

# Welcome

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# LANDLORD'S GUIDE FOR AVOIDING LAWSUITS

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# KEY SUBJECTS

- THE “MOVE-IN” PROCESS
- LEASES
- DISCRIMINATION
- CLAIMS AND LAWSUITS



# THE “MOVE-IN” PROCESS



# Best practices in the “Move-In” Process

- ❑ Avoid costly lawsuits with potential residents
- ❑ Avoid disputes during the tenancy
- ❑ Understand the rights and responsibilities of landlords and residents
- ❑ Find the best tenants



# BE CONSISTENT

- Even if you don't have a rental plan, be consistent when dealing with prospective tenants
- When answering questions, all answers should be somewhat similar to everyone



An advertisement should be  
**HONEST**



# What does this mean?

- Do not LIE
- Do not suggest a lower rent and hope for a bidding war
- Do not advertise for rental units that are unavailable



# What should not be in an ad?

- An ad may not be discriminatory
- Discrimination (even unintended) is illegal and can be a costly mistake



# What is a discriminatory ad?

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**An ad should not mention age,  
gender, race, religion, disability,  
adults only, marital status**



# Examples Not to Use

“Spanish speaking neighborhood”

“No kids”

“Young, single female preferred”

“Adults only”

“Perfect for a young married couple”

“Nurses only”

“Prefer . . . ”

“Hispanic neighborhood”

# Rental Applications

- Require every adult resident to fill out a rental application completely
- Always accept a rental application from any prospective resident



# Should applications be rejected?

- ❑ It is **legal** to reject (not accept) incomplete applications
- ❑ You should **not** reject complete applications, even if it's unlikely you will rent to that person
- ❑ All applications must be completed fully by all adult residents



# Applicant identification

- Request Social Security Number
- If no SSN, use an Individual Taxpayer Identification Number



# Immigration Status

Never ask a prospective tenant (or current tenant) his or her immigration status



# Sex Offenders

- You may not use Megan's Law Website to screen residents
- A background check that results in finding out that a potential resident is a sex offender is valid



# Denial Based Upon Credit Report

- If you refuse to rent to someone based upon a bad credit history, you must:
  - Tell the prospective tenant your reason
  - Provide the name, address, and telephone number of reporting agency
  - Provide statement that prospective tenant can receive copy of credit report



# Other Legal Methods

- ❑ Check Court Records (Time Consuming)
- ❑ Criminal background checks
  - ❑ Time Consuming
  - ❑ Requires Additional Disclosures
- ❑ Contact Employer
- ❑ Confirm bank account information
- ❑ Check with prior landlord
- ❑ Others



# Be Careful

- No Megan's Law Database
- Don't interfere with existing relationships
  - ▣ Care in contacting employer
  - ▣ Care in contacting current landlord
  - ▣ Care in contacting friends/families
- Don't violate privacy



# Making a Decision

- Stick with your rental plan
- If everyone is equal, select the first in line
- Large landlords who frequently never select a protected class are opening themselves to lawsuits (i.e. never renting to residents with children)



# Why not me?

- Point to a solid, non-discriminatory reason why you selected one person over another
- Inform tenants of the agency that conducted the credit report
- Be consistent
- Keep records



# What to do with old credit reports?

- ❑ Safe retention
- ❑ Destroy unneeded reports
- ❑ Destroy records routinely
- ❑ Computer files too!



# LEASES



# In Writing

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**Always have a Lease  
Agreement in writing!**



# Types of Leases

- Month to month
- Fixed term



# What should you do?

- Require one year lease and then the agreement becomes month to month
- Require one year lease and then require a one year renewal
- Do not provide for automatic renewals



# Foreign Languages

- If you negotiated the lease in another language, the lease should be in that language unless the resident brings his own translator who can speak and read the language and English
- Do not hire the translator
- The translator should not be a minor



# Medical Marijuana

- California Law: medical marijuana is **legal**
- Federal Law: marijuana is **illegal**, even if medicinal



# Medical Marijuana

## ISSUES TO CONSIDER:

- Smoking
- Growing/cultivating
- Selling/exchanging
- Verifying



# Medical Marijuana

- Although you may be able to prohibit smoking, there may be issues related to disabilities
- Consider non-smoking forms of use
- Is the person a qualified patient or just smoking illegally?
- NOTE: This is **unchartered territory** in California



# Medical Marijuana

- Probably okay to restrict growing and cultivation
  - BUT – apply rules **uniformly**
- Okay to restrict selling and exchanging of medical marijuana on the premises
- If you believe illegal activity is occurring, contact law enforcement



# Medical Marijuana

## VERIFICATION

- In California, marijuana must be prescribed by a physician to be subject to medical marijuana exceptions
- How to verify?
  - Medical marijuana card
  - Prescription
  - Other confirmation



# Medical Marijuana

- NOTE: This can be a tricky subject!
  - ▣ May intrude on disability rights/patient protections
  - ▣ May intrude on privacy rights
- NOTE: May intrude on criminal issues
  - ▣ Always okay to contact law enforcement if you believe criminal activity is occurring
- Consult an attorney if there are questions or concerns



# Home Businesses

- You can prohibit home businesses
- Insurance provisions
- Zoning laws



# PETS

- Describe pets that are allowed
- Enforce all “no pets” clauses when you find out about the pets
- You may charge a higher deposit for pets
- Do not charge a special “pet deposit” but merely make it a larger deposit



# Illegal Provisions

- ❑ Cannot waive rent control laws
- ❑ Cannot waive habitability rules
- ❑ Cannot waive repair and deduct rights
- ❑ Cannot waive inspection notices
- ❑ Cannot waive liability if guest gets injured



# Illegal Provisions

- ❑ Cannot grant landlord self-help eviction rights
- ❑ Cannot waive right to legal notice, trial, jury, or appeal
- ❑ Cannot waive right to deposit refund
- ❑ Cannot waive notice provisions



**Use AOA forms**  
(make sure they're current)

**Do not attempt to write your own  
Lease Agreement**



# DISCRIMINATION



# Discrimination

- ❑ Legal reasons vs. non-legal reasons to refuse to rent to a person
- ❑ Be consistent
- ❑ Do not apply generalizations to people
- ❑ Document legal reasons why you chose one tenant over another



# What is discrimination?

- ❑ Denial
- ❑ Representing that there are no available units, when in fact there are
- ❑ Providing inferior terms or different terms for different groups
- ❑ Harassment



# Criminals

- You **are** allowed to refuse to rent for criminal convictions
- Do **not** use Megan's Law Database in rental applications
- Arrests are a little more complicated



# Telephone Calls

- Always provide the same information over the phone
- Housing advocacy groups use test callers with various accents to see how landlords will answer questions



# Disabled Tenants

The law requires you to accommodate the needs of a disabled tenant at **your** expense, and allow the tenant to make reasonable modifications to their unit at **their** expense, if it would allow the tenant to live comfortably and safely in the unit



# What's an accommodation?

- Providing a closer parking space
- Allowing a guide dog
- Allowing live-in assistant/nursing
- Arranging to read all written agreements/notices to a blind tenant
- Granting exceptions to occupancy limitations



# What's a modification?

- ❑ Lowering countertops
- ❑ Installing special faucets or door handles
- ❑ Modifying kitchen appliances
- ❑ Installing a wheelchair ramp



# Modifications

- You **can** require the tenant to restore the unit to its previous condition prior to the modification (excluding reasonable wear and tear)
- You **cannot** require any additional security deposit
- You **can** require a reasonable estimate to restore the unit into an escrow account



# Verification of Disability

- You can require documentation
  - ▣ Credible statements from tenant or third parties
  - ▣ Doctor's note
  - ▣ Documents
  - ▣ Government agencies



# What's a disability?

- Physical
- Mental
- Substance abuse



# Smokers

- Addiction to tobacco (smoking) is **not** a disability
  - You can legally reject smoking applicants
- Medical Marijuana?



# Public Assistance

- You **cannot** reject an applicant for receiving public assistance, but ...
- You **can** reject an applicant solely on the basis that he/she participates in Section 8 Program
  - *Sabi v. Sterling*
  - Source of income to tenant = no rejection
  - Source of income from other party = ok to reject

# Occupancy Limits

- Be reasonable with occupancy limits
  - It is unlawful to implement a 4-person limit in a 3 bedroom apartment
  - Do not have a “one-person one-bedroom” rule
  - In general, a 2 + 1 policy works:
    - 1 bedroom = 3 people
    - 2 bedrooms = 5 people
  - Treat children and adults the same
- Avoid evictions based upon new births



# Personal Characteristics or Traits

- Avoid “discriminating” against a group:
  - Students
  - Particular jobs



# Remember the Rule

- BE CONSISTENT – will help avoid claims
- Discrimination claims can be **expensive**:
  - Government fines
  - Damages to disabled claimants
  - Attorney fee awards
  - Punitive Damages



# CLAIMS AND LAWSUITS



# What can landlords face when tenants allege a violation?

- Small Claims Court
- Court of “Unlimited” Jurisdiction
- Criminal Court
- State Agency
- Local Agency (city/county)



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# Small Claims Court

- Most landlord-tenant disputes end up in small claims
- \$7,500 maximum; \$5,000 if you are a corporation
- Try to settle even after you receive a complaint
- Although you don't need an attorney (and in fact, can't have one), it may help to get the issues straight and prepare you for the hearing



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# “Normal” Court

- Would handle larger landlord disputes
  - ▣ Significant damages or serious allegations
  - ▣ Class action lawsuits
  - ▣ Discrimination claims, personal injury claims, etc.
  - ▣ Disputes between landlords
- Damages must exceed Small Claims amounts
- An attorney is **strongly** recommended



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# Criminal Court

- Highly unusual, but it happens
- Only when a criminal charge (misdemeanor or felony) is filed
- May face jail time, fines, restitution, or a combination of the three
- An attorney is **strongly** recommended
- Not covered by insurance



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# State Agency Adjudications

- Administrative Proceeding
  - Not a civil court proceeding
  - Not a criminal court proceeding
  - Involves agency investigators, agency judges, etc.
- Investigate claims of discrimination, fair housing violations, and other statutory allegations
- Mediation/informal resolution an option
- An attorney is recommended



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# Local Agencies

- Handle a broad array of issues
  - ▣ Building Code, Housing Code, habitability
  - ▣ General property standards
- Rent Control
- May issue administrative citations, criminal infractions or misdemeanors
- Attorney is often not needed, unless issues are serious or complex



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# When do you need an attorney?

- If you don't understand how to defend yourself
- If the issues are serious or complex
- If there is a lot of money at stake
- If criminal charges are at issue

IT NEVER HURTS TO CONSULT FOR AN OPINION



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# ABOUT US



# About Alvarez-Glasman & Colvin

- A full service law firm founded in 1986
- Specialize in all aspects of real estate law
  - Landlord-Tenant Matters
  - Eviction and Unlawful Detainers
  - Collections
  - Commercial Lease Negotiation and Representation
- Call or e-mail for more information:
  - (562) 699-5500
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Thank you

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