CRIME FREE MULTI-HOUSING

Program Manual

We Have Joined the

Columbia Crime Free

Multi-Housing Program

City of Columbia

Columbia Police Department

600 E. Walnut Street, Columbia, MO 65201

www.como.gov/police

Crime Free Program Instructor Contacts:

Jason McClintic
Columbia Police Department
Crime Free Program Coordinator
Phone: 573-874-7426
e-mail: Jason.McClintic@CoMo.gov
website: www.como.gov/police

Steve Scott
Scott Law Firm
Phone: 573-442-7268
e-mail: sscott@scottlawfirm.com
website: www.scottlawfirm.com

Michael Bauer
Columbia Fire Department
e-mail: Michael.Bauer@CoMo.gov

Neal Sedgwick
Columbia Police Department
e-mail: Neal.Sedgwick@CoMo.gov

Leigh Kottwitz
Office of Neighborhood Services
e-mail: Leigh.Kottwitz@CoMo.gov

Book updated Jan 2007

TABLE OF CONTENTS

OVERVIEW

Rental properties present a unique challenge for law enforcement. The typical block watch approach to residents in single-family homes is not easily adapted to rental communities. In single-family homes, owners generally have a large cash investment in the purchase of their home. This motivates owners to a greater concern about crime in their neighborhoods. With rising crime rates come lower property values.

An owner of a single-family home might also be looking at a long term residency. Typically, homeowners have a thirty-year mortgage for their property. Home is where they come to each day and perhaps raise a family. There tends to be a lot of pride in ownership of their property. When crime problems begin to appear, owners are very likely to organize block watch activities to protect the long-term interest of their family.

In rental properties, the communities tend to be much more transient. Most often, residents sign a six-month, nine-month or year lease for a rental property. In many cases, owners allow a 30 day lease based on a month-to-month agreement. This allows for an occupant to move very easily if they feel crime has reached a level they will not tolerate. It is easier to move away from crime than to confront it.

The police have historically fought a losing battle with block watch in multi-family rental properties. In January of 1992, the Mesa Police Department was faced with a difficult decision. To no longer offer Block Watch in rental properties or to develop a new concept for crime prevention in the rental communities.

The result was the **CRIME FREE MULTI-HOUSING PROGRAM (CFMH)**. This bold, new program had no precedent. The program's concept was to take a multi-faceted approach to crime prevention. A unique coalition of police, property managers, and residents of rental properties. The program was to be an on-going program, with a three-phase approach, to address all of the opportunities of crime in rental property.

The program was designed to include a certification process, never before offered by a police department. The incentives of police issued signs, certificates and advertising privileges provided immediate interest in the program.

The development of the **Crime Free Lease Addendum** proved to be the backbone of the **CRIME FREE MULTI-HOUSING PROGRAM**. This addendum to the lease agreement lists specific criminal acts that, if committed on the property, will result in immediate termination of the resident's lease.

The CRIME FREE MULTI-HOUSING PROGRAM achieved almost instant success. In rental properties with the highest crime rates, the immediate results showed up to a 90 percent reduction in police calls for service. Even in the best properties, reductions of 15 -20 percent were not uncommon.

The CRIME FREE MULTI-HOUSING PROGRAM began to spread nationally after the first year and internationally in the second year. The CRIME FREE MULTI-HOUSING PROGRAM has been a success all across the United States and Canada. Please join us in this community empowering program!

POINTS TO CONSIDER

COSTS AND BENEFITS

Community-oriented property management is also good business.

Landlords and property managers who apply the active property management principles presented in this manual, and in the accompanying training, have consistently seen improvements in the quality of their rental business. Applying the information presented in this training can result in significant benefits to each of the three interest groups in a residential neighborhood: Whole communities can become safer, residents can enjoy better housing, and landlords can enjoy greater business success. Here s how it works:

Costs of Drug Activity in Rentals

When drug criminals operate out of rental property, neighborhoods suffer and landlords pay a high price. That price may include:

1. Declines in property values - particularly when the activity begins affecting the reputation of the neighborhood.

2. Property damage arising from abuse, retaliation, or neglect.

3. Toxic contamination and/or fire resulting from manufacturing or grow operations.

4. Civil penalties, including loss of property use for up to one year, and property damage resulting from police raids.

5. Loss of rent during the eviction and repair periods.

6. The fear and frustration of dealing with dangerous tenants.

7. Increased resentment and anger between neighbors and property managers.

CRIME FREE MULTI-HOUSING PROGRAM

A three-tiered approach to drug & crime reduction in rental housing.

ADVICE WE WERE GIVEN:

"Of particular value was support for concepts that in the past, I wasn't sure were correct. It's great to hear that we don't have to put up with any drug and crime related activity. I've been in multi-housing for 8-9 years and have taken several classes and seminars. I learned more valuable information in the first 4 hours of this class than in several other classes combined!"

THE BASICS

The **CRIME FREE MULTI-HOUSING PROGRAM** was designed to help tenants, owners, and the managers of rental property keep drugs and other illegal activity off their property.

This program is honest and direct. It is solution oriented. It is designed to be easy, yet very effective in reducing the incident of crime in rental property.

The program utilizes a unique three-part approach which ensures the crime prevention goal while maintaining an approach which is very tenant-friendly. When each phase is completed, a certificate of completion is awarded.

HISTORY OF THE PROGRAM

The Crime Free Multi-Housing Program is an international program that was started by Tim Zehring of the Mesa, Arizona, Police Department. The program began in 1992 and has spread to 45 states, numerous Canadian provinces, over 1000 cities and numerous countries across the globe.

The Crime Free Multi-Housing Program addresses these topics:

Introduction to Crime Free
About the Columbia Police Department
Crime Prevention
C.P.T.E.D. Concepts
Drug Recognition
Laws that can affect the landlord
Leases & the Eviction Process
Applicant Screening
Combating Crime Problems

THE CRIME FREE MULTI-HOUSING PROGRAM INCLUDES:

I. Prevention and Applicant Screening

- _ How code compliance (preparing the property) can protect your rights as a landlord.
- _ Benefits of applicant screening.
- _ Tips to strengthen rental agreements.

_ How to become a proactive property manager.

_ Maintaining a fire safe environment.

II. Drug Nuisance Abatement

_ Warning signs of drug activity.

_ Actions you must take if you discover your tenant or tenant's guests are conducting illegal activities at your property.

_ Role of the police.

_ Crisis resolution and the eviction process.

III. Resource Materials

_ This manual with additional community resources for tenants, landlords, and property managers.

_ Many other FREE materials will be available at class time.

One of the tools of the Crime Free Multi-Housing Program is the Crime Free Lease Addendum. (See the end of this section for a copy.)

THE THREE PHASES INCLUDE:

PHASE I involves an 8 hour seminar presented by the police department.

The following is a sample of topics which will be presented.

_ Introduction to Crime Prevention

_ Applicant Screening

_ Criminal Background Checks

_ CPTED (Crime Prevention Through Environmental Design)

_ Security Lighting

_ Fair Housing/Serving Notices/Evictions/Premise Liability

PHASE II will certify that the rental property has met the security requirements for the tenants' safety. Certification will consist of an on-site visit by the Crime Free staff. Minimum requirements must be met to qualify for Phase II completion.

The following items are the minimum requirements for C.P.T.E.D. (Crime Prevention Through Environmental Design) certification in the Crime Free Multi-Housing Program.

_ Deadbolt Locks - tapered cylinder with a one-inch (1") throw. Rotating cylinder guard preferred.

_ Eye Viewers - 180 degree viewing angle, minimum.

_ Strike Plate Screws - three-inch (3) screws in the strike place and one, three-inch screw in each door hinge.

_ Window Locks or Pins - required for ground floor windows or windows accessible from the balcony.

_ Sliding Glass Doors - an anti-slide device, such as a Charlie Bar, or a Tension Bar with a pin. Lift protection employed in the door track.

_ Landscape maintenance - trim shrubs below windows and up off the ground high enough to allow view of a person's feet when standing behind the shrub. Tree limbs should be trimmed up to six feet off the ground to allow visibility.

_ Adequate Lighting - visibility of a person for identification purposes at 100 feet.

A complete CPTED survey will be completed and provided to management staff. This survey will be more comprehensive than the minimum requirements. Property owners and managers are encouraged to do more than the minimum requirements.

PHASE III is a tenant crime prevention meeting and will be conducted for full certification. The managers will be granted the use of large metal signs for display on the property. The management will also be granted the use of the program logo in all advertisements.

The crime prevention meeting, frequently called a "safety social," bears a slight resemblance to Neighborhood Watch, but is specifically designed for apartment communities based on their unique needs.

The meeting is conducted by a police officer or police representative who shares crime prevention information with residents and management.

Managers of rental properties are required to use various incentives to ensure a good turnout for the presentation.

After a property is fully certified, it is necessary for management to host one safety-related crime prevention meeting with the residents each year to renew their membership in the Crime Free Multi-Housing program. They will be issued a gold certificate which expires 12 months after the crime prevention meeting.

Certificates and signs can and will be removed by Crime Free staff for failure to adhere to all phases of the program. All new staff must attend Phase I training annually.

CRIME FREE MULTI-HOUSING LEASE ADDENDUM
(Missouri Statutes)

In consideration of the execution or renewal of a lease of the dwelling unit identified in the lease, Owner and Resident agree as follows:

Resident, any members of the resident's household or a guest or other persons affiliated with the resident:

1. Resident, any member of the Resident s household or a guest or other person under the Resident s control shall not engage in criminal activity, including drug-related criminal activity, on or near the said premises. "Drug related criminal activity" means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use an illegal or controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C.802]).
2. Resident, any member of the Resident s household or a guest or other person under the Resident s control shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the said premises.
3. Resident or any member of the Resident s household will not permit the dwelling unit to be used for, or to facilitate criminal activity, regardless or whether the individual engaging in such activity is a member of the household, or a guest.
4. Resident, any member of the Resident s household or a guest or other person under the Resident s control shall not engage in the unlawful manufacturing, selling, using, storing, keeping, or giving of an illegal or controlled substance as defined in RSMo. 195.202 through RSMo. 195.218 at any locations, whether on or near the dwelling unit premises or otherwise.
5. Resident, any member of the Resident s household or a guest or other person under the Resident s control shall not engage in any illegal activity, including prostitution as defined in RSMo. 567.020, any criminal street gang activity as defined in RSMo. 562.035, harassment as prohibited in RSMo. 565.090, any crimes against persons as prohibited in Chapter 565 of Missouri Statutes, including but not limited to the unlawful discharge or unauthorized possession of firearms as prohibited in RSMo. 571.030 on or near the dwelling unit premises, or any breach of the lease agreement that otherwise jeopardizes the health, safety, and welfare of the landlord, his agent, or other tenant, or involving imminent or actual serious property damage, as prohibited in RSMo. 569.100 and RSMo. 569.120..
6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions of this added addendum shall be deemed a serious violation, and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for immediate termination of the lease as provided by law, proof of violation shall not require a criminal conviction, but shall be by a preponderance of the evidence.

7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of this addendum shall govern.
8. This LEASE ADDENDUM is incorporated into the lease executed or renewed this day between Owner and Resident.

_____ _____

Resident Signature Date

_____ _____

Resident Signature Date

_____ _____

Resident Signature Date

_____ _____

Manager Signature Date

_____

Property Name

Missouri State Statues that can affect the landlord

Missouri Revised Statutes
Chapter 195
Drug Regulations
Section *195.130*

August 28, 2006

Places used for illegal sale and use--nuisances, suits to enjoin, procedure--public nuisance, criminal penalty, property subject to forfeiture.

195.130. 1. Any room, building, structure or inhabitable structure as defined in section 569.010, RSMo, which is used for the illegal use, keeping or selling of controlled substances is a "public nuisance". No person shall keep or maintain such a public nuisance.

2. The attorney general, circuit attorney or prosecuting attorney may, in addition to any criminal prosecutions, prosecute a suit in equity to enjoin the public nuisance. If the court finds that the owner of the room, building, structure or inhabitable structure knew that the premises were being used for the illegal use, keeping or selling of controlled substances, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

3. All persons, including owners, lessees, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance.

4. It is unlawful for a person to keep or maintain such a public nuisance. In addition to any other criminal prosecutions, the prosecuting attorney or circuit attorney may by information or indictment charge the owner or the occupant, or both the owner and the occupant of the room, building, structure, or inhabitable structure with the crime of keeping or maintaining a public nuisance. Keeping or maintaining a public nuisance is a class C felony.

5. Upon the conviction of the owner pursuant to subsection 4 of this section, the room, building, structure, or inhabitable structure is subject to the provisions of sections 513.600 to 513.645, RSMo.

(RSMo 1939 § 9844, A.L. 1971 H.B. 69, A.L. 1985 H.B. 488, A.L. 1989 H.B. 479)

Revisor's note: S.B. 215 & 58, enacted by the 1st Regular Session of the 85th G.A. 1989, repealed section 195.130 effective 6-19-89. H.B. 479 repealed and reenacted section 195.130 the same session, effective 8-28-89.

Missouri Revised Statutes

Chapter 195
Drug Regulations
Section *195.253*

August 28, 2006

Public nuisances--defendants in suits to enjoin.

195.253. 1. Any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to for the purpose of possessing, keeping, transporting, distributing or manufacturing controlled substances shall be deemed a public nuisance.

2. The attorney general, circuit attorney or prosecuting attorney may, in addition to any criminal prosecutions, prosecute a suit in equity to enjoin the public nuisance. If the court finds that the owner of the room, building or structure knew or had reason to believe that the premises were being used for the illegal use, keeping or selling of controlled substances, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

3. All persons, including owners, lessees, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance.

(L. 1989 S.B. 215 & 58)

Chapter 441
Landlord and Tenant
Section *441.236*

August 28, 2006

Disclosures required for transfer of property where methamphetamine production occurred.

441.236. In the event that any premises to be rented, leased, sold, transferred or conveyed is or was used as a site for methamphetamine production, the owner, seller, landlord or other transferor shall disclose in writing to the prospective lessee, purchaser or transferee the fact that methamphetamine was produced on the premises, provided that the owner, seller, landlord or other transferor has knowledge of such prior methamphetamine production. The owner shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

(L. 2001 H.B. 471)

*This section was enacted by both H.B. 471 and S.B. 89 & 37 during the 1st Regular Session of the Ninety-first General Assembly, 2001. Due to possible conflict, both versions are printed here.

Methamphetamine production, landlord to disclose to tenant such production and certain criminal convictions.

441.236. 1. In the event that any premises to be leased by a landlord is or was used as a site for methamphetamine production, the landlord shall disclose in writing to the tenant the fact that methamphetamine was produced on the premises, provided that the landlord had knowledge of such prior methamphetamine production. The landlord shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

2. A landlord shall disclose in writing the fact that any premises to be leased by the landlord either was the place of residence of a person convicted of any of the following crimes, or was the storage site or laboratory for any of the substances for which a person was convicted of any of the following crimes, provided that the landlord knew or should have known of such convictions:

(1) Creation of a controlled substance in violation of section 195.420, RSMo;

(2) Possession of ephedrine with intent to manufacture methamphetamine in violation of section 195.246, RSMo;

(3) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine in violation of subsection 2 of section 195.233, RSMo;

(4) Endangering the welfare of a child by any of the means described in subdivision (4) or (5) of subsection 1 of section 568.045, RSMo; or

(5) Any other crime related to methamphetamine, its salts, optical isomers and salts of its optical isomers either in chapter 195, RSMo, or in any other provision of law.

(L. 2001 S.B. 89 & 37)

*This section was enacted by both H.B. 471 and S.B. 89 & 37 during the 1st Regular Session of the Ninety-first General Assembly, 2001. Due to possible conflict, both versions are printed here.

Chapter 567
Prostitution
Section *567.080*

August 28, 2006

Prostitution houses deemed public nuisances.

567.080. 1. Any room, building or other structure regularly used for sexual contact for pay as defined in section 567.010 or any unlawful prostitution activity prohibited by this chapter is a public nuisance.

2. The attorney general, circuit attorney or prosecuting attorney may, in addition to all criminal sanctions, prosecute a suit in equity to enjoin the nuisance. If the court finds that the owner of the room, building or structure knew or had reason to believe that the premises were being used regularly for sexual contact for pay or unlawful prostitution activity, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

3. All persons, including owners, lessees, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance, and they may be enjoined from engaging in any sexual contact for pay or unlawful prostitution activity anywhere within the jurisdiction of the court.

4. Appeals shall be allowed from the judgment of the court as in other civil actions.

(L. 1977 S.B. 60)
Effective 1-1-79

Chapter 572
Gambling
Section *572.090*

August 28, 2006

Gambling houses, public nuisances--abatement.

572.090. 1. Any room, building or other structure regularly used for any unlawful gambling activity prohibited by this chapter is a public nuisance.

2. The attorney general, circuit attorney or prosecuting attorney may, in addition to all criminal sanctions, prosecute a suit in equity to enjoin the nuisance. If the court finds that the owner of the room, building or structure knew or had reason to believe that the premises were being used regularly for unlawful gambling activity, the court may order that the premises shall not be occupied or used for such period as the court may determine, not to exceed one year.

3. Appeals shall be allowed from the judgment of the court as in other civil actions.

(L. 1977 S.B. 60)
Effective 1-1-79

City of Columbia Ordinances that can affect the landlord

Nuisance Party Ordinances

Section 16-301 Definitions and rules of construction.

The following definitions apply to this division:

"Nuisance party" is a social gathering of ten or more people on residential property that results in any of the following occurring at the site of the gathering, on neighboring property or on an adjacent public street:

(1) Unlawful sale, furnishing, possession or consumption of alcoholic beverages;

(2) Violation of any of the provisions of Article III of this chapter (noise);

(3) Fighting;

(4) Property damage;

(5) Littering;

(6) Outdoor urination or defecation in a place open to public view;

(7) The standing or parking of vehicles in a manner that obstructs the free flow of traffic;

(8) Conduct that threatens injury to persons or damage to property;

(9) Unlawful use or possession of marijuana or any drug or controlled substance;

(10) Trespassing; or

(11) Indecent exposure.

"Permit" means to give permission to; or to allow by silent consent, by not prohibiting, or by failing to exercise control.

(Ord. No. 19287, §1, 11-6-06)

(19287, Added, 11/06/2006)

Section 16-302 Nuisance parties prohibited.

It shall be unlawful for any person having the right to possession of any residential premises, whether individually or jointly with others, to cause or permit a social gathering on the premises to become a nuisance party.

(Ord. No. 19287, §1, 11-6-06)

(Ord. 19287, Amended, 11/06/2006)

Section 16-303 Police order to disperse.

Columbia police officers are authorized to order those attending a nuisance party to disperse. It shall be unlawful for any person not domiciled at the site of the nuisance party to fail or refuse to leave the premises immediately after being told to leave by a Columbia police officer.

(Ord. No. 19287, §1, 11-6-06)

(Ord. 19287, Amended, 11/06/2006)

Section 16-304 Nuisance parties -- residential rental properties; certificate of compliance sanctions.

(a) *Intent of section.* This section shall set forth administrative procedures and standards for revoking a residential landlord's certificate of compliance under the Rental Unit Conservation Law (Sec. 22-181, et seq. of this code) when multiple nuisance parties have occurred on residential rental property. The city seeks the cooperation of residential landlords in eliminating nuisance parties held by their tenants. The sanction of revoking a certificate of compliance is intended as a last resort after other attempts to eliminate the problem have failed. This section also establishes the offense of failure to prevent a nuisance party.

(b) *Initial nuisance party.* Within ten (10) days after the initial nuisance party that serves as a basis for a certificate of compliance sanction, the police department shall send the property owner and tenants of the unit hosting the gathering, by certified mail, a notice of nuisance party ordinance violation. The notice shall set forth the date, place and nature of the violation and urge the property owner and tenants to take action to prevent future nuisance parties on the property. If notice cannot be given to a party by certified mail, notice shall be given by first class mail and by posting a copy of the notice in a conspicuous place on the dwelling.

(c) *Subsequent nuisance party; compliance meeting.* If a subsequent nuisance party occurs at the same unit within a twelve (12) month period, the police department shall send the property owner and tenants, by certified mail, another notice of nuisance party violation within ten (10) days of the party. If notice cannot be given to a party by certified mail, notice shall be given by first class mail and by posting a copy of the notice in a conspicuous place on the dwelling. The notice shall set forth the date, place and nature of the violation and shall schedule a nuisance party ordinance compliance meeting. The compliance meeting shall be attended by a police department representative, by the property owner or the owner's agent and by the tenants responsible for the nuisance party. The purpose of the compliance meeting is to reach agreement on corrective action necessary to avoid future nuisance parties on the property. Possible corrective actions include, but are not limited to:

(1) An agreement by tenants to impose limits on social gatherings such as restrictions on the number of guests, time, music, consumption of alcoholic beverages, etc.

(2) An agreement by the property owner not to renew the lease or to initiate an eviction action if further nuisance parties are held on the property.

If agreement is reached, a police department representative shall reduce the corrective action to writing and shall provide a copy to the property owner and tenants.

(d) Owner's failure to prevent a third nuisance party. It shall be unlawful for the owner of any residential rental property to fail to prevent a nuisance party within twelve (12) months of a nuisance party that triggered a compliance meeting under subsection (c). An owner of residential rental property shall not be prosecuted for a violation of this subsection unless:

(1) At least one person was charged with a violation of Sec. 16-302 or Sec. 16-303 or an offense that caused a social gathering to become a nuisance party in connection with a nuisance party at the residential unit which triggered a notice under Sec. 16-304 (b); and

(2) At least one person was charged with a violation of Sec. 16-302 or Sec. 16-303 or an offense that caused a social gathering to become a nuisance party in connection with a nuisance party at the residential unit which triggered a compliance meeting under Sec. 16-304 (c).

(e) *Revocation of certificate of compliance.* A certificate of compliance may be revoked if the notices of nuisance party ordinance violations under subsections (b) and (c) have been sent and

(1) The property owner refused or failed to attend a compliance meeting;

(2) The property owner refused or failed to comply with any corrective action agreed to at the compliance meeting;

(3) Another nuisance party occurred at the same unit within twelve (12) months of the nuisance party that triggered the compliance meeting and the owner of the property failed to appear in response to a summons issued for a violation of subsection (d); or

(4) Two nuisance parties, each resulting in at least one person being charged with a violation of Sec. 16-302 or Sec. 16-303 or an offense that caused the social gathering to become a nuisance party, occurred at the same unit within eighteen (18) months of the nuisance party that triggered the compliance meeting.

When the police have sufficient evidence to support the revocation of a certificate of compliance, the police chief shall submit the matter to the city manager.

(f) *Initiation of revocation proceedings.* If the city manager determines that a revocation of the certificate of compliance for a building or unit may be justified, the city manager may institute a contested case for that purpose in accordance with Chapter 536, RSMo. The property owner and affected tenants shall be necessary parties to the case. The city manager or the manager's designee shall serve as hearing officer at the hearing held on the proposed revocation of the certificate of compliance.

(g) *Findings required for revocation; other considerations.* The hearing officer may revoke the certificate of compliance for the unit in violation of this division if the officer finds that:

(1) The initial and subsequent nuisance parties occurred at the unit;

(2) The proper notices of nuisance party ordinance violations were sent; and

(3) a. The property owner failed or refused to attend a compliance meeting;

b. The property owner failed or refused to comply with any corrective action agreed to at the compliance meeting; or

c. Another nuisance party occurred at the same unit within twelve (12) months of the nuisance party that triggered the compliance meeting and the owner of the property failed to appear in response to a summons issued for a violation of subsection (d); or

d. Two nuisance parties, each resulting in at least one person being charged with a violation of Sec. 16-302 or Sec. 16-303 or an offense that caused the social gathering to become a nuisance party, occurred at the same unit within eighteen (18) months of the nuisance party that triggered the compliance meeting.

In determining whether the certificate of compliance should be revoked, the hearing officer shall consider:

(1) The level of cooperation of the parties in attempting to avoid nuisance parties;

(2) The level of disturbance associated with the nuisance parties;

(3) The impact of the nuisance parties on neighbors and other victims;

(4) The degree to which the landlord and tenants have taken reasonable steps to avoid future nuisance parties; and

(5) The history of nuisance party ordinance violations on owner's property.

(h) *Affirmative defense.* It shall be an affirmative defense to a charge of violating subsection (d) and to a certificate of compliance revocation proceeding that the property owner has evicted or is diligently attempting to evict all tenants and occupants of the property who were responsible for the nuisance parties.

(i) *Time sanctions in effect.* The order revoking a certificate of compliance shall state the period of time that must elapse between the effective date of the revocation and the time when a new certificate may be issued for the property. This period shall not exceed one (1) year.

(j) *Appeal.* The property owner or any affected tenant may appeal an adverse decision of the hearing officer to the Circuit Court of Boone County in accordance with Chapter 536, RSMo.

(k) *Effect of property conveyance.* If title to property subject to an order revoking the certificate of compliance is conveyed in an arms-length transaction, as determined by the city manager or the manager's designee, the new owner may apply for a certificate of compliance after the new owner has met with a representative of the police department and agreed to take corrective action satisfactory to the chief of police to avoid future nuisance parties.

In determining whether the conveyance was an arms-length transaction, the city manager or the manager's designee shall consider:

(1) Whether the property was conveyed for less than fair market value;

(2) Whether the property was conveyed to an entity controlled by a person conveying the property; and

(3) Whether the property was conveyed to a relative of a person conveying the property.

(Ord. No. 19287, §1, 11-6-06)

Editor's note - Ord. No. 19287, § 1, adopted November 6, 2006, which added section 16-304 above, shall be in full force and effect from and after August 1, 2007.

(Ord. 19287, Amended, 11/06/2006)

Section 16-305 Penalty.

Any person who violates Sec. 16-302, Sec. 16-303, or Sec. 16-304 (d) shall, upon conviction, be punished for a first offense by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) or by imprisonment not exceeding three (3) months or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, a person shall be punished by a fine of not less than one thousand dollars ($1,000.00), nor more than four thousand dollars ($4,000.00) or by imprisonment not exceeding three (3) months or by both such fine and imprisonment.

(Ord. 19287, Amended, 11/07/2006)

Chronic Nuisance property Ordinances

Section 16-316 Legislative findings.

The city council makes the following legislative findings:

(1) Chronic unlawful activity on property adversely affects the peace and safety of neighboring residents and diminishes the quality of life in the neighborhood.

(2) Prosecution of unlawful activity on property is not always an effective way to preserve a desirable quality of life in the neighborhood.

(3) It is in the public interest for property owners to be vigilant in preventing unlawful activity from occurring on their property.

(4) It is in the public interest to make property owners responsible for the use of their property by tenants, occupants and visitors.

(5) The purpose of this article is to maintain a desirable quality of life in Columbia by holding property owners responsible for the use of their property.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-317 Definitions and rules of construction.

The following definitions and rules of construction apply to this article:

"Chief of police" and "chief" include any designee of the chief of police.

"Chronic nuisance property" means residential property on which or within 200 feet of which any person associated with the property has engaged in three or more nuisance activities during any four (4) month period.

"Nuisance activity" means any of the following unlawful conduct:

(1) Harassment under section 565.090 RSMo or section 16-143 of this Code;

(2) Assault under section 565.050 RSMo through section 565.070 RSMo or section 16-141 of this Code;

(3) Any sexual offense under Chapter 566 RSMo;

(4) Any prostitution related offense under Chapter 567 RSMo;

(5) Any violation of the liquor control law, Chapter 311 RSMo or the alcoholic beverages ordinance, chapter 4 of this Code;

(6) Trespass under section 569.140 RSMo or section 16-156 of this Code;

(7) Any stealing or related offense under Chapter 570 RSMo or section 16-171 of this Code;

(8) Any arson or related offense under section 569.040 through 569.065 RSMo or section 16-151 or 16-152 of this Code;

(9) Any violation of the “Comprehensive Drug Control Act of 1989" in chapter 195 RSMo or sections 16-253 through 16-255 of this Code;

(10) Gambling under Chapter 572 RSMo;

(11) Discharge of a firearm under section 16-234 of this Code;

(12) Possession of an open container of alcoholic beverage under section 16-185 of this Code;

(13) Indecent exposure under section 16-132 of this Code;

(14) Peace disturbance by fighting under section 16-176.1 of this Code;

(15) Unlawful use of weapons and armed criminal action under Chapter 571 RSMo and brandishing a weapon under section 16-246 of this Code;

(16) Any noise violation under section 16-258 or section 16-259 of this Code;

“Person associated with the property” means any person who is lawfully present on the property including any owner, tenant, occupant, guest or invitee.

“Property” means any lot or other unit of real property.

“Property owner” means a person having a fee interest in real property.

“Property owner’s agent” means a person authorized by the property owner to manage the property.

“Residential property” means any property containing a single family structure, a duplex, an apartment building, a manufactured or mobile home, a boarding house, a group home, a fraternity or sorority house, or a mixed use structure that includes a residential living unit.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-318 Police chief determination of chronic nuisance property.

(a) Before any property is determined to be a chronic nuisance property, the chief of police must notify the

property owner in writing that at least two nuisance activities have occurred on or within two hundred (200) feet of the property and that the property is in danger of becoming a chronic nuisance property. The notice shall identify the property and describe the alleged nuisance activities in detail including the dates on which the alleged nuisance activities occurred. The notice shall instruct the property owner to respond to the notice by either disputing the allegations of nuisance activities or proposing a plan to abate the nuisance activities. The notice shall be served on the property owner by first class and certified mail or by personal service in the same manner as legal process is served under any Missouri statute or court rule.

(b) The chief of police shall meet with any property owner who requests a meeting to dispute an allegation of nuisance activity or to discuss a plan to abate the nuisance activities. The property owner shall be notified of the position of the chief of police on all disputed allegations of nuisance activity within thirty (30) days after the meeting.

(c) If, after a property owner has received notice under subsection (a), the chief of police determines that an additional nuisance activity has occurred on or within two hundred (200) feet of the property causing the property to become a chronic nuisance property, the chief of police shall give the property owner written notice of the determination. The notice shall identify the property and describe in detail the alleged nuisance activities that cause a property to be a chronic nuisance property. The notice shall be served on the property owner by first class and certified mail or by personal service in the same manner as legal process is served under any Missouri statute or court rule. A notice mailed by first class mail shall be presumed received three (3) days after it is mailed. The property owner shall have ten (10) days after receipt of the notice to arrange a meeting with the chief of police to dispute the determination of chronic nuisance property or persuade the chief of police to defer submitting the matter to the city manager for abatement or to the city prosecutor for prosecution.

(d) The chief of police shall meet with any property owner who requests a meeting to dispute or discuss the determination of chronic nuisance property.

(e) If, after the property owner has been given the opportunity to meet with the chief of police, the chief still believes that the property is a chronic nuisance property, the chief may submit a report on the matter to the city manager for abatement under section 16-319 or to the city prosecutor for prosecution under section 16-321. The chief of police may defer referring a chronic nuisance property to the city manager or the prosecutor if the property owner has presented an abatement plan satisfactory to the chief of police and has made good faith efforts to implement the plan.

(f) Copies of the notices required under subsections (a) and (c) shall be sent to any active neighborhood association and any active neighborhood watch group for the neighborhood or watch area in which the property is located.

(g) The provisions of this section pertaining to property owners apply equally to property owners' agents.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/08/2006)

Section 16-319 Administrative process for abating chronic nuisance property.

(a) If, after reviewing the police chief's chronic nuisance property report, the city manager determines that the proper procedures have been followed and that there is reason to believe that the

property may be a chronic nuisance property, the city manager may authorize the city counselor to initiate an administrative action to abate the nuisance. The administrative action shall follow the contested case provisions of Chapter 536, RSMo. The owners of the property and any tenants shall be necessary parties to the action. The city manager or the manager's designee shall serve as hearing officer.

(b) If, after considering all evidence, the hearing officer determines that the property is a chronic nuisance property and that the procedures of section 16-318 were followed, the hearing officer may order appropriate abatement. Abatement may include closure of the property for up to one (1) year, physically securing the property, suspension of utility services during the period of closure and revocation of a certificate of compliance for rental property. If there is more than one (1) residential unit on the property, the hearing officer shall close only the unit or units whose occupants, guests or invitees have engaged in the nuisance activities. The hearing officer shall consider the following factors in determining whether to close a chronic nuisance property:

(1) The level of cooperation of the property owner and occupants in attempting to prevent nuisance activities;

(2) The nature and extent of the nuisance activities;

(3) The impact of the nuisance activities on neighbors and others; and

(4) Any actions taken to avoid further nuisance activities connected with the property.

(c) If an abatement order is not complied with, the hearing officer may authorize the abatement of the chronic nuisance property by city employees or by persons under contract with the city. No person shall enter private property to enforce an abatement order unless the person in possession of the property has consented to the entry or unless the municipal judge has issued a warrant for the entry. The chief of police shall certify the cost of abatement under this subsection to the city clerk. The cost shall include administrative costs as well as the actual cost of abating the nuisance. The city clerk shall cause a special tax bill against the property to be prepared in the amount of the abatement cost. The tax bill from the date of its issuance shall be a lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity. No clerical error or informality in the tax bill or in the proceedings leading up to the issuance of the tax bill shall be a defense in an action to collect the tax bill. Tax bills issued under this section, if not paid when due, shall bear interest at the rate of nine percent (9%) per year. The cost of abatement shall also constitute a personal obligation of any person who failed to comply with the order of the hearing officer.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-320 Effect of property conveyance.

(a) When title to property is conveyed, any nuisance activity that occurred before the conveyance may not be used to establish the property as a chronic nuisance property unless the reason for the

conveyance was to avoid a determination that the property was a chronic nuisance property.

(b) There is a rebuttable presumption that a reason for the conveyance of property was to avoid a determination that the property was a chronic nuisance property if:

(1) The property was conveyed for less than fair market value;

(2) The property was conveyed to an entity controlled by a person conveying the property;

(3) The property was conveyed to a relative of a person conveying the property.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-321 Chronic nuisance property prohibited.

(a) It shall be unlawful for a property owner or a property owner's agent to cause, permit or allow the property to become a chronic nuisance property.

(b) The procedures set forth in section 16-318 must be followed before any property owner or property owner's agent is prosecuted for a violation of this section. No person shall be both prosecuted under this section and made a party to an administrative action under section 16-319 based on the same facts.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-322 Other unlawful acts.

It shall be unlawful for any person to:

(1) Fail to obey an abatement order issued under this article;

(2) Interfere with any police officer, agent or employee of the city who is enforcing an abatement order issued under this article; or

(3) Occupy or use or allow another to occupy or use property that has been closed by an abatement order issued under this article.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-323 Defenses.

(a) In any prosecution or abatement action under this article, it shall be an affirmative defense that the property owner has evicted or is diligently attempting to evict all tenants and occupants of the

property that committed each alleged nuisance activity that caused the property to become a chronic nuisance property.

(b) In any prosecution or abatement action under this article, it shall be an affirmative defense that the property owner has diligently pursued reasonable means to avoid a recurrence of violations similar to the alleged nuisance activities that caused the property to become a chronic nuisance property.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

Section 16-324 Penalty.

(a) Any person who violates section 16-321 shall, upon conviction, be punished for a first offense by a fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) or by imprisonment not exceeding three (3) months or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, a person shall be punished by a fine of not less than one thousand dollars ($1,000.00) nor more than four thousand dollars ($4,000.00) or by imprisonment not exceeding three (3) months or by both such fine and imprisonment.

(b) Any person who violates section 16-322 shall, upon conviction, be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00) or by imprisonment not exceeding three (3) months or by both such fine and imprisonment.

(Ord. No. 19288, §1, 11-6-06)

(Ord. 19288, Added, 11/06/2006)

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

Crime Prevention Through Environmental Design, or CPTED (pronounced sep-ted), is a crime prevention philosophy based on the theory that proper design and effective use of the built environment can lead to a reduction in the fear and incidence of crime, as well as an improvement in the quality of life.

The best time to apply this philosophy is in the design phase, before a building or neighborhood is built. You can also successfully apply it later, but retrofitting an existing environment can sometimes be costly.

The use of CPTED will reduce crime and fear by reducing criminal opportunity and fostering positive social interaction among legitimate users of space. A legitimate user means one who is using a space for its intended purpose. The emphasis is on prevention rather than apprehension and punishment.

THREE KEY PRINCIPLES

There are three basic and overlapping principles in the CPTED concept. In order to get a better understanding of the concept, let us consider these:

Natural Surveillance

We need to create environments where there is plenty of opportunity for people engaged in their normal behavior to observe the space around them. By designing the placement of physical features, activities and people in such a way to maximize visibility, natural surveillance occurs.

Natural Access Control:

Most criminal intruders will try to find a way into an area where they will not be easily observed. Limiting access and increasing natural surveillance keeps them out altogether or marks them as an intruder. By selectively placing entrances and exits, fencing, lighting and landscape to control the flow of or limit access, natural access control occurs.

Natural Territorial Reinforcement:

An environment designed to clearly delineate private space does two things. First, it creates a sense of ownership. Owners have vested interest and are more likely to challenge intruders or report them to the police. Second, the sense of owned space creates an environment where “strangers” or “intruders” stand out and are more easily identified. By using buildings, fences, pavement, signs, lighting and landscape to express ownership and define public, semi-public and private space, natural territorial reinforcement occurs.

Why the emphasis on “Natural?”

Historically, the emphasis has been on the target hardening approach to crime prevention. Relying on mechanical (locks, security systems, alarms, monitoring equipment, etc.) and organized (security patrols, law enforcement, etc.) crime prevention strategies to make the target harder to get into and can create a fortress effect and “feel” unsafe. This traditional approach tends to overlook the opportunity for natural access control and surveillance. By natural, reference is made to the crime prevention by-product that comes from normal and routine use of an environment.

The CPTED theory advocates that all possibilities for natural crime prevention be exhausted, prior to the involvement of the mechanical and organized strategies. The CPTED approach is much more user friendly and customer service oriented than the traditional target hardening approach.

Example:

A multiple story office building is designed with a large lobby with elevators, a directory and is expected to be “self serve.” Over time, crimes occur in the lobby area; purse snatches, an assault or two, criminal damage, etc. The owner of the building installs CCTV to monitor the situation. Eventually guards are employed to

monitor the CCTV, and further down the road, to watch people come and go. By now, people do not feel comfortable coming here. They feel that it is unsafe, they are being watched on video cameras, and NOW things are so bad that they have to have a security guard in the lobby all the time.

A better approach, the CPTED approach, would have been to design in the opportunity for Natural Surveillance from the beginning; possibly a receptionist, or a coffee stand. Put some type of activity into the unassigned space in order to create natural crime prevention. In addition, the CPTED approach is much more customer service oriented. It serves the same purpose as the guard, but does not look as harrowing. In fact, it is much more inviting.

THE THREE D'S

CPTED involves the design of the physical space in the context of the bona fide user of the space, the normal and expected use of that space, and the predictable behavior of the bona fide users and offenders. CPTED emphasizes the connection between the functional objective of space utilization and behavior management. We must differentiate between designation of the purpose of space, its definition in terms of management and identity, and its design as it relates to function and behavior management. By using the "Three D's" as a guide, space may be evaluated by asking the following types of questions:

Designation:
What is the designated purpose of this space?
For what purpose was it originally intended?
How well does the space support its current use or its intended use?
Is there conflict?
Definition
How is space defined?
Is it clear who owns it?
Where are its borders?
Are there social or cultural definitions that affect how space is used?
Are the legal or administrative rules clearly set out and reinforced in policy?
Are there signs?
Is there conflict or confusion between purpose and definition?
Design:
How well does the physical design support the intended function?
How well does the physical design support the desired or accepted behaviors?
Does the physical design conflict with or impede the productive use of the space or the proper functioning of the intended human activity?
Is there confusion or conflict in the manner in which physical design is intended to control behavior?

Once these questions have been asked, the information received may be used as a means of guiding decisions about the use of human space. The proper functions have to be matched with space that can support them. The design has to assure that the intended activity can function well and it has to directly support the control of behavior.

STRATEGIES IN ACTION

Following are a few examples of CPTED strategies in action. In each there is a mixture of the three CPTED concept keys that is appropriate to the setting and to the security or crime problems. Some of the examples were created in the direct application of CPTED. Others were borrowed from real life situations that were

observed to be working. The most basic, common thread is the primary emphasis on naturalness--simply doing things that you already have to do a little better.

- Provide clear border definition of controlled space
- Provide clearly marked transitional zones that indicate movement from public to semipublic to private space
- Relocate gathering areas to locations with natural surveillance and access control or to locations away from the view of would-be offenders
- Place safe activities in unsafe locations to promote natural surveillance of these activities to increase the perception of safety for normal users and risk for offenders
- Re-designate the use of space to provide natural barriers to conflicting activities
- Improve the scheduling of space to allow for effective use, appropriate "critical intensity" and temporal definition of accepted behaviors
- Redesign or revamp space to increase the perception or reality of natural surveillance
- Overcome distance and isolation through improved communication and design efficiencies

CPTED GOAL

By including CPTED principles in new construction, from the design stage, we can make the built environment safer from the start, rather than waiting for crime problems to develop and depending on law enforcement to handle them after the fact. By reviewing existing problem areas and applying the CPTED principles, those problems can be turned around.

The goal of using the CPTED philosophy is to design and build safer, more productive and user-friendly environments, reducing costs and liability and ultimately, the improvement in the quality of life. There are no hard and fast rules in CPTED. ***This*** is good and ***that*** bad. **CPTED is about sharing ideas and asking questions.**

Four C.P.T.E.D. Elements

1. **Surveillance** The ability to look into and out of an area. The primary aim of surveillance is to keep outsiders under observation when they are inside the defensible space. Surveillance increases the perceived risk to offenders, and the actual risk if the observers are willing to act when potentially threatening situations develop. There are three types of surveillance. The best plan will involve all three types of surveillance.
    1. **Natural Surveillance** naturally occurring; as people are moving around an area, they will be able to observe what is going on around them, provided the area is open and well-lighted. Natural surveillance is typically free of cost, but observers may choose not to get involved in any situation that may pose a potential threat to themselves or others. When considering surveillance of your property, remember that **casual passersby or observers from neighboring properties may be willing to report suspicious activity**. There are two types of natural surveillance:
        a. **Formal:** This is surveillance conducted by people who live, work, or frequent an area that they choose to defend.
        b. **Informal:** Surveillance is conducted by people who visit an area. They are less likely to defend this space because it is not their own.

2. **Mechanical Surveillance** employs the use of cameras, mirrors, and other equipment that allows an individual to monitor a remote area. This has a high initial cost. **Someone must monitor the surveillance cameras!**

3. **Organized Surveillance** includes security patrols and other people who are organized to watch a targeted area. While this is the most effective deterrent to crime, it is also the least cost effective. While it may be necessary to employ security patrols or off-duty police officers, once the patrols are discontinued there is generally nothing left to show for your investment.

Surveillance Strategies:

- Improve exterior lighting-use lighting to it s best advantage; At minimum, the front door, back door, and other outside entrance points should be equipped with energy-efficient flood lighting that is either motion or light sensitive. Backyards and other areas should be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into windows. Be sure that applicants understand that the lighting is a part of the cost of renting-that it must be left on!
- Remove blind spots/control landscape/remove window clutter
- Make sure fences can be seen through
- Post the address clearly-when numbers are faded, hidden by shrubs, not illuminated at night, or simply falling off, neighbors will have one more hurdle to cross before reporting activity and police will have more difficulty finding the unit when called. Large apartment complexes should have a permanent map of the complex, including a you are here point of reference, at each driveway entrance. These maps should be clearly visible in all weather and well lighted. If the complex consists of multiple buildings, make sure building numbers can be read easily from many adjacent parking area, both day and night.

2. Access Control a design concept directed primarily at decreasing crime opportunity by denying access to crime targets and creating in offenders a perception of **RISK.** This is achieved by designing streets, sidewalks, building entrances, and neighborhood gateways to clearly indicate public routes and discouraging access to private areas with structural elements. There are three types of access control.

1. **Natural/Environmental Access Control** utilizes the landscape of the environment; rivers, lakes, etc.
2. **Mechanical Access Control** there are three types
   a. **Physical Barrier**: gated driveways; interior gates
   b. **Symbolic Barrier:** hedges; flower beds; low fences
   c. **Target Hardening:** add & improve locks; install security systems; improve windows & doors; increase lighting
3. **Organized Access Control** entails the use of security or courtesy patrol or having guard shacks to control who enters the property. Distribution of parking permits affixed to registered vehicles will identify which vehicles belong to residents. Vehicles should **not** be allowed to back into parking spaces. Number spaces for tenants to prevent parking violations and unauthorized parking.

Access Control Strategies:

- Reduce the number of entrances
- Control access from fire stairs and emergency exits
- Fence off problem areas

- Establish identification procedures for entry

3. **Territoriality** a psychological impression that people get when they look at the property. Good territoriality demonstrates a sense of ownership, alerting potential offenders that they do not belong there and they will be seen and reported, because undesirable behavior will not be tolerated. There are two components:

1. **Defensible Space** 4 categories

a. **Public** least defensible; appear un-owned; main streets or large public parks.

b. **Semi-Public** space that is public but is perceived to be owned by a common interest group. Ex: Neighborhood streets; cul-de-sacs

c. **Semi-Private** space that is perceived to be owned. It may be maintained by a specific group or individual but it is actually public. Ex: sidewalks

d. **Private** space that is owned and maintained by a group or individual. Ex: private yards

e. **Ways of Establishing Defensible Space**:

- Plant low growing hedges or bushes
- Posting No Trespassing signs
- Fencing **chain link** is easiest to destroy which causes need for continual repair; **wood** is easily damaged, however it is relatively easy to replace; **wrought iron** is expensive however it is difficult to damage.

2. **Maintenance** properties that are clean and well maintained are more likely to attract guests who take pride in their community. It is important to maintain the property, schedule routine maintenance checks, and keep the property in compliance with the City of Columbia's building codes! Make sure trees are trimmed 6 feet above the ground and maintain lighting. Show that you care and eliminate the broken windows theory on your property! Managers have a tough time with everything that they have to do. However, it is also important to be fair and impartial when dealing with complaints. If you have a problem with a tenant, call the police to prevent violence from occurring!

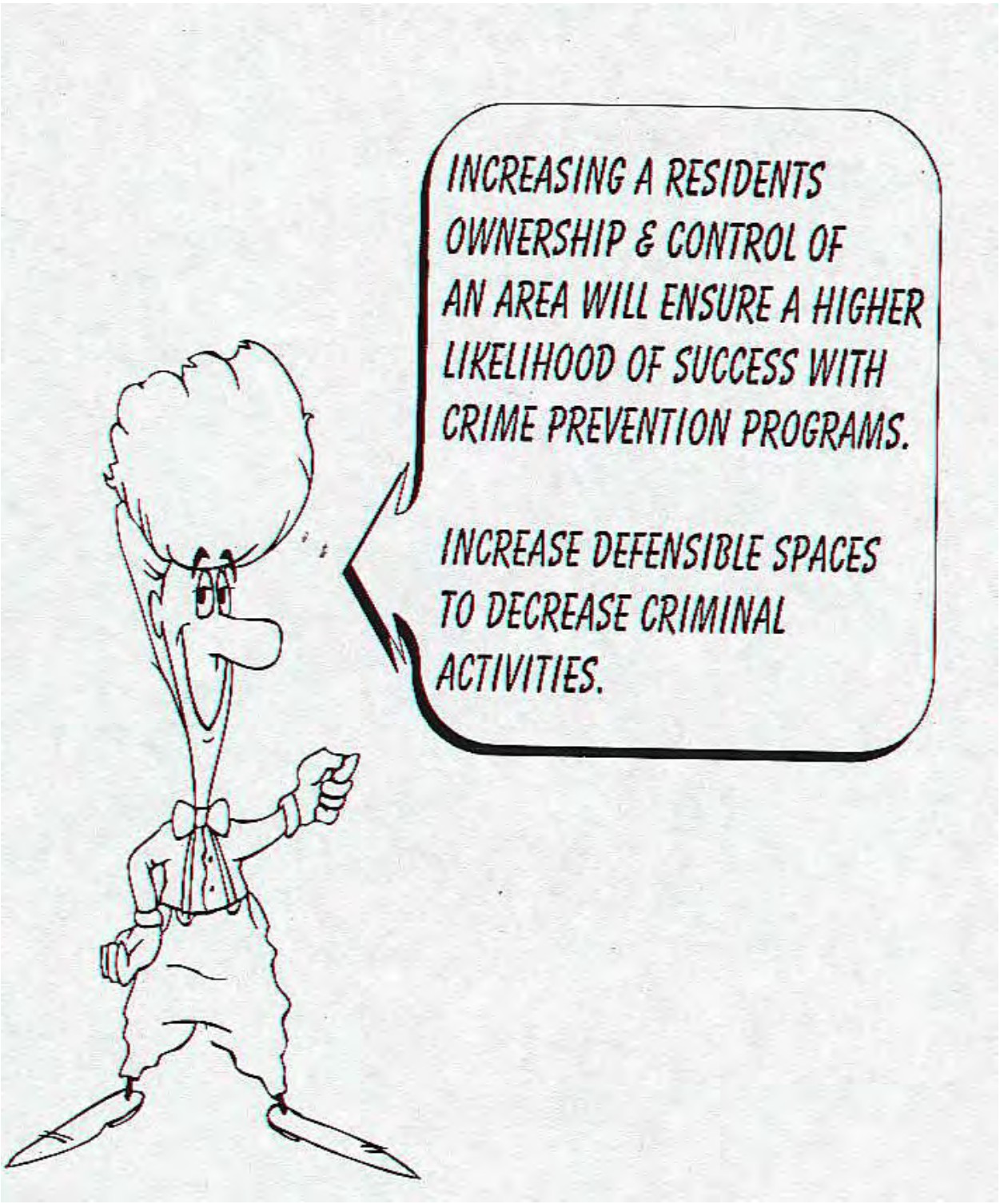
4. **Activity Support** this involves encouraging legitimate users to an area to displace the deviant users. This helps make unsafe areas safe again. The general design concept of activity support involves methods for reinforcing existing or new activities as a means of making effective use of the built environment. Resources capable of sustaining constructive community activities are often underused. Support of these activities can bring a vital and coalescing improvement to the community, along with a reduction of the vulnerable social and physical gaps that permit criminal intrusions.

Promoting Activity Support:

1. Utilize proper lighting
2. Establish community rules to encourage proper and safe use.
3. Maintain un obscured visibility for the intended users.
4. Ask these questions when evaluating an area:

*Who are the intended users?
*Why are the tenants not using an area?
*What will promote the use of this area?
*Why are deviant users frequenting the area?
*Why is it inviting to the deviant users?
*What will discourage the deviant users?

5. Examples: Volleyball, tennis, basketball, putting greens, pools, BBQ grills conveniently located, pavilions/gazebos, trails, workshops, contests, parks, newsletters



Solving Conflicts with CPTED Concepts：-

SURVEILLANCE

Concept:

✓ Good lighting and good landscape maintenance.

Conflict:

✓ No formal or informal surveillance by residents who stay indoors.

Solutions:

- ✓ Organize Block Watch
- ✓ Organize activities
- ✓ Organize training
- ✓ Organize alternative suggestions

ACCESS CONTROL

Concept:

✓ Good security fencing and gates.

Conflict:

✓ Gates are propped, locks damaged and fences damaged.

Solutions:

- ✓ Educate residents
- ✓ Repair/maintain gates
- ✓ Repair/maintain fences
- ✓ Send notice to residents
- ✓ Evict problem residents

TERRITORIALITY

Concept:

✓ Buildings well painted and addresses clearly marked.

✓ Rules posted appropriately.

Conflict:

✓ Residents only have ownership or concern for dwelling unit.

✓ Lack of private/semi-private space.

Solutions:

- ✓ Encourage gardening
- ✓ Encourage play areas
- ✓ Encourage ownership of areas
- ✓ Encourage litter patrols

ACTIVITY SUPPORT

Concept:

✓ BBQ grills and tables in common areas.

✓ Sports and recreational facilities well maintained.

Conflict:

✓ Little to no use of facilities by residents.

✓ Area becomes a site for dangerous activities and non-intended users!

Solutions:

- ✓ "Market" ammenities.
- ✓ Organize events/contests
- ✓ Prizes/plaques
- ✓ Improve lighting

C.P.T.E.D. Requirements:

1. **Deadbolts**
2. **Peepholes** (180-190 degrees)
3. **Security Strike plates**
4. **Anti-Slide/Anti-Lift Windows & Arcadia Doors**
5. **Adequate Lighting**
6. **Proper Landscaping**
7. Background checks
8. Home Depot Discount

Lighting

The task is to be safe, not just feel safe. Visibility is the goal. Good lighting can be a help, poor lighting always compromises safety.

Everyone wants the feeling and the reality of being safe outside at night. That does not mena putting in the brightest light we can find, blinding everyone in the area, creating light trespass, and lighting up the sky. What we do need is effective lighting, lighting that puts light where we need it (and nowhere else) and where it will help visibility. That means: no glare, no light trespass, no uplight, no harsh shadows, no steep transitions from light to dark, etc. Lighting by itself does not insure safety.

We need adequate light, but not too much. Too much can ruin our adaptation to less well-lit areas at night, blinding us when we need to see. When we go from too bright to too dark or vice versa, we have poor visibility for a while. This effect is called "transient adaptation", and good designs should minimize its adverse effect on visibility.

To see well, we need to minimize any glare. Glare never helps visibility. To see well, we need to minimize dark areas near well-lit areas. This means good lighting design is required. Think, too, about energy savings. We should not waste light nor use inefficient light sources. We waste far too much energy and money throughout the world due to poor lighting. **Use light, don't waste it!**

A. Function

1. Safety
2. Identification
3. Recreation
4. Encourage Routine Activities
5. Discourage Illegal Activity
6. Support CCTV

B. Purpose

1. Less likely that police, neighbors, or passersby will observe criminal activity.
2. Darkness and shadows provide good cover for watching a target and for escape.
3. Fear of being on the streets at night minimizes the number of potential witnesses.
4. Darkness increases the ease with which criminals can use surprise to gain control of their victims.
5. What purpose do you want lighting to serve?

C. Visibility

1. Lighting is an important element needed to preserve visibility and help a person see potential assailants.
2. Paths of travel need illumination, especially the faces of pedestrians.
3. Lighting that is too bright can diminish safety by creating a fishbowl effect.
4. The quality of light is as important as the quantity.
5. Shadows should be avoided.
6. Lighting requires maintenance to preserve visibility. Lights decrease in brightness with age. Pro-active scheduling is good CPTED.

D. Goals of Lighting

1. Unit lighting should be:
    * Energy efficient (used consistently)
    * Non-tamper able (use special screws)
    * Break resistant lens
2. Building lighting should:
    * Illuminate building numbers
    * Illuminate building accesses
    * Illuminate front and back areas
    * Illuminate porch lights under control of building, not apartment user
3. Grounds lighting should:
    * Provide a cone of light downwards to walkways
    * Provide a level of light between buildings to distinguish forms and movement
    * Identify the facility or property
    * Identify entrances, parking, walkways, signage, etc.

E. Types of Lighting

1. Incandescent
2. Fluorescent
3. Mercury Vapor
4. Metal Halide
5. Low Pressure Sodium
6. High Pressure Sodium

F. Lighting Terminology

*Foot Candle - equals light from one candle at one foot away
*Lux - European scale for foot candle
*Lumen - quantity of light from source
*Watt - amount of energy consumed
*Life - number of hours bulb will last
*Color Rendering - the ability of a light source to represent colors in objects; the relative measure of this ability is color rendering index (CRI) which rates the light sources on a scale of 0 to 100; the higher the CRI the more vibrant or close to natural the colors of objects appear.

G. Lighting Controls

1. Manual
2. Timer
3. Motion Sensor
4. Automatic: Power failure, alarm
5. Photoelectric Cell
6. Group lamping in series

<u>Advantages & Disadvantages of Various Types of Lighting:</u>

Incandescent Advantages:

***** Low initial cost
* Small Size
* Variety of shapes
* Ease of dimming
* Good color rendition, yellow, red, orange
* White light

****Example: Porch Lights; Indoor lights****

Incandescent Disadvantages:

* High, long term cost
* Low lamp life, 500 hrs
* Blue diminished
* Low efficiency

Fluorescent Advantages:

* High efficiencies 65-85 lumens/hr
* Variety of color, no color diminished
* Low operating cost
* Long life 20,000 hours
* Best overall color rendition
* Cool white in color

****Example: Frequently used as overhead lights****

Fluorescent Disadvantages:

* High initial cost
* Temperature sensitive
* Limited optical control
* Auxiliaries needed
* Medium efficiency

Mercury Vapor Advantages:

* Low initial cost
* Long life 16,000-24,000 hours
* Low operating cost
* Good color rendition, blue, red, yel
* Deluxe white light
* Green diminished

Mercury Vapor Disadvantages:

* Low efficiency 25-50 lumens
* High lumen depreciation
*Auxiliaries needed
* Start & re-strike 5-6 minutes
* Medium efficiency

Metal Halide Advantages:

*High efficiencies, 113 lumens
* Long life, 10,000-20,000 hours
* Reasonable optical control
* Low operating cost
* Good color rendition, yellow, blue, green

Metal Halide Disadvantages:

* High initial cost
* Auxiliaries needed
* Start & re-strike 2-15 minutes
* Color consistency-turns pink
* Glare potential
* Red diminished

****Example: Car dealership parking lots****

Low Pressure Sodium Adv.:

* High efficiency, 17-18 lumens
* Long life, 16,000-18,000 hours
* Medium initial cost
* Low operating cost
* Reasonable optical control

Low Pressure Sodium Disadv.:

* Auxiliaries needed
* Start, re-strike time
* No color contrast
* Glare potential
* Orange appearance

****Example: Dumpsters, schools, farms** NOT RECOMMENDED**

High Pressure Sodium Adv.:

* High Efficiency
* Long life, 24,000 hours
* Low operating cost
* Reasonable optical control
* Good color rendition, yellow, green, orng

High Pressure Sodium Disadv.:

* High initial cost
* Auxiliaries needed
* Start, re-strike 1 minute
* Glare potential
* Red, blue diminished

****Example: Parking Lots****

H. Consider Environmental Effects

*Factors such as fog, smoke, rain, snow and dust can dramatically reduce the level of light
*These can also alter the reflection percentage of virtualy any material or surface

FYI!!

*A resident leaving a normally lighted apartment or common area and entering an area of darkness will require 20 minutes to become fully dark adapted.

*Complex backgrounds tend to reduce the contrast of an intruder against the background, thus making detection more difficult.

Resources:

Illuminating Engineering Society of North America (IESNA) - www.iesna.org
Lighting Design Lab - www.northwestlighting.com

City of Columbia Water & Light Department, contact Jim Coke 874-7314

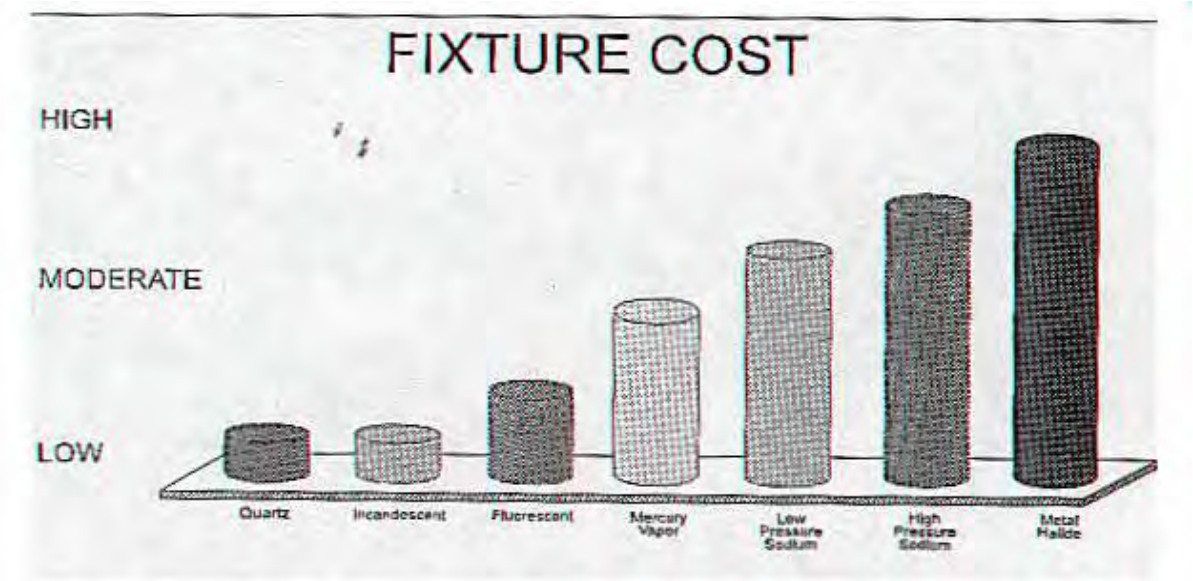
-Dusk to Dawn Lights (High Pressure Sodium Lights)

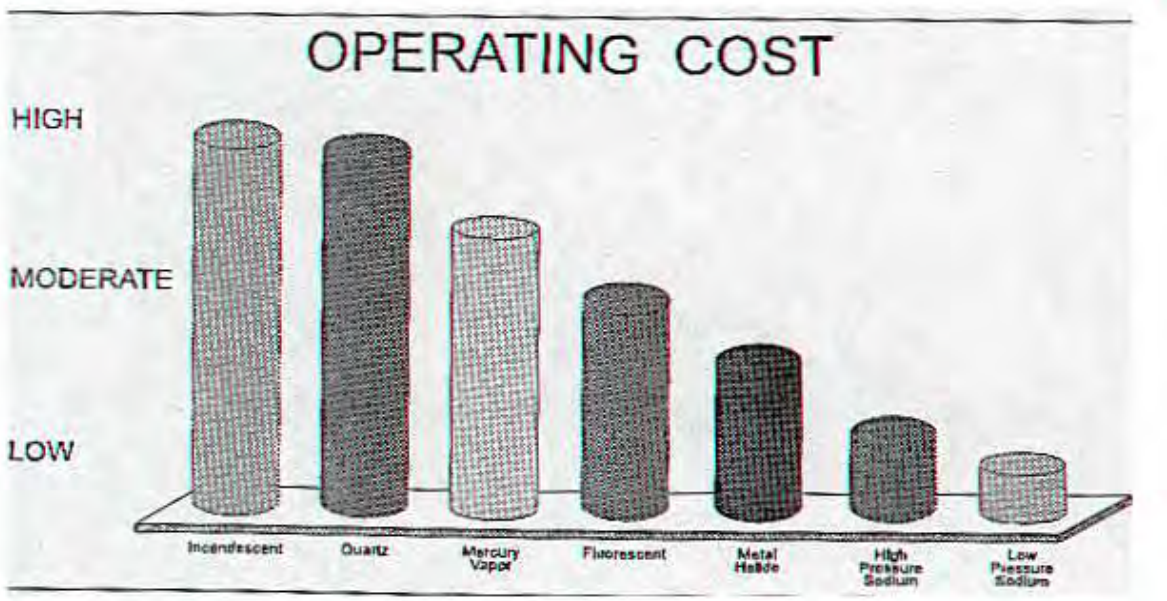
Pole: $2.77/month
100Watt light: $4.53/month
250Watt light: $13.44/month

Remember: There is no one light source that is right for all applications!

Light & Lamp Comparison

While many lamps will offer varying degrees of efficiency and effectiveness, this is a general guide to discuss advantages and disadvantages with certain lamps. Contact a professional lighting consultant if you have any questions. Performance and cost may vary greatly from manufacturer to manufacturer. These charts are provided to show there are more considerations than just the cost of lighting.





OF OUTDOOR LIGHTING TYPES

Energy-efficient lighting fixtures help you cut your electric bill. Plus, most products are easy to install because many models come pre-wired and pre-assembled. Each style comes with a lamp, and you can also choose to add a photocell on some designs.

Fluorescent Tubes
Cast cool, bright, economical light indoors.

Pictured: Circular, one of the many fluorescent tubes available.

Types of Lamps

High pressure sodium, Metal Halide, Mercury Vapor and Self-Ballasted Mercury lamps are all high intensity electric discharge lamps. Except for self-ballasted lamps, auxiliary equipment such as ballasts and starters must be provided for proper starting and operation of each type, in accordance with American National Standards Institute (ANSI) specifications.

Low Pressure Sodium lamps, though technically not high intensity discharge lamps, are used in many similar applications. As with HID lamps, they require auxiliary equipment for proper starting and operation. These lamps, which have efficacies up to 200 L/W, have a mixture of neon and argon gas plus sodium metal in the arc tube and an evacuated outer bulb. When voltage is applied to the lamp, the arc discharge is through the neon and argon gas. As the sodium metal in the arc tube heats up and vaporizes, the characteristic yellow amber color of sodium is achieved.

Nominal Wattage of Lamps

Lamp wattage varies during life, because of ballast and lamp characteristics. Ballast data should be reviewed for actual wattage levels.

Voltage Control

An interruption in the power supply or a sudden voltage drop may extinguish the arc. Before the lamp will relight, it must cool sufficiently, reducing the vapor pressure to a point where the arc will re strike the available voltage. Instant re strike lamps re strike immediately with the resumption of power providing approximately five percent of steady state lumens and a rapid warm-up. Other lamps require approximately one minute cooling before relighting. Still other HID types take three to 20 minutes, depending on type of lamp and luminaire.

Premise Liability

"Property owners can expect to be the subject of increasing litigation if they fail to take reasonable steps to prevent crime from occurring on their premises."
_-National Institute of Justice

"Premises liability cases are on the rise."
-National Institute of Justice

One of the most controversial areas of law concerns the liability of landlords, business proprietors or property managers for criminal acts by third parties which occur on or near their property. Several recent California court decisions have considered whether a landlord (or proprietor or property manager) was negligent in failing to take reasonable precautions to protect tenants and patrons from criminal acts of third parties. These decisions have important implications for commercial landlords, property managers and business proprietors.

Premises liability -- what is it?

Answer: Premises liability law puts responsibility on a property owner for some injuries suffered by other people on his property. It can include situations where individuals are in the owner's home, on the owner's property, or while a person is at another's place of business.

Answer: As a general rule, a property owner is responsible for injuries on his/her property if he/she has been negligent. The property owner is negligent if he/she has breached a duty of care owed by him/her to the injured person. For example, an owner of a pizza restaurant has a duty to keep the floor dry and free of slippery debris (or at least post a warning to people regarding a certain floor condition) so that customers are prevented from slipping or injuring themselves. Similarly, an automobile service station has an obligation and duty to ensure that customers can safely enter and exit the service station.

Can a property owner be held liable for criminal acts which occur on his/her property?

Answer: Generally, if the property owner knew or had a reason to know that an attack by a criminal was likely, the property owner can, in certain circumstances, be liable for criminal acts committed against a person on his/her property. For example, a significant period of criminal activity on or around a property that would put a reasonable property owner on notice that certain measures were necessary to protect people on the property could be used to prove an owner's liability for later criminal acts. Example: If a property owner knows that someone has placed an illegal animal trap on his property and the owner fails to do anything about the trap, he/she might be liable for injuries inflicted on someone else as a result of the trap.

What must a property owner do to keep people from being injured?

Answer: The general rule is that the owner of property, such as land or a building, has a duty to keep the premises in a reasonably safe condition under the circumstances. The factors used to determine whether the owner exercised reasonable care in maintaining the property includes (a) the foresee ability of harm to others; (b) the magnitude of the risks of injury to others if the property is kept in its current condition; (c) the benefit to an individual or to society of maintaining the property in its current condition; and (d) the cost and inconvenience of providing adequate protection. If it is certain that someone will get seriously injured if the property is kept in its current condition and the cost of preventing such injury is low, there is certainly a duty on the owner to make the property safe. He will be liable for injuries should he fail to do so.

-The test is not whether any particular security measure was adequate to prevent a given offense. The correct test is whether the level of the security was a reasonable fulfillment of landlords duty of care.

A. Claims by Business Type
   1. Residential Properties
   2. Hotels/Motels
   3. Parking Lots and Garages (on increase)
   4. Retail Stores and Shopping centers
   5. Restaurants, nightclubs and bars
   6. Offices and workplaces
   7. Hospitals and colleges

B. Claims by Crime Location
   1. Apartment Units
   2. Parking lots and garages
   3. Hotel Rooms
   4. Restaurant, bar/nightclub
   5. Outdoors, hallways, elevators
   6. Office, hospital room

C. Case Histories
   1. Doors & windows
   2. Strike plates & lock repair
   3. Resident unit keys
   4. Sliding door latches
   5. Security guards
   6. Security gates
   7. Common area lighting

   -AUniform Building Security Code

D. Lawsuit Elements
   1. Landlord owed a duty to the resident.
   2. Crime was reasonably foreseeable.
   3. Security was inadequate or absent.
   4. Negligence caused the crime and/or injury.

5. Plaintiff was actually injured; physical or psychological damages.

E. Security Plan Documentation
    1. Staff background screening
    2. Staff training records
    3. Resident screening procedures
    4. Rule enforcement records
    5. Maintenance records
    6. Crime incident records
    7. Security guard records

AIt is apparent that judges and juries can appreciate the logic of C.P.T.E.D. and decide in specific cases that the way properties are designed can influence criminal behavior. -U.S. Department of Justice

Awareness is the key!

Complaints we have heard:
"I am the only one person in the office, how can I do my job and make sure that I remain safe in the process?"

Advice given:
"Most crimes can be prevented by taking the time to plan ahead. Think about possible situations and have a plan before they arise."

I. Awareness

A. Assess the types of crimes that have occurred on the property and on similar properties.
B. Do not discount the possibility of crime because it has never happened before.
C. Be aware of the surrounding area.
D. Use the buddy system after hours to reduce the likelihood of an attack.
E. Set policies for showing rental units. Too often a woman is raped while showing a rental unit.

II. Working After Dark

A. Have another person in the office or nearby. Call someone and left them know you are working late, also call them when you are ready to leave.
B. Walk to your car with someone else, there is strength in numbers! If you must walk alone to your car, have your car as close to the office as possible, reducing the walking distance. Be aware of your surroundings!
C. Employees should be certain that all windows and doors have been secured.
D. Cellular phones are a good way to stay in touch, as are pagers. Property managers/owners can establish codes to use when problem situations occur.

III. Employee Training Programs

A. Employees should receive training to prepare themselves for all types of crime situations.
B. Armed Robbery Prevention
    1. Keep money in different locations
    2. Make frequent deposits
    3. Vary the time you make deposits, and who makes the deposits
    4. Make a ANo Cash Accepted Policy in the office
C. Set Policies and adhere to them

COMMUNITIES, NOT COMPLEXES!

NOT A COMPLEX

Rental properties are not complexes. Complexes are disorders! Rental properties are small communities where people live, and many raise a family. It is important to view each property as a community within a community. Residents need to feel they are a vital part of a healthy community. When residents feel at home, they are more apt to take pride and ownership of the area.

If residents of a rental property are fearful or not familiar with others in that community, many problems can result. Residents will be less likely to report suspicious or illegal activity, and that causes apathy. When apathy pervades, soon drug dealers and other undesirables will begin to take over the area. The only thing necessary for these activities to flourish is for good residents to do nothing to stop it. It doesn't take long for those who perpetrate illegal activity to realize no one is going to report them.

NOT A POLICE PROBLEM

Crime is NOT a police problem. It is a COMMUNITY problem. The police ARE a part of the community, so this does not exclude the police. It certainly is the police department s role to arrest people involved in illegal activity, but if the management re-rents to others committing criminal acts, the problem does not go away.

For example, if neighbors complain that various types of illegal activity are making a park unsafe for children to play in, this is not necessarily a police problem. The police can remove the persons committing crimes in the park, but if the residents don t follow-up by using the park, other illegal activities will soon begin again.

ONGOING MANAGEMENT

What to do to keep the relationship working.

COMPLAINTS WE HAVE HEARD:

The tenant moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal tenants, even though they never signed a lease.

ADVICE WE WERE GIVEN:

You need to follow one basic rule, you have to *actively* manage your property. The only landlords who go to court are the ones who don't actively manage their property.

For most property managers the experience is one of putting out brush fires all day long. If property managers can take a more proactive approach to the process, they can build an ever improving set of renters, avoid a lot of legal hassles, and have fewer brush fires during the day.

If your training teaches landlords nothing else, teach them that the neighbors in an area are not their enemies.

THE BASICS

Maintain the integrity of a good tenant/landlord relationship. Strengthen communications between the landlord, tenants, and neighbors. Help build a sense of community.

DON T BEND YOUR RULES

A key to ongoing management of your property is demonstrating your commitment to your rental agreement and to landlord/tenant law compliance. Once you set your rules, enforce them. Make sure you meet *your* responsibilities, and make sure you hold your tenants accountable for meeting theirs. By the time most drug problems are positively identified, there is a long history of evict able behavior that the landlord ignored.

_ **When aware of a serious breach, take action *before* accepting the next rent payment.** If a landlord accepts rent while knowing that the tenant is breaking a rule, but the landlord has not acted to correct the behavior, the landlord could lose the right to serve notices for the behavior. Landlord/tenant laws generally consider acceptance of rent equal to acceptance of lease violating behaviors about which the landlord has not objected. Further, regardless of the characteristics of your local law, it doesn't pay to teach your tenants that they are allowed to

break the rules. So, at minimum, as soon as you discover violations of local landlord/tenant laws or of your rental agreement, give tenants written notice that they are required to correct the problem, *then,* accept the rent. A non-waiver provision, such as the following, should eliminate the problem.

_ **If someone other than the tenant tries to pay the rent, get an explanation.** Also, note on the receipt that the payment is for your original tenants only. Otherwise, by depositing the money, you may be accepting new tenants or new rental agreement terms.

_ **If a person not on the lease may be living in the rental, pursue the issue immediately.** If you take no action to correct the behavior, and you accept rent knowing the tenant has allowed others to move in, you may have accepted the others as tenants as well. So either require the illegal subtenants to fill in a rental application and apply, or serve the appropriate notice that would require your original tenant to remove the subtenants under threat of eviction if the action is not taken.

_ **Fix habitability and code violations at the property quickly.** Maintaining habitable housing for tenants is the most important of a landlords responsibilities. In addition, as discussed earlier, failure to maintain a unit could compromise a landlord s eviction rights. Tenants may be able to use a Aretaliation defense when a landlord attempts to evict after a tenant has complained that the rental is substandard.

_ **When a tenant doesn't pay rent, address the problem.** Some landlords have let problem tenants stay in a unit, not just weeks after the rent was overdue, but *months*. While flexibility is important in making any relationship work, be careful about being too flexible. There is a big difference between being willing to receive rent late during a single month and letting your renters stay endlessly without paying.

_ **If neighbors call to complain of problems, pursue the issue.** Although it does happen, few neighbors call landlords about minor problems. If you get a call from a neighbor, find out more about the problem, and take appropriate action. If there are misunderstandings, clear them up. If there are serious problems with your tenants, correct them.

Bottom line: If you respect the integrity of your own rules, the tenant will too. If you let things slide, the situation can muddy fast. It may mean more work up front, but once the tenant is used to your management style, you will be less likely to be caught by surprises.

RESPONSIBILITIES DEFINED

For a legal description of the responsibilities of landlords and tenants, review your local landlord/tenant law, local maintenance codes, and the requirements of the Section 8 program if it applies to your units. Also, to state the obvious, if you haven't already, check your rental agreement. Rental agreements typically spell out various responsibilities of both the landlord and the tenant. The following is an overview of the typical responsibilities of both parties.

LANDLORD Responsibilities

A landlords responsibilities typically fall into three areas: the condition of the premises as delivered to the tenant, the obligation to maintain the unit once it is occupied, and the obligation to respect the rights of the tenant. A landlords responsibilities generally include:

_ **Prior to move-in, provide the tenant with a clean, sanitary, and safe rental unit.** This typically means the unit should be cleaned, garbage and debris from previous tenants removed, pest control problems addressed as appropriate, the various systems (plumbing, electrical, heating) working appropriately, the unit adequately weatherproofed, the structural integrity of the unit maintained (e.g., no rotting steps), fire safety issues addressed (e.g., smoke detectors installed and access to secondary exits assured), working locks installed, and any other potential safety hazards addressed.

_ **After move-in, make sure the unit remains habitable.** For occupied units, landlords generally are responsible for all major repairs and are granted both the power and the responsibility to make sure that tenants are doing their part to maintain the habitability of the unit. For example, while the law and the rental agreement may both require that the tenant do sufficient basic housekeeping to keep the unit free of sanitation problems, if the tenant is not doing so, it is generally up to the landlord to require the tenant to correct the problem, typically serving a type of notice that would require the tenant to remove the garbage or vacate the premises.

_ **Respect the tenant's right to private enjoyment of the premises.** It has been a basic characteristic of landlord/tenant relationships for hundreds of years that once the tenant begins renting property, the tenant has the right to be left alone. With some specific exceptions for such activities as serving notices, conducting maintenance inspections, doing agreed-upon repairs, or showing the unit for sale, the landlord must respect the tenant s right to private enjoyment of the unit in much the same way that an owner-occupant s right to privacy must be respected. In those areas where a landlord does have a right to access, the landlord must generally follow a carefully spelled out notification process prior to entering the rented property.

_ **Avoid retaliation against a tenant.** Generally, a landlord may not retaliate against a tenant who is legitimately attempting to cause the landlord to meet his/her responsibilities. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a tenant asking a landlord to repair a worn out furnace, fix a rotting step, or take other actions that fall within the landlord s responsibility under the law.

_ **Avoid illegal discrimination.** Nationwide, landlords may not discriminate on the basis of a tenant s (or applicant s) race, color, religion, sex, handicap, national origin, or familial status. Your state and local laws may included additional protected classes. This means that you may not use such class distinctions to screen applicants or to treat tenants differently once you enter into a rental agreement. For more information about the application of civil rights laws, see the chapter on *Applicant Screening*.

_ **Enforce the terms of the rental agreement and landlord/tenant law.** While both the rental agreement and the law will identify various required behaviors of tenants, in general it is up to the landlord to make sure the tenant complies. If the tenant is not in compliance, the law generally gives landlords the power to serve various types of Acure and Ano-cure notices to correct the

behavior or require the tenant to move out. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem tenants. (Of course, if your problem tenants are involved in criminal behavior for which there is enough evidence to make an arrest, the police may be able to arrest the tenant and have that person serve jail time. However, while arrest may remove the tenant from the property, you may still need to serve an eviction notice to regain possession of the property. See the chapter on *The Role of Law Enforcement* for more information.)

A NOTE ABOUT HIRING EMPLOYEES

Many rental property owners hire employees to assist with tenant screening, routine maintenance, and other tasks. It is critical that resident managers and other agents of the landlord be screened **even more thoroughly than applicants for tenancy**. In general, when an employee breaks the law while on duty, both the employee and the employer can be held responsible by the party that is harmed by the action. When the employee violates an element of rental housing law, the liability you will hold for employee misbehavior should be reason enough for extra screening efforts.

One screening tool that you will want to seriously consider for job applicants is a criminal conviction check, even if you don t check criminal backgrounds on prospective renters. Once property managers are hired, make certain they are trained in effective applicant screening, along with the warning signs of dishonest applicants. Also, be sure they understand, and follow, the requirements of fair housing laws.

TENANT Responsibilities

A tenant's responsibilities are generally to assure that no harm is done to the unit and to pay the rent. A tenant's responsibilities generally include:

_ **Do basic housekeeping, comply with the rental agreement, and avoid harming the unit.** In addition to complying with rental agreement provisions, tenants are typically required to use the premises in a reasonable manner, cause no damage to the unit beyond normal wear and tear, keep the premises free of accumulations of garbage and other waste, and do sufficient housekeeping to avoid safety and sanitation hazards. Some landlord/tenant laws also spell out a requirement that tenants be good neighbors, that tenants and their guests may not disturb the neighbors peace. Also, from a civil standpoint, tenants are generally considered responsible for the behavior of others they invite onto the premises. For example, tenants typically cannot defend a landlord s eviction action by claiming that all alleged violations were committed by friends who visited on a regular basis.

_ **Pay rent.** Landlords have the right to receive rent for the use of their property and tenants have an obligation to pay it. Exceptions exist only in those circumstances where landlord/tenant laws allow tenants to withhold rent when a landlord refuses to meet the *landlords* responsibilities.

_ **Enforce the terms of the rental agreement and landlord/tenant law.** Just as it is up to landlords to make sure that tenants comply with the rental agreement and landlord/tenant law, tenants generally hold the primary responsibility for making sure their *landlords* comply. Tenants have various powers to abate rent and/or take other action to cause a landlord to comply. For some problems, specific agencies can assist in enforcing the law, problems associated with building code violations and fair housing issues are two examples. However, the enforcing agencies often do not get involved unless they are first notified by the tenant. Therefore, chief

among the powers generally granted to a tenant is protection from the landlord s retaliation should the tenant attempt to assert a right defined in the law.

PROPERTY INSPECTIONS

A cornerstone of active management is the regular inspection. Unless you inspect, you can t be sure you are meeting your responsibility to provide safe and habitable housing. In addition, maintaining habitable property protects your rights as well.

While the purpose of a maintenance inspection is to care for the unit and ensure its habitability, regular inspections will also deter some types of illegal activity. For example, if tenants know that the landlord actively manages the property, they aren't likely to start making illegal modifications to the rental in order set up a marijuana grow operation. Further, inspections can help catch problems associated with illegal activity before they get out of hand. For example, it is common for drug dealers to cause damage to a rental unit that is way beyond normal wear and tear, a problem that could be observed, documented, and addressed through the process of a regular inspection program. Though early discovery of such damage is a possibility, the more frequent impact of an inspection program on illegal activity is basic prevention. Illegal activity is less likely to happen at property where the landlord has a reputation for concerned, active management.

The key to successful property inspection is avoiding the adversarial position sometimes associated with landlord/tenant situations. An inspection program done properly should be ***welcomed*** by your honest tenants. Steps include:

1. **Set an inspection schedule and follow it.** At minimum, every six months. It is a rare home that doesn't need at least some maintenance or repair work at least twice a year.

2. **Use the inspection/notice procedures defined by local law.** Generally, landlords have the right to do maintenance inspections of rental property if the tenant is given proper notice. However, each state sets its own limits on the conditions under which a landlord may enter an occupied rental. If the inspection is routine, keep the approach friendly. Perhaps call the tenant in advance and then follow up by serving the inspection notice by the methods defined in local law. To help address all maintenance needs efficiently, ask tenants to take note of any concerns they have in advance of the inspection date. Again, when done appropriately, good tenants should appreciate your attention and concern for maintaining the unit.

3. **Find and address code and habitability problems.** When you inspect the property, check for maintenance problems and handle any routine maintenance, such as replacing furnace or air conditioning filters or putting fresh batteries in a smoke detector. Discuss with the tenants any concerns they have. Make agreements to remedy problems. Then repair what needs to be fixed.

Maintaining your property through routine inspections will also help to build a positive relationship with the neighborhood; there is nothing more frustrating to a neighborhood than a landlord who does not keep up their property.

UTILITIES

There are some instances when the shutting down of utilities is a symptom of drug activity _ as dealers or heavy users get more involved in their drugs, paying bills can become less important.

Remember: If your lease stipulates that the tenant is responsible for utility bills, and the tenant stops paying for those services, you have grounds for serving a for-cause eviction notice requiring that tenants get back into compliance with the lease terms or vacate the premises. This may be particularly important to do if shutting off the utility would result in the unit no longer meeting habitability standards.

KEEP A PAPER TRAIL

Verbal agreements carry little weight in court. The type of tenant who is involved in illegal activity ***and*** would choose to fight you in court will know that. So keep a record of your agreements and provide copies to the tenant. Just having tenants know that you keep records may be enough to motivate them to stay out of court. You will need to retain documentation that shows your good-faith efforts to keep the property habitable and shows any changing agreements with a tenant, dated and signed by both parties.

It is a very good idea to keep written documentation of each and every repair you make to the rental unit.

TRADE PHONE NUMBERS WITH NEIGHBORS

Landlords of single-family residential housing sometimes don't hear of dangerous or damaging activity on their property until neighbors have written to the mayor, or the police have served a search warrant. Quite often the situation could have been prevented if the landlord and area neighbors had established a better communications link.

Find neighbors who seem responsible, concerned, and reliable. Trade phone numbers and ask them to advise you of serious concerns. You'll know you have found the right neighbors when you find people who seem relieved to meet you and happy to discover you are willing to work on problems. Conversely, if neighbors seek you out, work with them and solicit their help in the same way.

Note that landlords and neighbors tend to assume their relationship will be adversarial. Disarm any such assumptions and get on with cooperating. If you both want the neighborhood to remain healthy and thriving, you ***are*** on the same side and have nothing to gain by fighting each other.

COMPLAINTS WE HAVE HEARD:

We already have an apartment watch. The tenants get together and watch the manager to see if I screw up!

ADVICE WE WERE GIVEN:

APlease teach landlords that their good tenants can help.

THE BASICS

Good landlords and good tenants must learn to work together for the common goal of a safe community.

BENEFITS

In multi-family units, unless your tenants report suspicious behavior, you may not find out about drug activity until the problem becomes extreme. Some people, tenants and homeowners alike are frightened to report illegal activity until they discover the strength in numbers of joining a community watch organization. Whether you call your efforts apartment watch, community pride, or resident retention programs, the goal is the same: transforming an apartment complex into a community.

Organizing a community is more than just encouraging tenants to act as eyes and ears. In the absence of a sense of community, the isolation that residents feel can lead to apathy, withdrawal, anger, even hostility, toward the community around them. Organizing efforts can lead to profound changes: as apartment residents get to know each other and the manager, a sense of community, of belonging, develops, and neighbors and tenants are more willing to do what it takes to keep a neighborhood healthy.

Complexes that enjoy a sense of community often have more stable tenancies and lower crime problems than comparable complexes that are not organized. Managers who have initiated such efforts note these benefits:

_ Lower turnover, leading to considerable savings.

_ Less damage to property and lower repair bills.

_ Reduced crime.

_ A safer, more relaxed atmosphere for the tenants.

_ A positive reputation for the complex, leading to higher quality applicants and, over time, increased property values.

KEY ELEMENTS

The key to effective cooperative community building is to have the property manager take the lead and make sure the efforts are ongoing. Community organizing that is run entirely by tenants may have less long-term stability, simply because it is the nature of rental housing that tenant turnover will occur and key organizers will move on. For this reason, having the manager keep the program going is an important part of a successful program. Further, if management waits until the tenants are so fed up that they organize themselves, the relationship may be soured from the start. If management takes a proactive role in helping tenants pull together for mutual benefit, the opportunity for a positive working relationship is great. Tips include:

1. **Clean house.** If you have tenants who are involved in drug activity, illegal gang activity, or other dangerous criminal behavior, resolve the issue before inviting tenants to a building-wide meeting. Your good tenants may be frightened to attend a meeting where they know bad tenants might show up. In addition, they may question your motivation if you appear to encourage them to meet with people involved in illegal activity. So before you organize, you will need to evict problem tenants and make sure that improved applicant screening procedures are in place. Until then, rely on informal communications with good tenants to help identify and address concerns.
2. **Make community activities a management priority.** Budget for the expenses and consider promotion of such activity a criterion for management evaluation. It is not an afterthought. It is not something that resident managers should get around to if there is time. Unless managers make community organizing a priority, it will not get done.
3. **Hold meetings/events quarterly.** Don't expect major results from the first meeting, but do expect to see significant differences by the time the third or fourth is held.
4. **Meet in the common areas if possible.** While small meetings can be held in the manager's office, a vacant unit, or should a tenant volunteer, in a tenant's apartment, more people will feel comfortable participating if they can meet on Aneutral territory. Also, if you can hold events in courtyards or other outdoor locations, you may have more room to structure special events for children in the same area.
5. **At each event, encourage people to meet each other.** Regardless of other specific plans for meetings, take basic steps that encourage people to meet each other. Simple steps done faithfully can make a big difference over time. At each event:

   _ **Use name tags.** This simple step is important in helping to break down the walls of unfamiliarity for newcomers.

   _ **Begin any formal meeting by having people introduce themselves by name.**

   _ **Allow time at each event for people to socialize.** Make sure that some of this time happens after the meeting agenda is underway. Once the event is underway, participants will have the shared experience of the meeting with which to start a conversation.

   _ **Offer refreshments.** Whether it is as simple as coffee and pastries or as involved as a potluck or a summer barbecue, free food can attract many to a meeting who might not otherwise have attended.

- **Include activities for children and teenagers, as well as for adults.** Getting children involved in games and other events will provide a positive experience for the children and help encourage parents to meet each other. Also, like adults, when children and teenagers get to know their resident manager better, they are more likely to share information. This is important because teenagers, in particular, may have information about a community problem of which the adults are unaware.

6. **Hold theme events and special meetings as appropriate.** There is a balance between holding a purely social event and a meeting for the purpose of addressing an agenda. The balance at each meeting can vary, but it is important to provide some of both. At least one of the meetings held each year should be primarily for the purpose of celebration _ a holiday party in the winter or a Aknow your neighbor barbecue in the summer. Others can offer a time for socializing and a time for covering an agenda. Meeting agendas can be as varied as the types of apartments and people who populate them. In general meetings should:

   - **Respond to issues that are a direct concern to a number of tenants**. If there are immediate concerns, such issues should take priority over other potential agenda items. If tenants are concerned about gang violence in the neighborhood, less pressing topics may seem irrelevant.

   - **Provide new information about the local community.** This could take any number of forms. You might invite merchants from the area, fire fighters, police officers, members of neighborhood associations or other community groups, social workers, employment counselors, or any number of other people who could share useful information with tenants.

   Also, remember the importance of keeping meeting agendas on track, interesting, and focused on tangible, measurable outcomes. If tenants feel that meetings rarely address the published agenda, interest will shrink quickly.

7. **Nurture a sense of shared responsibility.** While it is important for management to continue providing support for the community-building process, it should not be a one-way street. Leadership in the complex should be nurtured, and volunteers recruited at each meeting to assist with the next meeting, program, or event. The more residents experience the community-building process as a joint effort of management and residents, the more they will appreciate it. Promoting a sense of shared responsibility can be accomplished in many ways. Here are just a few tips:

   - **Ask for volunteers to serve on a tenants council.** The council could meet informally once a month to discuss issues of concern in the complex and to plan the upcoming community-wide events. Don t be discouraged if only one or two people get involved initially. With success, more will join.

   - **Whenever possible, have tenants set the meeting agendas.** Whether it is through a tenant council or simply by collecting suggestions at community events, make sure tenants know they play a key role in defining the direction of community-building efforts.

   - **Give tenants a chance to comment on plans for the property.** Even the simplest issues can be turned into opportunities for community building. For example, if a fence is going to be built or replaced, before going ahead with the work, discuss the plans at a meeting and allow tenants to air concerns or suggestions. You may hear some new ideas that can make the end result more attractive. In those situations where you cannot act on a suggestion, you have the opportunity to explain your reasons to your tenants, and at least have them

experience a level of participation that they did not previously have. Along similar lines, by listening to tenant concerns, you may discover that a relatively simple adjustment in policy can result in a significant increase in overall tenant satisfaction.

8. **Pick projects that can succeed.** Don t promise more than you can deliver. Make sure that easily implemented changes are done promptly so that tenants can see the results. While it is important to take on the larger goals as well (such as getting rid of drug activity in the rest of the neighborhood), short-term results are needed to help tenants see that change is possible.

9. **Develop a communications system.** This can be as elaborate as quarterly or monthly newsletters, complete with updates from management, articles from tenants, advertisements from local merchants, and referrals to local social service agencies. Or it may be as simple as use of a centrally located bulletin board where community announcements are posted. Whatever the process, the key lies in making sure that your tenants are aware of the information source and that they find it useful enough to actually read it.

10. **Implement basic crime prevention measures.** In addition to the general community- building techniques described, various traditional crime watch techniques can also be implemented. Apartment watch training should be provided to your involved tenants prior to getting underway. Contact a community police officer in your area for more details. These specialists can help facilitate the first apartment watch meeting and discuss the practices of local law enforcement. Examples include:

   _ **Make sure tenants have the manager s phone number readily accessible, and that they know to call if they suspect illegal activity.** Of course, tenants should call 9-1-1 immediately if they witness a crime in progress or any life-threatening, emergency situation. They should also contact police non-emergency services to discuss illegal activity that is not immediate in nature. Encourage tenants to contact the manager *after* they have contacted 9-1-1, in the case of immediate and life-threatening situations, as well as to contact management any other time they suspect illegal activity in the complex. The sooner your tenants advise you of a problem, the more opportunity you have to solve it before the situation gets out of hand.

   _ **Encourage tenants to develop a list of phone numbers for each other.** By sharing phone numbers, tenants will be able to contact each other with concerns, as well as organize reporting of crime problems by multiple tenants. Note that sharing phone numbers among tenants should be done on a voluntary basis only _ those who do not want to participate should not be required to do so.

   _ **Distribute a list of local resources.** The resource list should include numbers for police, fire, and medical emergency services (9-1-1 in most areas) as well as hotlines for local crime prevention, substance abuse problems, domestic violence problems, employment assistance, and any number of other services and organizations that may be able to assist your tenants.

   _ **Purchase a property engraver for each complex.** Encourage tenants to engrave their driver's license number on items of value: video recorders, cameras, televisions, etc. Then post notices of the fact that tenants in the complex have marked their property for identification purposes. Burglars would rather steal property that can t be traced.

   _ **Apply crime prevention through environmental design changes.** If tenants cannot *see* the problem, they cannot report it. Essentially, it is important that lighting, landscaping, and building design combine to create an environment where drug dealers, burglars, and

other criminals don t want to be. Make it difficult to break in, close off escape routes, and make sure accessible areas can be easily observed by people throughout the complex.

11. **Encourage nearby neighbors and apartment complexes to get involved.** Solving the whole problem may require encouraging similar steps in adjacent apartment complexes or making sure neighbors in nearby single-family homes also get involved. As a starting point, invite area neighbors to at least some of the community events held at the complex each year.

12. **You are strongly urged to seek out, and join, the neighborhood association** in which your rental property is located. If one does not exist in the neighborhood, starting one may be as simple as contacting the City Neighborhood Specialist or the Crime Free Programs Coordinator.

CRIME PREVENTION

***Dictionary Definition**: Prevention of an action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited.*

ADVICE WE WERE GIVEN:

"Crime Prevention will only work if all parties make a commitment to it. The Police Department alone cannot solve crime without the public assisting."

DOES IT WORK?

Many people feel helpless against crime, because too often crime is seen as an inevitable part of our society. It has been said, "If a criminal WANTS to get you, he'll get you." This belief leads to helplessness, fear, and apathy. Apathy is one of the most dangerous elements in society today. When law abiding citizens refuse to go outside after dark, they have voluntarily turned over their neighborhoods to the ones perpetrating crimes.

Criminals Are Like Weeds

Many times a community will not battle crime because they feel that they cannot be successful. Often, people view dangerous criminals like a large rock that cannot be moved, or even budged. Dangerous criminals are NOT like rocks; they are more like plants. Unlike an inanimate rock, a plant will grow. A weed can best be illustrated as this - as a weed grows, it roots, sprouts and chokes out healthy plants. A single weed can quickly overtake an entire garden. When criminal activity is allowed to flourish, the effect is the same.

The typical approach to crime is **REACTIVE**. Once a crime has been committed, the police officer responds, writes a report and begins the preliminary investigation. It is certainly more humane and cost effective to prevent a crime from even occurring. Crime prevention is the **PROACTIVE** side of law enforcement. **Prevention** is more desirable because it addresses the potential for crime before it becomes a serious problem. Unfortunately, many people don't address crime situations before it is too late. A good example of this is a victim of burglary that suddenly becomes interested in security systems.

Once a crime problem has gotten too large, it is often easier to run away than face it. Equate the crime problem to killing a dinosaur. The easiest way to kill a dinosaur is while it is in the egg. Once the dinosaur is given the opportunity to grow, it will become progressively harder to defeat. The same is true with criminal activity.

Understanding Crime Prevention

To prevent crime, you need to understand crime and you need to understand the criminal mind. When you think of criminals, think of predators. Most criminals are like predators, looking for easy victims.

When you think of predators, you might think of the lioness. When the lioness is hungry, she will go out to stalk her prey. The lioness knows that the watering hole is a good place to find food, as this is where all the animals come to get water. The lioness is a skilled hunter. She knows the best approach is from downwind. This way they cannot smell her. The lioness is careful to approach slowly, staying low in the tall grass to avoid detection.

At just the right moment, the lioness pounces into the herd. The lioness does not run past the injured, the diseased, or the slowest ones in favor of the strongest one at the head of the pack. In fact, it usually is the one that is injured, sick or simple **NOT PAYING ATTENTION**, that gets attacked. This is called ***survival of the fittest or thinning the herd.***

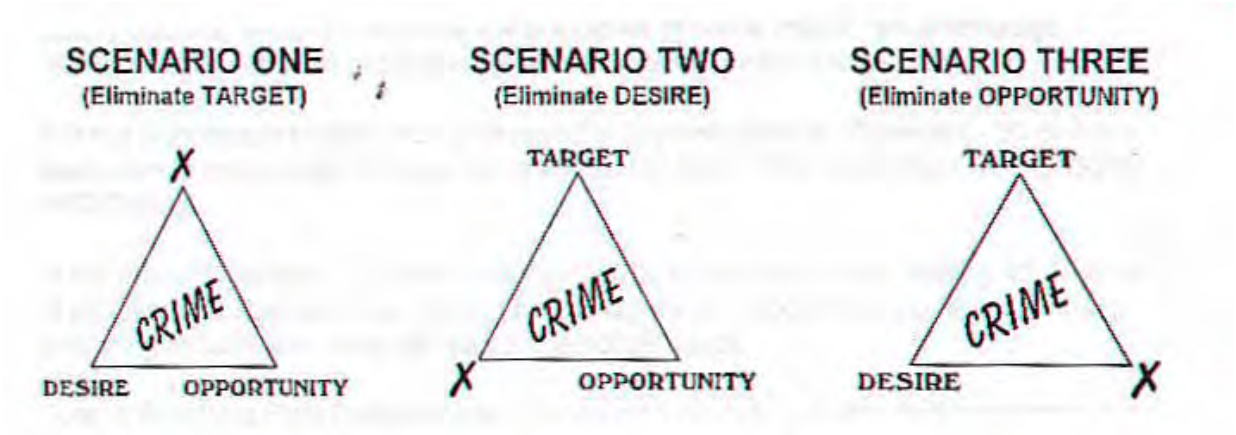
The two-legged urban breed of predator, the criminal, works the same way. They stalk their victims looking for the easy prey. To be successful against an attack - you don't necessarily have to be the strongest one - just don't be the weakest one.

RISK (LOSS) MANAGEMENT

When assessing the potential for crime, it is important to decide whether to accept the risk (risk acceptance), without investing in counter measures, or to take sometimes costly steps to reduce the risk (risk transference). Transferring the risk may involve spending a little money now to save much more later on.

There are other less expensive ways to prevent crime. This includes the removal of the elements necessary for a crime to occur (risk avoidance). There are also ways to reduce the risk or spread the risk to reduce losses. The following demonstrates the types of risk management.

ELEMENTS OF CRIME



If a car thief comes to an apartment community to steal a corvette, the **DESIRE** is there. If all of the residents are inside their rental units, now the **OPPORTUNITY** is there. But if there is not a Corvette on the property, you will not have a crime because there is no **TARGET**.

If a person sees a Corvette, the **TARGET** and all of the residents are in their apartments, allowing the **OPPORTUNITY** for crime, but the person who sees the Corvette has no **DESIRE** to steal the car, again, you will have no crime.

If a person comes to the property with the **DESIRE** to steal a corvette, and sees the perfect **TARGET**, but the residents of the apartment community are out in the recreation and common areas, this will reduce or eliminate the **OPPORTUNITY.**

The CRIME FREE MULTI-HOUSING PROGRAM is effective because it addresses all three (3) elements - TARGET, DESIRE and OPPORTUNITY. To eliminate the TARGET, we teach how to "target harden". To eliminate OPPORUNITY, we train residents to be the "eyes and ears" of the community. To eliminate the DESIRE, a concerted effort is made to keep those with criminal intent from trespassing, visiting or living at the property.

SET RULES

If a person knows that rules are clearly stated and enforced, they are less likely to move into a community to commit criminal activity. Have a back-up plan in your lease to discourage more determined individuals.

Careful screening and active management principles addressed in the CRIME FREE MULTI-HOUSING PROGRAM, the criminal activity among residents and visitors can be virtually eliminated.

TARGET HARDENING

Sometimes you cannot remove a target, but you can harden the target. Target hardening involves the use of locks, electronic devices, or other hardware that will DETECT, DETER, DELAY or DENY the criminal (away from the intended target). Target hardening is directed to all structures, vehicles and personal property within the rental community.

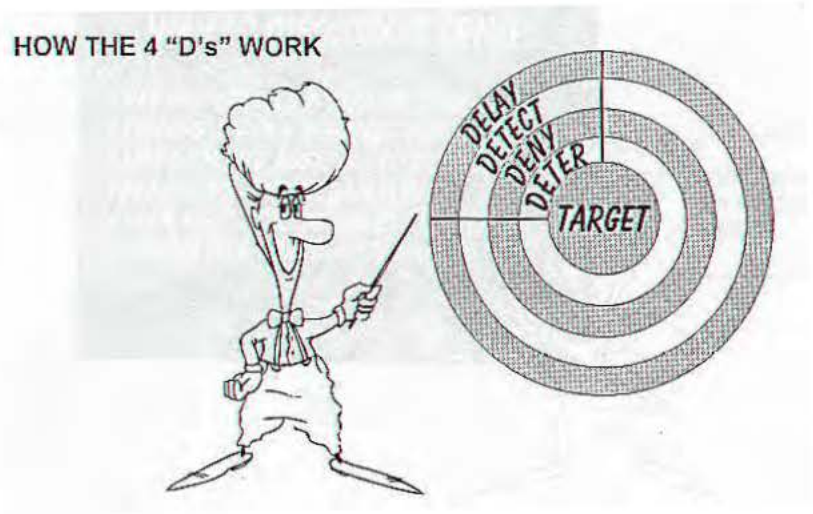
- **DETECT:** By utilizing good security techniques, you can cause the person to make more noise, which will **increase the risk of detection**. This may also persuade the person not to commit the crime.

- **DENY:** By engraving valuables, using security electronic equipment or by moving other valuables out of view, you can **remove the rewards received from a crime opportunity**. If the rewards are not there, this may persuade the person not to commit the crime.

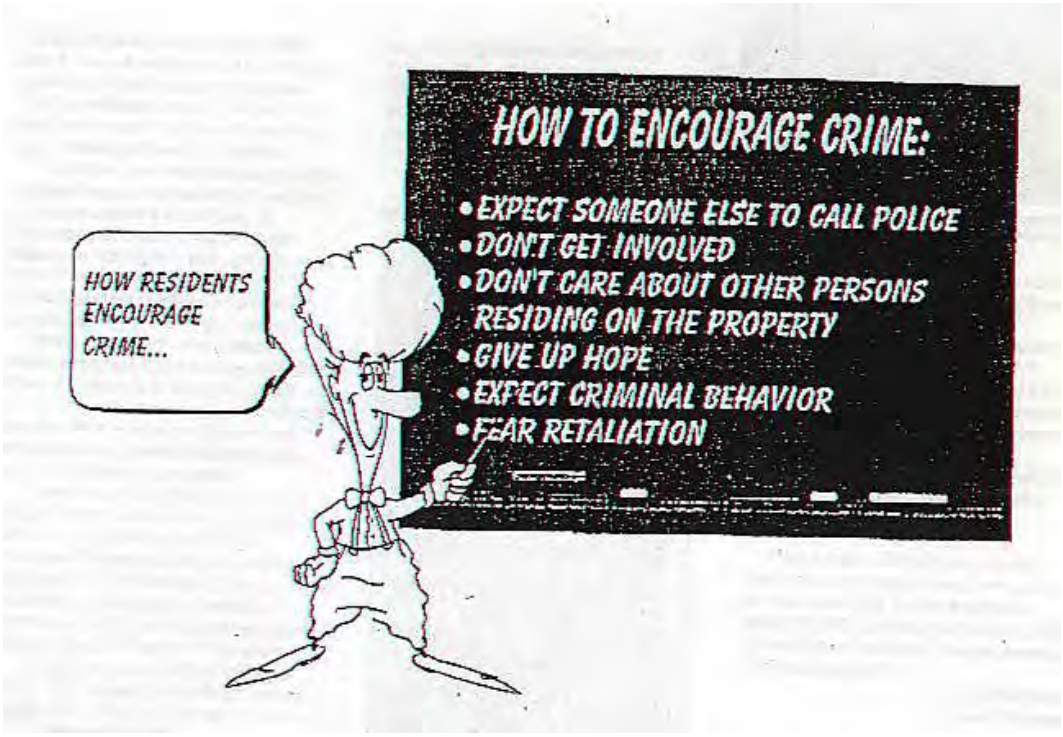
- **DELAY:** Many times crimes are committed because of an easy opportunity. By using good crime prevention techniques you can **increase the time and effort needed to commit the crime**. This may persuade the person not to commit the crime.

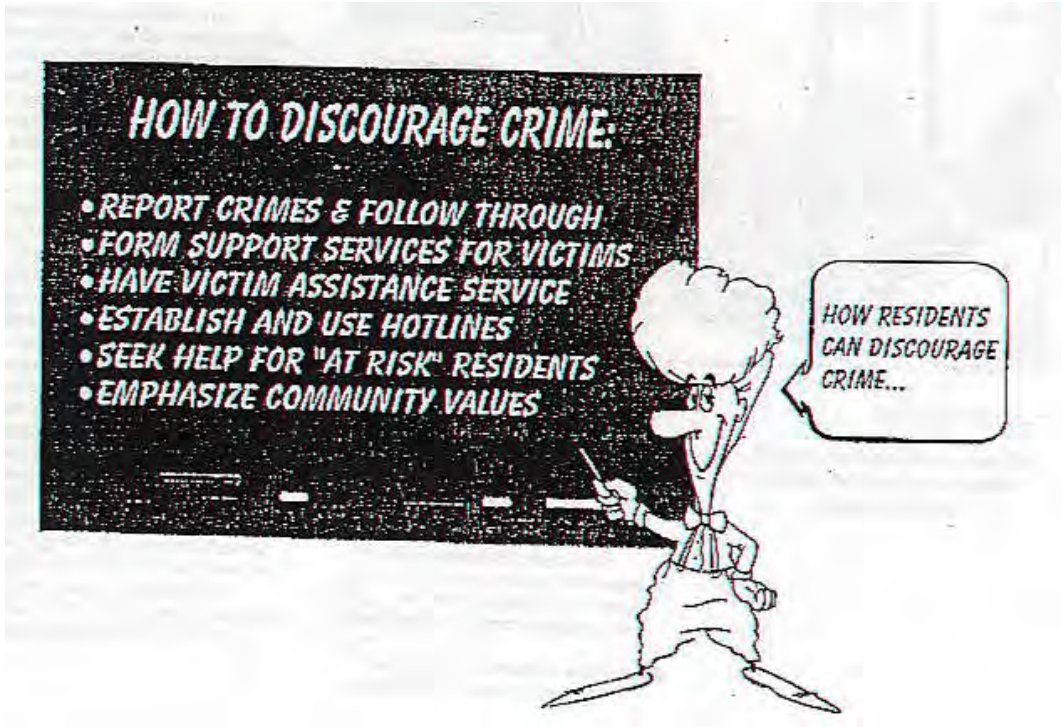
- **DETER:** By utilizing the previous three techniques, you may prevent a crime from happening by **deterring the criminal from the property to an easier target** elsewhere.

HOW THE 4 "D's" WORK



MANAGING CRIME PROBLEMS





COMBATING CRIME PROBLEMS

WHO S JOB IS IT?

Property managers get frustrated very quickly when trying to report crime problems to the police. It just seems the police don t show enough interest. If they cared, they would arrest the troublemakers, right? Well, it s not that easy.

Some property managers are viewed as apathetic toward crime. It appears that property managers intentionally rent to anyone, as long as they pay the rent. Some police officers are viewed as apathetic toward problems that arise in rental communities. It appears the police are in too much of a hurry to get to the next call, or the next cup of coffee.

The truth is, there are some property managers and police officers that could do a better job. But the majority of police officers and property managers are doing their level best. There is just the issue of misconceptions about what the police can and cannot do, as well as what the property manager can and cannot do.

The Displacement Theory

If management depends too heavily upon the police to deal with criminal activity on the property, they'll likely be disappointed. The police cannot do very much alone. For example, consider the balloon displacement theory.

If a balloon is squeezed from one side, all of the air is displaced to the other side. When the balloon is released, all of the air comes back again. The police have this same effect on crime. The police can respond to a crime problem, apply pressure, and displace the problem. But as soon as they move on to the next area, and they WILL have to, the problem returns.

If a property manager squeezes one side of a balloon, maintenance squeezes another side, the police another side, and residents squeeze from the top and bottom, the balloon will burst. This team can have the same effect on crime. There is strength in numbers! United against crime, the team will always win.

Police officers do not have sufficient training in civil laws regarding landlord/tenant disputes. Frequently, the police expect the property management to do things that just are not allowed. The reverse is true. Many times the police are asked to do things that they are not allowed to do either. Because there is not enough time spent on explaining why a particular action cannot be taken, the other sees this refusal as apathy.

CIVIL LAWS VS. CRIMINAL LAWS

To clear up the matter, we first have to see the differences between civil and criminal matters. They have very little in common. In fact, sometimes they have NOTHING AT ALL in common. Property managers work with Missouri landlord/tenant law as set out in Missouri statutes and cases (civil law), while the police work with Missouri criminal laws. The rules and the penalties are entirely different. The amount of evidence a police officer needs for probable cause to make an arrest is much higher than the preponderance of evidence a property manager need to take action under the civil laws.

Criminal Law

When you think of criminal laws, think of Perry Mason, the judge and jury. When you think of civil laws, think of Judge Wapner and *The People s Court.* The issues and the procedures are quite different.

In criminal law, the police must have >probable cause to arrest someone. Suspicion is not enough. Probable cause is where an officer knows a crime happened, and believes the perpetrator is the one being detained. When an officer begins to question the person who just got arrested, **they must tell the suspect about their Aright to remain silent. The police cannot search an apartment without a warrant, and they are not easy to obtain.**

If the officer is able to build enough evidence to arrest a suspect, there is still no guarantee the prosecutor s office will file charges. If charges are filed, there is no guarantee the person will be brought to a jury trial. If the person is brought to a jury trial, there is no guarantee the jury will convict. If the jury convicts, there is no guarantee the person will go to prison. If the person goes to prison, there is no guarantee they will stay there very long.

In many cases, plea bargains are made, probation is given, and in some situations, the charges are just dropped. In most cases, the people that get arrested at rental properties do not go to prison. They are released very soon after being arrested, and they go right back home to their apartment.

Civil Law

In civil law, the procedure is much different. **Property managers do not need probable cause to question a resident, and they do not have to read them their rights. If the lease contains an inspection clause, property managers have the right to enter rental units, and they don t need a search warrant!** If the resident has committed a breach of the rental agreement, the resident must appear in court or risk losing the case.

In civil court the expected courtroom scenario usually does not apply. In most landlord/tenant cases, there is no jury. The landlord s and tenant s witnesses tell their stories, and the judge weighs the evidence and renders judgment. That s it.

In criminal cases, a jury must be convinced of a defendant s guilt beyond a reasonable doubt. In civil law, the judge only needs to see a Apreponderance of evidence to find in

favor of one side. A preponderance of evidence is MUCH less than proof beyond a reasonable doubt. **A preponderance of evidence could be only 51% to win. Proof of guilt beyond a reasonable doubt requires virtually 100% to win a criminal case.**

TAKING ACTION

If a resident is conducting illegal activity at the rental property, a criminal conviction may not be as expedient as taking civil action. For instance, if a resident is suspected of selling drugs or gang activity, you should contact the police, but be prepared to take action yourself. There may not be a whole lot the police can do to help you in some cases. Document all of the activities you and others have observed, because you may have more ability to deal with the situation.

DRUGS IN APARTMENTS

What will you do if ***an employee in a resident s unit discovers Drugs***? Some management companies may want you to take the drugs to the office, another company may recommend that you secure the office, and yet some companies may want you to get a witness. **In all cases you should notify the police. They will secure a search warrant.** Check with your company s attorney for legal advice in advance. In one case, a maintenance person took needles, which turned out to belong to an insulin dependent diabetic who was very angry with management. **Bottom line, consider your actions!!**

Drugs can be extremely dangerous; caution should always be exercised. It is not advisable to pick up or remove drugs, drug pipes, needles or other paraphernalia. At the very least, rubber gloves should be worn when touching any of these items.
Needles are especially dangerous, not only because of the drugs themselves, but because of the likelihood of the transmission of Hepatitis or the HIV virus. Because children and adults frequently crawl into dumpsters, this is not a good place to dispose of them. Maintenance and grounds keepers should also be on the lookout for needles and other stashes in remote areas of the property and inside broken sections of block fences.

GENERAL DISTURBANCES

Loud music, loud parties and just rowdy behavior can be very annoying. The police can ask residents to reduce the noise and issue a summons for peace disturbance, but frequently they will soon begin again. **The management has the most power to deal with this issue**. A good lease should contain a clause prohibiting loud noise that bothers other tenants. Tenants who violate such a clause can be warned that further violations will result in fines and/or eviction. If a tenant persists in violating the noise clause, management should promptly take action to evict the tenant.

WHO HAS THE POWER?

The Fourth Amendment to the United States Constitution limits the power of the police. **The property manager has much more power to remove a resident from the property**. A resident can be free, awaiting trial for over a year. The criminal process is much slower than the civil one. You will need less evidence to remove the resident civilly, and the civil court may issue a prompt eviction if violence, threats of violence, drugs or other criminal activity are involved.

There are some things the police can do that managers cannot. But more often what the Management can do, the police cannot. **Together the police and management** can work with responsible residents to solve virtually any problems. It takes a concerted effort, and both sides have to be willing to do as much as possible. Though it may seem easier for the police to deal with it, that is not always the case. Here is another example:

TRESPASSING

Mark Manager calls the police to report a trespasser. When the officer arrives, the ***A****suspect is waiting for the police. The manager tells the officer,* ***A****I want this man arrested for trespassing!*

The officer talks to the man in question and finds out he is actually living in the unit. His clothes, television and other personal effects are in the apartment as well.

The officer explains to Mr. Manager, The man is not trespassing, the resident is allowing him to live there.

Aha! replies the manager. He is NOT on the lease!

The officer responds, the lease is a civil matter. You will have to serve notice to the resident who is allowing the unauthorized guest.

If a rental agreement has clearly stated policies regarding unauthorized occupants, the property manager can typically serve a notice for the resident to remedy the breach in 10 days, or face eviction. This is often the case with unauthorized pets.

While these stories may sound far fetched, truth is sometimes stranger than fiction! These are actual cases.

MANAGEMENT S RESPONSIBILITY

Frequently managers complain about all the problems they are having with a particular resident. They can tell many stories, but when asked to show written documentation of non-compliance, often times the manager has not kept records.

Often property managers fail to take action to evict problem tenants when they have grounds to do so. Depending on the language of the lease, this process generally begins with serving a notice on the tenant stating how the tenant has violated the lease and either terminating the lease or stating that the lease will be terminated if the violation continues.

It is not uncommon to find managers who think their only job is to collect rent and seek eviction of tenants who do not pay rent. They think it is the police department s job to deal with tenants other undesirable behaviors.

Granted, most apartment managers are familiar with the various options, but far too many don t use them as often as they should. The three (3) keys to any successful eviction are Adocument... document... DOCUMENT.

RESIDENT S RESPONSIBILITY

Train residents - to recognize and report illegal activity.

Empower residents - form resident councils, and neighborhood associations.

Establish relationships/rapport - attend meetings, use suggestion boxes, have an open door policy.

Set goals - for residents.

- Smaller, short-term goals at first
  - people get discouraged
  - people need successes
  - people need a series of goals
  - remind residents of goals
  - advertise successes
- Larger, long-term goals later
  - more impact on community
  - more difficult, but more rewards

A TEN-STEP PROCESS

1. Contact all residents.
2. Arrange a timely meeting.
3. Provide handouts.
4. Follow up with newsletter to all residents who don t show up.

5. Have property manager facilitate meeting.
6. Arrange police/fire department presenter.
7. Present crime statistics.
8. Present reasons for crime.
9. Present resources.
10. Present solutions.

The Role of Law Enforcement

Building an effective partnership

COMPLAINTS WE HAVE HEARD:

The problem is the police won't get rid of these people when we call. We've had dealers operating in one unit for four months. The other tenants are constantly kept up by the activity even as late as 2:00 or 3:00 in the morning on weeknights.

I called police about one of my properties. They wouldn't even confirm that anyone suspected activity at the place. A month later they raided the house. Now I m stuck with repair bills from the raid. If they had just told me what they knew, I could have done something.

ADVICE WE WERE GIVEN:

AIn almost every case, when the police raid a drug house, there is a history of compliance violations *unrelated to the drug activity* for which an active landlord would have evicted the tenant.
Narcotics detective

THE BASICS

Know how to work with the system to ensure rapid problem resolution. Have a working knowledge of how your local law enforcement agency deals with drug problems in residential neighborhoods.

DEFINING THE ROLES: LANDLORDS AND LAW ENFORCEMENT

It is a common misconception that law enforcement agencies can evict tenants involved in illegal activity. In fact, only the landlord has the authority to evict; the police don t. The police may arrest people for *criminal* activity. But arrest, by itself, has no bearing on a tenant s right to possess your property.

Eviction, on the other hand, is a *civil* process. The landlord sues the tenant for possession of the property. Note the differences in level of proof required: Victory in civil court requires a preponderance of evidence, the scales must tip, even slightly, in your favor. Criminal conviction requires proof beyond a reasonable doubt, a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to *evict* your tenants, but the police do not have enough evidence to *arrest* them. Further, even if the police arrest your tenants, and a court convicts them, you still must evict them through a separate process or, upon release, they have the right to return to and occupy your property.

Many landlords are surprised to discover the degree of power they have to close drug rentals and eliminate their threat to the neighborhood. As one police captain put it, Even our ultimate action against a drug operation in a rental, the raid and arrest of the people inside, will not solve a landlord s problem, because the tenants retain a legal right to occupy the property. *It' s still the tenants home* until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long. It s surprising, but the person with the most power to stop the impact of an individual drug house operation in a neighborhood is the property owner or the landlord. Ultimately, the landlord can remove all tenants in a unit. The police can't.

The only time law enforcement may get involved in eviction is to enforce the *outcome* of your civil proceeding. For example, when a court issues a judgment requiring a tenant to move out and the tenant refuses, the landlord can go to the sheriff (or other appropriate law enforcement agency) and request that the tenant be physically removed. But until that point, law enforcement cannot get directly involved in the eviction process. However, the police may be able to provide information or other support appropriate to the situation, such as testifying at the trial, providing records of search warrant results, or standing by while you serve notice.

Again, criminal arrest and civil eviction are unrelated, the only connection being the possibility of subpoenaing an arresting officer or using conviction records as evidence in an eviction trial. No matter how serious a crime your tenants have committed, eviction remains your responsibility.

WHAT TO EXPECT

Police officers are paid, and trained, to deal with dangerous criminal situations. They are experts in enforcing criminal law. They are not authorities in civil law. As such, if you have tenants involved in illegal activity, while you should inform the police, do not make the common but inaccurate assumption that you can Aturn the matter over to the authorities and they will take it from there. Because landlord/tenant laws are enforced only by the parties in the relationship, when it comes to removal of a tenant, landlords *are* the authorities. With that in mind, you will get best results from the police by providing any information you can for their criminal investigation, while requesting any supporting evidence you can use for your civil proceeding.

In order to get the best cooperation, remember the rule of working with any bureaucracy: ***The best results can be achieved by working one-on-one with the same contact.*** Further, while this rule applies to working with any bureaucracy, it is especially important for working with a law enforcement agency where, if police personnel share information with the wrong people, they could ruin an investigation or even endanger the life of an officer. If an officer doesn't know you, the officer may be hesitant to give you information about suspected activity at your rental.

The type of assistance possible will vary with the situation, from advice about what to look for on your property, to documentation and testimony in your eviction proceeding. But remember that it is not the obligation of the police to collect information necessary for you to evict problem tenants. While you can get valuable assistance from the police, don't wait for the police to develop an entire criminal case before taking action. If neighbors are complaining that you have drug activity or other dangerous situations in your rental, investigate the problem and resolve it as quickly as possible. Do *not* assume that the situation at your unit must be under control simply because the police have yet to serve a search warrant at the property.

THE POLICE WON T TALK TO US

Frequently managers will complain that the police don't stop at the office to report why they are called to the property. There are some very legitimate reasons why.

Some problems are so minor, the officer may not feel it warrants reporting. For example, a couple has a verbal dispute, as many people do, but no one is hurt; the situation is minor, and there is no reason to air the dirty laundry to the neighbors.

Though it may be the manager who walks up to the officer asking about the call, the officer may not feel it is appropriate to disclose the information. It is also possible the officer isn't certain the person is really the manager.

Many times the officer is in a hurry to clear the call and get on to the next one that is waiting. Domestic calls take a lot of time in and of themselves, and officers are always being criticized about their response time by the next person who is waiting. The time it takes to locate a manager (and re-tell the whole story) can easily amount to 15 minutes, a half-hour or more. This is especially true when the manager has a lot they want to say to the officer as well.

Some officers feel the manager isn't going to follow through anyway. Though it may be hard to believe, there are property managers that are nosey. They never follow through with the appropriate notices, they just want to know everybody s business.

If a police officer knows the property manager actually follows through with an appropriate course of action, there is greater incentive to talk with the manager. The officer really does not want to have to keep coming back for the same problem over and over again.

Meet with the officer, even if you have to call and schedule an appointment. When the officer arrives, let them know you are an active member of the CRIME FREE MULTI-HOUSING PROGRAM and you are willing to work with the police. Meeting the officer is

the first step.

Keep in mind, there are many different shifts, therefore it could take a while to meet all the beat officers.

PRIVACY LAWS

There is another very key issue to be addressed. That is the issue of privacy laws. A police officer cannot stop by in person, or leave a card in the office telling you the who, what, when, where, why and how.

The officer is more likely to give you a case number, and as a matter of public record, you can request a copy of the police report. Always try to get the case number if you get nothing else. While the officer may not be able to give you the names of the persons involved, they may be able to give you the unit number they went to.

One of the benefits of being a **fully certified member** of the CRIME FREE MULTI-HOUSING PROGRAM is that you can contact the Crime Free Programs Coordinator to get a print out of all the police calls to your property.

HOW TO APPROACH THE OFFICER

If you see a police officer at one of your rental units, don t interfere -- stay back. The situation may become very volatile at any moment. The officer may order you to stand back for your own safety.

If you are certain things are settled, you can get the officer s attention and introduce yourself as the manager and ask to see the officer when they are through with the call. The less you say at this point, generally the better. Stand at a safe distance, but wait for the officer. Don’t go back to the office.

When the officer is finished, let them know you are working with the CRIME FREE MULTI-HOUSING PROGRAM, and get a case number. Sometimes, a case is not drawn up and no report will be written. The officer will let you know.

If the officer is able to give you more information, it will help you follow through with the necessary steps you must take. If not, get a copy of the report. Let the officer know that you do plan to follow through, and you would appreciate working with them in the future.

ESTABLISHING MORE

If a property manager has a **serious** problem with crime, they may choose to hire off-duty officers to patrol the property. This is a very effective way to solve serious problems with residents. If a manager cannot do that, they may want to consider private security.

REQUESTING EXTRA PATROL

Frequently managers will call requesting extra patrol. While it never hurts to ask, it may not help either. There are hundreds of rental properties in Columbia. Many more properties than we have patrol officers. One thing they all have in common is they all want extra patrol visits through the property.

Then there are the mobile home park managers. They all want extra patrol, too.

And don't forget the managers of the grocery stores that call the police looking for extra patrol because a customer got a purse stolen, or a car was stolen from the lot. There are more stores than there are patrol officers.

And, of course, there are thousands of residents that want extra patrol in their residential neighborhoods and alleyways. Everyone wants to see more police patrols in their neighborhoods.

There are still others that feel the police ought to spend more time writing tickets for speeders and people who don t use turn signals. There just aren't enough police officers to fill all those needs.

Unfortunately, the police officers cannot provide security for everyone who asks. Even if they could visit the property a couple of times per day, the likelihood that they would be at the right place at precisely the right time is very slim. The best efforts will include officers that can spend hours at the property. Random passes through the property are ineffective, and often not possible.

NARCOTICS SURVEILLANCE

Property managers will also call the police requesting a narcotics detective to set up surveillance on a resident they suspect of using drugs. While managers are aware the detectives are not sitting by the phone hoping somebody will call soon, they may not know how many calls are received.

Narcotics detectives are highly trained and do excellent work because they have methods that work so well. Typically, they rely on a person to Aintroduce them to a suspect whenever possible. If they can get close to an operation, they are more likely not only to make an arrest, but to arrest several people. If the quantities are high, they are likely to get prison time for the offender. The higher up the supply line that they penetrate, the more successful the operation.

The end user is not going to get the prison time or produce all of the other results the detectives are after. They want the bigger fish to fry. They work the more serious cases. There are more calls than the police have detectives. It is a matter of prioritization.

MANAGEMENT SURVEILLANCE

You should call to report the drug activity, because you may be providing the very key information the police have been looking for. You should also document other behaviors associated with the drug activity, and serve the appropriate notices. **There are usually a string of other evict able offenses that managers overlook, trying to prove somebody is into drug activity.**

Rarely have property managers confronted residents with their suspicions, yet they call the police. When asked why they haven't confronted the resident they say, I don t have any proof. Think about that. **The police need a whole lot more proof than the manager does. The police can't do anything without the proof either.**

Why can t the police just watch and get the proof? There just aren't enough detectives available. The better question is, why don't the property management teams watch the resident and get the proof? It is much easier for those who live and work on the property to watch what is going on. They know who lives at and belongs on the property; the police don't. Because management needs a lot less proof than the police, they will get faster results civilly. Setting up video cameras or recording license plates may provide clues, but they may also spark retaliation from the resident. Whatever action is taken, safety should always be foremost.

BUT I M SCARED!

Because the potential for danger is there, **property managers should be more selective and forceful with prospective residents**. If policies are not strictly stated in the beginning, they will be harder to enforce in the end. Prevention is the key.

Most residents will stop drug activity if they find out the manager is onto them. The reason most people continue this activity is because they know the manager is afraid to confront them. Even if the police arrest a resident, you will have to evict them and others on the lease. They will come back awaiting trial in most cases.

WARNING SIGNS OF DRUG ACTIVITY

The sooner it is recognized, the faster it can be stopped.

COMPLAINTS WE HAVE HEARD:

The neighbors tell me my tenants are dealing drugs. But I drove by ***three*** different times and didn't see a thing.

ADVICE WE WERE GIVEN:

You've got to give up being naive. We could stop a lot more of it if more people knew what to look for. Narcotics detective

THE DRUGS

While many illegal drugs are sold on the street today, the following are most common:

Cocaine and Crack. Cocaine is a stimulant. Nicknames include coke, nose candy, blow, snow, and a variety of others. At one time cocaine was quite expensive and generally out of reach for people of low incomes. Today, the price has dropped to the point that it can be purchased by all economic levels. Cocaine in its powder form is usually taken nasally (snorted). Less frequently, it is injected.

Crack, a derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as rock. Crack is manufactured from cocaine and baking soda. The process requires does not produce any of the toxic waste problems associated with methamphetamine production. Because crack delivers a high using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes. Crack is typically smoked in small glass pipes.

Powdered cocaine has the look and consistency of baking soda and is often sold in small, folded paper packets. Crack has the look of a small piece of old, dried soap. Crack is often sold in tiny Ziploc bags, little glass vials, balloons, or even as is with no container at all.

In general, signs of cocaine usage are not necessarily apparent to observers. A combination of the following is possible: regular late-night activity (e.g., after midnight on weeknights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine).

> Powdered cocaine usage crosses all social and economic levels. Crack usage is so far associated with lower income levels. While Los Angeles style gangs (Bloods and Crips) have made crack popular, other groups and individuals have begun manufacturing and selling the drug as well.

Methamphetamine. Methamphetamine is a stimulant. Nicknames include: meth, crank, speed, crystal, STP, and others. Until the price of cocaine began dropping, meth was known as the poor mans cocaine. Meth is usually ingested, snorted, or injected. A new, more dangerous form of

methamphetamine, crystal meth or ice, can be smoked. So far, the feared rise in ice usage has not been observed.

Pharmaceutical grade meth is a dry, white crystalline powder. While some methamphetamine sold on the street is white, much of it is yellowish, or even brown, and is sometimes of the consistency of damp powdered sugar. The drug has a strong medicinal smell. It is often sold in tiny, sealable plastic bags.

Hard-core meth addicts get very little sleep and they look it. Chronic users and cooks those who manufacture the drug may have open sores on their skin, bad teeth, and generally appear unclean. Paranoid behavior combined with regular late-night activity are potential indicators. Occasional users may not show obvious signs.

Cooks tend to be lower-income and may have an unpleasant urine smell about them. While many types of individuals are involved in meth production, the activity is particularly common among some outlaw motorcycle gangs.

Because of the toxic waste dangers associated with methamphetamine production, we have included additional information on dealing with methamphetamine labs in a separate chapter.

Tar Heroin. Fundamentally, heroin is a powerful painkiller both emotionally and physically. Nicknames include brown sugar, Mexican tar, chiva, horse, smack, H, and various others. Heroin is typically injected.

Tar heroin has the look of creosote off a telephone pole, or instant coffee melted with only a few drops of water. The drug has a strong vinegar smell. It is typically sold in small amounts, wrapped in tinfoil or plastic. Paraphernalia that might be observed include hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and blackened cotton balls.

When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. While heroin began as a drug of the wealthy, it has become a drug for those who have little income or are unemployed. Heroin addicts don't care about very much but their next fix and their clothes and demeanor reflect it. When they are not high, addicts can become quite aggressive. As with most needle users, you will rarely see a heroin user wearing a short-sleeved shirt.

Marijuana. Marijuana is also known as grass, weed, reefer, joint, J, Mary Jane, cannabis, and many others. Marijuana is smoked from a pipe or a rolled cigarette, and typically produces a mellow high. However, the type and power of the high varies significantly with the strength and strain of the drug.

The marijuana grown today is far more powerful than the drug that became popular in the late 60s and early 70s. Growers have developed more sophisticated ways to control growth of the plants and cause high output of the resin that contains THC the ingredient that gives marijuana its potency. Todays marijuana is often grown indoors to gain greater control over the crop and to prevent detection by competitors, animals, or law enforcement. It takes 90 to 180 days to bring the crops from seed to harvest.

Users generally appear disconnected and non-aggressive. The users eyes may also appear bloodshot

or dilated. Usage of marijuana crosses all social and economic levels.

WARNING SIGNS IN RESIDENTIAL PROPERTY: DEALING, DISTRIBUTION, GROW OPERATIONS, LABS

The following list describes signs of drug activity that either you or neighbors may observe. As the list will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.

Note also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.

This list is primarily targeted to tenant activity.

DEALING

Dealers sell to the end user so they typically sell small quantities to many purchasers. Dealing locations are like convenience stores there is a high customer traffic with each customer buying a small amount.

Neighbors may observe:

_ **Heavy traffic.** Cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical, increasing on weekends or late at night, or minimal for a few weeks and then intense for a period of a few days particularly pay days.

_ **Exchanges of money.** Cash and packets traded through windows, mail slots, or under doorways.

_ **Lack of familiarity.** Visitors appear to be acquaintances rather than friends.

_ **People bring valuables into the unit.** Visitors regularly bring televisions, bikes, VCRs, cameras and leave empty-handed.

_ **Odd car behavior.** Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits. Visitors may also park around a corner or a few blocks away and approach on foot.

_ **Lookouts.** Frequently these will be younger people who tend to hang around the rental during heavy traffic hours.

_ **Regular activity at extremely late hours.** For example, frequent commotion between midnight and 4:00 in the morning on weeknights. (Both cocaine and methamphetamine are stimulants users tend to stay up at night.)

_ **Various obvious signs**. This may include people exchanging small packets for cash, people using drugs while sitting in their cars, syringes left in common areas or on neighboring property, or other paraphernalia lying about.

Landlords may observe:

_ **Failure to meet responsibilities.** Failure to pay utility bills or rent, failure to maintain the unit in appropriate condition, general damage to the property. Some dealers smoke or inject much of their profits as they get more involved in the drugs, they are more likely to ignore bills, maintenance, and housekeeping.

DISTRIBUTION

Distributors are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the wholesale component, while dealers are the retail component. If the distributors are not taking the drugs themselves, they can be difficult to identify. A combination of the following indicators may be significant:

_ **Expensive vehicles.** Particularly when owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved so they might drive a $50,000 car while renting a $20,000 unit.

_ **Pagers and cellular phones.** Particularly when used by people who have no visible means of support.

_ **A tendency to make frequent late-night trips.** Many people work swing shifts or have other legitimate reasons to come and go at late hours. However, if you are seeing a number of other signs along with frequent late-night trips, this could be an indicator.

_ **Secretive loading of vehicles.** Trucks, trailers, or cars being loaded and unloaded late at night in a hurried, clandestine manner. Load and distribution houses (most likely to be found in border states) are essentially repackaging locations and involve moving large quantities of drugs.

MARIJUANA GROW OPERATIONS

Grow operations are hard to identify from the street. They are more likely to be found in single-family residential units than in apartments. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below.

Neighbors may observe:

_ **Electrical wiring that has been tampered with.** For example, evidence of residents tampering with wiring and hooking directly into power lines.

_ **Powerful lights on all night in the attic or basement.** Growers will be using powerful lights to speed the development of the plants.

Landlords may observe:

_ **A sudden jump in utility bills.** Grow operations require strong lighting.

_ **A surprisingly high humidity level in the unit.** Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe peeling paint or mildewed wallboard or carpet.

METH LABS

Once a meth cook has collected the chemicals and set up the equipment, it doesn't take long to make the drugs about 12 hours for one batch. Clandestine labs have been set up in all manner of living quarters, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that offer extra privacy. In rural settings it's barns or houses well away from other residences. In urban settings it might be houses with plenty of trees and shrubs blocking the views, or apartment or hotel units that are well away from the easy view of management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

Neighbors may observe:

_ ***Strong* ammonia smell.** Very similar to cat box odor (amalgam process of methamphetamine production).

_ **Other odd chemical odors.** The smell of other chemicals or solvents not typically associated with residential housing.

_ **Chemical containers.** Chemical drums or other chemical containers with their labels painted over.

_ **Smoke breaks.** *If* other suspicious signs are present, individuals leaving the premises just long enough to smoke a cigarette may also be an indicator. Ether is used in meth production. Ether is highly explosive. Methamphetamine cooks get away from it before lighting up.

Landlords may observe:

_ **Strong unpleasant/chemical odors.** A particularly strong cat box/ammonia smell within the rental may indicate usage of the amalgam process for methamphetamine production. The odor of ether, chloroform, or other solvents may also be present.

_ **Chemistry equipment.** The presence of flasks, beakers, and rubber tubing consistent with high school chemistry classes. Very few people practice chemistry as a hobby if you see such articles, don't take it lightly.

_ **A maroon-colored residue on aluminum sashes or other aluminum materials in the unit.** The ephedrine process of methamphetamine production is a more expensive process, but it does not give off the telltale ammonia/cat box odor. However the hydroiodic acid involved *does* eat metals and, in particular, leaves a maroon residue on aluminum.

_ **Bottles or jugs used extensively for secondary purposes**. For example, milk jugs and screw top beer bottles full of mysterious liquids.

_ **Discarded chemistry equipment.** Garbage containing broken flasks, beakers, tubing, or other chemical paraphernalia.

Note: *If you have reason to believe there is a meth lab on your property, leave immediately, wash your face and hands, and call the narcotics division of your local law enforcement agency to report what you know. If you have reason to believe your exposure has been extensive, contact your doctor some of the chemicals involved are highly toxic. For more information about meth labs, see the chapter on clandestine drug labs.*

GENERAL WARNING SIGNS OF DRUG ACTIVITY

The following may apply to dealing, distribution, or manufacturing.

Neighbors may observe:

_ **Expensive vehicles.** Regular visits by people in extremely expensive cars to renters who appear to be significantly impoverished.

_ **A dramatic drop in activity after police are called.** If activity stops after police have been called, but before they arrive, this may indicate usage of a radio scanner, monitoring police bands.

_ **Unusually strong fortification of the unit.** Blacked-out windows, window bars, extra deadbolts, surprising amounts spent on alarm systems. Note that grow operators and meth cooks, in particular, often emphasize fortifications extra locks and thorough window coverings are typical.

_ ***Frequent* late-night motorcycle or bicycle trips.** This would only be a significant sign if the trips are made from a location where other indicators of drug activity are also observed.

_ **Firearms.** Particularly assault weapons and those that have been modified for concealment, such as sawed-off shotguns.

Landlords may observe:

_ **A willingness to pay rent months in advance, particularly in cash.** If an applicant offers you six months rent in advance, resist the urge to accept, and require the person to go through the application process. By accepting the cash without checking, you might have more money in the short run, but your rental may suffer damage, and you may also damage the livability of the neighborhood and the value of your long-term investment.

_ **A tendency to pay in cash combined with a lack of visible means of support.** Some honest people simply don't like writing checks, so cash payments by themselves certainly don't indicate illegal activity. However, if other signs are also noted, and there are large amounts of cash with no apparent source of income, get suspicious.

_ **Unusual fortification of individual rooms.** For example, dead bolts or alarms on interior doors.

_ **Willingness to install expensive exterior fortifications.** If your tenants offer to pay surprisingly high dollar amounts to install window bars and other exterior fortifications, they may be interested in more than prevention of the average burglary.

_ **Presence of any obvious evidence.** Bags of white powder, syringes, marijuana plants, etc. Also note that very small plastic bags the type that jewelry or beads are sometimes kept in are not generally used in quantities by most people. The presence of such bags, combined with other factors, should cause suspicion.

_ **Unusually sophisticated weigh scales.** The average home might have a food scale or a letter scale perhaps accurate to an ounce. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated accurate to gram weights and smaller. (Of course, there are legitimate reasons to have such scales as well, so don't consider a scale by itself, as an indicator.)

_ **Large amounts of tinfoil, baking soda, or electrical cords.** Tinfoil is used in grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations.

IF YOU DISCOVER AMETHAMPHETAMINE LAB

COMPLAINTS WE HAVE HEARD:

There was a time when I didn't even know what a precursor chemical was. Now I know all about methamphetamine labs. So far it has cost me more than $10,000 to deal with one property with a meth lab on it. And were still not done.

ADVICE WE WERE GIVEN:

ASome of the acids used in meth production don't have any long term effects it's all immediate. They damage your lungs if you breathe the vapors and they'll burn your skin on contact.
Narcotics detective

Because methamphetamine labs represent a potential health hazard far greater than other types of drug activity, we have included this section to advise you on how to deal with the problem. This information is intended to help you through the initial period, immediately after discovering a meth lab on your property. For information about warning signs of methamphetamine labs and other drug activity, see the previous chapter on the Warning Signs of Drug Activity.

THE DANGER: TOXIC CHEMICALS IN UNPREDICTABLE SITUATIONS

There is very little that is consistent, standard, or predictable about the safety level of a methamphetamine lab. The only thing we can say for sure is that you will be better off if you leave the premises immediately. Consider:

- **Cleanliness is usually a low priority.** Cooks rarely pay attention to keeping the site clean or keeping dangerous chemicals away from household items. The chemicals are rarely stored in original containers often you will see plastic milk jugs, or screw-top beer bottles, containing unknown liquids. It is all too common to find bottles of lethal chemicals sitting open on the same table with the cooks bowl of breakfast cereal, or even next to a babies bottle or play toys.

- **Toxic dumpsites are common.** As the glass cooking vessels become brittle with usage, they must be discarded. It is common to find small dumpsites of contaminated broken glass, needles, and other paraphernalia on the grounds surrounding a meth lab, or even in a spare room.

- **The chemicals present vary from lab to lab.** While some chemicals can be found in any meth lab, others will vary. Recipes for cooking meth get handed around and each one has variations. So we cannot say with any certainty which combination of chemicals you will find in a lab you run across.

- **Booby traps are a possibility.** Other meth users and dealers may have an interest in stealing the product from a cook. Also, as drug usage increases, so does paranoia. Some cooks set booby traps to protect their product. A trap could be as innocent as a trip wire that sounds an alarm, or as lethal as a wire that pulls the trigger of a shotgun or causes the release of deadly chemical gases.

- **The risk of explosion and fire is high.** Ether, commonly used in some drug labs, is highly explosive. Its vapor can be ignited by the spark of a light switch. Under some conditions, a bottle could explode just by jarring it. Meth lab fires are generally the result of an ether explosion the result can be instant destruction of the room, with the remainder of the structure in flames.

- **Health effects are unpredictable.** Before the law enforcement community learned of the dangers of meth labs, they walked into them without protective clothing and breathing apparatus. The results varied in some cases officers experienced no ill effects, while in others they developed Amild@ symptoms such as intense headaches. However, in other cases, officers experienced burned lung tissue from breathing toxic vapors, burns on the skin from coming into contact with various chemicals, and other more severe reactions.

- **Many toxic chemicals are involved.** The list of chemicals that have been found in methamphetamine labs is a long one. Some are standard household items, like baking soda. Others are extremely toxic or volatile like hydroiodic acid (it eats through metals), benzene (carcinogenic), ether (highly explosive), or even hydrogen cyanide (also used in gas chambers). For still others, like phenylacetic acid and phenyl-2-propanone, while some adverse health effects have been observed, little is known about the long-term consequences of exposure.

WHAT TO DO IF YOU FIND A LAB

1. **LEAVE!** Because you will not know which chemicals are present, whether or not the place is booby-trapped, or how clean the operation is, ***don't stay around to figure it out.*** Do not open any containers. Do not turn on, turn off, or unplug anything. Do not touch anything, much less put your hand where you cannot see what it is touching among other hazards, by groping inside a drawer or a box, you could be stabbed by the sharp end of a hypodermic needle.

   Also, if you are not sure you have discovered a clandestine lab, but think you may have, don=t stay to investigate. Make a mental note of what has made you suspicious and get out.

2. **Check your health and wash up.** As soon as possible after leaving the premises, wash your face and hands and check your physical symptoms. If you have concerns about symptoms you are experiencing, call your doctor, contact an emergency room, or call a poison control center for advice.

   Even if you feel no adverse effects, as soon as is reasonably possible, change your clothes and take a shower. Whether or not you can smell them, the chemical dusts and vapors of an active meth lab can cling to your clothing the same way that cigarette smoke does. (In most cases, normal laundry cleaning not dry cleaning will decontaminate your clothes.)

3. **Alert your local police.** Contact the narcotics unit of your local law enforcement agency. (After hours, call your police emergency number, 9-1-1 in most areas.) If you are unsure of whom to call, contact your police services through their non-emergency numbers listed in your phone book. Because of the dangers associated with clandestine lab activity, such reports often receive priority and are investigated quickly. Typically, the law enforcement agency will coordinate with the local fire department=s hazardous materials team.

4. **Arrange for cleanup.** Before you can rent the property again, you will need to decontaminate it. Cleanup procedures are evolving and regulations on cleanup vary significantly from state to state. Start by getting any appropriate information from the law enforcement and hazardous materials officials who dealt with your unit. Ask for suggestions on whom to contact in your area generally county or state health officials will need to be involved and will have information on methods for decontamination.

   Also, if there are remaining issues to be addressed with your tenants, do so. However, when a meth lab is discovered, your tenants will typically have either already left or will no longer have any interest in possessing the unit, so while there may be other issues to resolve, physical removal of tenants is usually not one of them.

   Depending on the level of contamination present, cleanup may be as simple as a thorough cleaning of all surfaces and removal of absorbent materials (e.g., stuffed furniture and rugs), or as complex as replacing flooring or drywall. On very rare occasions demolition of the entire structure may be required. Again, contact your local health officials for details.

   Because of the range of chemicals involved, and the differing levels of contamination possible, we cannot accurately predict the length of time involved to get a contaminated property back into use.

YES, BUT...

If lab sites are so toxic, how can meth lab cooks live there?
The short answer is: because they are willing to accept the risks of the toxic effects of the chemicals around them. Meth cooks are often addicted to the drug and are often under its influence during the cooking process. This makes them less aware and more tolerant of the environment, as well as more careless with the chemicals they use and more dangerous to those around them.

Meth cooks are frequently recognized by such signs as rotting teeth, open sores on the skin, and a variety of other health problems. Some of the chemicals may cause cancer what often isn't known is how much exposure it takes, and how long after exposure the cancer may begin. Essentially, meth cooks have volunteered for an uncontrolled experiment on the long-term health effects of the chemicals involved.

Also, there are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire officials to discover the presence of a lab while fighting the fire, they discover the evidence of drug lab activity.

Finally, *you* face a different set of risks in a meth lab than do the cooks. The cooks know which compounds they are storing in the unmarked containers. They know where the more dangerous chemicals are located and how volatile their makeshift setup is likely to be. When you enter the premises, you have none of this information, and without it you face a much greater risk.

ACCUDATA
CREDIT SYSTEMS

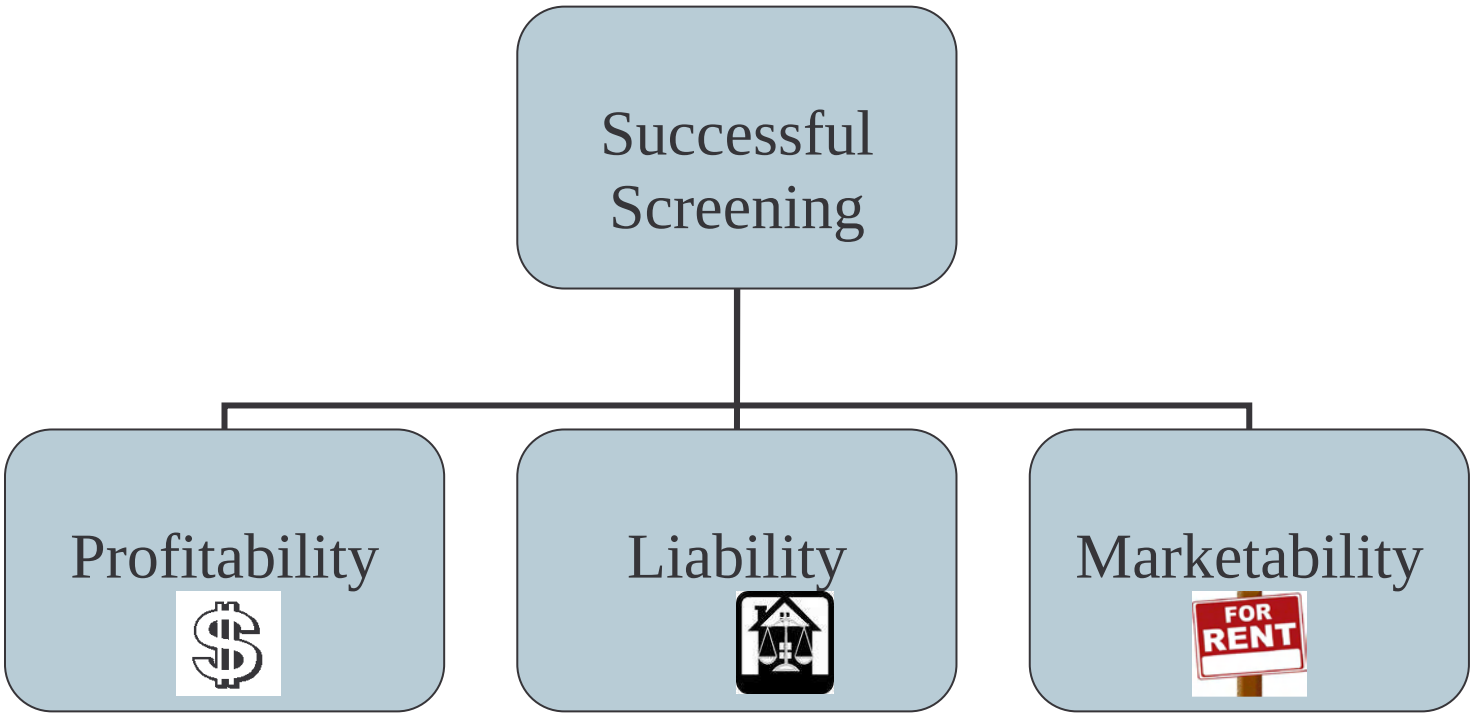
1-800-475-6703 / 573-893-7500
Jefferson City, Missouri

Resident Screening Services and Consulting

Make fast and confident leasing decisions

"Serving our members since 1926"

www.AccudataServices.com


Successful Screening
Profitability
Liability
Marketability
FOR RENT

Establishing Application Screening Standards

The Fair Housing Act of 1966 & the Fair Housing Amendment Act of 1988 established protected classes that can not be discriminated against during the screening process.
RACE COLOR RELIGION SEX DISABILITY FAMILY STATUS

1. **Rental Application**: Have a detailed application that collects enough information to make an informed decision. Always require a social security number and date of birth, because they will be needed to do credit and criminal checks (See sample). The more information you collect will help you detect false statements and will become a very useful tool if the resident breaks their lease and you have to recover lost revenue.

2. **Personal Identification:** Require more than one piece of I.D. by all applicants and make a copy of each one. (Driver license, school ID, Soc. Sec. Card)

3. **Previous Address:** Verify rental history that has been provided on the application and cross-reference that with the addresses from their credit report.

4. **Income & Employment:** Verify income and employment that has been provided on the application and cross reference that with employment information from their credit report. (Pay stubs, federal income tax returns, checking deposits)

5. **Credit Report:** A credit report provides valuable information to determine an applicant's payment history with other creditors. It can also help to verify social security number, address, employment, bankruptcy and debt to income ratio.

6. **Criminal Record:** Criminal convictions can range from passing bad checks to first degree murder. Sex offenders, drug distribution & violent crimes are the type of convictions you should carefully screen for.

7. **Post Your Screening Requirements:** Once you have developed your screening criteria, be consistent and apply the same requirements to all applicants. By disclosing your screening requirements it will help to stop many potentially problem residents from even applying in the first place and will show current residents that you are providing a safe place to live.

*You are investing in the people you rent to and if they don't pay or damage the property the cost of screening your applicants can seem very minimal. Each screening step will help to reduce your **risk** and increase your **profits**. Good residents are a valuable commodity to the property, so establish screening standards to reflect your risk level. Remember the rule of thumb to be in compliance of Fair Housing laws; **what you do for one, you do for all**. For additional tips on screening contact ACCUDATA at 1-800-475-6703 or 573-893-7500.*

NOTICE OF RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

Congress has set forth the circumstances when a consumer's credit report can be viewed and evaluated. Known as "Permissible Purpose" found in Section 604 of the Fair Credit Reporting Act, which lists these circumstances as seen below.

1. ***As ordered by a court or federal grand jury subpoena. Section 604(a)(1)***
2. ***As instructed by the consumer in writing. Section 604(a)(2)***
3. ***For the extension of credit or services (i.e. car loan, home loan, credit card, cell phone, rent etc.). Section 604(a)(3)(a)***
4. ***For employment purposes, including hiring and promotion decisions. Section 604(a)(3)(B) and 604(b)***
5. ***For the underwriting of insurance. Section 604(a)(3)(C)***
6. ***When there is a legitimate business need. Section 604(a)(3)(F)(i)***
7. ***To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a) (3)(F)(ii)***
8. ***To determine a consumer's eligibility for a license or other benefit granted by a governmental agency. Section 604(a)(3)(D)***
9. ***For the use by a potential investor or servicer. Section 604(a)(3)(E)***
10. ***For use with determining child support payments. Section 604 (a)(4) and 604(a)(5)***

The national credit reporting agencies offer a toll-free number that enable consumers to opt-out of all pre-approved credit offers with just one phone call. **Call 1-888-5-0PTOUT (1-888-567-8688).**

SAMPLE* Application Process for Rental Housing ***SAMPLE**

Please read the following procedures and requirements that must be followed during your application process for rental housing. If you have any questions contact our rental office. We maintain a strict policy of confidentiality and privacy for our applicants and residents. We do not discuss information on applications with anyone other than the applicant. In addition, we do not discuss individual credit reports with an applicant. If you would like to discuss any information contained in your credit report, you will need to contact Accudata Credit Systems LLC 1-800-475-6703 or 573-893-7500. *We will not discriminate against any person because of race, color, religion, national origin, sex, age, familial status, sexual orientation or mental or physical handicap.*

1. IDENTIFICATION - One picture i.d. and a social security card must be presented at time of application.
2. APPLICANT PROCESS - Applicant is urged to review the screening criteria to determine if requirements can be met. Each applicant over 19 shall submit a complete application and pay the appropriate applicant screening fee(s). Acceptance or denial of the application may take up to 7 days. Upon acceptance, applicant(s) may be required to complete the rental agreement and pay applicable fees and/or deposits within 7 days.
3. RENT TO INCOME RATIO - Combined gross income of all applicants for each apartment shall be at least three (3) times the rental amount.
4. SOURCE OF INCOME - All sources of employment and non employment income shall be legally obtained and verifiable. Verification of income shall be made by direct contact with the employer. Proof of earnings from self employment shall be documented through income tax returns.
5. DEBT TO INCOME RATIO - The ration of applicants' combined monthly debt and rental payment to gross income shall be no more than 40%.
6. HOUSING REFERENCES - Applicant(s) should have a current resident reference (apartment community or mortgage company) reflecting a prompt payment record and an acceptable rental history for the past (2) two years. Any record of disturbance of neighbors, destruction of property, living or housekeeping habits at a prior residence which may adversely affect the health or welfare of other residents, illegal occupants, unauthorized pets, or owing a past due balance to a previous landlord may result in the denial of the application. If information cannot be verified the landlord may require compliance with the variance (see #10). If the applicant's previous housing as included home ownership, mortgage payment history shall be considered.
7. CREDIT WORTHINESS & CRIMINAL RECORD - A credit report and criminal record will be run on all applicants over 18 years of age. Applicant(s) history should be free of judgments, collections, charge-offs, bankruptcies and repossessions and should show no past-due balances or accounts over their credit limits. A Criminal record can not contain any felony charges.
8. LIMITATIONS - Occupancy must not exceed two (2) persons per bedroom. A bedroom is defined as a room whose primary purpose is for sleep, and which has a window, door, closet and is near a smoke detector. Where applicable, an efficiency apartment shall house no more than one (1) person and a studio no more than (2) persons.
9. INCOMPLETE, INACCURATE OR FALSIFIED INFORMATION - Any information that is incomplete, illegible, inaccurate or falsified may be grounds to require compliance with the variance policy, or may lead to subsequent termination of the rental agreement upon discovery of falsified information. Please complete the rental application legibly and include full name (First, Middle & Last). Incomplete applications will not be processed.
10. VARIANCE POLICY - Failure to meet the screening criteria as stated above may result in the

landlord's right to:

a. Deny the application

b. Require a general deposit of up to 100% of the rental amount and/or

c. Require a cosigner, who will also be required to meet the screening criteria.

What types of housing discrimination are renters protected from?

The fair housing laws cover activities related to the sale, rental, or advertising of dwellings, the provision of brokerage services, or the availability of residential real estate-related transactions. The federal Fair Housing Act and Fair Housing Amendments Act (42 U.S. Code §§ 3601-3619, 3631) prohibit landlords from choosing tenants on the basis of a group characteristic such as:

- race
- religion
- ethnic background or national origin
- sex
- familial status, including having children or being pregnant (except in certain designated senior housing), or
- a mental or physical disability

In addition, some state and local laws prohibit discrimination based on a person's marital status, age, or sexual orientation. Landlords can always select tenants using criteria that are based on valid business reasons, such as requiring a minimum income or positive references from previous landlords, as long as these standards are applied equally to all tenants.

What kinds of subtle discrimination are illegal?

The Fair Housing Acts prohibit landlords from taking any of the following actions based on race, religion, or any other protected category:

- falsely denying that a rental unit is available to some applicants
- advertising that indicates a preference based on group characteristic, such as skin color
- setting more restrictive standards, such as higher income, for certain tenants
- refusing to reasonably accommodate the needs of disabled tenants, such as allowing a guide dog, hearing dog, or other service animal
- setting different terms for some tenants, such as adopting an inconsistent policy of responding to late rent payments, or
- terminating a tenancy for a discriminatory reason.

How can a renter file a discrimination complaint?

A tenant who thinks that a landlord has broken a federal fair housing law should contact a local office of the U.S. Department of Housing and Urban Development (HUD), the agency that enforces the Fair Housing Act, or check the HUD website at **www.hud.gov**.

HUD will provide a complaint form, and will investigate and decide whether there is reasonable cause to believe that the fair housing law has been broken. If the answer is yes, HUD will typically appoint a mediator to negotiate with the landlord and reach a settlement (called a "conciliation"). If a settlement is later broken, HUD will recommend that the Attorney General file a lawsuit.

If the discrimination is a violation of a state fair housing law, the tenant may file a complaint with the state agency in charge of enforcing the law. Also, instead of filing a complaint with HUD or a state agency, tenants may file lawsuits directly in federal or state court. If a state or federal court or

housing agency finds that discrimination has taken place, a tenant may be awarded damages, including any higher rent paid as a result of being turned down, and compensation for humiliation or emotional distress.

Criminal Record Search Information

Contrary to popular belief, there is no national computer of criminal records available for non-law enforcement agencies. Although the FBI and state law enforcement agencies have access to a national computer database, it is absolutely illegal for a private company to obtain criminal information through these protected systems. Instead, private companies must obtain criminal records on a city, county, state or Federal level. Each database can and will contain different types and details of criminal information. The following information will help you develop a screening policy that meets your standards of risk.

Types of Offenses

Infraction

Infractions are minor offenses that fall under violations of city codes and regulations.

Traffic Offense

These are serious traffic offenses, such as driving under the influence. Minor traffic infractions will not be indicated in the criminal background check.

Criminal Misdemeanor

These offenses usually call for incarceration of one year or less, in a local confinement facility. In many instances, there is no jail time.

Felony Criminal Record

A felony criminal record is considered the most serious. The incarceration period ranges from one year to life. Death penalty sentences fall under this category. Incarceration is completed in a state or federal prison system.

Criminal Record Sources

Municipal Criminal Records

An excellent search for local violations, however they are very limited in the geographical coverage of the search. A municipal record will typically contain only records that have occurred within the city limits. Most landlords use municipal records in partnership with a more extensive search.

County Criminal Record

A county criminal record check provides the most detailed and current information. Studies have indicated that the majority of crimes are committed within the perpetrator's county of residence. The primary disadvantage is that the county check will only indicate crimes that have occurred in the specific county. As you may surmise, this may create a problem when there are criminal records in other counties. Certain types of criminals such as pedophiles and sex offenders will move to avoid to detection.

State Criminal Record

Each state has a central repository that houses criminal records from all of the counties within the state. These repositories maybe maintained by the state police or through a centralized court system. Unfortunately, not all states allow access to their information. The primary advantage of accessing information from the state is that it will include records from all of the counties within the state. There are two disadvantages in obtaining information from the state level. The first is that the records obtained from the state level is not as detailed as that derived from the county level. The second is that the county may not report the criminal record in a timely manner or provide updates.

Department of Corrections

This commonly utilized state-wide source reports on felons whom have been convicted of felonies and state level misdemeanors and have been placed under the supervision of the DOC. The severity of the offenses included in the DOC check varies per state, however serious felonies such as sex crimes, murder and armed robbery, are reported.

Federal Criminal Record

A federal criminal record indicates felonies that have been prosecuted by the federal government and fall under federal statutes. These crimes will not be indicated in state and county criminal checks as they are tried in federal courts.

Criminal Record Identifiers

Jurisdictions will utilize one or several search identifiers to access criminal records. The identifiers are: first name, middle name, and last name, date of birth, social security number, race, or fingerprints. Many jurisdictions utilize an exact name search only. Others may utilize a combination of the above identifiers. Inaccurate identifiers will yield inaccurate results. It becomes very important that the applicant thoroughly completes their rental application. Middle name, exact date of birth will help ensure your search is accurate and it returns all information. Be aware that criminal record search results are not guaranteed. Government agencies will not guarantee results as information is secured by and through fallible human sources.

www.AccudataServices.com

National Coverage*Online Access*Customized Formats

"Serving our members since 1926"
1002 Diamond Ridge Suite 500
Jefferson City, Missouri 65109
573-893-7500 / 1-800-475-6703

Social Security Numbers

A state by state list of social security numbers
Social security numbers are assigned by birth state

NH	001-003
VT	008-009
RI	035-039
NY	050-134
PA	159-211
DE	221-222
WV	247-251
SC	247-251
FL	261-267
IN	303-317
MI	362-386
KY	400-407
AL	416-424
AR	429-432
OK	440-448
MN	468-477
MO	486-500
SD	503-504
KS	509-515
ID	518-519
CO	521-524
AZ	526-527
NV	530
OR	540-544
AK	574
DC	577-579
NM	585
MS	587-588
PR-VI	596-599
CA	602-626

ME	004-007
MA	010-034
CT	040-049
NJ	135-158
MD	212-220
VA	223-231
NC	237-246
GA	252-260
OH	268-302
IL	318-361
WI	387-399
TN	408-415
MS	425-428
LA	433-439
TX	449-467
IA	478-485
ND	501-502
NE	505-508
MT	516-517
WY	520
NM	525
UT	528-529
WA	531-539
CA	547-573
HI	575-576
PR-VI	580-584
GU	586
FL	589-595
AZ	600-601

A couple of good ways to tell if a social security card is valid:

- The columns or posts on each side of the card are slightly raised. You can feel this by rubbing it.
- The signature line on the bottom of the card is actually a line that has the words socialsecurityadministrationsocialsecurityadministrationsocialsecurityadministration... If you magnify it you can see it.

Missouri Civil Landlord-Tenant Law

By Steve Scott, Attorney
Scott Law Firm, P.C., 201 Westwood Ave., Columbia, MO 65203
Phone 573-442-7268 -- Fax 573-443-1676
Email sscott@scottlawfirm.com -- Web https://scottlawfirm.com

An understanding of the basics of Missouri civil landlord-tenant law will help landlords avoid future problems. Unfortunately, unlike some other states, Missouri does not have a comprehensive, codified Landlord-Tenant Act. Therefore, these materials were prepared for landlords' study and future reference. However, these materials cover only the most common situations and problems. Landlords who have questions or encounter situations not covered here should consult with Scott Law Firm or other legal counsel experienced in landlord-tenant law. The following topics are covered in these materials:

TOPIC **PAGE**

Preliminary Matters

It is strongly recommended that landlords attend an eviction hearing. It is a great way to prepare for your day in court. If you see what others are doing right and wrong, it will help you when it is your turn. In Boone County as of January 2019, most eviction hearings take place in Circuit Court Division 9 at the Boone County Courthouse at 10 a.m. on Mondays and at 1:30 p.m. on Thursdays (except the second Thursday each month).

It is also recommended that you use an attorney who has experience with landlord-tenant issues. When eviction cases are lost, it is usually because of a legal technicality that an experienced attorney would be able to avoid, so the cost of an attorney can save money down the road. If a tenant retains an attorney, and the tenant's attorney sees that everything has been and is being handled properly, they are less likely to fight an eviction. However, if a tenant's attorney sees that a landlord made mistakes in the process, the tenant and tenant's attorney are more likely to fight an eviction and possibly win.

Before moving on, an important concept to understand about landlord-tenant law is that the courts view a lease both as a contract and as a real estate conveyance for a specified term. Because of the conveyance aspect of leases, the courts usually require strict compliance with landlord-tenant law and lease clauses in order to evict a tenant.

Sources of Missouri Landlord-Tenant Law

Missouri landlord-tenant law literally has its roots in medieval English law and the ensuing centuries worth of cases decided by the courts. There are also a number of Missouri statutes dealing with landlord-tenant issues, primarily concentrated in three chapters.

* Chapter 441 of the Revised Statutes of Missouri (RSMo.), titled "Landlord and Tenant," contains sections dealing with the following matters:
    * General provisions relating to leases
    * Double rent after tenancy expires
    * Abandoned personal property (new in 1997)
    * Tenant's right to repair and deduct from rent (new in 1997)
    * Inadequate and deficient housing
    * Maintenance of heat-related utility services
    * Expedited evictions (new in 1997)

* Chapter 534 RSMo., titled "Forcible Entry and Unlawful Detainer," deals with eviction of tenants who breach their leases or hold over after their leases end (called "unlawful

detainer") and with "wrongful eviction" cases filed by tenants against landlords (called "forcible entry and detainer.")

* Chapter 535 RSMo., titled "Landlord-Tenant Actions," includes provisions dealing with the following matters:
  * Procedures for rent-and-possession cases
  * Disclosures landlords must make to tenants
  * Security deposits

There are also miscellaneous statutes relating to landlord-tenant issues scattered throughout the Missouri statute books. For example, Sec. 41.944 RSMo. sets out a procedure for military personnel to terminate their leases when they are assigned to distant duty stations.

Also, if you lease subsidized housing under "Section 8," additional federal and state regulations will apply. In particular, special eviction notices and procedures are required which are beyond the scope of these materials, and you should consult with a knowledgeable attorney to ensure proper procedures are followed.

Self-Help Eviction Illegal in Missouri

WARNING: In Missouri, the only legal way to evict a tenant is through court action and having the sheriff enforce an eviction judgment.

So-called "self-help" evictions, where the landlord physically removes a tenant and/or the tenant's property without a court order, or attempts to exclude the tenant by changing locks, removing doors, or turning off utilities, are illegal. (The only exception is when you temporarily shut off utilities for health or safety reasons, such as a gas or water leak.)

If a landlord uses such self-help eviction techniques, the tenant can sue for wrongful eviction (technically, "forcible entry and detainer"). The tenant can recover any actual damages proved by the tenant and can also claim punitive damages.

Service of Notices

Throughout these materials, mention is made of "serving" notices on tenants.

As interpreted by Missouri courts, service of a notice generally requires personal delivery of a notice to the tenant. This simply means handing or at least offering to hand the notice to the tenant so that the person serving the notice can testify, if necessary, that the tenant received the notice, or at least had the opportunity to receive it. The tenant does not have to sign the notice, or even touch it. If the tenant sees you, puts his hands in his pockets and says, "I'm not taking that," you only need to say, "You're served," and place the notice where the tenant can retrieve it if he chooses. If a tenant jumps into her car and locks the doors, you can place the notice on the windshield under the wipers and tell her she is served. The same would apply if a tenant won't open the screen door to his unit, or if he looks out a window. The point is, there needs to be some personal contact with the tenant. You must make the tenant aware you are serving the notice and make it available to her in some fashion.

If you do not make personal contact with the tenant, it is generally not sufficient service of a notice to simply tape the notice somewhere you think the tenant will see it. However, certain notices (see more information below) may be served by posting on the door of the leased premises if no one answers the door. You should consult with an attorney to determine what constitutes sufficient service of a particular type of notice.

Note that if more than one tenant signed the lease for the particular unit, a separate copy of any notice should be served on each such tenant. It is not sufficient to serve one tenant and hope that tenant will also give the notice to the other tenants unless your lease provides that a notice to one tenant constitutes notice to all tenants.

When a landlord files an eviction lawsuit, it is often necessary to state in the lawsuit that a notice was served on the tenant. As a practical matter, tenants often do not dispute in court that the notice was served, which has the effect of "curing" any defective notice. However, if the tenant does dispute proper service of a required notice, the landlord must be prepared to prove service. This is typically done by having the person who served the notice testify when and how he or she did so.

Sometimes landlords try to serve notices by certified mail. The courts usually accept notices served this way only if the landlord can present a certified mail receipt signed by the tenant. A receipt signed by someone other than the tenant will not suffice.

Here are some guidelines for record-keeping for notices: Fill out the original of the notice form to fit the particular situation. If there is more than one tenant to be served, make copies for the additional tenants. Also make two more copies -- one for your office file and one for your attorney if it becomes necessary to file suit. The service information at the bottom of the notice does not have to be completed for the copy or copies served on the tenant(s); however, the service information should be completed on your office copy and attorney's copy.

By statute, certain notices can be served by either handing a copy to the tenant, handing a copy to someone else at least 15 years old who resides at the leased premises, or posting (taping) the notice on the door if no one comes to the door. When this statute applies, the recommended notice forms on the Scott Law firm website include those options in the "certificate of service" area.

NOTE: Do not confuse the service of notices discussed in this section with the ability to have a court summons in an eviction lawsuit served by the sheriff by posting the summons on the rental unit. Landlords should follow the guidelines in this section for serving any required pre-lawsuit notices.

Many notice-service problems can be avoided by including an appropriate clause in a written lease. For example, Scott Law Firm recommends this clause: "Lessee agrees that any notice given by lessor relating to this lease may be given by any one or more of the following methods, each of which shall be equally sufficient: (a) by personal delivery of the notice to any one or more of the persons signing this lease as lessee or any person residing in the premises who is at least 16 years old; (b) by posting the notice on the main entrance door of the premises; or (c) by

mailing the notice to lessee at lessee's last-known address by certified mail, return receipt requested. Notices that are personally delivered or posted shall be deemed given on the date of delivery or posting; notices that are mailed shall be deemed given on the next mail delivery date after the date of mailing, whether or not the return receipt is signed and returned. Any notice given as stated in this paragraph shall be binding on all lessees under this lease and all other persons occupying the premises with lessee's permission."

Beware of Waiver

A problem that sometimes arises after you have served a notice on a tenant -- for example, a notice to terminate an oral lease -- is that the tenant comes in and wants to pay rent or do something else to cure whatever default he has been notified about. If you are not careful, accepting rent or other lease performance from the tenant might be seen by a court as a waiver of your right to pursue eviction.

The notices provided on the Forms page of the Scott Law Firm website include language excluding waiver when applicable and should be sufficient to avoid a waiver defense by a tenant.

However, if you use other notices that do not include such language, you will need to make sure the tenant understands that if you accept rent or other performance under the lease, you are not waiving your right to pursue eviction. This is best done in writing, and it would be good to get the tenant's signature if possible.

Disclosures to Tenants

Chapter 535 RSMo. sets out certain information that landlords are required to disclose to tenants. There are two main things to be disclosed, which the statute allows you to include in the lease:

* Name and address of manager
* Name and address of owner or agent authorized to receive lawsuits

The statute goes on to say that if this information changes, the updated information must be provided to tenants.

If these disclosures are not made, the person signing the lease for the landlord is deemed the landlord's agent to receive lawsuits and to fulfill all the landlord's obligations under the lease.

Qualifying Tenants

To avoid problems with tenants, it is crucial for landlords to properly "qualify" tenants before leasing to them. The process should start with a good rental application form. **Form 1** on the Forms page of the Scott Law Firm website is a recommended application form prepared by Scott Law Firm. Among other things, by signing the form, a prospective tenant authorizes you to perform background checks including obtaining credit reports.

You should check court records for the prospective tenant's possible criminal and/or civil litigation history. It should be a red flag if the tenant has been evicted by other landlords. You can also consider obtaining a credit report on the prospective tenant. If you obtain a credit report

and decide to reject a prospective tenant at least partly on the basis of the credit report, you must provide the tenant with a "Statement of Credit Denial." See **Form 3** on the Forms page of the Scott Law Firm website.

Resources for checking court records and obtaining credit reports are contained in **Form 2** on the Forms page of the Scott Law firm website.

Written Leases

The first line of defense in dealing with problem tenants is having a good written lease. While it is possible to have oral leases of residential units, written leases almost always provide superior protections for landlords. Written leases are discussed on the Leases page of the Scott Law Firm website.

You should ensure that your leases include the following minimum points, most of which cannot be adequately addressed in an oral lease:

* Identity of landlord or agent
* Identity of tenant(s) (make clear multiple tenants are "jointly and severally liable")
* Identification of premises leased and items included such as appliances and furnishings, storage space, parking space, etc.
* Beginning and ending dates
* Amount of rent and due date (add late charges and bad check charges if desired)
* Location where rent must be paid
* Amount of security deposit, if any
* Inspection of premises by tenant with notation of existing damage
* Who is permitted to occupy premises
* Permitted activities (residential use only? business activities allowed?)
* Responsibility for utility payments and trash collection
* Responsibility for maintenance, repairs and cleaning
* Prohibit alterations without landlord's consent
* Prohibit assignment or subleasing without landlord's consent
* Non-liability and indemnification of landlord for injuries to tenants and tenants' property
* Provisions for termination of tenancy
* Payment of attorney's fees, litigation expenses and court costs (IMPORTANT NOTE: You will not be able to obtain a judgment for attorney's fees and litigation expenses if you do not have a clause in a written lease requiring the tenant to pay them.)
* All amounts owed under lease, including payments by landlord for tenant, are "additional rent" -- this may allow remedies the same as for non-payment of rent
* Incorporate rules and regulations and lease application.
* Waive common-law notice requirements for forfeiture
* Waive jury trial and establish venue (court location) for lawsuits.

Warning about hold-over tenants: Absent language to the contrary in a written lease, if the lease states a definite termination date, the tenant stays beyond that date and pays rent for any

period beyond that date, and the landlord accepts that rent, Missouri law provides that the lease is renewed with all the same provisions of the prior written lease, except that the term of the lease is now month-to-month. If a landlord wishes to avoid this result, the landlord should not accept rent from a tenant for any period after the lease ends. If the landlord has accepted rent for a period after the lease ending date and thereby created a month-to-month tenancy, such a tenancy can be terminated by giving written notice of termination as discussed in the next section on "Oral Leases."

Oral Leases

Oral leases can be year-to-year on crop land, but are month-to-month for other types of property including residential property. An oral lease can be terminated by written notice given by either the landlord or the tenant. No reason needs to be given for termination, but a landlord cannot terminate an oral lease for a discriminatory reason that violates federal or state fair housing laws (see the "Prohibited Discrimination" section below.

A termination notice for a year-to-year lease on crop land must be given not less than 60 days before the end of the year.

In most situations, a termination notice for a month-to-month lease must be given at least one month before the termination date (see details below). In the special case of a month-to-month lease of a mobile home lot where the mobile home is owned by the tenant, notice must be given at least 60 days before the termination date.

Notices to terminate oral leases must be in writing. The landlord must be able to prove the notice was served on the tenant and should follow the guidelines in the "Service of Notices" section above.

For month-to-month leases other than mobile home lots where the mobile home is owned by the tenant, a notice served before the next rent-paying date will terminate the lease at the end of the month following the next rent-paying date.

EXAMPLE: Assume the rent-paying date is the first of the month. A notice served before March 1 will terminate the lease at the end of March. However, a notice given after March 1 but before April 1 could only terminate the tenancy at the end of April.

CAUTION: The termination notice must state the correct termination date. In the above example, if the notice specified a termination at the end of March but was served on or after March 1, the notice would be ineffective. In this situation, the notice would have to be served again before April 1specifying the termination date as the end of April.

See **Form 19** on the Forms page of the Scott Law firm website for a sample notice to terminate a month-to-month lease.

A notice to terminate a mobile home lot lease where the mobile home is owned by the tenant must specify a termination date at least 60 days after the next rent-paying date. Otherwise, the

same example and caution above will apply. See **Form 20** on the Forms page of the Scott Law firm website for a sample notice.

Overview of Lawsuits Landlords Can File against Tenants

In general, there are four types of lawsuits landlords can file against tenants, which are discussed in more detail in the following sections. They are:

* Rent-and-possession (the most-often-used remedy when tenants do not pay rent)

* Unlawful detainer (eviction cases when tenants breach leases or stay after their leases expire)

* Expedited evictions (for illegal drugs, or threatened injury or property damage)

* Contract actions (filed against tenants who are no longer in possession of the leased premises, either because they have abandoned the premises or their leases expired, for damages such as unpaid rent or repair costs)

Before discussing these four types of lawsuits, there is an important distinction to be made between rent-and-possession lawsuits and unlawful detainer cases:

> If the tenant's only breach of the lease is non-payment of rent, and you do not mind if the tenant stays so long as the rent is paid, then a rent-and-possession case will be appropriate. This is because under the rent-and-possession statutes, the tenant has the right to continued possession of the leased premises if he or she pays the rent.
>
> On the other hand, if you want to evict the tenant even if the rent is paid, then an unlawful detainer action would be the appropriate type of eviction lawsuit. Subject to proper notice being given and having appropriate language in your written lease, most breaches of a lease by a tenant, including non-payment of rent, will give rise to an unlawful detainer action.

Rent-and-Possession Lawsuits

Rent-and-possession actions arise simply from the non-payment of rent and are governed by Chapter 535 RSMo. To prevail in such a case, the only three things you need to prove are: (1) There is rent due and payable, (2) demand was made for payment, and (3) the tenant has failed to pay. However, if at least one full month's rent is owed, no pre-suit demand for payment is required; in this situation, the lawsuit itself is deemed to be a sufficient demand.

If less than one full month's rent is owed and a pre-suit demand for payment is required, there is no waiting period necessary between the demand for rent and the filing of a rent-and-possession lawsuit. You can make the demand and then immediately file suit. However, if you think the tenant might pay after receiving the notice, it may be wise to wait a few days after making demand before filing suit to avoid incurring the expense of filing suit.

While a demand for rent need not necessarily be in writing, it is usually easier to prove the demand was made if you serve a written notice, particularly if the tenant disputes that demand was made. Most landlords use a written notice to make demand for rent before filing a rent-and-possession case. See **Form 13** on the Forms page of the Scott Law firm website for a sample demand.

You can actually sue everyone occupying the premises for rent and possession, even if not all of them signed the lease. This can make it easier to serve the lawsuit in some cases because Missouri law includes roommates as "family members" upon whom service can be made in lieu of direct service upon all defendants. However, if you want to sue more than one occupant of leased premises, be sure to make pre-lawsuit demand for payment of rent upon all those you wish to sue.

Under 1997 changes to Missouri statutes that you can include other matters besides non-payment of rent in a rent-and-possession case. For example, you can claim late fees, damages to the premises, and even attorney's fees (if you have an appropriate attorney fee clause in your lease). However, if the tenant pays the rent, the tenant will be entitled to retain possession of the premises; in such a case, you would still be able to get a monetary judgment against the tenant for the other items claimed in the lawsuit.

Jury trials are not available in rent-and-possession cases, except that if the losing party asks for a new trial, the new trial can be a jury trial if requested by either party. Landlords will not want a jury trial because of the additional time and expense involved. Therefore, it is strongly recommended that landlords include a clause in their leases whereby both the landlord and the tenant waive the right to a jury trial in any litigation involving the lease. (Note: Jury waiver clauses are not permitted in Section 8 leases.)

A statutory provision adopted in 1997 provides that if the tenant has allowed someone else to have sole possession of the leased premises without the landlord's permission, the court can award, in addition to rent due, damages not to exceed twice the rent due.

There is a special requirement to be aware of if you have purchased (or acquired through foreclosure or tax sale) rental property subject to pre-existing leases. In such a situation, you must give written notice to the tenants that you own the property before you will be entitled to sue for rent and possession. This notice should be given as soon as possible after you obtain title to the property. See **Form 14** on the Forms page of the Scott Law firm website for a sample notice.

Unlawful Detainer Lawsuits

An unlawful detainer lawsuit should be filed if you want to evict the tenant no matter what -- even if the rent is paid. Unlawful detainer is appropriate in any situation where the tenant retains possession of the leased premises after the lease terminates, including:

* The tenant retains possession after the date specified in a written lease for termination of the lease, or the tenant under an oral lease gives written notice that

he intends to vacate the premises on a specified date and then fails to do so (no pre-lawsuit notice from landlord to tenant is required in these cases).

* The tenant retains possession beyond the date specified in a landlord's properly served notice to terminate an oral lease (see the "Oral Leases" section above for notice requirements to terminate oral leases).

* The tenant retains possession beyond 10 days after you have served a proper notice to terminate a written lease for breach of the lease. (The breach can include non-payment of rent, but see the caution below.)

You can give a 10-day notice to terminate a lease if the tenant does any of the following: (1) breaches (violates) any of the provisions of the lease, (2) assigns or transfers his interest in the lease without your written consent, (3) causes damage to the premises beyond ordinary wear and tear, (4) allows the possession, sale or distribution of illegal drugs on the premises, or (5) permits the premises to be used for gambling or prostitution.

CAUTION: If you wish to pursue an unlawful detainer action for breaching the lease by failing to pay rent, absent an appropriate lease clause, you must make written demand for payment of rent on the exact day when the rent becomes due and for the precise amount due. This is a common law requirement which is a manifestation of the courts' view of leases as both a conveyance and a contract and their reluctance to allow forfeitures of leases unless strict procedures are followed. To avoid this problem, it is strongly recommended that your leases include a clause waiving common law notice of default and termination procedures and substituting a contractual method of giving notice. The following language should suffice: "Upon lessee's default or breach in the performance of any condition or covenant of this lease, including tenant's obligation to pay rent, lessor shall be entitled to terminate this lease by giving written notice to lessee specifying lessee's default or breach and stating that the lease will terminate 10 days after lessee's receipt of the notice without further notice if lessee fails to cure the default or breach within said 10-day period. Lessee agrees that such notice shall constitute sufficient notice to terminate the lease and for lessor to initiate an unlawful detainer action if the default or breach is not cured within said 10-day period, and lessee waives all other common law or statutory notices. Lessor shall be entitled to double rent for each day lessee retains possession of the premises after termination of the lease pursuant to this paragraph."

If you do not have such a clause in your lease, **Form 18** on the Forms page of the Scott Law firm website can be used to make written demand for payment of rent on the exact day when the rent becomes due and for the precise amount due.

If you want to evict a tenant even if the tenant cures the breach or breaches of the lease, **Form 21** on the Forms page of the Scott Law firm website is a sample notice for situations where the tenant (1) assigns or transfers his interest in the lease without your written consent, (2) causes damage to the premises beyond ordinary wear and tear, (3) allows the possession, sale or distribution of illegal drugs on the premises, or (4) permits the premises to be used for gambling or prostitution.

If you are willing for the tenant to stay if the tenant cures the breach or breaches of the lease, **Form 22** on the Forms page of the Scott Law firm website is a sample notice that can be used. Note that you may be required to use this form if the lease itself grants the tenant a right to cure breaches.

There is clearly a right to a jury trial in an unlawful detainer action. Therefore, to avoid the substantial additional time and expense involved in a jury trial, it is strongly recommended that your leases include a clause whereby both you and the tenant waive the right to a jury trial in any litigation involving the lease. (Note: Jury waiver clauses are not permitted in Section 8 leases.)

In an unlawful detainer case, you can seek the following remedies: (1) Possession of the leased premises, (2) rent that was unpaid before the termination date of the lease, (3) double rent for the period after termination of the lease during which the tenant remains in possession, (4) reimbursement for damages to the premises in excess of ordinary wear and tear, (5) attorney's fees and litigation expenses if you have a clause in your lease authorizing them, and (6) court costs.

A statutory provision adopted in 1997 provides that if the tenant has allowed someone else to have sole possession of the leased premises without the landlord's permission, the court can award, in addition to rent due, damages not to exceed twice the rent due.

Expedited Evictions

Expedited evictions are a new type of eviction case created by statute in 1997. They are covered in Sec.Sec. 441.710 - 441.880 RSMo. The procedure is unique in that it can be used to exclude non-tenants as well as tenants from leased property.

It is important to note that if there are grounds for expedited eviction and the landlord does not take action to evict the tenant within 30 days after being asked to do so, the prosecuting attorney or a neighborhood association can file the eviction action in the landlord's place. If this happens, the costs of the eviction including attorney's fees can be assessed against the landlord. It is also possible for the prosecuting attorney to have the leased premises declared a public nuisance and prevent re-rental for an extended period of time. Therefore, it behooves you to act promptly, particularly if you are asked to do so by the police or the prosecuting attorney's office.

You can seek expedited eviction on any one or more of the following grounds:

* An emergency situation exists whereby eviction by other means would, with reasonable certainty, result in imminent physical injury to other tenants or the landlord, or physical damage to the landlord's property costing more than 12 months rent. (However, this ground cannot be used unless you first make a reasonable effort to abate the emergency situation through public law enforcement authorities or through local mental health services personnel authorized to take action pursuant to Sec.632.300 RSMo. et seq., which allow civil detention of persons likely to cause physical harm to others or themselves.)

* Drug-related criminal activity has occurred on or within the property leased to the tenant.

* The property leased to the tenant was used in any way to further, promote, aid or assist in drug-related criminal activity.

* The tenant, a member of the tenant's household or a guest has engaged in drug-related criminal activity either within, on or in the immediate vicinity of the leased property.

* The tenant has given permission to or invited a person to enter onto or remain on any portion of the leased property knowing that the person had been removed or barred from the leased property pursuant to the provisions of the expedited eviction statutes.

* The tenant has failed to promptly notify the landlord that a person whom the landlord previously had removed from the property has returned to, entered onto or remained on the property leased by the tenant with the tenant's knowledge.

No advance notice is necessary to file for expedited eviction unless the perpetrator of the illegal activity is someone other than the actual tenant. If the perpetrator is someone other than the tenant, then you must give 5 days written notice to the tenant setting out the provisions of Sec.441.750 RSMo. and specifying the grounds for expedited eviction. You can then file for expedited eviction against the tenant after 5 days unless the tenant delivers written notice to you within the 5-day period that the tenant has either: (1) sought a protective order, restraining order, order to vacate the premises, or other similar relief against the perpetrator, or (2) reported the illegal activity to a law enforcement agency or county prosecuting attorney in an effort to initiate a criminal proceeding against the perpetrator. See **Form 24** on the Forms page of the Scott Law firm website for a sample notice.

If you prove that the tenant was personally responsible for one or more of the grounds for expedited eviction, the court will order the tenant evicted.

If someone other than the tenant was the perpetrator and you prove one or more of the grounds for expedited eviction, but the tenant proves that he or she in no way furthered, promoted, aided or assisted in the illegal activity, and that he or she did not know or have reason to know the activity was occurring or was unable to prevent the activity because of verbal or physical coercion by the perpetrator, then the court can order the perpetrator excluded from the property but cannot evict the tenant. If the tenant cannot prove these defenses, however, then the tenant can also be evicted.

The court can order the expedited eviction enforced by a law enforcement agency within a number of days specified by the court.

Expedited eviction can be pursued even if criminal prosecution has not been commenced, will not be commenced, has not been concluded, or has been concluded without a conviction. In any event, relevant evidence obtained in good faith by a law enforcement officer is admissible in an

expedited eviction proceeding. If a criminal proceeding involving the drug-related criminal activity has resulted in the conviction of the tenant or another defendant in the expedited eviction case, the conviction can be introduced in evidence in the expedited eviction.

If you are pursuing an expedited eviction, you must give the defendants a reasonable opportunity before trial to examine all documents or records in your possession that relate to the case.

The court can enter orders in expedited eviction cases to protect persons who may be called as witnesses. An order can be issued if a witness has been threatened, intimidated or otherwise has reason to fear for his or her safety. Orders can include nondisclosure of names and addresses of witnesses and questioning of witnesses in the judge's chambers.

Before entering a final order in an expedited eviction case, the court can issue restraining orders and other preliminary relief to prevent further commission of drug-related crimes at or near the leased premises or to protect the rights of the parties or nearby residents.

You are entitled to continue collecting rent from a tenant while an expedited eviction case is proceeding. It appears you can ask the court to award unpaid rent in the case.

If the court finds that the tenant or another person should be evicted or excluded from the leased premises, the court must postpone the eviction or exclusion if the tenant or other person asks for a postponement and proves six points to the court's satisfaction: (1) the person is a drug user and drug-dependent and will promptly enter a court-approved drug treatment program, or the tenant did not aid or assist in the drug-related criminal activity; (2) the drug-related activity did not occur within 1,000 feet of a school and did not involve the sale or distribution of drugs to minors; (3) a weapon or firearm was not used or possessed in connection with the drug-related activity; (4) the court has not issued and will not issue an order to protect witnesses in the case; (5) the person has not previously received a postponement of eviction or exclusion in an expedited eviction case; and (6) the postponement will not endanger the safety, health or well-being of the surrounding community or the landlord. If you submit an appropriate written request to the court, the court will notify you if a request for postponement is filed and give you the opportunity to participate in any hearings on the postponement. If the court decides to grant the postponement, the tenant will be placed on "probationary tenancy" for 6 months or the remaining lease term, whichever is shorter. The court can specify conditions for the probationary tenancy to protect the landlord and those living nearby and to further the purposes of the expedited eviction law. Conditions that can be imposed include periodic drug testing, community service, and participation in a treatment program.

There does not appear to be a right to a jury trial in expedited eviction cases.

Finally, it is important to note that if you act in good faith in pursuing an expedited eviction based on information you received, you are immune from civil liability to the tenant and other persons against whom allegations may be made.

Contract Actions

If possession is not at issue (in other words, the tenant no longer occupies the leased premises), then any claims you may have against the departed tenant may be pursued as ordinary contract claims.

Typical claims that are pursued in such cases include: (1) Unpaid rent, (2) reimbursement for damages to the premises in excess of ordinary wear and tear, (3) unpaid utility bills, (4) attorney's fees and litigation expenses if you have a clause in your lease authorizing them, and (5) court costs.

Information Needed for All Landlord-Tenant Lawsuits

When you want to take legal action against a problem tenant, your attorney is going to need certain information. Scott Law Firm provides a questionnaire for you to complete which gives us all the information needed - see the Evictions page on the Scott Law Firm website for a link to the form.

If you use another attorney, here is a checklist of the information your attorney will need in most cases:

* Name of owner of leased premises, or authorized agent for owner (landlord).
* Name(s) of tenant(s) and addresses where they can be served (home and work). Also, their phone numbers, birth dates and Social Security Numbers if known.
* Address of leased premises, including apartment number.
* Terms of lease.
* Copy of written lease if any.
* Essential terms of oral lease -- rent amount, rent-paying date.
* Amounts of unpaid rent (and late charges, if applicable), itemized by month and totaled (with a copy of your tenant ledger if you maintain such a ledger).
* Itemized and totaled list of damages to premises, if known, or at least the fact that you believe there are damages.
* Specification of other breaches (violations) of lease, such as noise, trash, illegal activities, etc.

General Procedure in Landlord-Tenant Lawsuits

Your understanding of the procedures involved in landlord-tenant lawsuits will help you be a more effective landlord and enable more efficient action against problem tenants. Some of the information in this section is specific to Boone County, but the procedures should be substantially similar or even identical in other Missouri counties.

The first step in any legal action is to file a document known as a "petition" with the court. Almost all landlord-tenant cases are filed in the Associate Division of the Circuit Court, which has statutory jurisdiction over rent-and-possession, unlawful detainer and expedited eviction cases. You or a staff member will be required to sign a "verification" on the petition, which is a sworn statement that the allegations made in the petition are true to the best of your knowledge.

A filing fee must be paid when the petition is filed. The filing fee is actually an advance deposit toward anticipated court costs. When the case is over, if you win a judgment against the defendant and can collect the judgment, you will also be entitled to recover the actual court costs.

After the petition is filed and the filing fee is paid, the next step is "service" of the lawsuit on the defendant(s). It is a fundamental principle in our system of justice that you cannot obtain legal relief against another person through the courts unless that person is aware of the case and has an opportunity to respond. The "summons" served on the defendant along with a copy of the petition will notify the defendant of the initial court date. Usually service of the lawsuit is accomplished by a sheriff's deputy who personally delivers the summons and petition to the defendant or a member of the defendant's family at the residence. If you want faster service, you can ask your attorney to have the court appoint a private process server to serve the lawsuit.

Both rent-and-possession and unlawful detainer cases can also be served by "posting" and mail -- that is, by taping a copy of the summons and petition on the door of the leased premises and mailing a copy to the defendant by certified mail. The posting must be done by a sheriff's deputy or special process server, and the mailing is usually done by the landlord's attorney. The downside to posting is that you cannot obtain a monetary judgment against the defendant -- only a judgment for eviction -- unless the defendant personally appears in court in response to receipt of the lawsuit by posting and/or mail.

A rent-and-possession, unlawful detainer or expedited eviction lawsuit must be served on the defendant at least four days before the initial court date (called the "return date") specified in the summons. A contract action must be served at least 10 days before the initial court date. Your attorney (or you, if you filed the case on your own) must appear on the initial court date or risk dismissal of the case. You or your attorney will receive notice of the court date. In Boone County, these court dates are generally at 9:00 a.m. on Mondays. Assuming that someone appears on your behalf, there are three possible results of the initial court appearance:

* If the defendant does not appear, the court will enter a default judgment against the defendant.

* If the defendant appears and does not dispute the allegations in the petition, the court will enter a consent judgment against the defendant.

* If the defendant appears and disputes the allegations in the petition, the case will be set for trial.

In eviction cases, if the defendant disputes the petition at the initial court appearance and is still in possession of the leased premises, the court usually sets a trial date one to two weeks later and informs the parties on the spot. However, if the defendant has vacated the premises by the time of the initial court appearance, the court will set the trial three to six weeks after the initial court date.

If the case must be tried, you and your witnesses will need to meet at least briefly with your attorney before the trial to prepare. At the trial, you and your witnesses will present testimony and exhibits first. Your attorney will ask questions to bring out the necessary points (direct

examination). Then the tenant or the tenant's attorney will have an opportunity to ask questions (cross-examination). After all of your evidence has been presented, the tenant and his or her witnesses will have the opportunity to present testimony and witnesses. Your attorney will be able to cross-examine them. When both sides have finished presenting evidence, the court makes its decision and enters a judgment based on the evidence presented. The court usually announces its judgment at the conclusion of the trial. Most landlord-tenant trials are relatively short in duration -- usually no more than 30 minutes, and often as little as 5 or 10 minutes.

Time Frames for Landlord-Tenant Lawsuits

In rent-and-possession, unlawful detainer and expedited eviction cases, the statutes require service of the summons and petition on the defendant at least 4 days before the initial court date. Typically the initial court date is set approximately 3 weeks after the filing of the suit to allow sufficient time for service. The initial court date will have to be delayed if the lawsuit cannot be served at least 4 days before that date.

Summonses are only good for 30 days. If they cannot be served within that time frame, a new summons will have to be issued, leading to further delay. Assuming reasonably prompt service of the lawsuit on the defendant and no unusual delays, the following are typical time frames for landlord-tenant cases in Boone County:

* Uncontested case (default or consent judgment) -- 3-5 weeks average.
* Contested case (trial required): Possession at issue: 5-7 weeks average.
* Possession not at issue (only monetary damages sought): 6-10 weeks average.

The moral is: Don't let bad situations fester. Take prompt action because they will only get worse while awaiting judgment.

Enforcement of Judgments

Suppose you have gone to court and obtained a judgment against the tenant. Now what? How can you enforce the judgment? It helps to understand what a judgment actually is. Fundamentally, a judgment is a determination by a court that you are entitled to particular legal relief and therefore can use certain enforcement processes available through the court upon request to try to obtain that relief. The key points to understand are that judgments are not self-enforcing (you have to request enforcement action), and there is no guarantee that the available enforcement mechanisms will result in full "satisfaction" of all legal relief to which you have been found entitled.

Your first priority is probably to evict the tenant from the leased premises, which you will be entitled to do if you obtained a judgment for possession. If you did get a judgment for possession, the court will send a notice to the defendant advising of the judgment and the need to vacate the premises; often this prompts the tenant to move, but sometimes it does not. You can ask for an "execution for possession" immediately after the judgment is entered only if the judgment was a consent judgment -- in other words, the defendant agreed to it. This is because there is no right to appeal a consent judgment. On the other hand, if you obtained a default judgment (upon the defendant's failure to appear) or a judgment at trial, the court will not issue

an execution until at least the 11th day after the judgment was entered because the defendant has 10 days within which to file an appeal. Even if you were represented by an attorney, you can request an execution for possession on your own by filing a letter with the court clerk along with a $30 execution fee for each defendant in the case. See **Form 25** on the Scott Law Firm website for a sample execution request letter.

After you have requested an execution for possession, you must coordinate with the sheriff's office on the eviction date and time. It will take one to three days after you make your request to the court clerk for the execution paperwork to get to the sheriff's office, so don't call right away. When you think enough time has passed, call the sheriff's office at 875-1111 to arrange a mutually agreeable time for the eviction to take place. At the appointed time, you must either have a key to the premises, have locksmith on hand, or be willing to force the door. You must provide the manpower to move the tenant's property to the curb. The function of the sheriff's deputy is to stand by to preserve peace -- he or she will not help move the tenant's possessions.

Now suppose you obtained a monetary judgment against the tenant for rent, damages to the premises, etc. Garnishment is the easiest way to enforce such a judgment. Garnishment requires a request on a special form available from the court clerk and a $30 filing fee for service in Boone County. Typical targets for garnishment are the former tenant's bank accounts (this is a good reason to keep copies of tenants' checks and/or require banking information in your lease applications) and his or her employer (you can garnish his wages, which is a good reason to inquire about employment in your lease application).

Other methods of collecting a monetary judgment are seizure and sale of the tenant's personal property and sale of any real estate owned by the tenant. These are more complicated processes, and the assistance of an attorney is strongly recommended.

Security Deposits

It is crucial for landlords to be fully informed about the Missouri law on security deposits because the courts enforce them rather strictly. More than a few landlords have gotten in trouble for not scrupulously following the statute. Security deposits are governed by Sec. 535.300 RSMo. The key points of the statute are as follows:

* You cannot collect a security deposit exceeding two months rent. (This rule clearly applies to residential leases, but it is not clear whether it applies to commercial leases.)

* The statute requires you to give the tenant reasonable written notice at the tenant's last-known address (which can be the address of the leased premises if no forwarding address was left), or in person, of date and time when you will inspect the premises after termination of the lease to determine the amount of security deposit to be withheld, if any. If you mail the notice, send it by certified mail, return receipt requested, so you can at least prove mailing. See **Form 8** on the Scott Law Firm website for a sample notice of inspection.

* The inspection must take place at a reasonable time, and the tenant has the right to be present. (See the note at the bottom of this section regarding a desirable lease clause relating to security deposit inspections.)

* Within 30 days after termination of a lease, you are required to either:

    * return the full security deposit to the tenant, or

    * give the tenant a written itemized list of damages for which the security deposit, or any part thereof, is withheld, along with balance of security deposit, if any. (**Form 9** on the Forms page of the Scott Law Firm website can be used for this purpose.)

* You are deemed to have complied with the 30-day requirement by mailing the security deposit, or the list of damages and any balance of the security deposit, to the last-known address of the tenant. It is not an excuse for failing to do so that the tenant did not leave a new address with you. If no new address is known, you should mail the materials to the address of the formerly leased premises, preferably by certified mail, return receipt requested, so you can at least prove mailing if necessary.

* The only amounts you are entitled to withhold from the security deposit are:

    * Unpaid rent pursuant to lease.

    * Repairs necessary to restore property to its condition at beginning of lease, except for ordinary wear and tear.

* Penalty provision: If you fail to follow the above-listed requirements in any respect, or if you wrongfully withhold all or part of the security deposit, the tenant can obtain judgment against you for up to twice the amount wrongfully withheld.

It should be noted that if your legitimate damages exceed the security deposit, nothing prohibits you from attempting to recover those damages by filing suit against the former tenant.

Under a 2016 statutory amendment, a lease may specify a standard carpet-cleaning charge to be deducted from a security deposit; if this is done and the charge is the amount specified in the lease, a copy of the carpet-cleaning bill must be attached to the security deposit statement. If the actual carpet-cleaning bill was more than the amount specified in the lease, the entire bill can be charged on the security deposit statement; again, the bill must be attached to the statement.

The foregoing security deposit rules do not apply to deposits specifically designated as pet deposits. Pet deposits are not required to be refundable. The terms of the lease or separate pet agreement will govern the use and refundability of pet deposits. The security deposit rules also do not apply to leases of commercial (non-residential) property.

Note about security deposit inspections: When landlords sue tenants for property damage, tenants sometimes attempt to use statements the landlord made during the inspection to defend against the landlord's claim. Typically, the tenant will say something like, "The landlord didn't mention that problem during the inspection, so it must not have existed and I shouldn't have to pay for it." However, as most landlords know from experience, it is common that a particular problem may not be noted during the inspection but will be found later when there is more time for looking at the unit or when actual repairs are being made. In view of this problem, Scott Law Firm recommends that the following clause be included in all residential leases: "Any statements or estimates made by lessor or lessor's representative during inspection are subject to correction or modification before final security deposit accounting."

Trespassers, Squatters and Tenancy at Sufferance

Landlords occasionally encounter a situation in which trespassers or other unauthorized persons are living in or frequenting the landlord's property. If a trespasser has not been given permission by anyone (including other tenants) to live on the property, the police likely will assist in removing the person without the landlord having to sue for eviction, but the police may require that the person first be given a trespass notice. **Form 16** on the Forms page of the Scott Law firm website is designed as the necessary trespass notice. It can either be handed to the trespasser or posted in a location on the premises where the trespasser is likely to see it.

Occasionally situations arise in which a tenant gives permission to a person to live at a landlord's property. Even if the tenant had no legal authority to give such permission (and under most leases the tenant would not have such authority), the police generally would not treat the person as a trespasser and remove him without court action. Another situation that sometimes occurs is that a person living at a landlord's property is really nothing more than a "squatter," but for some reason the police decide not to treat the person as a trespasser. In either of these situations, the landlord must serve a "demand for possession" on the unauthorized person and then can immediately file suit for unlawful detainer if the person fails to vacate. **Form 17** on the Forms page of the Scott Law firm website is designed to be used in either of these situations.

Occasionally a situation arises in which a person who originally had permission to occupy premises is no longer so authorized. A common scenario is the situation where an owner or tenant of real estate invites a person to live at there and later decides to withdraw the invitation after the person has lived there for a period of time (e.g., woman invites man to live with her, man moves in, they don't get along, woman asks man to leave, and man refuses). The person no longer having permission to occupy the premises is known in the law as a "tenant at sufferance." A Missouri statute requires a 30-day written notice to terminate a tenancy at sufferance. **Form 23** on the Forms page of the Scott Law firm website is designed to provide such notice. If the person whose permission to occupy has been withdrawn was to pay some rent on a particular day of the month, then the time principles described in the **Form 19** Notes on Use would apply. However, if there was no agreement for that person to pay rent, then the termination can take effect 30 days after the notice is served. Care should be taken to insert the correct termination date in the notice; an incorrect date invalidates the notice and requires starting over with a new notice. When the tenancy at sufferance terminates pursuant to the notice, an unlawful detainer case can be filed if the person notified has not vacated.

Removal of Property from Abandoned Premises

An occasional scenario is that a tenant will simply abandon leased premises and leave items of his or her personal property behind. When this occurs, the tenant typically cannot be located, so you cannot file a lawsuit to determine your right to remove and dispose of the tenant's personal property.

When this situation arose before 1997, the landlord had to rely solely on the common law theory of "abandonment" when removing and disposing of a tenant's left-behind personal property. This theory requires some evidence that the tenant intended to abandon the property, including such things as:

* Tenant has not been seen at the premises for some time.
* Utilities are turned off.
* Most other property was taken and what was left does not seem valuable.
* Keys were left behind.

If the tenant were to sue later for the landlord's action of removing and disposing of the tenant's property, the landlord could raise the common law abandonment theory as a defense. However, the landlord took the risk that the evidence of abandonment might not be found sufficient, in which case a judgment might be entered against the landlord for the value of the tenant's property that was disposed of. Sometimes this risk can be minimized by posting or otherwise serving a notice such as **Form 10** on the Forms page of the Scott Law firm website.

While the common law abandonment theory remains available, the Missouri General Assembly adopted a new statute in 1997 that provides a "safe harbor" method of establishing abandonment. The statute allows a landlord to remove and dispose of a tenant's property after the tenant has abandoned the leased premises without liability to the tenant if specified procedures are followed. Under the statute, the premises will be deemed abandoned if rent is due and has been unpaid for 30 days, and the landlord has a reasonable belief that the tenant has vacated and intends not to return. To use this procedure, the landlord must post a written notice in specified form on the premises and mail the same notice to the last-known address of the tenant by both first-class and certified mail, return receipt requested. If the tenant then fails within 10 days to either pay rent or respond in writing stating the tenant's intention not to abandon the premises, the landlord can remove and dispose of the tenant's property without liability to the tenant. See **Form 11** on the Forms page of the Scott Law firm website for a sample notice to use this statutory procedure. **Form 12** on the Forms page of the Scott Law firm website provides detailed instructions for using **Form 11**.

Maintenance/Repairs

Introduction: At early common law, absent agreement, the landlord had no duty to maintain or repair leased premises. Over the years, this rule has been modified by a number of exceptions, making the landlord of residential property liable for repair and maintenance in most, but not all, situations. Still, however, with limited exceptions, the tenant cannot withhold rent because of the landlord's failure to repair or maintain. The common law rules and the exceptions engrafted upon them over the years are outlined below.

Common Law Rules: A Missouri court summarized the main common law rules as follows: "At early common law, a lease was considered a conveyance of an estate in land and was equivalent to a sale of the premises for the term of the demise. As a purchaser of an estate in land, the tenant was subject to the strict property rule of caveat emptor -- let the buyer beware. The lessee's eyes were his bargain. He had the duty to inspect the property for defects and took the land as he found it. Fraud apart, there was no law against letting a tumble-down house. There was no implied warranty by the lessor that the leased premises were habitable or fit. The common law traditionally assumed that the landlord and tenant were of equal bargaining power. So, if the tenant wished to protect himself as to the fitness of the premises, he could exact an express covenant from the landlord for that purpose. The law of leasehold originated in an era of agrarian economy which assumed that the land was the most important feature of the conveyance. The tenant was only the conduit for the rent which was conceived to issue from the land itself without reference to the condition of the buildings or structures on it. If the buildings were not habitable, the rent -- which was the quid pro quo of the tenant's possession -- was still due from him. Thus, even where the tenant was successful in exacting a covenant that the lessor make repairs, this covenant was considered only incidental to the land and independent of the tenant's covenant to pay rent. Hence a breach by the landlord did not suspend the obligation of rent; the tenant's only remedy was to sue for damages arising from the breach. For all practical purposes, the obligation to pay rent was absolute." Other features of the common law rules were as follows:

* The common law not only did not require the landlord to maintain leased premises, but also prohibited the landlord from entering the premises to make repairs absent agreement with the tenant.

* The rule that a tenant may not withhold rent because of the landlord's failure to repair or maintain remains alive and well today, with certain exceptions noted below.

* However, a lease can be written to give the tenant the right to withhold rent to compensate the tenant for repairs the landlord was contractually obligated to make.

* At common law, the tenant had the right, but not the duty, to make repairs and maintain the leased premises; however, the tenant also had to refrain from committing waste, which in some situations might give rise to a duty to perform some repairs or maintenance. Waste is defined as "the failure of a lessee to exercise ordinary care in the use of the leased premises or property that causes material and permanent injury thereto over and above ordinary wear and tear.

* Even when the tenant voluntarily repaired or maintained the leased premises, there was no right to be reimbursed by the landlord absent agreement.

* In any event, the tenant is liable at common law for the repair of conditions caused by the tenant's neglect or intentional act.

Constructive Eviction: The doctrine of constructive eviction was the first step taken by the courts toward holding the landlord liable for repairs under some circumstances. A constructive

eviction arises when the lessor, by wrongful conduct or by the omission of a duty placed upon him in the lease, substantially interferes with the lessee's beneficial enjoyment of the leased premises, such as by failing to repair a leaky roof in violation of a lease clause placing the roof maintenance responsibility on the landlord. Under the constructive eviction doctrine, the tenant is allowed to abandon the lease and excuse himself from the obligations of rent because the landlord's conduct or omission not only substantially breaches the implied covenant of quiet enjoyment but also impairs the consideration for the lease. However, before abandoning the premises, the tenant must notify the landlord of the problem and give the landlord a reasonable time to remedy the problem. If the tenant remains in possession of the premises for too long a period after the landlord fails to remedy the problem, the tenant may be held to have waived the constructive eviction theory. In effect, the constructive eviction doctrine may compel the landlord to make repairs to avoid the tenant's moving out and not remaining liable for rent. The constructive eviction doctrine applies to both residential and commercial rental property.

Warranty of Habitability: While there still is no implied warranty of habitability, suitability or fitness in connection with commercial leases, Missouri courts began holding in 1973 that there is an implied warranty of habitability in residential leases. As defined in the first case so holding, "...in every residential lease there [is] an implied warranty by the landlord that the dwelling is habitable and fit for living at the inception of the term and that it will remain so during the entire term. The warranty of the landlord is that he will provide facilities and services vital to the life, health and safety of the tenant and to the use of the premises for residential purposes." Under this theory, a tenant's obligation to pay rent is dependent on the landlord's performance of his obligation to provide a habitable dwelling during the tenancy. However, before withholding rent, the tenant is under an obligation to give the landlord notice of the deficiency or defect not already known to the landlord and to allow a reasonable time for its correction, but the tenant cannot withhold rent if the defect or deficiency was caused by the tenant's wrongful conduct. In theory, tenants who withhold rent from the landlord under the habitability theory are required to deposit the rent with the local circuit court as it becomes due, but the Missouri appellate courts have never clarified how this is to be done.

Local Housing, Fire and Safety Codes: Many Missouri cities and some counties have adopted ordinances embodying housing, fire and/or safety codes which place affirmative duties on landlords to maintain rental properties in compliance with the ordinances. Most such ordinances make it illegal to rent properties which do not comply with the codes and for which a certificate of compliance has not been issued. Because these codes, and enforcement practices, vary from place to place, a landlord should make careful inquiry in his or her locale and be prepared to perform whatever repairs and maintenance are required. From a tenant's perspective, often the best way to compel a landlord perform a repair is to complain to the local government's code enforcement agency.

Limited Statutory Right to Repair and Deduct from Rent: A statute enacted in 1997, Sec. 441.234 RSMo., gives tenants the right, under limited conditions, to deduct repair costs from rent. This new right cannot be waived by a written lease clause. To be eligible, the tenant must have lived in the leased premises for six consecutive months, have paid all rent and charges, and not have received any written notice from the landlord of any lease violation which was not subsequently cured. The following additional requirements apply:

* The condition to be repaired must detrimentally affect the habitability, sanitation or security of the premises, must constitute a violation of a local municipal housing or building code, and must not have been caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or another person on the premises with the tenant's consent.

* The reasonable cost to correct the condition must be less than the greater of $300 or one-half of the monthly rent, provided that the cost may not exceed one month's rent and that a tenant may not deduct more than one month's rent during any 12-month period.

* Before proceeding, the tenant must give written notice to the landlord of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to correct the condition within 14 days after receiving written notice, or as promptly as required in case of an emergency, the tenant may cause the work to be done in a workmanlike manner. If the tenant has the work done, the tenant may deduct from rent the actual and reasonable cost of the work, not exceeding the amount specified above, upon giving the landlord an itemized statement including receipts.
* However, if the landlord provides to the tenant within the 14-day period a written notice disputing the necessity of the repair, then the tenant may not deduct the repair cost from rent without securing, before the repairs are performed, a written certification from a local governmental body that the condition to be repaired constitutes a violation of a housing or building code. If this certification is issued, the tenant may have the work done as described above only if the landlord fails to correct the condition within 14 days after receiving notice of the certification, or as promptly as required in case of an emergency.

Substandard Housing Statute: Landlord liability to repair and maintain also can arise under Sections 441.500 - 441. 643 RSMo., which provide remedies to tenants of housing facilities that do not comply with applicable housing or building codes. A civil action may be commenced in the circuit court of the circuit where the property is located on the ground that a nuisance exists with respect to such property. Such an action may be filed by: (1) The municipality where the property is located through its code enforcement agency, (2) by the occupants of one-third or more of the dwelling units within the affected building, (3) by a non-profit organization organized to enhance housing opportunities, or (4) by any owner or tenant of real property within 1,200 feet in any direction of the property in question who can show a substantial effect by the alleged nuisance. The term "nuisance" means a violation of provisions of the housing code applying to the maintenance of the building or dwelling unit which, if not promptly corrected, will constitute a fire hazard or substantial threat to the life, health or safety of the occupants and/or the general public. If the court finds that the dwelling unit or building constitutes a nuisance as defined, the court may appoint a receiver and direct that present and future rents be deposited with the receiver, who may use the rent monies to remedy the deficiencies. A court order directing payment of rent to a receiver is a valid defense to any eviction lawsuit by the landlord based on non-payment of rent.

Latent Defects: In general, if there are latent defects in leased premises which are known to the landlord but not to the tenant, and which the tenant cannot discover in the exercise of ordinary care, the landlord is under a duty to disclose the defect, and the landlord's failure to disclose the defect, or concealment of the defect, renders the landlord liable for injuries to the tenant, the tenant's family, and the tenant's invitees resulting from the defect. To avoid this liability, the landlord should correct the defect. However, if the latent defect is disclosed to the tenant, the landlord is not liable to the tenant for not repairing the defect, assuming that the defect is not required to be repaired by the landlord under some other theory.

Common Areas: It has long been the rule in Missouri that landlords must keep common areas of leased buildings in a safe condition and must use reasonable diligence in doing so. Common areas include hallways, stairs, lobbies, walkways, porches, yards, laundry rooms, etc. which are maintained for the use of multiple tenants. In contrast, any portion of a leased building which is exclusively within the tenant's control is not a common area, and the landlord generally has no duty to maintain such tenant-controlled areas (except under other theories mentioned in this topic).

Agreement to Repair and Reserved Control: A landlord can assume the duty to make repairs within the leased premises (as opposed to common areas) by contractual agreement in a lease. If the landlord makes such an agreement, he must maintain the areas of the leased premises over which he assumes the duty of repair in reasonably safe condition for the intended uses. It is also possible for the landlord to retain sufficient control over the leased premises for the purpose of inspecting and making repairs such that the landlord will be deemed to have assumed the liability for making repairs and maintaining the portion of the leased premises within his control in reasonably safe condition for its intended uses.

Structural Repairs: Absent an express agreement by a tenant to make structural repairs to a leased commercial building, the tenant has no liability for structural repairs; this is true even if the lease obligates the tenant to make general repairs, unless the lease specifically imposes the duty on the tenant to make structural repairs, and, therefore, where a lease is silent on who must pay for substantial structural repairs, the burden will fall on the landlord. Presumably this same principle would apply with even more force to a residential lease, to the extent the structural repairs did not become the landlord's obligation under another theory such as habitability or violation of housing codes.

Commercial Leases: The general common law principle that neither the landlord nor the tenant need make repairs if the lease is silent on the issue does not comport with the realities of modern commercial leasing. Accordingly, conventional commercial leases ordinarily assign maintenance and repair responsibilities to the landlord and the tenant. A common provision is that the landlord will maintain the exterior of the buildings and the tenant will maintain the interior, fixtures and equipment. This type of provision may be adequate for simple situations, but in leases of larger properties, it frequently will prove to be inadequate. Ordinarily, the parties intend that day-to-day maintenance and minor repairs be made and paid for by the tenant, and that repairs due to obsolescence or old age and more in the nature of a replacement or a capital expenditure be made and paid for by the landlord. The problem becomes acute in view of the cost of making major replacements or repairs to such things as elevators, boilers and large air-conditioning units. There are two common solutions to the drafting problem:

* A provision to the effect that the tenant's expenditures for items such as elevator, boiler or air-conditioning maintenance shall not exceed a specified amount in any one year, and that expenditures exceeding that amount will be paid by the landlord; or

* A provision that the tenant agrees to make ordinary repairs, while the landlord agrees to make repairs and replacements due to obsolescence or old age.

Neither of these clauses is perfect, and it behooves the lawyer to work with a landlord or tenant client to determine the potential costs of performing various maintenance and repair work and to allocate those costs appropriately in the lease.

A common problem that arises in commercial leases relates to doors and windows. Typically, while assigning exterior maintenance to the landlord, a commercial lease also specifies that the tenant must replace glass in doors and windows. A common question that then arises is whether doors and windows are considered part of the interior or the exterior of the premises. The matter can be resolved by providing in the lease that the tenant will take care of glass but that "doors, door frames and sills, windows, window frames and sills and door opening and closing devices will be maintained and repaired by the landlord."

Personal Injury Liability Warning: As a general proposition, if the landlord is liable to repair or maintain under any theory, the landlord will be liable for personal injuries resulting from failure to maintain the premises in a reasonably safe condition.

Summary of Key Points:

* A landlord is not required to repair/maintain leased premises except as follows:
  * When conditions may prompt the tenant to claim constructive eviction, whereupon the landlord must consider whether to make repairs to forestall the claim.
  * When conditions violate the implied warranty of habitability.
  * When conditions violate local housing, fire and/or safety codes and the codes place the repair/maintenance obligation on the landlord/owner.
  * When the tenant exercises the limited statutory right to deduct rent from repairs under Sec.441.234 RSMo.
  * When the landlord is compelled to repair/maintain under the substandard housing statutes, Sec.Sec. 441.500 - 441.643 RSMo.
  * When conditions in common areas are unreasonably dangerous to tenants and invitees.
  * When the landlord has reserved the rights to make repairs within the demised premises and to enter the demised premises on his own initiative to do so.
  * When the landlord has undertaken a contractual obligation in the lease to make repairs.
  * When necessary repairs would be classified as "structural" in nature, absent agreement by the tenant to make structural repairs (but an agreement by a

residential tenant to make structural repairs probably is not valid under the warranty of habitability doctrine).

* A tenant cannot withhold rent from the landlord because of the landlord's failure to maintain or repair except as follows:
  * Pursuant to agreement with the landlord.
  * Upon substantial breach of the lease by the landlord which constitutes constructive eviction (but note the tenant will need to plead and prove constructive eviction as a defense if the landlord sues).
  * When the premises are wholly or partially uninhabitable, provided that if the tenant remains in possession, rent or partial rent must be deposited with the court or a third-party escrow agent (note again that the tenant will need to plead and prove breach of warranty of habitability as a defense if the landlord sues).
  * The tenant may be entitled to withhold a limited amount of rent for repairs made by the tenant upon compliance with Sec. 441.234 RSMo.
  * In an action pursuant to Sections 441.500 - 441. 643 RSMo., rent may be paid to a receiver instead of the landlord if ordered by the court.

Fair Debt Collection Practices Act

Landlords should note that the notice forms provided on the Forms page of the Scott Law firm website have been set up to be signed by the landlord rather than an attorney. The reason for this has to do with how the federal courts are interpreting the Fair Debt Collection Practices Act. The courts in several circuits have decided in the past few years that the act applies to landlord-tenant cases. When attorneys at law give notices on behalf of clients, they are required to also give certain warnings required by the FDCPA and must allow the recipient at least 30 days to respond. Most landlords will prefer for action to commence much sooner than 30 days after notices are given. However, when landlords give notices to tenants themselves, they are not required to give the FDCPA warnings, and it is not necessary to allow 30 days for tenants to respond.

Prohibited Discrimination

Federal and Missouri fair housing laws strictly prohibit discrimination based on a number of factors including:

* Race
* Color
* Religion
* National origin
* Ancestry
* Sex (gender)

* Disability

* Familial status

The main federal law is the Fair Housing Act, 42 U.S.C. Sections 3601-3631. Another relevant federal law is the Americans with Disabilities Act, 42 U.S.C. Sec.12101 *et seq*. The primary Missouri statute is Sec.213.040 RSMo. Most of the prohibited categories of discrimination are self-explanatory. However, "disability" and "familial status" require further explanation.

"Disability" is defined for purposes of housing discrimination as:

* having a physical or mental impairment which substantially limits one or more of a person's major life activities, or

* being regarded as having such an impairment, or

* having a record of having such an impairment,

which, with or without accommodation, does not interfere with occupying the dwelling in question.

"Disability" does not include current illegal use of or addiction to illegal drugs. However, a person may be considered to have a disability if he or she: (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of, and is not addicted to, an illegal drug or has otherwise been rehabilitated successfully and is no longer engaging in such use and is not currently addicted; or (2) is participating in a supervised rehabilitation program and is no longer engaging in illegal use of illegal drugs; or (3) is erroneously regarded as currently illegal using, or being addicted to, an illegal drug.

"Familial status" is defined as one or more individuals who have not attained the age of 18 years being domiciled with either:

* a parent or another person having legal custody of such individual, or

* the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections against discrimination based on familial status also apply to any person who is pregnant or who is in the process of securing legal custody of any individual who has not yet attained the age of 18 years.

The prohibition of familial status discrimination does not:

* Apply to housing projects which have been specifically designated and legally qualified as "housing for older persons" (typically, 55 years of age and older).

* Affect any local laws limiting the maximum number of occupants permitted to occupy a dwelling. (For example, Columbia defines "family" in Sec.29-2 of the ordinances as either parents and children plus no more than two additional related persons, or a group of not more than 4 persons not related by blood or marriage living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities on a nonprofit cost-sharing basis.)

* Affect a state statute (Sec.441.060.2 RSMo.) which authorizes an occupancy limit of two persons per bedroom in leased housing (except that this occupancy limit does not apply to a child or children born to the tenants during the course of the lease).

Prohibited acts of discrimination against persons in the protected categories include:

* Termination of a lease.

* Refusal to negotiate, rent or renew a lease, or discrimination in the terms, conditions or privileges of rental, or in the provision of services or facilities.

* Denial that any dwelling is available for inspection or rental when it is available.

* Refusal to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if the modifications are necessary to afford the person full enjoyment of the premises; however, if reasonable under the circumstances, you can require the tenant to agree to remove the modifications upon termination of the lease.

* Refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling.

Caution: There has been a new development regarding criminal backgrounds of prospective tenants. In early 2016, HUD announced new guidelines stating that automatically rejecting a tenant's application because of a history of one or more criminal convictions could constitute discrimination – usually racial – under the theory of "disparate impact" discrimination. The idea is that because African-American and other ethnic groups are convicted at substantially higher rates than other groups, automatically rejecting people with convictions could result in discrimination against the particular ethnic group. Therefore, a more fine-tuned approach to evaluating tenants with criminal backgrounds should be adopted. It should be safe to reject prospective tenants whose criminal history suggests that they might pose a danger to others, such as those convicted of violent crimes or sexual offenses. However, automatically rejecting anyone with a conviction of a low-level, non-violent crime could lead to a discrimination complaint.