

NEXT MEETING

Monday,
October 19, 2009

Fort Stephenson
House
600 W. State St.
Fremont



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FIRE PREVENTION AND SAFETY

Fire Chief Greg Lowe, of Green Springs Rural Volunteer Fire Department, will be speaking about fire prevention and safety in your rental properties at our next meeting – Monday, September 21st.

Chief Lowe has been on the fire department for 23 years. He has previously served as President, 1st Lieutenant, and Assistant Chief and has been the chief for the last 11 years. As Chief, he is responsible for maintaining all equipment, handling personnel issues within the department, and investigating and determining causes of fires within his district. He is also the fire inspector for his service area. In 23 years, he has seen and fought many different types of fires. The Green Springs Rural Volunteer Fire Department responds to injury accidents and many miscellaneous calls as well.

When it comes to fire prevention and safety in apartments, Chief Lowe said tenants and landlords both share responsibility.

Statistics show that tenants tend to cause most apartment fires, rather than building defects or deficiencies. Rental fires are almost always the result of a tenant's lifestyle choices, with alcohol being a factor in most fatal fires. In general, the three major causes of fires in apartments are smoking, unattended cooking, and candles. When candles became popular several years ago, they shot right to the top of the fire safety concern list. They are relaxing and silent, so people go to bed and forget about them. But if a burning candle is too close to curtains or if it tips over, a deadly fire can be ignited. Tenant complacency is also a key contributor to rental fires. Tenants often assume that their building management is responsible for their safety.

Landlords should install smoke detectors in their rental properties. However, if a renter finds that their apartment doesn't have a working smoke detector, they should take the initiative to inform their landlord about the problem. Tenants should also be vigilant about testing and replacing batteries in smoke detectors. When the battery starts making a chirping noise because it's losing its charge, don't just remove it and forget about installing a new battery.



Applicant Bankruptcy on Credit Report. What should I do?

Landlords have the right to set specific tenant selection criteria to include any factors based on valid business principles. As a landlord, you are free to choose to use almost any standards as long as legitimate business criteria have been applied, consistently, without discrimination, and in full compliance with all applicable laws.

With that in mind, you may legally reject any applicant who has previously filed for bankruptcy, (even if the bankruptcy discharge was completed several years ago) if you have a firm (preferably written) policy of “no bankruptcy” (within a specific period, if desired).

Federal fair housing laws do not include a protected class for financial status. If the landlord's criterion is rejection of an applicant who has filed bankruptcy and the criterion is applied to every applicant without discrimination, the rejection of the application is a legitimate business decision by the landlord.

On the other hand, you may not wish to have such an absolute policy. You may decide that a more flexible policy regarding bankruptcy filing is appropriate for your properties and applicant pool, for example, a filing within a certain recent number of years. The key issue is that you absolutely must apply the same standard to every applicant.

A bankruptcy filing will be reported to the major credit bureaus and appears in the public records section of a full credit report. If, as recommended, you have prepared a rental information packet, including your written selection criteria, the prospective applicant will know your eligibility requirements, know his personal bankruptcy history, and decide whether to submit his application.

In general, adverse credit information remains on a credit record for 7 years. However, a person's bankruptcy may be reported for a longer period from the filing of the case. The bankruptcy will appear even if the person voluntarily dismissed it before the discharge, but the credit reporting agency must report the dismissal.

For bankruptcy, the length of the period depends on which Chapter was filed. Chapters 7, 11, and 12 may remain for ten years from the filing date. Chapter 13 usually remains for seven years from the filing date. Accounts from creditors listed in bankruptcy will usually remain seven years from the date they were reported as included in the bankruptcy.

Bankruptcy is governed by federal law found in Title 11 of the United States Code. The Bankruptcy Code supersedes any conflicting state law by reason of the Supremacy Clause of the Constitution. Although states may not regulate bankruptcy, they may pass laws that govern certain specific aspects of the debtor-creditor relationship. Accordingly, bankruptcy law is much the same from state to state except for the types and limits of exemptions. Exemptions are those assets of the debtor that are legally beyond the reach of the bankruptcy trustee and, hence, of the creditors. The debtor in bankruptcy keeps the exempt property. Federal and state laws define the kinds and values of property that are exempt and the definitions vary greatly among the states.

Although tenant bankruptcy is probably not particularly common, it is an issue about which landlords be knowledgeable. While this article is concerned with applicants whose credit reports list a bankruptcy, there are a number of other reasons that knowledge of bankruptcy law is relevant to landlords. Regarding existing tenants, landlords need to (1) know what to expect when a tenant files bankruptcy, (2) what they can and cannot do after a tenant's bankruptcy filing and (3) how a bankruptcy affects the continuing tenancy of a tenant filing bankruptcy. These issues will be only briefly touched on in this article.

Bankruptcy law seeks to benefit both debtors and creditors by seeing that debtors get relief from debts they can't pay and creditors get paid from certain assets of the debtor or from his future income.

The primary purposes of bankruptcy law are to (1) give a debtor an opportunity for a new start by relieving the debtor of debts or rescheduling payments in a way that the debtor can handle and (2) repay creditors to the extent that the debtor has assets that can be used for payment. Both procedures take place under a Court approved and supervised plan.

The impact of an applicant having previously filed bankruptcy can depend greatly on which type of bankruptcy was filed. The types of bankruptcy proceedings are referred to by the chapters of the federal Bankruptcy Code that describes them. The most commonly used chapters are Chapter 7, Chapter 11, and Chapter 13 filings.

A filing under Chapter 7 is called a liquidation proceeding in which the debtor's non-exempt assets, if any, are sold by the Trustee, with the proceeds being distributed to creditors according to the priorities established by law. In many Chapter 7 bankruptcy cases involving liquidation of property, there is little or no money available

Applicant Bankruptcy on Credit Report. What should I do? (continued)

from the debtor's estate to pay creditors. As a result, in these cases, there are few issues or disputes and the debtor is normally granted a "discharge" of most debts without objection. This means that the debtor will no longer be personally liable for repaying the debts.

Chapter 11 is a reorganization proceeding, typically for businesses, where the debtor remains in possession of the business assets and continues to operate the business subject to the oversight of the Court and the creditors' committee.

Chapter 13 (sometimes called a wage earner plan) is an adjustment of debt of individuals who have regular income, both current and future, that repays creditors over time through a Court approved debt management plan.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 made major changes to the Code restricting the availability of discharge for Chapter 7 and substantially reducing debt relief available for Chapter 13. In addition, the Act imposed more stringent eligibility requirements for those individuals considering bankruptcy and requires approved credit counseling before they can file. Under the new Act the position of landlords and other creditors is improved over the previous Code provisions.

A key change affects the procedures landlords must follow when dealing with a tenant who has filed for bankruptcy. The Bankruptcy Code protects the existing tenant from discrimination based solely on the fact that the tenant filed bankruptcy. Landlords cannot legally terminate a tenancy solely because the tenant is a debtor in a bankruptcy proceeding. This is not the same thing as the tenant being protected from discriminatory treatment based on the tenant's financial history. It is simply the tenant's right to deal with financial troubles through bankruptcy that is protected under bankruptcy law.

Why would a landlord want to reject an applicant who has filed for bankruptcy? The primary reason is financial. While recognizing that bankruptcy is a legal right allowing relief from certain debts, a landlord wants a tenant who has a satisfactory history of credit management. Specifically, the landlord wants a tenant who has the ability and willingness to pay rent. A bankruptcy filing indicates the applicant was unable to meet his financial obligations during a certain period. The underlying event necessitating bankruptcy may have compromised the applicant's ability to meet future financial obligations. The landlord may not want to take a chance.

However, many landlords set financial criterion that allows some flexibility in evaluating bankruptcy filings. Bankruptcy filing is a voluntary measure that seeks to remedy a bad situation that is not always an indication of irresponsible money management. Job loss and/or major medical expenses can quickly change the financial picture of any individual. Bankruptcy filing may well be a positive step to regaining financial stability. If the applicant is otherwise qualified according to your standards you may wish to consider the overall picture and assess your risk accordingly.

You might give greater importance to the applicant's credit management history since the bankruptcy filing. If the applicant is nearing the end of the record period, and the bankruptcy has been fully discharged, while still taking the bankruptcy into account, you may focus on the most recent year period of credit history (for instance, the last three or four years). You will take into consideration how long ago the bankruptcy was filed, the applicant's current source and stability of income, and the amount of outstanding debt to help you determine your risk.

You may elect to offer tenancy based on acceptance of conditions such as a co-signer or guarantor, a higher security deposit (as allowable by state statute), or a shorter-term lease. You are still bound by fair housing laws and cannot discriminate by selectively offering different terms to different applicants.

There is another consideration in that, assuming an applicant has adequate income, he should be more credit worthy after a bankruptcy than before. First, discharged old debts will no longer have a claim on future income. Second, bankruptcy cannot be filed again for a number of years.

You can set your qualifying requirements as high as desired regarding financial criteria. In practice, however, you should not set standards so high that you never find anyone meeting those standards. The important issue for landlords is to establish selection criteria that make good business sense and to evaluate every applicant against those standards without discrimination.

Tips to Being a Successful Landlord



The ultimate goal of investing in rental property is to turn a profit. To ensure that you achieve that goal it is essential that you follow several critical guidelines.

First, always make sure that you **check tenant references**. This can be a burdensome step and many landlords overlook it because they feel as though they have good instinct when they meet with the tenant. But not checking references can lead to a number of problems later on. You will uncover a wealth of information about potential problems before you rent to a prospective tenant.

Second, **make sure you have everything in writing**. This is to protect your rights as a landlord as well as the rights of your tenants. Everything from the code of conduct you expect your tenants to abide by while renting your property to the rental application itself must be in writing.

Third, you will find that you have better success with your rental property if you take the time to **ensure that it is both secure and clean**. The grounds of the property should be free of litter and trimmed regularly. Not only will the property be more visually appealing but these actions will also assist you with property liability. You will also want to take additional security measures. Extra security may be able to lower your insurance premiums as well as provide an incentive to quality tenants to rent your property when they know it is secure.

If you decide to hire a property manager, take the time to interview prospective candidates very carefully. **Property managers can be very helpful** if you don't have the time to manage the property yourself. This is especially true if your property is a long distance away from you. The wrong property manager can cause you problems with poor tenant screening and delayed lease up times. This means that you will need to hire a thoroughly responsible and professional individual to handle the job. Always ask for referrals.

Always make sure that you **obtain adequate insurance**. Not only should you have property insurance but you should also have liability insurance. One incident is all it takes to wipe out your investment. Also check with your state to determine if any additional insurance coverage is required.

Regardless of the condition the property was in when you purchased it, there will come a time when repairs are needed. This is part and parcel of owning rental property. If you take too long to make repairs, not only will your property suffer and repairs will ultimately cost more to take care of but you will also likely lose quality tenants as well. By making sure you **handle repairs promptly** you will be able to maintain the life of your property as well as retain good tenants.

Always make sure that you **follow all applicable regulations** in the renting of your investment property. The Fair Housing Administration Act provides precise regulations in order to prevent discrimination. If you violate those regulations you could find yourself facing a lawsuit that is costly in terms of time as well as money. The best course of action is to take the time to do your homework and consult an attorney experienced in real estate matters for guidance regarding the FHA as well as ensuring that you have the proper forms. Good property managers will already be versed in these regulations.

Finally, make sure that you **do not violate the privacy of your tenants**. Check with your state's regulations to find out whether you must provide any type of notice to your tenant before you enter the dwelling.

Following these guidelines will help you to retain good quality tenants and avoid any potential legal problems. After all, happy tenants make for happy landlords!

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When the Last Thing You Want to do is attend Another Seminar...

Times are tough, especially when your real estate business isn't earning the big profits it can in today's market.

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For more information, check out the website: <http://oreiaconvention.com/index.asp>



THANK YOU TO LAST MONTH'S GUEST SPEAKERS:

YOU, our members!!

We hope that you all walked away with some new insights from our last meeting, whether it was the best and easiest way to evict a tenant, or how to find a quality contractor. Remember the greatest benefit to belonging to SCAREIA is our ability to share local information and to help each other be successful. Don't hesitate to contact any of our members at any time – they are our best resource!

2009 S.C.A.R.E.I.A. Board Members

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V. President: Mark Damschroder
419-334-4096

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For further information,
you may contact
any of the
Board Members
at any time

About Our Organization...

SCAREIA was organized in October 2005. Our primary focus is to share information, to help educate and to motivate our members in their successful real estate endeavors.

Anyone interested in Real Estate Investing, whether you are just beginning or a seasoned investor, are welcome to join.

SCAREIA meets the 3rd Monday of every month at 7pm. Meetings are located in the basement of the Fort Stephenson House, 600 W. State St., Fremont, Ohio.

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First American

First American Title Insurance Company
610 W. State Street
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Direct: 419-332-0313 Fax: 419-332-0713

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**SANDUSKY COUNTY AREA
REAL ESTATE
INVESTORS ASSOCIATION
600 W. STATE ST., BOX SCAREIA
FREMONT, OH 43420**

