

Are you Ready to be a Landlord?



Linda Davis
Friedland

For those wishing to purchase a new home, but are facing the all too common difficulty of selling their existing home, renting can be a viable option. However, the experiences reported by residential landlords range from “pleasant” to “legal nightmare.” If the following steps are taken, many of the common problems can be avoided:

1. Research your local municipal ordinances and the bylaws for your homeowners association, if applicable, to confirm that renting is permitted.

You do not want to spend the time and money required to find a tenant and sign a lease agreement, only to learn that renting is prohibited in your neighborhood. This first step is crucial.

2. Learn the state and federal laws pertaining to Landlord-Tenant and Fair Housing.

Discriminating on the basis of race is the obvious practice to avoid. However, there are policies employed by landlords that are less obvious, such as refusing to rent to families with children, charging extra for children, or refusing to rent to single men. While such practices can be rationalized one way or another, they are illegal, and can create substantial liability exposure. The Fair Housing Act prohibits landlords from discriminating on the basis of race, color, religion, sex, familial status or national origin.

The Fair Housing Act also provides rights for handicapped persons. The Act defines “handicap” as “a physical or mental impairment which substantially limits one or more of such person’s major life activities,” with a specific exclusion for substance abuse.

Landlords are prohibited from “refusing to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the

premises to the condition that existed before the modification, reasonable wear and tear excepted.”

In other words, a landlord cannot prevent a handicapped tenant from installing a wheelchair ramp or stabilization bars, so long as the tenant agrees to remove these items at the termination of the tenancy.

The Fair Housing Act does not prohibit discrimination on the basis of age, which makes sense, because individuals under the age of 18 cannot enter into lease agreements. If you receive federal subsidies for your rental property, however, you would be subject to the Age Discrimination Act of 1975.

Landlords must also know their rights and obligations under the state landlord-tenant laws. Tenants cannot simply be thrown out for failing to pay rent. Specific legal procedures must be followed before a tenant can be evicted. When in doubt about a particular practice, you should consult an attorney rather than risk becoming a defendant in a lawsuit.

3. Know your limitations.

Do you really know how to fix a toilet, furnace or leaky roof? Could you complete these repairs correctly, the first time? If so, would you have the time to complete these repairs in a timely manner? If not, consider hiring a property manager. Depending on the tasks you hire your property manager to do, the property manager may have to be a licensed real estate broker. In that case, you should ensure that the license is current and active.

4. Contact your Insurance Agent.

Homeowners’ insurance policies will not typically cover rentals. You will most likely need to change your insurance coverage to reflect this change in status, and if so, your premium will increase. You should also consider increasing your liability coverage.

5. Calculate the amount you would need to collect in rent.

Include in your calculations, your mortgage, taxes, repair costs, insurance premiums, maintenance costs and property management fees. Will you be renting to families with children? You may

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wish to fund a plumbing budget.

6. Research the local rentals in your area to determine the prevailing rental rate.

Make sure the rentals to which you are comparing your home are comparable. For example, rental properties with lakefront access or within high performing school districts will typically command higher rent payments. The opposite is true for rental properties in areas with high crime rates or limited shopping availability. Even if the rent you are able to collect is substantially less than your monthly costs, you may still be able to break even, or better, if your home appreciates during the rental period. Depending on your individual circumstances, a less-than-ideal rent payment could be better than negotiating a short-sale, or letting your house just sit vacant.

7. Carefully screen prospective tenants, and have them sign an application.

Create or download a formal application for prospective tenants to complete, so that you can obtain the following information each and every time:

Social Security Numbers. Your application should also contain a place for the applicant to sign and consent to the release of his or her credit report. The Fair Credit Reporting Act ("FCRA") and the Fair and Accurate Credit Transactions Act ("FACTA") mandate the safekeeping of Social Security Numbers, and impose criminal and civil liability for violations, so make sure that these numbers are locked away to restrict unauthorized access. Also, the FCRA requires landlords to provide an applicant with an "adverse action notice," in the event that tenancy is denied because of a poor credit rating, even if other factors were involved in the decision.

Read the Credit Report. This report may contain reports from previous landlords regarding unpaid rent or evictions, in addition to the applicant's credit history. The credit history will provide some insight into how an applicant generally conducts his or her life.

The Names of Previous Landlords. Contact all landlords listed on the application. Did the tenant pay his rent on time? Did the tenant steal fixtures, damage property or cause any noise complaints to be filed? If the previous landlord refuses to answer any question other than the dates of tenancy, this could be a red flag. Also, beware of landlords who provide good references just to get rid of bad tenants. Listen to each landlord with a critical ear.

The Applicant's Income. Michigan law imposes legal hoops through which landlords must jump before a tenant can be evicted, so before the lease agreement is signed, ensure that the tenant can afford the rent—and pay it consistently. Obtain the applicant's pay stub. Call the employer. Is the applicant

paid with a salary or a commission? The ideal applicant will have been employed with the same employer for at least one year, and receive a regular monthly paycheck, as opposed to receiving fluctuating commission checks. In a renter's market, however, this is not always possible.

Criminal Background Check. The last thing you want to see is the police kicking down your front door to get to your tenant. Visit Michigan.gov to search an applicant's criminal background, or hire someone to do it for you.

8. Draft an iron-clad lease agreement.

Would you like to be able to sue for the balance of the rent due under the lease agreement if your tenant defaults? Make sure that your lease contains an acceleration clause. Should the tenant be responsible to obtain contents insurance or paying for utilities? Make sure that language is in there. What about pets? Pets can damage your property, but they could also enable you to collect a higher rent payment because many landlords exclude them. You may also wish to exclude or allow specific pets.

Your lease should also list the events that can lead to eviction, in addition to the non-payment of rent, and detail the notice requirements, deadlines for rights to cure, and designate waiver or non-waiver of enforcement. Would you like to be able to show your rental property to potential buyers during the tenancy? This would have to be clearly stated in the lease agreement. Generally, the most cost-effective way to draft a lease agreement is to have it drafted by an attorney, in order to ensure that it contains the language necessary for your particular situation.

9. Consider placing the rental property into a corporate entity.

Consult with your attorney and tax advisor to determine whether the rental property should be in your name, or in the name of a company or corporation. Owning shares or units of a company that owns the rental property, instead of owning the rental property outright, could provide certain tax advantages and better liability protection for your other assets.

Whether your landlord experience is pleasant or a legal nightmare will depend on the time you invest before your first tenant moves in. The attorneys at CMDA are available to walk landlords through the process.

Linda Davis Friedland

Linda Davis Friedland is an attorney in our Livonia office where she concentrates her practice on Commercial Litigation, Employment and Labor Law, Corporate and Business Law, Estate Planning, Utilities Law and Municipal Law. She can be reached by calling (734) 261-2400 or via e-mail at lfriedland@cmda-law.com.

CMDA Happenings

Acho Teaching Sports Law at Local University



Jim Acho

Jim Acho, an attorney in our Livonia office, has been offered and accepted a position teaching Sports Law at Madonna University located in Livonia, MI. He will be teaching one class per semester for their School of Sports Management program.

Grand Rapid Attorneys Obtain Dismissal

Attorneys **Allan Vander Laan** and **Andrew Brege** from the Firm's Grand Rapids office recently obtained dismissal in a lawsuit filed against a southeastern Michigan township and its Board of Trustees by its former Director of Public Safety.



Allan Vander Laan

The former director brought the lawsuit against the township after he was terminated, alleging a violation of the Open Meetings Act, defamation, intentional infliction

of emotional distress and several other claims. The Open Meetings Act claim was based on the former director's opinion that he was the subject of discussion during a closed meeting that he alleged was improperly conducted. The defamation claims were based on statements made during board meetings and reprinted in the local newspaper regarding the reasons for his termination. The former director claimed the statements, which related to issues ranging from the township budget to employee morale, were false and prevented him from obtaining new employment.

Our attorneys argued the suit was barred by governmental immunity and the First Amendment. Further, we argued there was no violation of the Open Meetings Act, as the minutes clearly reflected the closed session was properly entered, and all the trustees' testimony regarding the closed session was consistent regarding the purpose and content of the closed session. Following oral arguments, the judge issued a written opinion adopting all of our arguments and dismissed the case with prejudice.

Attorney Profile: Owen J. Cummings

Each month a different attorney in our Firm is profiled. We hope you enjoy learning more about the attorneys that make our Firm so great.



Owen J. Cummings

Owen J. Cummings founded the Firm in 1965. Since that time, the impact his accomplishments have made in the legal profession is nothing short of astonishing. One of Mr. Cummings' greatest qualities is his willingness to help others. Marie Jones, a 20-year employee of the firm who has worked directly as Mr. Cummings secretary for the past seven years explains, "Mr. Cummings gives to his clients as a person, as well as an attorney. He goes out of his way for his clients and they adore him for it. He always makes time for his clients, and for the staff at CMDA, as well. They don't come any better than Mr. C."

Once people meet Mr. Cummings and experience his calm demeanor and kind heart, they understand that his first priority is their needs and he remains their attorney for life. Just this

summer, Mr. Cummings received a call from a woman who needed a change to her estate plan that he had originally prepared. The original file revealed that she was a client from 29 years ago.

One of Mr. Cummings greatest professional accomplishments is his role in the formation of Michigan Municipal Risk Management Authority (MMRMA). In 1980, he and Bernard McClorey (a co-founder of our Firm) created an organization that joined governmental entities together to secure insurance coverage that promised stability of premium and far-reaching protection.

MMRMA was started with just three municipalities, including a township for which Mr. Cummings has been general counsel for more than 35 years. Mr. Cummings worked countless hours to get legislation passed to allow this type of self-insurance since nothing like it had ever been done before. The hours he put into organizing the structure of MMRMA has helped it grow into what it is today. This year MMRMA is celebrating its 30th anniversary. We are proud of our Firm's role in its formation and our service as defense counsel since its creation.

Mr. Cummings lives in Redford Township with his wife of 53 years, Ruth. Together they have six children and ten grandchildren.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features should be addressed to the attention of Jennifer Sherman.

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