or comply with any other term or provision of the Lease not requiring the payment of money …" Section 10.1.9 further provided that defaults under that section could be cured within ten business days of USH's receipt of a notice of default from Martinsville.

Hoosier field a motion for summary judgment with the court. It asserted that there were no genuine issues of material fact in dispute, and asked the court to find for USH and Hoosier on the law alone. Specifically, Hoosier maintained that, under § 10.1.9, USH was entitled to, but did not receive, notice of default and an opportunity to cure. Therefore, it argued: Martinsville was barred from asserting that USH had breached the Lease; and Martinsville's claim for termination of the Lease was premature.

Martinsville maintained that the Lease did not require notice and an opportunity to cure for nonpayment of rent. Citing § 10.1.9's phrase "not requiring the payment of money," Martinsville argued that nonpayment of rent was excluded from the requirements of notice of default and "cure period."

The trial court held that the Lease required Martinsville to provide notice of default and an opportunity to cure for the nonpayment of rent. De-

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spite the language in § 10.1.9, the court found that it was the parties' intent that non-payment of rent be "curable." That "intent," the court said, was "supported by common sense," and the fact that disruption of Hoosier's skilled nursing facility would be "devastating" to patients, families and staff.

Martinsville appealed.

DECISION: Affirmed.

The Court of Appeals of Indiana held that the Lease did not require Martinsville to give USH notice of default and an opportunity to cure before terminating the Lease. However, the court further held that the common law doctrine of equitable estoppel did require such notice and opportunity to cure. In other words, the court concluded that Martinsville was barred from obtaining the relief it sought because it had not acted fairly.

In so holding, the court found that the relevant Lease provisions were clear. It agreed with Martinsville: § 10.1.9 excluded the payment of money from the notice of default and opportunity to cure requirements. It disagreed with the trial court: the nature of the Grandview (as a skilled nursing facility) was not necessarily a basis for concluding that the Lease required notice and an opportunity to cure for nonpayment of rent.

However, the court also concluded that the doctrine of equitable estoppel required Martinsville to provide notice and an opportunity to cure before terminating the Lease. The court found that for a year and a half, the parties had been "actively negotiating significant issues directly related to the Lease . . , and the rent due under the Lease was [a] factor in [those] negotiations." During that time, Martinsville had refrained from pursuing its remedies under the Lease to enforce payment of rent. This, found the court, demonstrated "a willing delay in USH's nonpayment of rent." Martinsville had "acquiesced to a delay in the payment of rent." As such Martinsville was "estopped" from "suddenly, without notice, and without a reasonable time to cure, claiming USH breached the Lease by failing to make rent payments."

Accordingly, the court concluded that Martinsville's complaint was premature and the Lease was not terminated.

See also: *Scott-Reitz Ltd. v. Rein Warsaw Associates, 658 N.E.2d 98 (Ind. Ct. App. 1995).*

Case Note: Martinsville had argued that, under § 10.5 of the Lease, it could not waive nonpayment of rent, except in writing—which it had not done. The court said that § 10.5 was inapplicable; resolution of the issue was "based on the principle of estoppel not waiver." "Waiver" is an "intentional relinquishment of a known right." The "estoppel doctrine," explained the court, is "based on the rationale that one who by deed or conduct has induced another to act in a particular manner will not be permitted to adopt an inconsistent position … or course of conduct that causes injury to another." Martinsville acquiesced to the delay in rent payment, and USH relied on that acquiescence. Because of that, Martinsville was prohibited from claiming its right to terminate the Lease.

Right to Renewal

Landlord miscalculates rent, then says tenant is not "in compliance" with lease renewal provision due to rent owed

Citation: *Maleki v. Desert Palms Professional Properties, L.L.C., 2009 WL 2252313 (Ariz. Ct. App. Div. 1 2009)*

Dr. Farzam Maleki leased commercial space from Desert Palms Professional Properties, L.L.C. ("Desert

Palms"). The commercial lease (the "Lease") was for a five-year term. Under the Lease, Maleki had an option to renew for an additional five-year term so long as he was "in compliance with the terms [of the Lease]."

The Lease required rent at $24 per rentable square foot per year, with a three percent increase annually. Taxes and fees to be paid by Maleki were also based on the rentable square footage of the leased space. The Lease stated that the premises consisted of "approximately 1,500 square feet," and that "[t]he exact square footage shall be determined by [Desert Palms] …." Desert Palms later notified Maleki that the "total Lease space" upon which rent, taxes and fees were to be calculated was 1,418 square feet.

From October 2002 until November 2006, Desert Palms invoiced and Maleki paid, rent, taxes and fees based on 1,418 square feet. In November 2006, Desert Palms notified Maleki that the rentable square footage of the leased space had been calculated mistakenly; it was 1,466 square feet, not 1,418 square feet. Desert Palms stated that because of the mistake, Maleki had paid too little rent, fees and taxes during the lease period. It demanded Maleki pay $8,043.70 in back rent, fees, and taxes.

Maleki disputed the amount owed. While the amount owed remained in dispute, Maleki provided written notice of his intent to renew the Lease. Desert Palms asserted that Maleki could not renew the Lease because he had "failed to maintain compliance."

Maleki brought a legal action against Desert Palms. He asked the court to declare that he was entitled to renew the Lease and remain in possession of the leased space.

The superior court found that Maleki was "in compliance" at the time he exercised his right to renew the Lease. It said that because Desert Palms was responsible for the miscalculation, Maleki was entitled to rely on the 1,418 figure through the original term of the Lease. It concluded that Maleki was therefore entitled to renew the Lease.

Desert Palms appealed.

DECISION: Affirmed.

The Court of Appeals of Arizona held that Maleki was "in compliance" with the Lease within the meaning of the Lease's renewal provision.

Desert Palms had argued that because Arizona law required option provisions to be construed strictly, Maleki could not exercise the option to renew unless he was in "strict" compliance with the Lease. The court said that principal of Arizona law applied to compliance with the manner in which the option to renew is exercised. There was no question that Maleki strictly complied with the Lease's renewal provision regarding notice to renew. As to compliance with the rest of the Lease, the court said that Maleki's right to possession was not dependent on "perfect performance" of the Lease. Maleki would not have a right to renew only if he was in "material" breach of the lease. The court found Maleki was not in "material" breach of the Lease since he: faithfully paid rent, taxes and fees for four years based on the square footage number Desert Palms provided; and at the time he exercised his option to renew there was a "good faith dispute" as to the correct rentable square footage and amounts owed. Since Maleki did not materially breach the Lease, he was "in compliance" with the Lease when he exercised his option to renew. He was therefore entitled to renew the Lease.

See also: *Foundation Development Corp. v. Loehmann's, Inc., 163 Ariz. 438, 788 P.2d 1189 (1990).*

See also: *Title Ins. & Guaranty Co. v. Hart, 160 F.2d 961 (C.C.A. 9th Cir. 1947).*

Case Note: Because Maleki's breaches, if any, were immaterial, Desert Palms lacked the power, under Arizona law, to re-enter and take possession. Accordingly, the court also held that Desert Palms breached the cov-

Around the Nation

NATIONWIDE

Bill would ease rental of foreclosed properties

The U.S. Senate is considering a bill, the Neighborhood Preservation Act, which reportedly would "make it easier for people to rent foreclosed properties." More specifically the bill "would allow banks insured by the Federal Deposit Insurance Corp. to rent out foreclosed properties for up to five years." The legislation is intended to decrease the number of foreclosures for sale and stabilize prices. The bill has already been approved by the U.S. House.

Source: *The Examiner*; www.washingtonexaminer.com

CALIFORNIA

City requires "just cause" eviction of tenants in foreclosed properties

The Ridgecrest City Council recently passed an ordinance that prohibits banks from evicting tenants of foreclosed residential properties. Under the new ordinance, a bank is required to have "just cause" for evicting tenants after foreclosure. The law lists specific circumstances where eviction is permitted.

Source: *California Chronicle*; www.californiachronicle.com

Landlord alleges state law violations in adoption of revised rent control ordinance

An East Palo Alto landlord has brought a lawsuit against East Palo Alto and the San Mateo County Chief Elections Officer. The lawsuit seeks to remove a revised rent stabilization ordinance from the November ballots. The lawsuit alleges that the city's adoption of the law violated California Law. Specifically, the lawsuit claims the city violated the Ralph M. Brown Act "by discussing the proposed rent control ordinance in closed session." And, it alleges that the city violated the California Environmental Quality Act because it "failed to analyze the environmental impacts of the new rent law."

Source: *San Jose Mercury News*; www.mercurynews.com

COLORADO

Public nuisance ordinance may be extended

The Boulder City Council is expected to soon consider whether to extend to 2012 parts of the "abatement of public nuisances ordinance." The ordinance "allows the city to take civil action against property owners when they—or their tenants—receive multiple citations for so-called quality-of-life offenses such as loud parties and trash." Effectively, under the ordinance, the owner of property that receives at least two citations for code violations within 12 months may be taken to court by city officials.

Source: *Daily Camera*; www.dailycamera.com

ILLINOIS

Landlord sues sheriff for failure to process evictions

A Chicago landlord has sued Cook County Sheriff Tom Dart for his refusal to process evictions. The sheriff made news headlines earlier this year for halting evictions on foreclosures. The landlord has alleged, in federal court, that the sheriff's failure to process evictions is for the sheriff's political gain and that it's costing landlords thousands of dollars per month.

Source: *The Wall Street Journal*; http://blogs.wsj.com

MASSACHUSETTS

Landlords are charged with manslaughter in relation to deadly apartment fire

Three landlords have been, or are expected to be, charged with manslaughter and reckless violation of the state building code for a fire in a building in Quincy. The fire resulted in the death of a father and two infant sons who lived in an "illegal basement apartment with only one exit" and no smoke detectors.

Source: *The Boston Globe*; www.boston.com

enant of good faith by threatening to take possession when Maleki did not comply with its demands for payment.

Landlord Liability—Negligence

Landlord fails to install smoke detectors and tenants die in fire

Citation: *Gordon v. Fleeman, 680 S.E.2d 684 (Ga. Ct. App. 2009)*

Lucy Dessesseau leased residential spaces in a duplex from Irvine Gordon. Dessesseau sublet the residential spaces to Nathaniel Fleeman and Juhmel Barnhart. On February 2, 2005, a fire started at the duplex. Fleeman and Barnhart died as a result of the fire. Subsequently, their families brought wrongful death actions against Gordon. Those actions alleged that Gordon was liable, based on negligence, for Fleeman and Barnhart's deaths. More specifically, they alleged that Gordon was liable in negligence for the deaths because he had failed to install smoke detectors as required by state law, Ga. Code Ann. § 25-2-40. Section 25-2-40 required "every dwelling and every dwelling unit within an apartment, house … and townhouse … which was constructed prior to July 1, 1987, [to] have installed an approved battery operated smoke detector which shall be maintained in good working order." The law further required that smoke detectors had to be mounted on each story of a multi-story dwelling.

A jury found in favor of Fleeman and Barnhart's families.

Gordon appealed. He argued that the evidence "did not authorize a finding that he had breached any duty under [§ 25-2-40]." Although the fire inspector had found no smoke detector in Fleeman and Barnhart's unit, Gordon's contractor had testified that he, at Gordon's direction, had installed smoke detectors on both levels of the duplex. Gordon also claimed that, under Georgia law, "once a landlord installs a smoke detector in a dwelling or dwelling unit, the landlord has discharged his statutory duty and cannot be liable for negligence." Gordon specifically pointed to: Ga. Code Ann. § 25-5-20(g), which provided that "failure to maintain a smoke detector in good working order" could not be considered as "evidence of negligence;" and Ga. Code Ann. § 44-7-14, which provided that "[h]aving fully parted with possession . . , the landlord is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant."

DECISION: Affirmed.

The Court of Appeals of Georgia affirmed the jury's finding that Gordon was liable in negligence for Fleeman and Barnhart's deaths. Gordon's failure to install smoke detectors in violation of § 24-2-40 caused the deaths, held the court.

In so holding, the court found that evidence supported the jury's finding that Gordon had failed to install smoke detectors. The jury properly reached its conclusion based on testimony, including that of the fire inspector, who found no smoke detectors had been installed; the jury was not required to believe the testimony of Gordon's contractor, who said they were installed.

Since evidence supported a finding that Gordon breached his statutory duty to install the smoke detectors, "nothing in the language Gordon cite[d] from either [Ga. Code Ann.] §§ 24-2-40 or 44-7-14 insulated him from liability."

See also: *Housing Authority of City of Atlanta v. Jefferson, 223 Ga. App. 60, 476 S.E.2d 831 (1996).*

Case Note: Gordon had also argued that there was no causal link (required for negligence liability) between any failure to

install the smoke detectors and the tenants' deaths. He pointed to evidence that Fleeman had been awake during the fire and alerted to the danger and that Barnhart had been prescribed various medications and never woke up on the night of the fire despite the "commotion." He contended that an earlier alarm to the residents would not have lessened or eliminated the tenants' exposure to flame. The court disagreed, finding evidence did not require the jury to reach such a conclusion. Rather, based on evidence, the court concluded that the jury properly found that the fatal injuries were caused by Gordon's failure to comply with § 25-4-20.

"No-Pet" Clause

Tenant says building staff's knowledge of dog resulted in landlord waiver of lease's "no-pet" clause

Citation: *1725 York Venture v. Block, 64 A.D.3d 495, 884 N.Y.S.2d 6 (1st Dep't 2009)*

1725 York Venture ("York") owned unsold shares of 12 of approximately 230 apartments in a residential cooperative building. ERT Management, Inc. ("ERT") was the managing agent for these unsold units. ERT hired Gumley-Haft, Inc. ("GHI") to maintain these units. GHI also managed the building and staff for the cooperative corporation.

Michael Block leased one of York's apartments in the cooperative building. Block's lease had a "no-pet" clause that prohibited pets without the written permission of York. Nevertheless, without York's permission, Block owned a Staffordshire terrier from 1995 until its death in April 2005. In June 2005, Block adopted a mixed breed pit bull. Again, Block did not request York's permission. The doormen—employed by GHI—observed Block take the dog out for a walk two or three times per day.

In October and December 2005, Block's dog leapt at other tenants. The tenants notified GHI, which in turn notified ERT. After the October incident, York sent Block a ten-day notice to cure, followed by a notice of termination. Eventually, York commenced a holdover proceeding against Block.

In response, Block argued that York had waived the "no-pet" clause by: (1) failing to enforce the clause with respect to his first dog; and (2) failing to enforce the clause for the three months that the doormen knew that Block had the second dog. Block's second argument was based in the city's "Pet Law," which provided that: "Where a tenant … openly and notoriously for a period of three months … harbors … a household pet … and *the owner or his or her agent has knowledge* of this fact, and such owner fails within this three month period to commence a summary proceeding or action to enforce a lease provision prohibiting the keeping of such household pets, such lease provision shall be deemed waived."

In response to Block's first argument, York maintained that any waiver of the lease's "no-pet" clause as to Block's first dog did not constitute a waiver of the clause as to his second dog. As to Block's second argument, York acknowledged that the doormen knew of Block's dog for more than three months before York commenced the holdover proceeding. However, York argued that Block's argument failed because the doormen were not York's "agents" since they were not employees of York's managing agent, ERT; they were employees of GHI, the cooperative's managing agent.

The Civil Court found for York. The court concluded that Block breached the parties' lease by harboring a dog without York's written permission. Possession of the apartment was awarded to York.

NEW JERSEY

State supports suit against rental company that required a minimum income level from tenant

The State Public Advocate recently filed legal briefs supporting a woman's legal action against a rental company who refused to lease her an apartment because she could "not afford to pay her rent without help from the state's rental assistance program." The Public Advocate reportedly contends that "setting a minimum income level 'undermines the very purpose of the State Rental Assistance Program, which provides New Jersey's low-income tenants access to market-rate housing.'"

Source: *NJ.Com*; www.nj.com

NEW YORK

Proposed law seeks to "reform" commercial lease renewal process

New York City Council members are reportedly pushing for an "emergency vote" on a proposed Small Business Survival Act. According to proponents of the Act, it "seeks to prevent extortion of small businesses by reforming the current commercial lease renewal process." The Act requires landlords and small businesses to negotiate a fair lease agreement or reach an agreement through mediation.

The Epoch Times; www.theepochtimes.com

City's Tenant Protection Act upheld by court

A State Supreme Court recently upheld New York City's Tenant Protection Act. The law gives tenants the right to sue their landlords in Housing Court if the landlord uses threats or "other disruptive tactics" to try to force out tenants. The lawsuit, which was brought against the city by "property owners and the city's largest landlord group," the Rent Stabilization Association, claimed, among other things, that the law violated the state and federal Constitutions. The court hailed the law as a "rational legislative response to what the City Council has determined is the potential for a growing problem of tenant harassment in New York City." The Rent

Stabilization Association is reportedly considering an appeal.

Source: *The New York Times*; www.nytimes.com

PENNSYLVANIA

City will conduct small apartment "spot checks"

Philadelphia's Department of Licenses and Inspections ("L & I") reportedly plans to begin "spot checks of small apartment buildings this fall." The L & I Commissioner says they plan to focus "on high-density neighborhoods with frequent code violations."

Source: *The Philadelphia Inquirer*; www.philly.com

Proposed law may require landlords to pay for private inspections

Philadelphia City Council members reportedly plan to soon introduce legislation that "would require owners of taller buildings [at least six stories in height] to pay for private inspections," and to file inspection reports with the city.

Source: *The Philadelphia Inquirer*; www.philly.com

RHODE ISLAND

Town ordinance requiring stickers be placed on nuisance rental properties is challenged as unconstitutional

University of Rhode Island students and their landlords have brought a federal lawsuit, challenging a Narragansett town ordinance as unconstitutional. Under the ordinance, town police are authorized "to place 10-inch-by-14-inch stickers on properties where parties of five or more people created a 'substantial disturbance' through loud noise, public drunkenness, illegal parking or other such behavior." The large stickers remain on the property for "the duration of the school year or summer, depending on when they were given out." Student tenants contend the stickers are the equivalent of "degrading 'scarlet letters," shaming them and leaving them vulnerable. Landlords argue they are "being held responsible for behavior over which they have no control," and that the sticker's stigma makes it difficult to rent property.

Source: *The Associated Press*; www.google.com/hostednews/ap/article/

Block appealed.

The Supreme Court reversed.

York appealed.

DECISION: Affirmed.

The Supreme Court, Appellate Division, First Department, New York, held that York's failure to enforce the lease's "no-pet" clause with respect to Block's first dog did not constitute a waiver of the clause as to the second dog. However, the court also held that York waived the clause as to the second dog, pursuant to the city's Pet Law.

In so holding, the court rejected York's argument that the doormen's' knowledge should not be imputed to it since the doormen were not its "agents." The court found that even though the doormen were not directly employed by York, they: served York's tenants; and communicated with York through ERT. The court concluded that York "should not be able to defeat the remedial purposes of the Pet Law by pointing to its own failure to instruct or request the [building] employees to report the presence of animals."

See also: *Seward Park Housing Corp. v. Cohen, 287 A.D.2d 157, 734 N.Y.S.2d 42, 114 A.L.R.5th 789 (1st Dep't 2001).*

See also: *Park Holding Co. v. Emicke, 168 Misc. 2d 133, 646 N.Y.S.2d 434 (App. Term 1996).*

Landlord Liability—Damages

Court imposes statutory cap on damages awarded to lead-poisoned tenant

Citation: *Green v. N.B.S., Inc., 409 Md. 528, 976 A.2d 279 (2009)*

Kelly Green was a tenant in rental property owned by NBS, Incorporated and managed by Dear Management, Inc. (collectively, "NBS"). At the rental property, Green was exposed to lead-based paint.

Eventually, Green brought a legal action against NBS. She claimed that she had brain damage as a result of her exposure to lead-based paint. Among other things, she alleged that NBS caused her injury. She said they were negligent in their ownership and/or management of the rental property and had violated the Consumer Protection Act ("CPA").

The court agreed with Green's allegations as to NBS's negligence and violation of the CPA. A jury determined that Green did, in fact, sustain injuries as a result of exposure to lead-based paint. The jury returned a verdict in favor of Green in the amount of $2.3 Million.

Maryland statutory law, § 11-108, limits non-economic damages in personal injury actions. Citing this statutory cap (the "Cap") on non-economic damages, the court reduced the amount of damages awarded to Green to $515,000.

Green appealed. Among other things, she argued that § 11-108's Cap was not applicable to her case. She pointed to § 11-108(b)(3)(i), which said the Cap "shall apply in a personal injury action to each direct victim of *tortious conduct* and all persons who claim injury by or through that victim." Green contended that in order for the Cap to apply, two conditions had to be met: (1) there had to be a "personal injury;" and (2) there had to be a victim of "tortious" conduct. She argued that, in her case, the second condition was not met. Her personal injury was not based on "tortious" conduct; rather, it was based on a statutory cause of action (i.e., the CPA). Because the Cap did not apply, she contended that the trial court erred when it reduced the jury's award.

The Court of Special Appeals affirmed the imposition of the Cap.

Green again appealed.

DECISION: Affirmed.

The Court of Appeals of Maryland held that the Cap applied to Green's claim seeking money damages for CPA violations.

The court reached its conclusion based on: (1) an analysis of the meaning of the § 11-108's words "tortious conduct;" and (2) the legislative history of § 11-108.

Section 11-108(b)(3)(i) stated that the Cap applied in personal injury actions involving victims of "tortious conduct." In construing the phrase "tortious conduct," the court found that "tort" "encompasses all 'civil wrongs,' not just wrongs that were recognized as a civil wrong at common law." "[T]he fact that a cause of action arises out of a statute does not mean that a tort has not been committed."

Furthermore, found the court, nothing in the legislative history of the enactment and amendment of § 11-108 suggested that the legislature "even thought of the difference between actions claiming personal injury due to common law torts as opposed to causes of action claiming personal injury arising out of statutory or constitutional torts." The court found it "impossible to believe that the legislature intended to narrow the statute [as Green suggested] so that insurers would now have to cover non-economic damages awards that exceeded the [C]ap so long as the personal injury action arose out of the violation of a statute …."

The court concluded that the Cap applies in any action for damages for personal injury—whether based on tortious conduct or on a statutory cause of action.

See also: *Lee v. Cline, 384 Md. 245, 863 A.2d 297 (2004)*.

Case Note: The court also concluded that the Cap was not, as Green had argued, a "special law" prohibited by the state Constitution.

Landlord's Quarters—A Place for Landlords

Residential landlords face lead-based paint hazards, laws and liabilities

A case highlighted in this bulletin involved the issues of lead-based paint health hazards and related landlord liability. Landlords of residential rental property constructed before 1978 should be aware of lead-based paint hazards, laws and liabilities. With a few exceptions, rental property built before 1978 is presumed to contain lead-based paint. Lead-based paint poses significant health hazards, particularly for young children. For this reason, federal laws, state laws and local laws govern the disclosure and containment or abatement of lead-based paints.

Lead Hazards. Prior to 1978, most paint contained lead. Lead is known to be a highly toxic metal. When absorbed by the body, lead can cause damage to vital organs such as the brain and kidneys, as well as nerves and blood. Because of its affects on the brain, lead can also cause behavioral problems, learning disabilities, seizures, and even death. Children are particularly susceptible to lead poisoning. Because of their smaller size, it takes lower levels of lead to damage their systems than it does in adults. Additionally, children are at greater risk because they are still developing and because they are more likely to be on the ground and/or put their hands in their mouth. In rental property, children risk exposure to lead from: lead-based paint dust from chipping, peeling or flaking lead-based paint and/or from lead contaminated soil; or lead-containing plumbing pipes. A child is considered to have lead

VERMONT

State requires landlord proof of lead paint law compliance

The State Attorney General's Office is sending letters to landlords who own apartments built before 1978. The letters reportedly ask such landlords to: show proof that their rental properties are in compliance with the state's lead paint law; file compliance letters with the state Department of Health; and "prove that tenants know about the dangers of lead poisoning."

Source: *Brattleboro Reformer*; www.reformer.com

WASHINGTON

New law allows released inmates to qualify for rental assistance

Under the state's newly implemented housing voucher program, inmates may, upon their release, be eligible for rental assistance from the Department of Corrections. The program is "aimed at emptying prison beds and shaving millions of dollars of criminal justice costs." Released inmates may be entitled to up to $500 per month of rental assistance for up to three months—totaling $1,500 in assistance. Voucher payments are made by the state directly to the landlord.

Source: *HeraldNet*; www.enterprisenewspapers.com

WISCONSIN

Hefty fines seek to abate chronic nuisances at rental properties

The City of Reedsburg recently adopted a Chronic Nuisance Premises ordinance. Reportedly, the goal of the ordinance is to abate chronic nuisances, defined as three violations in 30 days or six violations in 12 months. The ordinance fines owners of "chronic nuisance premises" who fail to respond within 10 days of notification. Fines for a 10-day failure to respond range from $250 to $1,000, with an additional $500 to $1,000 per day that "the owner maintains, keeps or allows the tenant to exist without an abatement plan in place."

Source: *Reedsburg Times-Press*; www.wiscnews.com

poisoning if his or her blood-lead levels are greater than the Center for Disease Control's ("CDC") recommended level of 10 micrograms of lead per deciliter of blood.

Lead Laws. Because of the health-risks associated with lead-based paint, many laws govern disclosure and containment or abatement of lead-based paint.

Federal laws. The applicable federal law is the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X. This law applies to all rental properties constructed prior to January 1, 1978, except for the following:

- "housing for which a construction permit was obtained, or on which construction was started, after January 1, 1978;
- lofts, efficiencies, and studio apartments;
- short-term vacation rentals of 100 days or less;
- a single room rented in a residential dwelling;
- housing certified as lead-free by a state-accredited lead inspector;
- housing designed for persons with disabilities, unless any child less than six-years old lives there or is expected to live there;
- retirement communities (housing designed for seniors, where one or more tenants is at least 62 years old), unless children under the age of six are present or expected to live there." (Source: NOLO, "Lead Disclosures for Rental Property FAQ")

Disclosure—when renting. Landlords with rental housing covered by Title X are required to provide all prospective tenants with:

- the U.S. Environmental Protection Agency ("EPA")-approved pamphlet, "Protect Your Family From Lead in Your Home (This pamphlet provides information on identifying and controlling lead-based paint hazards.);
- any known information concerning lead-based paint or lead-based paint hazards at the rental property, including the location of the lead-based paint and/or lead-based paint hazards, and the conditions of the painted surfaces;
- any records and reports on lead-based paint and/or lead-based paint hazards at the rental property (including in common areas and other units, when such information was obtained as a result of a building-wide evaluation);
- an attachment to the lease, which includes a "Lead Warning Statement" and confirms that the landlord has complied with all notification requirements, and which must be signed by the landlords and tenants.

Note: These disclosure requirements apply before both the signing and renewing of a lease or rental agreement, and landlords must keep the disclosure forms as part of their records for three years from the date the tenancy begins.

Disclosure—when renovating. Landlords of buildings constructed prior to 1978 who intend to disturb at least two square feet of painted surfaces must comply with additional disclosure rules for "renovations." Tenants of rental units subject to the renovations must be given the EPA lead-hazard pamphlet (noted above). If common areas of rental property are being renovated, tenants of every rental unit in the building must receive a copy of the EPA pamphlet, as well as notice of: the nature and location of the renovation work; and the dates the renovation work is expected to begin and end.

Note: Tenants must receive the required information 60 days before the renovations begin.

State and local laws. Most states and some municipalities also have laws related to lead-based paint at residential rental properties. These laws typically ban the use of lead-based paint. They also may govern rental property disclosure of lead-based paint and/or lead-based paint hazards, requiring notices in addition to those required under federal law (i.e., such as additional information pamphlets; or registration of property with the state; or notification to state agencies prior to abatement). Some states, such as Massachusetts, require the removal or covering of lead-based paint hazards in homes built before 1978 where any children under six years of age live. This requires the hiring of a licensed lead inspector to test the home for lead and record all lead hazards. Many states also require lead-based paint abatement be performed by a licensed contractor who is "properly trained to perform the deleading work."

Liability. A landlord who fails to comply with the EPA disclosure regulations may face penalties of up to $10,000 for each violation. Landlords may also face liability for tenant injuries from lead-exposure under both the common law (i.e., under a theory of negligence, which requires landlord knowledge or notice of the presence of lead-based paint) and statutes (i.e., applicable statutory laws governing landlord responsibility related to lead-based paint in residential rental property). Some states, such as Maryland, cap a landlord's liability when the landlord can show compliance with lead laws.

Source: U.S. Department of Housing & Urban Development, "About Lead-Based Paint"

Source: U.S. Department of Housing & Urban Development, "The Lead Disclosure Rule"

Source: NOLO, "Lead Disclosures for Rental Property FAQ"

Source: Leshnower, R., Every Landlord's Property Protection Guide: 10 Ways to Cut Your Risk Now (NOLO, January 2008)

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