



Liability Crash Course

Minimize liability; understand key legal issues

by Pamela V. Rothenberg, Esq.

A number of legal challenges routinely arise while managing a real estate project, regardless of property type. For those new to real estate management, a few “must know” subjects will help keep everything in check and minimize liability.

The privacy quagmire: Property managers must understand and manage risks associated with obtaining and storing tenant or resident information to minimize liability risks relating to identify theft. Property managers must establish systems and policies preventing access to private information contained in paper and electronic tenant files, and must develop data retention policies and systematic requirements concerning destruction of confidential information.

The ADA and its enforcers: The Americans with Disabilities Act states a property’s public accommodations must be accessible to persons with disabilities. If these facilities are not accessible, property managers must make reasonable accommodations. To manage these risks, property managers should consider conducting ADA surveys of their properties to provide evidence of intent and effort to make the ADA-required reasonable accommodations. An audit of practices at each project may be a preventive investment.

New employment law challenges:

The U.S. Department of Labor issued final regulations under the Fair Labor Standards Act, governing overtime eligibility for white-collar workers. The rules also include sections on overtime protection for blue-collar

consider lease provisions requiring payment of early termination fees if a tenant or resident wants to terminate a lease before the stated expiration date or requiring a customary late fee imposed on delinquent rent payments.

To be enforceable, these required lease payments must be properly written as liquidated damage clauses. A properly written liquidated damage clause must satisfy the following criteria: (a) the parties to the lease must both intend the provision constitutes liquidated damages, rather than a penalty; (b) the resulting actual damages the property manager would suffer from late rent payment or other default must be difficult to determine at the time the lease is signed; and (c) the amount of liquidated damages to be paid must be reasonable and proportionate to the loss that would be suffered by the property manager.

Paying attention to these legal issues and being cautious when it comes to legal risks is key to property managers protecting themselves and their assets. □

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workers. Property managers should familiarize themselves with these new rules and how they impact exempt and non-exempt pay, and how they impact on-site and off-site management personnel.

Liquidated damages provisions in leases:

Property owners and managers should focus their attention on risks associated with improperly drafted late fee provisions in their leases. Carefully