

# THE VERMONT APARTMENT OWNERS NEWSLETTER

NOV./DEC.

*Educating Vermont Landlords since 1974*

2013

## PROBLEMATIC LATE FEES

Many landlords charge late fees if the rent is not paid on time. As an alternative, landlords sometimes provide a discount for prompt payment. Whether it is a late charge or a discount for prompt payment is irrelevant to the test used to determine the appropriateness of the amount of a late charge or discount. To determine whether your late charge/discount is compliant with Vermont law, please review it in light of the following three standards:

- The late charge/discount is established because defining the landlord's exact costs due to a non-payment of rent would be difficult to calculate accurately, and;
- The sum fixed as a late charge or discount must reflect a reasonable estimate of the landlord's likely cost of collecting the rent, and;

- The late charge/discount must be intended to compensate the landlord for costs of collection, and not as a penalty for nonpayment of rent.

This three-part test for late charges/discounts has just been reaffirmed by the Vermont Supreme Court in Glassford vs. BrickKicker, 211 VT 118 (VT 211), November 4, 2011.



## BUSINESS MANAGER CORNER

### RENT TRACK

Also around the Thanksgiving holiday, VAOA will be rolling out a new program for our members. We are excited to announce that we have established a relationship with Rent Track. Rent Track allows your tenants to pay you with ACH check, debit card or credit card. Rent Track is also tied in to the three credit bureaus, so if your tenants pay on time, they can build their credit. Conversely, if their payment is late it will get recorded on their credit report. We'll have more information on this program soon.

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## PERSPECTIVE

By **Stuart M. Bennett**

### *40 Years of Sustained Success*

It is important to remember where you have been, to understand where you are going. VAOA has been effectively representing the interests of Vermont landlords since 1974, and we will be celebrating 40 years of service in 2014. Not only does VAOA lobby for state wide change in landlord tenant laws, but also on the local level when members need help in their community.

The following are some of the more important initiatives VAOA has either prevented from becoming law, or succeeded in passing as new law.

**Rent Control** - This perennial issue has now lost credibility. It was a painfully slow process. It started when Bernie Sanders was mayor of Burlington, and would periodically resurface on the state and local levels. But facts are stubborn things. VAOA demonstrated that rent control does not encourage investment in housing. The easy example was the rent control and extensive regulatory schemes created to “preserve” mobile home parks. These effectively killed private investment in new parks, and hastened the closing of many.

**Lead Paint** - VAOA had the benefit of similar proposals in other states to demonstrate what would work in Vermont. In the end, by working closely with the Health Department, VAOA helped contain the most onerous proposals, and created a legislative scheme that requires sensible lead reduction protocols by landlords which still protect children in rentals. Most importantly, landlords got limited immunity from liability if they perform the Essential Maintenance Practices (EMP's).

**Rent Escrow Court Process** - This requires a tenant to pay rent into a court escrow account if they want to stay in an apartment during an eviction for non-payment of rent. This was the brain child of VAOA, and has prevented the worst abuses of tenants who tried to live free during the protracted court process. In the end, it created a pot of cash to be transferred to the landlord, or used to settle the case.

**Removal of Tenants Personal Property** - This serious problem took years to properly fix. If a tenant voluntarily left a rental, landlords could be required to store this property for 60 days. In some cases a landlord had to determine if the apartment had been “abandoned”. The glaring omission was the handling of this property if the tenant had been evicted through the courts. VAOA proposed and helped pass legislation which allows the landlord to dispose of the tenant’s property 15 days after a writ of possession is served.

**Utility Shutoff** - This past year a bill was introduced to allow tenants to establish water/sewer accounts with municipalities if the service was to be shut off due to the landlord’s nonpayment. This bill died when VAOA and many municipalities testified that these services are rarely shut off, and the logistics of billing transient tenants in multi-unit buildings where not practical, let alone fair.

## SERVICE AND COMPANION ANIMALS

### *Article provided by VLA's Housing Discrimination Law Project*

"I know you have a no-pets policy, but my therapist says I need my cat because of my anxiety and depression." One of the most discussed housing discrimination issues is reasonable accommodations for an animal or animals as a companion, therapy, service, or assistance animal. Waiving one or more pet policies, including a no pet policy or an extra security deposit charged for pets are typical reasonable accommodations. Reasonable accommodation rules apply to condominiums, town houses, and mobile homes as well as to rentals.

Last issue, we discussed reasonable accommodations generally. Allowing a companion animal is a type of reasonable accommodation. This article discusses reasonable accommodation animals in particular. The main things to remember are the words "reasonable" and that what is reasonable under the law requires a fact-by-fact, individual circumstances evaluation. What is reasonable is an objective, not a subjective, standard. The question is not what the requesting person or the housing provider believes is reasonable but what a judge or jury will find is reasonable.

An assistance animal is any animal that helps a person with a disability. Assistance animals are sometimes called service animals, companion animals, emotional support animals, or therapy animals. It doesn't matter what the animal is labeled. It also doesn't matter which disability the animal assists with or how the animal alleviates or assists the person with a disability. The animal may help the person to do certain things, like assist with seeing, hearing, walking, taking medications, or any other physical impairment. An animal is also required to be allowed as a reasonable accommodation where what the animal provides is psychological or emotional support. This includes helping the person stay calm, helping with depression, or helping a person leave the house when the person is significantly impaired in doing so alone. If a person has a disability and an assistance animal helps alleviate the symptoms or limitations the disability imposes, the person is entitled to a reasonable accommodation that allows the animal to live with him or her.

### Exceptions

A request for a reasonable accommodation to allow an animal may be refused if:

- The animal is a direct threat to the health or safety of others;
- It's known that this particular animal (not breed but yes species, e.g., tigers) will cause serious damage to others' property, including the housing provider's;
- Allowing the animal would impose an undue financial burden on the housing provider;

### **But Everyone Loves Their Dog (Snake, Fish)!**

An assistance, service, or reasonable accommodation animal is not a pet. It is the means by which the person with a disability manages despite his or her impairments. Reasonable accommodation animals are required by law because some people with disabilities need these animals to use and enjoy housing on the same basis as a person without the disability would. Each request must be considered by itself, taking into account the disability that is being accommodated; the reasonableness of the particular animal to the housing environment; and the connection between the disability and how the animal assists the person with that disability.

### **No Training or Certification Required**

Some reasonable accommodation animals have special training, but this cannot be required. A landlord may require that the animal be current on any legally-required licensing and vaccinations and be neutered. A seeing eye dog which has been through years of training to learn how to assist a blind or visually impaired person is legally equivalent to a kitten that has no training but alleviates a person's significantly impairing depression.

*Continued on Page 5.*

## SMOKE FREE HOUSING INFORMATION

Dear Property Owner,

Did you know that most people prefer to live in a smoke free environment? A survey by Wilder Research found that 75% of people prefer smoke free housing, including smokers themselves.

Second hand smoke is poisonous and, at around 53,000 non-smokers per year, is the 3<sup>rd</sup> leading cause of death in the US. To make matters worse, damages to your units from smoking can cost thousands to repair. Second hand smoke can penetrate deep into furniture, paint, window dressings, and carpets and can travel to neighboring units through thin walls or baseboard heaters.

Your local community coalition, Central Vermont New Directions Coalition, would like to assist you in the transition to making your multi-unit housing property smoke free. With this transition, you will see a dramatic improvement in the quality of your units. There will be virtually no risk of smoking related fires or damages, general health and wellbeing of all tenants will increase, and the cost refinishing an apartment will decrease significantly (by at least half). All of these improvements increase the marketability of your units and make them generally more appealing.

Transitioning to a smoke free property can seem

stressful and even scary for some property owners, but remembering these three guiding principles can help give you confidence in your decision:

You are not asking tenants not to smoke. You are asking them to not smoke inside your units.  
It is about the smoke; it is not about the smoker.  
It is no different than having a pet or trash policy.

Central Vermont New Directions Coalition is here to assist you in any way we can with this process. We can provide you with tools, like model smoke free policies for your lease agreement or second hand smoke facts, which will help you make informed decisions about your property. We can also put you in contact with other multi-unit housing property owners who have gone smoke free. Please feel free to contact us with any questions.

Sincerely,

Marcus Hass

Central Vermont New Directions Coalition  
73 Main Street, #33  
Montpelier, Vt. 05602  
802-223-4949  
[www.cvndc.org](http://www.cvndc.org)

## TIDBITS AND QUOTABLES

### Are you using the VAOA Notices?

At least one judge in the state is taking issue with the phrase “notice to quit” in notices and pleadings. The statute refers to “Notice of Termination.” The VAOA notices use this phrase. It is a good practice to mirror the language in the statute in your notice. VAOA recommends using our forms.



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## LANDLORD/TENANT LAWYERS MAY BE LIABLE FOR AN IMPROPER EVICTION FILING

Recently, a court held that a landlord's attorney had violated the Fair Debt Collection Practices Act by not confirming the accuracy of information from a landlord client.

In this particular case, the law firm was working for a property management firm which was a new client to the firm. Based on information received from the client, the firm started an eviction without confirming the accuracy of the information. As it turned out, the tenant was exempt under a "Senior Citizen Rent Increase Exemption" in New York City.

The error was brought to the attention of the landlord's attorney by a tenant advocate. The tenant's attorney immediately withdrew the action.

Notwithstanding, a Fair Debt Collection Practices Act suit was commenced against the landlord's attorney. The Fair Debt Collection Practices Act provides for statutory, and strict liability damages.

The court indicated "While the court makes no finding of what procedures would have been sufficient, the absence of any procedures to avoid discoverable errors clearly is insufficient. No reasonable jury could conclude that Defendants' procedures were reasonably designed to avoid the type of error that occurred in this case."

In the end, the case settled for \$22,000 in Fair Debt Collection Practices action damages to the tenant and \$108,000 in legal fees to be paid to the tenant's attorneys.

This is the first time a Federal court has held the landlord law firm liable for such an action.

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## SERVICE AND COMPANION ANIMALS, CONTINUED

*Continued from Page 3*

### **But Everyone Has a Disability!**

Yes, disability is defined very broadly in federal and Vermont anti-discrimination laws. If a person is significantly impaired in one or more major life activities, he has a disability. Major life activities include seeing, hearing, breathing, and walking. Depression, anxiety, and other mental health problems can also be disabilities if they significantly impair a person in a major life activity including activities such as leaving the house, getting out of bed, not committing suicide, etc.

If the disability or connection between the disability and the assistance animal is not obvious, the housing provider may ask additional questions to verify the disability and need for the animal. However, a request for an animal as a reasonable accommodation doesn't give a housing provider the right to unfettered access to the person's medical records,

waiver of medical privacy, or to open-ended conversations with the person's health care providers.

Questions about a person's disability must be narrowly focused on what the animal will do to alleviate or assist with the person's limitations.

### **Pragmatic Realities**

Given the very broad definition of disability and the broad range of ways an animal can alleviate or assist a person with a disability, the least litigious course is to allow a reasonable request—for example, one dog or cat or fish—or even snake in a terrarium. It's generally not worth fighting over one animal. If the proposed animal is an inherently dangerous species—a tiger or a poisonous snake, for example or impractical, e.g., a cow, it may be worth contesting—after weighing all of the factors.

## NEW VAOA WEBSITE PLATFORM

VAOA's website has transitioned to a new platform. The new website has a new login system. If you were in the old website and we had your email address you should have received an email from Union Street Media with instructions on how to set up your new password. If you did not receive this email, please check your Spam folder or contact us to determine the email address we have for you on file. We may have an outdated email or we may not have your email address at all. VAOA does not give out your email address to any other vendors.

The new website platform requires that you have a valid email address in order to be added to the system. This is because the new website allows you to manage your own passwords and you can request a change of password directly from the website.

We have encountered a few quirks in the new system (i.e. it functions a bit differently than the old system). When you visit the website ([www.vaoa.com](http://www.vaoa.com)), to sign in, click the "Sign In" button. This will take you to the login in page with Union Street Media. Type in your username and password. If you cannot remember your password, click on "Lost Your Password?" The system will automatically send an email (to the email address we have on file) with instruction for re-setting your pass-

word.

Once the system logs you in, instead of redirecting you to the website homepage, you will be in the page which allows you to post apartments for rent. To get to the website, click on "Vermont Apartment Owners Association" in the black bar across the top of the page and choose "Visit Website." You will be sent to the homepage. The "Sign In" button will still be listed. To confirm that you are logged in, look up in the upper right-hand corner of the site. If it says "Howdy, username," you are logged in.

All of the forms are now accessible on the new website, we are working out a few glitches with the forum section of the website.

The new website platform should be easier to navigate, easier to read on your smart phone or tablet, and will be much more user friendly.

### MOBILE HOME PARK SECTION

*DEDICATED TO TOPICS CONCERNING MOBILE HOME PARKS*

## NOTICES TO QUIT FOR MOBILE HOME PARKS ARE DIFFERENT FROM NOTICES TO QUIT FOR APARTMENTS

Notices to quit for mobile home parks must say that "*An eviction proceeding may be commenced if you (the tenant) do not pay the overdue rent within twenty days from the date of the mailing of this notice.*" This notice has to be provided to the leaseholder by certified or registered mail.

This notice format is materially different than the notice to quit for nonpayment of rent for apartments. For apartments, the notice must specify the date that the

tenancy is terminated. The date the tenancy is terminated must be at least fourteen days from the date of the notice.

Please review the notice to quit format provided in the forms section of the VAOA website.

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