



City of Buffalo's

LANDLORD TRAINING PROGRAM

KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY

A practical guide for landlords and property managers

A community-oriented property management approach

City of Buffalo, New York

Byron W. Brown, Mayor

Save Our Streets Task Force

Funding for this manual provided by: Department of Justice

Local Law Enforcement Block Grant



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Various parts of this document provide broad descriptions of legal procedure. **However, no part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with federal, state, and local law governing a particular jurisdiction.** If you need legal advice, seek the services of a competent attorney. Also, laws change. Information that is accurate at the time of printing may be rendered obsolete by the passage of new laws or revised judicial interpretations of existing law.

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Campbell DeLong Resources, Inc.
319 SW Washington, Suite 802
Portland, Oregon 97204
Phone: (503) 221-2005
Fax: (503) 221-4541
ltinfo@cdri.com
www.cdri.com

We request that any errors or significant omissions be noted and forwarded to the above so that corrections in future versions may be made.

The National Landlord Training Program manual, upon which this manual is based, was made possible through cooperative agreements Nos. 87-SD-CX-K003, 89-DD-CX-0007, 91-DD-CX-0001, and 94-DD-CX-K104 from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistance Attorney General, Office of Justice Programs coordinates the activities of the follow program offices and bureaus: the Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention and the Office for Victims of Crime. Points of view or opinions contained within are those of the City of Buffalo and Campbell DeLong Resources, Inc. and do not necessarily represent the official position or policies of the US Department of Justice.

The first version of this Buffalo manual was created by Campbell DeLong Resources, Inc. Additional editorial decisions and added text for this edition have been made by the City of Buffalo.

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ACKNOWLEDGMENTS

This manual was created by Campbell DeLong Resources, Inc. and the City of Buffalo. Many individuals and agencies participated in information gathering and draft review for this effort. In particular, we would like to acknowledge the participation of the following:

- Corporation Counsel for the City of Buffalo
- Department of Inspections for the City of Buffalo
- Division of Citizen Services for the City of Buffalo
- Buffalo Police Department
- Belmont Shelter Corporation
- Erie County Social Services
- Erie County Health Department
- United States Attorney's Office
- Housing Opportunities Made Equal
- Braco I
- Charles Leist
- City of Syracuse

CITY OF BUFFALO
OFFICE OF THE MAYOR



BYRON W. BROWN
MAYOR



The City of Buffalo has a rich history, a wonderfully diverse population, and many strong and vital neighborhoods. Buffalo is known as the “City of Good Neighbors” because it is a great place to live, to work and to raise a family. As Mayor, I am dedicated to make Buffalo even stronger in the future.

Few factors impact the enjoyment and stability of neighborhoods more than problems at rental properties. Chronic drug dealing and other problem activities can reduce a neighborhood to a mere shell of the healthy community it once was. In our frustration, we often look only to the police or “the system” for solutions and forget that neighborhoods and landlords have tremendous power over the basic health of a community.

Although owner-occupied homes can be the cause of difficulties, more often it is complaints about rental properties and tenants in those properties that come to City Hall. Granted, both city government and police have a critical responsibility in dealing with these situations, but it is citizens - landlords, tenants, and homeowners - who remain the foundation that makes a community healthy!

The most effective way to deal with problems (whether drug activity or other problems) on rental property is through a coordinated effort with government, police, landlords, and neighborhoods. We are working the help neighbors take on more of the responsibility for preventing crime and problem behavior on their blocks. The police continue to develop better ways to address problems with drug and other problem activity in residential neighborhoods. What you can do is learn how to keep illegal and problem activity off your property and make a commitment to removing or stopping it the moment it occurs.

The intention of this manual is to help you do just that - to help honest, responsible tenants rent from responsible landlords, while preventing those involved in illegal activities from abusing rental housing and the neighborhoods in which they stand.

We acknowledge that most landlords want to take care of their property and be fair, and that most tenants are good people who care about where they live. Responsible property management and ownership begin with the idea that it will benefit all of us. If the information in this manual is used responsibly by all of us - tenants, landlords, and owner-occupants - we will enjoy safer and healthier neighborhoods.

A handwritten signature in black ink that reads "Byron W. Brown". The signature is written in a cursive, flowing style.

MAYOR – CITY OF BUFFALO

POINTS TO CONSIDER

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.

Benefits of Active Management

Active management can prevent much of the rental-based drug crime occurring today. Developing an active management style requires a commitment to establishing a new approach. Landlords and managers interviewed for this program, who have made the switch to more active management, consistently report these rewards:

1. A stable, more satisfied tenant base.
2. Increased demand for rental units - particularly for multi-family units that have a reputation for active management.
3. Lower maintenance and repair costs.
4. Improved property values.
5. Improved personal safety for tenants, landlords, and managers.
6. The peace of mind that comes from spending more time on routine management and less on crisis control.
7. Appreciative neighbors.

PREPARING THE PROPERTY

Make the environment part of the solution.

ADVICE WE WERE GIVEN:

“Drug people don't like to be seen. They can set up anywhere, but the farther they are from the manager's office, or the more hidden the house is from view, the better they like it.” - Police officer.

The Basics

Make sure the aesthetic and physical nature of the property is attractive to honest renters and unattractive to dishonest ones.

Keep the Property Up To Habitability Standards

Maintaining housing standards is important to the public welfare and it protects against neighborhood decay. In addition, a substandard rental unit is more likely to attract drug criminals - it announces to potential criminals that the landlord's standards are low and that inappropriate tenant behavior is likely to be overlooked.

Also, eviction of a knowledgeable problem tenant from a poorly maintained unit can be both time consuming and expensive. For example, New York landlord-tenant laws protect tenants from retaliation if the tenant makes a “good faith complaint” to a government authority that the landlord is in “violation of any health or safety law, regulation, code, or ordinance...”^① In such a situation, if a landlord attempts to evict a problem tenant from a substandard unit, the court may be confronted with having to weigh the behavior of a problem tenant against that of a problem landlord. So in effect, landlords who fail to meet their responsibilities under the law may find that they have compromised their rights under the law as well.

Before renting your property, make sure it meets applicable local maintenance code, the habitability requirements of your local landlord-tenant law, and - if you rent to Section 8 tenants the U.S. Department of Housing and Urban Development (HUD) standards for “decent; safe, and sanitary” housing. While many of the basic elements of these requirements will overlap, they won't entirely, so you will need to check all three sources to make sure you are in compliance. For a general discussion of basic requirements, see the chapter on *Ongoing Management*. For the specific code that impacts your area, review applicable state and local law.

^① RPL § 223-b. (Note that equivalent protection is granted to tenants who take other specified actions including making a good faith attempt to enforce rights accorded to the tenant under a lease or rental agreement.)

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

(pronounced “Sep -Ted”)

The role of Crime Prevention through Environmental Design (CPTED) is used to evaluate property in order to lower the amount of crime and the perception of crime in rental property. While nothing can totally eliminate crime, CPTED practices have been shown to be effective in reducing crime and the perception of crime.

Using the concepts of CPTED, a landlord can reduce the vulnerability and the criticality of any future litigation. The use of CPTED principles can be instrumental in developing a stable resident base; which means, less crime, less damage to property, less vacancy and less turnover at the end of lease periods. In short a higher return on investment.

Property owners are faced with court ordered damages when they fail to protect their residents or guests of their residents. No longer is it enough to have no prior knowledge of a problem to protect yourself in civil litigation. The standard of “Knew or should have known” is being applied liberally and landlords are being held responsible for all types of activity that occurs on their property. By identifying the vulnerabilities of your property and making a “good faith” effort to correct those discrepancies the landlord can protect themselves from “punitive damages” which are often not covered by insurance policies. Using the principles of CPTED, landlords can identify potential problems and develop a good faith file to avoid or lessen punitive damage awards.

CPTED divides property into different areas and defines who has control over that area. **Public areas** are those where anyone is welcome to be. An example would be a sidewalk, alleyway or street. **Semi-private** areas are those areas that although are open to the public are set apart from the public areas. These consist of porches, driveways and with rental properties storage areas. Finally there are **private areas**. Private areas are those areas that are set aside as belonging to one individual. Defining these areas and the separation of these areas gives not only the outsider, but also the tenant, a definition of what is their space and what is someone else's space. Problems arise when space does not belong to anyone. Unidentified ownership causes areas to be neglected and unwanted persons soon take over these spaces.

Identifying what is public, semi-private and private is easy when you own a single family home. The city owns the sidewalk and anyone can use it. The driveway and walkway are “mine” and anyone with legitimate business can use these areas. The defiant user however, should expect to be challenged if it is not obvious what their intentions are, such as the letter carrier. The grass and all of the rear yard are totally “mine” and these areas are off limits to everyone without permission. Anyone attempting to enter these areas will be challenged and had better have a good reason for attempting to go there. The problem with rental property and multi -housing properties is that these areas are not marked and are open to any of the tenants and their guests. It is sometimes difficult to identify who has responsibility over what areas of the property. Without this identification the tendency is to let “someone else take care of the problems.”

Areas can be marked by physical barriers to show ownership. Fences are the most common way to physically mark space as being private, or if the gate can be opened, semi-private. These fences however, are expensive and do not always have the Wanted effect of identifying who controls the area. Symbolic barriers are less intrusive and serve the same purpose; to provide the same identification effect.

Symbolic barriers do not actually prevent physical movement but they do leave no doubt as to whether a person has left public property and entered into private or semi-private property. Low decorative fences, flowerbeds, and changes in sidewalk patterns or materials and signs are examples of symbolic barriers.

Identification of areas is not always enough to get tenants to take control of the property, a tenant must be allowed, and expected, to care for the property.

Territoriality involves an individual's perception of, and relationship to, an area. A strong sense of territoriality causes an individual to take control and defend areas that they consider their private and semi-private space. Tenants who take control and show a strong sense of territoriality toward a property will protect that property, will keep the property clean and in a better state of repair than a tenant who looks on a property as "just someplace that I live." Small problems will be reported quicker, before they become large expensive problems, and some small repairs will be made by the tenant without even notifying the landlord. It is up to the landlord to give the tenant permission to control the area when the tenant first moves into the property. Landlords who instill in their tenants that this is "your home" and I will help you keep up "your home" will have less problems than the landlord who tells the new tenant not to "damage my property" will.

Natural Surveillance, is the ability to see and to be seen. Tenants who have a clear view of the areas that they are responsible for will find it easier to assume territoriality over the property. Keeping the property visible by keeping trees and bushes trimmed properly will enhance the ability to see the property. Trees should be trimmed high enough (6') so that no one can hide in the lower branches to watch the house. Bushes should be kept low (3') so as not to provide hiding places. This is especially true for bushes that are near windows and doors. Lighting should provide illumination at night to commonly used areas. Motion sensor lighting should be used in areas that have very little traffic after dark such as driveways and backyards. The amount of lighting in common areas should be constant so as not to provide shadows where deviants may hide but also provide a psychological area of fear. We all know how fast monsters are! You know they are under the bed but by the time you turn on the light they have gone. Deep shadows provide the same type area as under the bed.

Access Control keeps people out of private areas. One of the goals of CPTED is to make a property safe without giving it a fortress look. Door and window locks can be deterrents to burglars and do not give the same impression that bars on windows do. The goal of CPTED is not to prevent all burglaries, but to make the entry into the property more difficult and time consuming. The difficulty of entering and increasing the time required to enter give the offender the impression that they may be seen and apprehended. Burglars do not want to be seen, heard or confronted. Studies have shown that burglars want to get inside quickly, take what they can find and exit the area quickly. By increasing the difficulty and the time involved to commit a burglary the burglar may move to another property or decide not to commit a burglary at all. Most properties can be secured by using common sense measures and the total cost should be around \$15.00 or less per unit.

Activity Support is a concept that directs normal users of an area to places that will support natural surveillance. The more people use a space that allows natural surveillance and the feelings of ownership (territoriality) to show the less likely it will be that a crime will be committed in that area. By moving lawn furniture to an area where the driveway and the backyard can be seen the less likely it will be that someone will try and break into the rear of the house, even if no one is using the area at the time. Sitting on a front porch will have the same effect for the front and sides of the house. Knowing and speaking to the neighbors will also add to their desire to "protect their friends, and their friend's property." Knowing and speaking to neighbors does not occur in neighborhoods where people stay inside behind closed curtains.

As a landlord there are numerous things that you can do to not only protect your property and your tenant's property but also to reduce your liability from civil litigation when problems do occur. By applying the fundamentals of Crime Prevention through Environmental Design a landlord can protect their investment while providing a safer environment and a better quality of life for multi-housing residents. All of this should lead to a more stable resident base; less damage to property, less vacancy and less turnover at the end of the lease period. In short, Crime Prevention through Environmental Design when applied properly can increase the profitability of your rental property.

For more information contact:

Charles Leist

1153 Elmwood Ave

Buffalo, New York 14222

716-886-5262

Leist@adelphia.net

Keep the Property Visible, Control Access

The following are some recommended “first steps” for making “OPTED” changes to rental property. Taken alone, few of the following elements will have a significant impact. Taken together, they will stop some operators from wanting to move into the property, and will make it easier for neighbors (or surveillance teams) to observe and document illegal activity should it start up. Initial steps include:

- **Use lighting to its best advantage.** Install photosensitive lighting over all entrances. Buyers, sellers, and manufacturers of illegal drugs don't like to be seen. 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 - made to go on for a few minutes when a person approaches or to go on at sunset and stay on till dawn. Backyards and other areas should also be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into windows - either yours or the next-door neighbor's. Be sure applicants understand that the lighting is part of the cost of renting - that it must be left on.

In apartment complexes, make sure that all walkways, activity areas, and parking lots are well lit, especially along the property perimeter. Covered parking areas should have lighting installed under the canopy. All fixtures should be of vandal-resistant design. Landscape planning should take into account how future plant growth will impact lighting patterns.

- **Make sure fences can be seen through.** If you install fencing, chain link or wrought iron types are best, because they limit access without also offering a place to hide. Wood fencing can also be used effectively, provided wide gaps are left between the boards. In some cases you might also consider a lower fence height - for example, four feet high instead of six. Consider replacing, or modifying, wood fences that have minimal gaps between boards. Keep hedges trimmed low.
- **Keep bushes around windows and doorways well-trimmed.** Bushes should not impair the view of entrances and windows. Tree branches should also be trimmed up from the ground so as to discourage the possibility of a person hiding.
- **In chronic problem locations, use plants that assist in deterring activity.** While the overuse of hostile foliage such as “pricker” bushes can detract from the livability of an area, selective use of such plants can assist in meeting crime prevention goals. For example, near windows and other possible

areas of entry where it has proved difficult to stop problem activity, such plants can make it harder for criminal activity to take place.

- **Post the address clearly.** 341 article 2 section 109-1 and 109-2 of the City Building Code requires that each building in the city have its street number posted in a conspicuous space and clearly legible from the middle of adjacent roads. Only the drug operator will benefit if the address is difficult to read from the street. When address 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 any adjacent parking area, both day and night. Also, make sure that rental units are numbered in a logical and consistent manner to make it possible for officers to locate the unit as rapidly as possible if called to it.

- **Control traffic flow and access.** In larger complexes, control access points to deter pedestrian passersby from entering the property. Then do the same for automobile traffic. People involved in drug activity prefer “drive through” parking lots - those with multiple exits. Consider blocking some parking exits, adding fencing, and rerouting traffic so all automobile *and* foot traffic, coming and going, must pass the same point - within view of the manager's office.

If more control is needed, issue parking permits to tenants. Post signs forbidding cars without permits to use the lot. Towing companies that specialize in this type of business can provide you with signs, usually for a nominal setup fee. Depending on the availability of street parking for guests, either deny guest parking altogether or limit it to specific spaces. Be consistent in having violators towed away. Remember, it is *your* parking lot, not a public one.

- **Before building, design for a strong sense of community.** Each of the other steps described in this section should be integrated into building plans to help design a safer rental unit from the start. In addition, for apartment complexes in particular, building plans should include design elements that will help foster a sense of community. Recreational areas and other community facilities can help encourage neighbors to become acquainted. Building layouts should nurture more personalized, neighborhood environments over those that may reinforce feelings of isolation and separation from the community.

Keep It Looking Cared For

Housing that looks cared for will not only attract good tenants - it will also *discourage* many who are involved in illegal activity. Changes that help communicate “safe, quiet, and clean” may further protect the premises from those who want a place where chronic problem, activity might be tolerated. While these approaches are useful in any type of rental, because of the day-to-day control that apartment owners have over the common areas of their property, the following approaches can make a particularly strong difference in multi-family complexes:

- **Remove graffiti fast.** Graffiti may be the random work of a juvenile delinquent, or the work of a gang member marking territory. Regardless, it serves as an invitation for more problems and it can demoralize and intimidate a neighborhood. If you believe graffiti may be gang related, call the police. Then remove it or paint it over. Remove it again if it reappears - do not let it become an eyesore.

- **Repair vandalism.** As with graffiti, an important part of discouraging vandalism is to repair the problem fast. If the vandalism appears to be directed against you or your tenants, the police should be advised immediately and additional approaches discussed to addressing the situation.
- **Keep the exterior looking clean and fresh.** Fresh paint, well-tended garden strips, and litter-free grounds help communicate that the property is maintained by someone who cares about what happens there.

Keep it Conformed to Code

Buffalo's housing code, is a part of the City of Buffalo ordinance. It provides uniform standards governing the condition, occupancy, and maintenance of all premises in the City, as well as the responsibilities of every person concerned with real property. All landlords of property located in the City of Buffalo must maintain their premises in accordance with the Housing and Property Code.

The Buffalo Housing and Property Code supplements all other federal and state codes and applies to all residential, commercial and mixed-use premises (commercial and residential) within the City. When a provision of the Housing and Property Code is found to be inconsistent with any provision of another code, the provision with the highest standard is enforced.

Copies of specific ordinances are available at the Department of Permit and Inspections Services office, located at 65 Niagara Square, Room 304 City Hall, Buffalo, New York 14202. It is recommended that property owners be familiar with these requirements.

Generally, The Housing and Property Code requires all owners to keep buildings and open areas hazard free; keep their property free of insects, vermin, and rodents; and maintain adequate facilities for the collection, storage, handling, and disposal of garbage and rubbish.

Comply with maintenance and repair standards. Among other obligations, landlords are required to:

- **Maintain electrical, plumbing, sanitary, heating and ventilating systems in good and safe working order.**
- **Keep in good working order appliances they install, such as refrigerators and stoves.**
- **Exercise reasonable care and maintain “common areas”** (areas such as hallways, lobbies and shared courtyards, walkways and parking lots). This includes as obligation to inspect common areas and to keep a building's public areas in good repair. This duty also includes cleaning and shoveling common areas.
- **Keep every part of a dwelling clean and free of vermin, dirt, garbage and other offensive material.**
- **Make sure that buildings have smoke detectors meeting Code guidelines.** The Housing and Property Code contains other more specific requirements for different types of buildings, based on the number and type of apartments.
- **Provide suitable door locks and provide for reasonable safety.** Apartments in Buffalo must have suitable locking devices. Double Key “dead bolts” are not allowed.
- **Keep it warm.** In New York State residential buildings shall maintain a temperature of not less than sixty-eight degrees Fahrenheit between September 15th and May 31st when the outside temperature falls below fifty-five degrees Fahrenheit.
- **Guardrails.** Walking surfaces to which persons have access and which are elevated more than 18 inches above adjacent surfaces, shall be protected by parapet walls or guardrails at least 3 feet in height.
- **Handrails.** Stairs or steps having three risers or more shall have a handrail on the open side.

Note that while the landlord bears the ultimate responsibility for the property, in general, the landlord's authority extends to holding tenants responsible for tenant -caused problems. For example, a tenant may be obligated to repair damage caused by willful or negligent conduct. Failures to make such ordinary repairs as are necessary to prevent decay of premises. A tenant does not have to make repairs caused by ordinary wear and tear.

Code Enforcement in Buffalo

The Department of Permit and Inspection Services is the government body that is charged with enforcing the various building codes within the City of Buffalo. The following is a description of the various certificates that property owners may be required to obtain:

Certificates and Designations

Certificate of Occupancy: There are **two** types:

Certificate of Occupancy (CO). A CO is issued when all work is complete. This certificate, when issued for buildings require the approval of various agencies.

Certificate of Compliance. This document certifies that an inspection was made of a multiple dwelling or a building of mixed occupancy was found to be in compliance with the Housing and Property Codes and other applicable laws and regulations.

Multiple dwellings are defined as buildings containing three (3) or more apartments and five or more rooms for Lodging Houses.

Mixed occupancy is defined as a building having one or more apartments with a commercial occupancy in the same structure.

Certificates of occupancy and compliance. No building hereafter structurally altered or erected shall be used or changed in use, wholly or in part, nor premises occupied or used, wholly or in part, until a certificate of occupancy and compliance shall have been issued by the Commissioner of the Department of Permits and Inspection Services.

For further information about certificates or other aspects of the Housing and Property Codes, please contact the Department of Permits and Inspection Services, 65 Niagara Square, Room 304 City Hall, Buffalo, New York 14202.

Inspections

There are two primary situations in which a landlord or property owner may be contacted by the Department of Permits and Inspection Services. Both of which would require an inspection of your property. The first situation is when a complaint is made alleging violation of the Housing and Property Codes. The second is upon issuance of a permit for Electrical, Heating, Plumbing and Building repairs or renovations.

A Notice of Violation also indicates the time allotted for beginning or completing repairs (correction date). Open area violations can also be issued for trash, garbage, weeds, junk vehicles, and the like. The

Commissioner of the Department of Permits and Inspection Services has the discretion to declare certain situations emergencies requiring immediate action.

When contracted, the owner has the duty to respond and complete repairs in the allotted time. If there are no violations discovered at the time of the inspection, the case will be closed or an appropriate certificate may be issued. If violations of Housing and Property Code exist, then further action, (such as repairs or additional inspections) will be necessary.

Failure to make a timely abatement of the violations will result in legal action against a landlord or property owner or a fine may be assessed if the work is not completed by the third inspection.

Permits

A permit is a formal document granting permission to commence some action. Permits are issued to fulfill legal mandates; to protect the health and safety of the general public; and to insure compliance with construction drawings, life safety codes, and generally accepted standards. The City's permit office is located on the third floor of City Hall in Room 301, Buffalo, New York.

When a permit is required. The City requires that no person or organization shall begin to excavate, erect, construct, enlarge, alter, re-model, repair, or demolish any building or structure or install any mechanical equipment or systems, such as plumbing, heating, electrical, air conditioning, ventilation, elevator, fire suppression, or detection systems, without first having applied for and obtaining a permit. Also, special structures such as swimming pools, signs, driveways, decks, parking lots, wood stoves, and fireplaces require permits. The cost of a permit is determined by the scope of the work to be performed. Interior and exterior painting or decorating, landscaping or work that does not exceed seven hundred and fifty dollars excluding structural changes does not require a permit. When in doubt about the need for a permit, call 851-4924.

If you begin work without first obtaining a permit, the law provides that a “stop work order” be issued and that, when the permit is finally obtained, a doubled permit fee be paid.

Inspection for permit work. Construction inspections are required during the various phases of construction. The permit must be placed in a visible location on the construction site and be accessible to the inspector.

Chronic Code Violations: “Slum Landlord” Signs

In the event of a history of repeated housing or sanitation violations which have not been responded to by a property owner, the City of Buffalo, in addition to taking any and all other appropriate legal action, may erect a sign on the City's right of way in front of the property. This initiative is used as a tool in dealing with individuals who choose not to correct serious problems at their property and who have failed to respond effectively to other notification methods.

Under the Code Enforcement Initiative for Chronic Code Violations, when a problem property has been identified - where open violations have been repeatedly cited and not corrected - the City may send a letter to the owner of the property documenting violations and indicating that public identification measures will be taken if the property is not brought up to code. After sufficient time for the property owner to respond,

if compliance is still not received, a sign is erected in front of the property containing the name, home address, and telephone number of the landlord.

The City designed the “Slum Landlord” sign procedure as a tool to use when code violations at the property turn into chronic, ongoing problems. It is used only when there is a history of repeated housing or sanitation violations. Therefore, having signs posted on your property can be easily avoided by complying with code compliance requests appropriately when received.

APPLICANT SCREENING

“An ounce of prevention...”

COMPLAINTS WE HAVE HEARD ②:

“People say you should screen your tenants. You can't. The applicants lie about their previous landlord - they give you a fake address and the phone number of their brother. You call up the brother, he plays along and you never discover they were evicted at the last two houses they rented.”

“I thought I was calling the previous landlord and it was the applicant's parents - and the parents played along. It ended up in eviction, some months later.”

“We can't screen tenants worth anything. If you don't do it right, you could be sued for discrimination. So you check to see if they have income and that's it.”

ADVICE WE WERE GIVEN:

“I went to a meeting for landlords about these issues. I was surprised - most people in the room couldn't understand why they were getting bad tenants. They just couldn't see that there are ways to keep that from happening.”

“Most landlords, even some ‘pros,’ are still practicing the old way of doing things - they take a social security number, make one phone call, and rent to the person. Then they wonder where the problems are coming from. Well, the old methods don't work anymore.”

“I've just quit relying on character judgment. For managing rental property, it doesn't work. I have a set application process, written down. Applicants must meet all the criteria. If they do, I rent to them. If they don't, I don't. It is simple, legal, and fair. At this point, every one of my properties has good people in it.”

“Many landlords are frightened of the fair housing laws. Some believe they can't screen at all. If landlords establish a fair screening procedure and follow it equally for each applicant, they will have a very strong case against discrimination lawsuits.”

“When I call previous landlords to verify an applicant's record, most are surprised to get a screening call from another landlord - apparently it happens too rarely.”

The Basics

Attract honest tenants, while discouraging dishonest applicants from applying. Have a backup system to help discover if a dishonest person has applied. Use a process that is legal, simple, and fair.

② Unless noted, quotes are from landlords or professional property managers. Note that some “complaints” contain inaccurate or incomplete assumptions about legal rights or procedure.

Overview

There are two ways to screen out potentially troublesome tenants:

1. **Encourage self-screening.** Set up situations that discourage those who are dishonest from applying. Every drug dealer who chooses not to apply is one more you don't have to investigate.
2. **Uncover past behavior.** More often than not, a thorough background check will reveal poor references, an inconsistent credit rating, or falsehoods recorded on the application.

The goal is to weed out applicants planning illegal behavior as early as possible. It will save you time, money, and all the entanglements of getting into a legal contract with people who may damage your property and harm the neighborhood.

For the following steps to be most effective, it is just as important that applicants actually read and understand the rules and the process as it is that you implement the process in the first place. Implementing elements of the following suggestions may help protect yourself legally. Making sure that an applicant knows your commitment to the process may help prevent problems before they have a chance to grow.

Also, a word of caution: If you are looking for a one-step solution, you won't find it here. There are no “magic” phone numbers you can call to get perfect information about applicants and their backgrounds. Effective property management requires adopting an approach and attitude that will discourage illegal behavior, while encouraging the stabilization, and then growth, of your honest tenant base. What makes the following process so effective is not any one step, but the cumulative value of the approach.

Applicant Screening, Civil Rights, and Fair Housing

Landlords are sometimes confused over how much right they have to turn down applicants. A few even believe that civil rights laws require them to accept virtually any applicant. This is not the case. What follows is a brief explanation of fair housing laws and how they apply not just to screening but to the entire rental process.

The purpose of these laws is to prevent discrimination on the basis of person's membership in a protected class. They do not require you to show a preference for a member of a protected class, nor do they prevent you from setting fair screening guidelines and applying them equally to all applicants. Similarly, they do not prevent you from establishing rules; they just state that the rules must be the same for every tenant and should be enforced consistently. Adherence to these laws will not only help you avoid the appearance of discrimination; it will also help establish and maintain good tenant relations.

From advertising to screening, fair housing laws are designed to ensure that all qualified applicants are provided an equal opportunity to rent. Once you have selected your tenants, these same laws govern how they are treated. Federal fair housing guidelines prohibit discrimination based on the following “protected classes:” race, color, religion, sex, handicap, national origin, and familial status (the presence of children). The State of New York adds age (you may ask if someone is over 18) and marital status (whether someone is married single, widowed, or divorced). Locally, the City of Buffalo adds sexual orientation, and the Towns of Hamburg and West Seneca add lawful source of income.

Advertising and Screening Fairly

When deciding what to put in your advertisement, make sure it contains enough information to encourage “self-screening.” Include the size, price and location of the unit, as well as any restrictions such as “no pets” or “no smoking.” It is illegal to imply a preference for or an intent to discriminate against a particular class of people by, for example, using phrases such as “No children” “Italian West Side” or “Ideal for retired couple.”

Most landlords know that it's unlawful to deny housing on the basis of someone's membership in a protected class. It is also illegal to state that the apartment is not available when in fact it is, or to “steer” different groups of people to different housing opportunities. It is not your responsibility or right to decide where someone can or cannot live, even if you believe you are acting in an applicant's best interest. For example, you should not tell certain people that they would be happier in one part of town than another, separate certain groups of people by building or floor, or otherwise attempt to segregate tenants, for example families with children or people who have a disability.

In a face to face interview, or on an application, use the same set of questions for each person who applies and avoid questions that imply an intent to discriminate. Fair housing laws prohibit making statements, asking questions, or recording information about a person's age, race, sex, etc.

The key lies in making sure your process is fair - that it neither directly nor indirectly discriminates. To comply, you should design a fair process and apply it consistently and equally to all applicants. The following examples are consistent with federal fair housing guidelines:

- You may have a rule that requires all applicants to show a photo I.D., and you could turn down applicants who cannot produce a photo I.D. ③ The practice becomes illegal when you apply the rule inconsistently - requiring I.D. from people of one class but not from those of another.
- You could give a document to all applicants that outlines rules of the unit and warns against selling drugs on the property. The practice becomes illegal when you hand it to applicants of one class, but not of another. Should you develop such a document, also make sure the wording used does not discourage members of a protected class from applying.
- You could refuse to rent to anyone who lies to you during the application process or provides false information on the application. This is both legal and highly appropriate.

Fair Treatment for Tenants

A thorough discussion of how to maintain good tenant relations is found in the section called “Ongoing management,” but a few things fall under the category of fair housing law and should be mentioned here.

Any rules you set should be clear and consistently applied. You may not set different terms and conditions for different types of tenants - for example charging certain people an extra security deposit or additional rent, requiring inspections more often for certain groups of people or responding to requests for repairs differently depending on who made them.

③ Because of age discrimination concerns in the state of New York, some New York landlords will elect to look at photo I.D. only after the applicant has been “provisionally” accepted - that is, the applicant is informed that, so long as information on the applicant's Photo I.D. is consistent with other information provided by the applicant or discovered by the landlord through screening, the applicant will be accepted. See additional discussion about requesting photo I.D. on page 22.

It is always important to respect a tenant's privacy, as violation of a tenant's privacy can sometimes lead to the appearance of sexual harassment, which is a serious violation of federal fair housing law. Evictions will also be discussed later in the training. Keep in mind that it is considered denial of housing under fair housing laws to evict a tenant because they are “too old,” disabled, don't speak English well, or any other reason having to do with their membership in a protected class.

Tenants with disabilities

Some landlords refuse to rent to disabled tenants because they fear they will incur additional costs for insurance or for adapting the apartment to meet someone's needs. Others may feel that a disabled tenant may jeopardize the safety of other tenants. Not only are these beliefs unfounded, to act on them is against the law.

The law defines a disability as a condition that severely impairs the ability to perform one or more life functions. This protected class includes people with mobility impairments, developmental disabilities, mental illness, and persons with HIV or AIDS. It also covers former users of illegal drugs.

The same rules apply to applicants and tenants with disabilities as to those who may appear to be without disabilities. You may not refuse to rent to someone solely because they are disabled. You may not inquire about the nature or severity of a disability, nor may you limit where a person may live because of a disability. If you have handicap accessible units available, you should state this fact to every applicant, not just those you feel might benefit from them.

There are two commonly misunderstood protections for people with disabilities. The first is the right of a tenant with a disability to make reasonable modifications to their unit serviceable for a person with a disability. You may not refuse to allow these modifications, as long as they would not cause you any undue hardship. The cost of the modifications is borne solely by the tenant, and you may inspect the plans before any work is done to make sure that the modification is done in a workmanlike way. Generally, you may also ask that tenants restore the apartment to its original state when they move.

The second protection is called a reasonable accommodation. This is a change in the rules, policies or practices of a dwelling to accommodate an individual with a disability. A reasonable accommodation must be requested by the tenant. You may ask that a tenant supply documentation from a medical professional showing that the requested accommodation is needed.

We have said earlier that you have the right to refuse pets, certain kinds of pets, or to charge a pet deposit. However, by law, a service animal (e.g. a seeing-eye dog) is not considered to be a pet. Therefore, even if you have a “no pets” policy in place, if you have a qualified applicant who requires a service animal, you may not refuse to rent to that person.

Remember, there is nothing illegal about setting fair criteria and holding all applicants to the same standards. By the consistent use of such guidelines, you can retain full and appropriate control over who lives in your rental units and who does not.

Fair housing protections for landlords

Fair housing law governs all housing professional. If you are looking to buy rental property, no real estate professional should attempt to interfere with your right to purchase property based on your membership in a certain class. Nor should they attempt to steer you away from purchasing property in certain neighborhoods.

It is illegal for lending or insurance agencies to discriminate against you by offering you different loan rates or more expensive policies due to your membership in a protected class, or due to the perceived racial composition of the neighborhood in which your property is located.

Landlords, under pressure from area businesses, block clubs, or owners of neighboring property, or simply because of an “unwritten law” have sometimes felt compelled to discriminate against certain groups of people. In extreme cases, landlords have received overt threats to themselves, their property and /or other tenants. Fair housing laws make it illegal for anyone to interfere with your right not to discriminate. If you have received a threat, be sure to report it immediately both to an appropriate law enforcement agency and to a fair housing organization, which can give you support and advice.

It's important to remember that these laws are designed to remove the discrimination that weakens our communities. When you comply with fair housing laws and stand up for your own rights, you are setting an example for others to follow. Even if it is difficult, by complying with the spirit as well as the letter of the law, we will build a stronger, more equitable society.

Written Tenant Criteria: What to Post

Many of the attorneys and legislative authorities interviewed for this program recommend developing written rental criteria and posting a copy of those criteria in your rental office. If you do not have a rental office that all applicants visit, they suggest attaching a copy of the criteria to every application you give out.

If you are, going to use written criteria, remember to have applicants read the document. Posting information alone is of limited prevention value unless applicants know it is there.

The following is intended as a “generic” example of information a manager might post and direct each applicant to read. The intent is to encourage every honest tenant to apply, while providing dishonest applicants with an early incentive to seek housing elsewhere. Every drug dealer who doesn't apply is one more you don't have to deal with.

By itself, this information will scare off only a few people involved in illegal activity. Most have heard tough talk before. Many expect landlords to be too interested in collecting rent to care about applicant screening. It is important to follow through in word and action - continually reinforce the point that you enjoy helping honest tenants find good housing by carefully screening all applicants, and *then actually screen them*.

While we have attempted to make sure the following section adheres to the goals of national fair housing guidelines, there may be criteria listed that do not meet the requirements of some state or local civil rights laws. Further, complying with federal and local civil rights laws involves much more than the language used in the applicant screening process. If you are not familiar with your fair housing responsibilities, seek information from a local rental housing association or from an attorney who specializes in the subject.

Also, the following is only an example intended to show various types of rules that might be set. You should adjust the criteria as appropriate for your own needs. Whatever criteria you set, have them reviewed by an attorney familiar with current landlord -tenant issues before you use them.

Introduction. Here it is important to “set the tone” for your applicants - make sure that good applicants want to apply and that bad applicants may begin to think twice. Here's one approach:

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other renters in this area [apartment complex] are being screened with equal care, and as a result, there may be a reduced risk of illegal activity occurring in the area.

Please review our list of criteria. If you feel you meet the criteria, please apply.

Please note that we provide equal housing opportunity: we do not discriminate on the basis of race, color, religion, sex, handicap, national origin, familial status, age, marital status, or sexual orientation.

Screening Criteria

- **A complete application.** One for each adult tenant (18 years of age or older). If a line isn't filled in, or the omission explained satisfactorily, we will return it to you.

This criterion helps to make sure that every application has enough information for you to make an informed decision. One of the simpler methods for hiding one's financial history is to “forget” to fill in one's social security number on the application form. Without a name and social security number credit checks cannot be run. ④ To the person contemplating illegal activity, this requirement will communicate a very basic message - that you will actually screen your applicants. That message alone will turn away some.

This rule also allows you to receive an application from each adult who intends to be a tenant and not just the one with the good rental history. People involved in illegal activity may have friends and roommates who still have clean credit or a good rental history. The obvious approach for such people is to have the person with the good rental history apply and then follow that person into the unit. You have a right to screen every adult who intends to be a tenant, ⑤ so require an application and verify the information for each.

④ Date of birth is also very valuable to have to ensure accurate identification of the applicant and prevent uses of some types of fraudulent identification. See discussion of issues relating to requesting date of birth on page 26 for more on this topic.

⑤ A “tenant,” under New York law, includes any person who is “a party to the lease or rental agreement.” Note, however, that there are at least two types of adults who could live in your rental unit who would not be “tenants:” immediate family members of a tenant who are 18 or older and do not wish to sign the rental agreement, and “occupants,” essentially an adult guest permitted to live in the unit with a tenant. For more on this topic, see discussion of New York's “roommate” law beginning on page 46.

- **Two pieces of I.D. must be shown prior to qualifying for tenancy.** We require a photo I.D. (a driver's license or other government -issued photo identification card) and a second piece of I.D. as well.

This is a simple and effective rule. The second piece of identification does not have to be very “official” - generally a credit card, student ID card, or many other types of cards will do. The issue is that a person who carries false identification may not have two pieces of false I.D. with the same name on them

While the rule may be simple, some care must be taken when setting it to ensure that it not become too restrictive, and thus be found to be in violation of New York State Executive Law 296.5, which states, in part, that it is considered illegal discrimination for a landlord to “make any record or inquiry” in connection with an applicant “which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sex, age, disability, marital status, or familial status, or any intent” to so discriminate. Because of age discrimination concerns in the state of New York, some New York landlords will elect to look at photo I.D. only after the applicant has been “provisionally” accepted - that is, the applicant is informed that, so long as information on the applicant's photo I.D. is consistent with other information provided by the applicant and with information discovered by the landlord through screening, that the applicant will be accepted. You may also wish to state expressly that I.D. is checked to verify identification only.

While the, least controversial approach would be to avoid asking for any identification, it makes very little sense to get into a long-term financial relationship with an individual whose identity has not been verified.

As with all screening criteria you set, verify your policy on this issue with your landlord -tenant attorney before implementing it. For more on the issue of age discrimination and date of birth inquiries, see page 26.

- **Rental history verifiable from unbiased sources.** If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require: a qualified co-signer on your rental agreement (qualified co-signers must meet all applicant screening criteria) or an additional security deposit of X amount.

It is your responsibility to provide us with the information necessary to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history.

If you owned - rather than rented - your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.

Variations of this rule have been used by many landlords to address the issue of renting to those who do not have a rental history or those who say “I last rented from my mother (or father, aunt, or uncle).” This makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior - while loyal relatives may *say* a relation is reliable, they might think twice about co-signing if they know that isn't true.

If requiring a co-signer seems unwieldy for your type of rentals, you may want to offer a different option: require additional pre-paid rent or security deposit from people who don't have a verifiable rental history.

- **Sufficient income/resources.** If the combination of your monthly personal debt, utility costs, and rent payments will exceed X% of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement (or an

additional deposit of X amount). If the combination exceeds X+Y% of your monthly income, your application will be denied.

We must be able to verify independently the amount and stability of your income. (For example: through pay stubs, employer/source contact, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.) For Section 8 applicants, the amount of assistance will be considered part of your monthly income for purposes of figuring the proportion.

You can, and should, verify self-employment. Drug dealers may describe themselves as self-employed on the assumption that you will have to take their word as verification. Some will be unprepared to supply tax returns, a copy of a business license, or other verification.

It may also be appropriate to remove income requirements for Section 8 applicants since your local Public Housing Agency (PHA) will have already determined the amount of subsidy based on ability to pay. Note also that some landlords include a condition for those applicants who do not have a regular monthly income, but do have substantial savings on which to draw. Landlords who set such guidelines often define a minimum cash net worth (described as a multiple of the monthly rent) for people in this category.

- **False information is grounds for denial.** You will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.

If your applicants are not honest with you, you may turn them down. It's that simple.

- **Criminal convictions for certain types of crimes will result in denial of your application.** You will be denied rental if, in the last X years, you have had a conviction for any type of crime that would be considered a serious threat to real property or to other residents' peaceful enjoyment of the premises, including the manufacture or distribution of controlled substances.

This criterion is more controversial than it may seem, because even people who have been convicted of a crime need a place to live. In some states people who have been convicted of a crime - and served their time - are granted limited protected class status. While you may set this type of rule in the State of New York, don't use this requirement as a crutch - many drug dealers haven't yet been convicted of a crime. In addition, few people who are planning to use a rental for illegal activity, whether or not they have a criminal record, will have a verifiable, clean rental history. If you are performing the other recommended screening steps conscientiously, this criterion will often be unnecessary.

- **Certain court judgments against you may result in denial of your application.** If, in the last X years, you have been through a court ordered eviction, or had any judgment against you for financial delinquency, your application will be denied. This restriction may be waived if there is no more than one instance, the circumstances can be justified, and you provide a qualified co-signer on your rental agreement.

Although, in most cases, you may turn down applicants who have been through a recent court-ordered eviction, we recommend maintaining flexibility for some instances. After all, some evictions are not deserved. It also seems inherently more fair to give people who have made a single mistake the chance to improve.

- **Poor credit record (overdue accounts) may result in denial of your application.** Occasional credit records showing payments within ___ to ___ days past due will be acceptable, provided you can justify the circumstances. Records showing payments past ___ days are not acceptable.

If you are renting property, you are effectively making a loan of the use of your property to your tenant. Banks don't loan money to people with poor credit. You don't have to loan the use of your property either.

You may also want to have exceptions for specific types of bills. For example, you might wish to allow exceptions if the only unpaid bills are for medical expenses. However, regardless of what other exceptions you define, remember that it is a very poor idea to accept tenants who have a history of not paying previous landlords - if they didn't pay the last landlord, they may not pay you either.

- **Poor references from previous landlords may result in denial of your application.** You will be turned down if previous landlords report significant complaint levels of noncompliance activity such as: repeated disturbance of the neighbors' peace; reports of prostitution, drug dealing, or drug manufacturing; damage to the property beyond normal wear; reports of violence or threats to landlords or neighbors; failure to give proper notice when vacating the property.

Also, you will be turned down if a previous landlord would be disinclined to rent to you again for any reason pertaining to lease violating behavior of yourself, your pets, or others allowed on the property during your tenancy.

One of the very best indicators of an applicant's future behavior as a tenant is that applicant's past behavior as a tenant. You have a right to know if the applicant has been a good tenant and to screen based on that information.

- **There is a \$X earnest deposit, conditionally refundable.** If you are accepted, the deposit will be applied to your security deposit. If you withdraw your application after we have incurred screening expenses, we will not refund your deposit. In all other cases, the deposit will be refunded.

The reason for charging a small "earnest money deposit" is to help ensure that every applicant who does apply is committed to renting the unit. That way the landlord doesn't waste time and money screening those who are not planning to rent. Also, this requirement may discourage some people involved in illegal activity from applying. An alternate way of approaching this issue is to charge a small applicant screening fee to cover the cost of running a credit check - either approach can help raise the commitment level of the applicant and reduce the likelihood that the landlord will spend time screening applicants who then reject the unit. See the discussion on page 28 for more on this topic.

- **We will accept the first qualified applicant.**

In the interests of ensuring that you meet the requirements of fair housing law, this is the best policy to set. Take applications in order, noting the date and time on each one. Start with the first application. If that applicant meets your requirements, go no further - offer the unit to the first applicant. This is the most fair policy you can set, and it helps make sure that you do not introduce inappropriate reasons for discriminating when choosing between two different, qualified applicants.

Rental Agreement

Some landlords post a copy of the rental agreement next to their screening requirements. Others offer a copy to all who wish to review it. The key is to make sure that each applicant is aware of the importance you place on the rental agreement. In addition, you may want to set a procedure to ensure that every applicant is aware of key elements of the agreement that limit a tenant's ability to allow others to move onto the property without the landlord's permission. One approach:

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental unit or complex. A complete copy of our rental agreement is available for anyone who would like to review it. In particular, in addition to other important requirements, please note that your rental agreement will:

- Require that you prevent all household members, guests, and visitors from engaging in any lease violating behavior.
- Forbid you and any member of your household, or your guests, from engaging in illegal drug use, sale, manufacture, distribution, or other criminal activity on or near the property.
- Provide that serious or repeated violations of the lease requirements on these items, or any other item addressed by the rental agreement, will result in termination of your rental agreement.

Please read the entire rental agreement carefully, as we take each part of the agreement seriously. The agreement has been written to help us prevent illegal activity from disturbing the peace of our rental community and to help make sure that our tenants are given the best housing we can provide.

Other Forms and Procedures

At this point, you may want to post information, as applicable, about waiting list policies, security deposits, prepaid rent, pet deposits, check in/check out forms, smoke detector compliance, and other issues relating to rental of the unit.

Application Information: What to Include

The best approach is to avoid reinvention of the wheel - contact a local legal publishing company, a rental housing association, or your own attorney for copies of appropriate forms. Whether you are using application forms or rental agreements, make sure you have forms that were designed specifically for the laws that govern your area and are up-to-date with any recent changes.

These requirements, and others, will be on many standard forms:

- Full name, including middle.
- Date of birth for each person applying to be a tenant (adult signatory to the lease), *with this caution for New York State landlords kept in mind:*
 - **In publicly assisted housing, don't ask for date of birth.** Applicants for publicly assisted housing in the State of New York may not be asked for date of birth information (prohibited by NYS Executive Law §296.2-a).

- **In private rentals, clarify with your attorney before asking date of birth.** While many private New York landlords ask for date of birth on rental applications, some choose not to out of fear that doing so may imply age discrimination (which is prohibited by NYS Executive Law §296.5). The issue, however, is generally not whether a landlord has knowledge of an applicant's protected class status - after all, issues such as gender, race, and approximate age are often discernible in a face-to-face meeting, and credit reports routinely provide date of birth. Rather, the issue - for landlords of private rental housing - is whether or not the landlord is discriminating on the basis of such characteristics or implying a willingness to do so. Given that New York law forbids making any “record or inquiry” that expresses, even indirectly, the idea that discrimination on the basis of age (or any other protected class) is intended, a New York State landlord may be better off by directly stating that no such discrimination will occur.

One approach would be to add a clarification that date of birth is required for verification of identity only (particularly on the credit report) and otherwise shall have no bearing whatsoever on the screening of applicants. The reason why it is beneficial to collect date of birth is that it makes it more difficult for dishonest applicants to provide false identification - for example, a credit check will reveal possible fraud if the name, social security number, and date of birth do not match that given on the application.

Finally, while the research conducted prior to completing this manual did not uncover other barriers in New York law to requesting date of birth, other than those discussed above, we recommend that landlords contact their attorneys on this issue prior to implementing an approach that includes collecting the information.

- Government -issued photo identification information, including I.D. number, and the name of the issuing state or other issuing agency (e.g., military identification card).
- Social security number (you'll need it for the credit check).
- Name of all people who are going to occupy the premises.
- Name, address, and phone number of past two landlords.
- Income/employment history for the past year. Income/salary, contact/supervisor's name, phone number, address. If self-employed, ask for copy of business license, tax returns, bank records, or client references.
- Additional income - generally, it is only necessary to list income that the applicant wants included for qualification.
- Credit and loan references. Auto payments, department stores, credit cards, other loans.
- Bank references. Bank name, account number, address, phone number.
- AS APPROPRIATE: Name and phone number of a relative to call in case of emergency; information about pets and deposit rules; other information required for application.

The following question is *not* typically on standard forms, but could be added. *If you are going to use it, make sure you include it on all application forms and not just some of them.*

- “In the last X years, have you, or any other person named on this application, been convicted for dealing or manufacturing illegal drugs?” (You could also ask about other types of crime that would constitute a threat to the health, safety, or welfare of other tenants or neighbors - burglary, robbery, sexual assault, and child molestation are some obvious examples.)

Of course, if they *do* have a conviction, they may lie about it. However, if you discover they have lied, you have appropriate grounds for denying the application or, with the right provision in your lease, terminating the tenancy. Also, it is one more warning to dishonest tenants that you are serious in your resolve.

About Fees and “Application Deposits”

Some landlords charge an application fee to defray the cost of screening. Some landlords require an earnest money deposit at the time of application to make sure the applicant is serious about renting the unit. While policies vary, most stipulate that if the applicant is accepted, but chooses not to rent the apartment, the fee or deposit will not be refunded. The value of charging a fee or collecting a deposit with the application is preventive:

- **Fees and deposits can promote “self-screening.”** People who are planning illegal activity may recognize your charging a fee as further indication of your commitment to screen carefully. Further, such a policy can discourage those who plan on filling out multiple applications, waiting to set up a drug operation with whichever landlord accepts them first.
- **Fees and deposits can save time.** You will spend less time screening people who then decide not to rent from you. Also, with a financial commitment involved, an applicant might take an extra few minutes to make sure every line on the application is filled in completely and accurately - making your verification process that much easier. Your best investment of the time you save? Spend it screening each applicant more thoroughly.

Charging an earnest money deposit, or an application fee, is not for everyone. In addition, because of the potential for abuse, local landlord-tenant laws often regulate policies associated with deposits and fees. Research conducted for this manual has not identified laws that regulate approaches to applicant screening fees in City of Buffalo. In general, we suggest the following approach as a fair “earnest money” or “application fee” policy:

1. **Keep it reasonable.** For example, charge enough to cover the direct out-of-pocket costs of screening a single applicant, but not more (e.g., the cost of a credit check or the amount you pay a screening company). Remember, the major value in charging an application fee or collecting a deposit is to make sure the applicant is committed to renting the unit - the fee won't necessarily cover all costs you incur to screen applicants.
2. **Keep it fair.** Return fees or deposits to all honest applicants who were not given the opportunity to rent the unit. Return the money even if you incurred some screening costs on those applicants. If honest applicants are required to pay a fee even when they are not offered an apartment, the cost of just *finding* housing can become prohibitive.

For more information about fee and deposit policies - as well as guidance on appropriate forms to use - contact a local property management association or an experienced landlord-tenant attorney.

How to Verify Information

Many landlords are *surprised* to receive calls from other landlords inquiring about the quality of a past tenant. Apparently it doesn't happen often enough. As one landlord put it, "you can spend \$100 in time and money up front or be stuck with thousands later." As another put it, "99% of these problems can be avoided through effective screening. There is no better investment you can make."

As you review the following list, keep in mind that you will not have to do every step for each applicant, but the basics, written in bold letters, should be done every time. *If you implement no other recommendations in this manual, implement these:*

1. **Compare the I.D. to the information given.** Make sure the photo I.D. matches the applicant and the information matches that given on the application form. If the picture, address, and numbers don't match the application information, find out why - you may have cause to turn down the application. Unless obvious inconsistencies can be explained and verified to your satisfaction, you don't have to rent to the applicant. For discussion about photo I.D. issues in New York law, see page 22.
2. **Have a credit report run and analyzed.** A credit report will provide independent verification of much of the application material. You can find out about past addresses, court ordered evictions, credit worthiness, past due bills, and other information. The reports are not foolproof, but they provide a good start. Here are your options:
 - **Join a credit bureau directly.** If you are managing a number of units and are likely to be screening multiple applicants every month, you may find it cost-effective to join a credit bureau directly and spend the time to learn how to interpret their reports. While this is an option, note that even some very large management companies go through associations or contract with applicant screening firms to gain the benefit of their outside expertise.

Or:

- **Have a third party pull the report and offer interpretation.** If you are not screening a sufficient volume of applicants, or would like assistance in interpreting the reports, contact an applicant screening firm or local rental housing association for assistance. Services vary from organization to organization and you should shop for the organization that best meets your needs. At one end of the spectrum are organizations that handle the entire applicant screening process for you. At the other end of the spectrum are organizations that simply pull the reports and mail you a copy. There are many variations in between.
3. **Independently identify previous landlords.** The most important calls you make are to the previous landlords. The best indicator of a tenant's future behavior is his or her past behavior. To begin, verify that the applicant has given you accurate information:
 - **Verify the past address through the credit check.** If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the tenant *actually lived there*.
 - **Verify ownership of the property through the tax rolls.** A call to the county tax assessor will give you the name and address of the owner of the property that the applicant previously rented.

(Title companies and real estate brokers typically have ready access to this information as well.) If the name matches the one provided by the applicant, you have the *actual landlord*.

If the name on the application doesn't match with tax rolls, it could still be legitimate - sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord responsibilities. But most of these possibilities can be verified. If nothing else, a landlord who is not listed as an owner on the tax rolls should be familiar with the name of person who *is* listed - so ask when you call.

- **If possible, cross check the ex -landlords' phone numbers out of the phone book.** This will uncover the possibility of an applicant giving the right name, but a different phone number (e.g., of a friend who will pretend to be the ex -landlord and vouch for the applicant). If the owner's number is unlisted, you will have difficulty verifying the accuracy of the number provided on the application. The local phone company may be willing to give you the name of the person who uses the number on the application, although in most cases they won't.

Another approach for verifying the name of the previous landlord is available in the case of applicants who were on the Section 8 program at their last address. In such a situation a landlord can verify both the previous address and the name of the previous landlord through the Rental Assistance Corporation Authority.

Now you have verified the landlord's name, address, and perhaps even phone number. If the applicant gave you information that was intentionally false, deny the application. If the information matches, call the previous landlords.

Remember, if the applicant is currently renting somewhere else, the present landlord may have an interest in moving the tenant out and may be less inclined to speak honestly. In such an instance, your best ally is the landlord before that - the one who is no longer involved with the tenant. *Be sure you locate and talk to a past landlord with no current interest in the applicant.*

4. **Have a prepared list of questions that you ask each previous landlord.** Applicant verification forms - generally available through rental housing associations or through legal publishing companies - give a good indication of the basic questions to ask. You may wish to add other questions that pertain to your screening criteria. In particular, many landlords we spoke with use this question: *"If given the opportunity, would you rent to this person again?"*

Also, if you suspect the person is not the actual landlord, ask about various facts listed on the application that a landlord should know - the address or unit number previously rented, the zip code of the property, the amount of rent paid. If the person is unsure, discourage requests to call you back - offer to stay on the line while the information is looked up.

5. **Get co-signers if necessary.** If the applicant meets one of your defined "borderline" criteria - such as having rented from a relative previously - and you have posted the appropriate rule, require that a co- signer apply with the applicant. Verify the credit and background of the co-signer just as you would a rental applicant. To ensure the legal strength of the co-signing agreement, you may wish to have your attorney draw up a document you can use for such purposes.
6. **Verify income sources.** Call employers and other contacts using phone numbers from the directory. If an applicant is self-employed, get copies of bank statements, tax returns, business licenses, or a list of client references. *Don't cut corners here:* many drug distributors wear pagers,

have cellular phones, and generally appear quite successful, but they cannot verify their income with tax returns, bank statements, or references from established clients.

7. **Consider checking for criminal convictions.** The options for getting criminal background information available to a landlord in Buffalo include:
 - **Court records search.** Outcomes of court proceedings are generally public record and as such can be obtained through the local court system. Generally, therefore, landlords (and other citizens as well) can access adult criminal conviction information through court records. The ease of getting such information can vary significantly from jurisdiction to jurisdiction, depending on access policies and the method of record keeping used. No permission from an applicant (or any other person) is required to review this type of “public record” information.
 - **Police and Sheriffs records.** In addition to reviewing court records directly, Buffalo landlords can also access law enforcement records through the Buffalo Police Department. However, this process *does* require the permission of the applicant. On forms provided by the law enforcement agency, the landlord will need to get a signed release from the applicant permitting the Buffalo Police - Department to give information from their records about the applicant. The signature must be notarized, and a small processing fee is charged by the law enforcement agency. Call the Identification Section of the Buffalo Police Department at 851-4444 for information on costs, forms, and where to go to obtain this information.

Some landlords will avoid the entire form and notarization process by requiring that applicants visit the law enforcement agency directly, get a copy of their own record, and bring it back to the landlord. However, such a process may have the undesirable effect of causing some qualified applicants to object to the extra process and choose not to apply.

- **Private screening companies.** Some landlords hire private screening companies to conduct screening background checks - including criminal background checks - on their applicants. The approaches used by the screening firms will vary, but most will use variations of the two listed above. Depending on the screening firm used, a possible additional benefit to using a screening company will be the company's ready knowledge of the process for researching criminal background in other counties and other states.

Your chances for getting verifiable information are best if you have the applicant's name, date of birth, social security number, and current address.

One cautionary note: many attorneys advise that conviction - but not *arrest* - may be used as a basis for rejecting an applicant. Patterns of arrest have proved to be discriminatory against protected classes and, as such, would be inappropriate to use as a screening criterion.

Finally, resist the urge to rely too heavily on this screening technique - there are many drug criminals who have not yet been convicted of a crime.

8. **Verify all other information according to your screening criteria.** Remember, before you call employers, banks, or other numbers listed on the application, verify the numbers through your local phone book or long distance directory assistance.

Federal and County Housing Beneficiaries

The Section 8 Program. “Few landlords realize it, but you can screen a subsidized applicant the same way you screen any applicant. Most don't screen subsidized applicants for rental history - either because they don't know they can, or because they are too excited about the guaranteed rent check.” “For landlords the message is simple. Bottom line, if you screen your tenants, Section 8 is a very good program.” - A Section 8 Program Director.

The Section 8 Tenant Based Renter Assistance Programs. Section 8 Programs are funded by the federal government and regulated through the U.S. Department of Housing and Urban Development (HUD). In Erie County there are three Public Housing Agencies (PHA's) administering rental assistance programs: Belmont Shelter Corp., Rental Assistance Corp (RAC) and Buffalo Municipal Housing Authority. HUD recently consolidated the renter assistance programs into one program, the Housing Choice Voucher Program.

A Family's eligibility for a Housing Choice Voucher is based on their gross annual income. The voucher helps eligible families to access modest housing by filing the gap between reasonable rents and the amount very low-income families can afford to pay for rent and utilities.

Once a family has been selected from the wait list, determined eligible and issued a voucher, the task remains to locate a privately owned apartment where the owner is willing to participate in the program. Belmont pays a subsidy (Housing assistance Payment or HAP) based primarily on the family's monthly income directly to the owner and the remainder of the rent is paid by the tenant.

Some Benefits of the Section 8 Program:

- The owner is assured the full amount of the subsidy every month, assuming program requirements have been met.
- The PHA conducts annual inspections of the unit to assist in the maintenance of the property.
- The Conventional landlord/tenant relationship is preserved.
- Tenants are provided with a level of subsidy comparable to that available in traditional public housing while allowing a much greater choice of housing.

What Owners Should Know:

- The PHA is not acting as your agent in leasing the unit, does not manage the unit and does not assume the responsibilities of the landlord or tenant in connection with the leasing of the unit.
- The PHA does not screen applicants for suitability as tenants. However, the PHA can provide owners with the prospective tenant's current address and the name(s) and address(es) of the assisted family's current and previous owner to assist you in screening.
- It is recommended that you collect a security deposit just as you would from an unassisted tenant. When the tenant moves from the unit, you may use the security deposit (subject to state and local laws) as reimbursement for any unpaid tenant rent, damages to the unit or other amounts owed under the lease.
- All apartments assisted through the section 8 programs must meet housing Quality Standards (HQS). These national standards simply ensure that the unit is decent, safe and sanitary. Inspections

are conducted, at minimum, on an annual basis by the PHA and are free of charge. A basic inspection checklist is attached for your review.

- Landlords and tenants are required to execute a one-year lease that complies with state and local laws and submit a copy to the PHA. The lease that is used with your unassisted tenants would generally be acceptable for use with those who receive Section 8. A HUD -prescribed tenancy addendum will be added to your lease. Rules and regulations that your tenants are expected to follow should be put in writing as an addendum will be added to your lease. Rules and regulations that your tenants are expected to follow should be put in writing as an addendum to the lease, signed by both parties and submitted to the PHA along with the formal lease.
- It is the owner's responsibility to enforce the lease provisions. Serious and/or repeated lease violations (generally supported by a court ordered eviction) are grounds for termination of a family from the Section 8 programs.
- Any drug-related criminal activity on or near the premises or any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by other residents or persons living in the immediate vicinity of the premises is grounds for termination of tenancy.
- Tenancy may also be terminated for other good cause, including:
 - Not accepting the offer of a new lease or lease revision.
 - A history of disturbance to neighbors, destruction of property, or living or housekeeping habits which result in damage to the unit or premises.
 - Owner opts to use the unit personally or for a family member, or for a nonresidential purpose.
 - A business or economic reason such as sale of the property, renovation or the desire to lease the unit at a higher rent.
- The owner is required to sign a contract with the PHA. The contract enables the PHA to make payments to the owner on behalf of a particular tenant. The owner's contractual agreement with the PHA is as follows:
 - That the unit will be maintained (in accordance with HQS);
 - Only the agreed upon rent will be demanded from the tenant;
 - Agrees to comply with applicable equal opportunity statutes, Executive Orders, and regulations prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability;
 - Among other things, the owner is certifying that to the best of their knowledge the assisted family is occupying the contract unit and it is the family's only residence.
- The amount of rent charged by the owner is not restricted by the PHA, so long as the rent is not greater than that charged of unassisted tenants and it is comparable to that charged in similar rental units. However, the amount of the subsidy is limited and families may spend no more than 40% of their monthly income for their housing expenses in the first year of their lease. Therefore, families are required to search for units within a certain price range and units can be rejected for certain families if their costs will exceed 40 % of their monthly income.

A CHECKLIST FOR HOUSING QUALITY STANDARDS

All units must be “decent, safe and sanitary” according to Housing Quality Standards in order to be approved for Section 8 assistance. This checklist will help you to determine if the unit will meet basic inspection guidelines.

PLEASE REVIEW THIS CHECKLIST AND MAKE NECESSARY REPAIRS BEFORE AN INSPECTION IS SCHEDULED. UNFORTUATELY, WE ARE UNABLE TO CONDUCT AN INSPECTION TO REVIEW THIS LIST WITH YOU.

Please be advised that Belmont **CANNOT** conduct an inspection unless:

1. **ALL UTILITIES ARE TURNED ON.**
2. **UNIT IS VACANT OR OCCUPIED BY THE TENANT WHO WILL BE RECEIVING SECTION 8** (may not be occupied by tenant intending to vacate)

MOST COMMON FAIL ITEMS

___ Are the windows and frames in good condition: no broken or cracked glass? Do they remain open unassisted? Do all windows on the ground floor have an operable lock?

___ Is there a handrail for all stairways with four or more steps/risers? (If you lift your foot 4 or more times a handrail is needed). Does the handrail extend the length of the stairway?

___ Is there a working smoke detector installed on every level of the building? Is a smoke detector located near the sleeping areas of the apartment as well as in the attic and basement?

___ Is there a shut-off valve on the furnace and hot water heater? Do all hot water heaters and all boilers have a pressure relief valve and a discharge line to within five inches of the floor?

GENERAL ITEMS

___ Are all painted surfaces free from chipping, peeling and cracking? (required: children under 6)

___ Are all walls, ceilings and floors in good condition?

___ Is all the plumbing in unit working properly and free from leaks?

___ Do the furnace and the hot water heater work properly and are they in good condition?

___ Does the furnace provide adequate heat for all rooms, including the bathroom?

___ Is the immediate neighborhood free from conditions which pose a threat to health and safety?

___ Does the unit have at least 2 exits?

___ Are all rooms and halls well-lit with natural or artificial light to prevent injury?

___ Are all rooms free from electrical or other hazards?

___ Do all porches and balconies that are 30 inches or more above the ground have a secure railing?

___ Are all of the utilities (gas, electric, water) that the tenant will be responsible for separately metered?

___ Are there cover plates on all switches and outlets?

- ___ Are all electrical connections in junction boxes with covers?
- ___ Are the house and yard free from trash and other debris?
- ___ If there is a fuse box, are there any fuses larger than 20 amp? Please replace; 20 -amp maximum.

LIVING ROOM

- ___ Are there at least two working duplex electrical outlets or one duplex outlet and one permanently mounted light fixture?
- ___ Is there at least one window? If openable, does it stay open unassisted?

KITCHEN

- ___ Do the stove and refrigerator work properly? Are all stove controls present?
- ___ Is there at least one duplex and one permanently mounted light fixture?
- ___ Is there adequate space for storage and food preparation?

BATHROOM

- ___ Are the tub, sink, shower and toilet in good condition and working properly?
- ___ Is there an openable window and/or a working exhaust fan in all bathrooms?
- ___ Is there a permanently mounted light fixture?

BEDROOMS

- ___ Are there enough bedrooms for the family? (no more than two people per living/sleeping area)
- ___ Is there an openable window in each bedroom, and if it is on the ground floor, can it be locked?
- ___ Does it remain open unassisted?
- ___ Are there two working duplex electrical outlets, or one duplex outlet and one permanently mounted light fixture in each bedroom?

BASEMENTS

- ___ Are all spliced wires enclosed in a junction box with a cover?
- ___ Are all unused gas lines capped?
- ___ Is there a working smoke detector in the basement?
- ___ Are all knife switches in all fuse boxes covered?

____ Are there any broken windows?

____ Is there trash and/or debris in basement?

____ Are there any combustible material within three feet of the hot water tank or furnace?

NOTE: WE EXPECT THE UNIT TO PASS THE FIRST INSPECTION. In the event the unit does not pass inspection, a summary sheet will be sent to the landlord and tenant. Once Belmont is notified that the work is completed, our office will schedule a re-inspection as soon as possible.

If you have any questions or need more information, contact the Inspections Department at 884-7791.

Erie County Department of Social Services. The Department of Social Services, as the primary source of income for welfare recipients, plays a unique role in the rental market. Thus, we have started new policies to bring more fairness and accountability into this process for both landlords and tenants. These new policies include:

1. Issuing direct, one-party checks as payment for rent to landlords;
2. Requiring 30 days written notice to the Department of Social Services (DSS) from recipients before making any changes to the one-party rental check;
3. Requiring one-party direct checks for recipients who fail to pay rent;
4. Withholding one-party checks from landlords who fail to maintain their property according to specified community standards.

1. **Option of One -Party Direct Checks.** The Department currently makes restricted rent payments by a two-party check. A new option, the one-party check, payable to the landlord and mailed to his or her address, will be offered to clients who request it.

Because we expect a large demand for new one-party checks, this change will be phased in over time. Recipients who are already receiving rent payments through a two-party check will not be given the new payment option until they move to a new address or appear for their re-certification interview.

2. **Advance Notice Requirement for Changes to One-Party Checks.** Recipients who request a one-party check will be required to give DSS 30 day's written notice before the Department will make any change to that payment. This includes to whom the check is made payable and where it is sent. If a client fails to give proper notice, the next rent payment would go to the current landlord as planned and the requested change would not be made until the following month.

This requirement will give the Department the opportunity to mail out a notice to landlords approximately 20-25 days prior to the change occurring and would provide some protection to landlords with a more timely notice of changes to these payments. In the case of an emergency or a valid tenant-landlord dispute, there are exceptions to this requirement.

2. **Mandated One -Party Direct Checks for Mismanagement.** Mismanagement is determined when a client fails to pay rent or to pay it on time for two or more consecutive months. If a recipient fails to pay rent and it is documented in writing by the landlord, that recipient will be required to have the landlord paid directly by a one-party check. Once a mismanagement determination has been made, it follows the client to a new address. One-party direct checks would continue unless the new landlord declined to accept them. For one-party direct checks only the New York State set shelter rate, not the full rent, can be paid. Erie County has also requested that New York State approve a 30 -day written notice for any changes to mandated one-party direct checks. This request is still pending.
3. **Landlords - Safe Housing & Good Neighbor Responsibilities.** In order to receive one-party direct checks from DSS, landlords must be willing to meet their responsibilities in providing housing which meets all applicable Housing and Health Department Codes and in assuring that their properties do not become the focus of illegal activity in the community.
 1. When a serious housing or health code violation is reported to DSS for a property for which the landlord is receiving a one-party check, these payments will be stopped and held in escrow until the violations have been corrected.
 2. When the City of Buffalo through its “Save Our Streets Program (SOS)” or other communities through similar programs, identify property owners as failing to meet community standards by allowing their property to become a center of drug sales or other illegal activity, those landlords will be prohibited from receiving one-party direct checks from DSS for any of their properties.

Current rules that limit how much we can pay for rent and under what circumstances remain in effect. This means that in most cases the Department cannot make a direct payment without the client's written request and cannot pay more than the New York State set shelter rate without the client's permission.

The Department of Social Services has created a special hotline for property owners to call if they have questions about their new policies. The number is 858 -RENT (858-7368). This number will be available from 10:00am until 4:00pm, Monday through Friday.

Regarding “Borderline” Applicants

The preceding criteria include a number of examples where exceptions are made in borderline cases if the applicant can provide a co-signer. Alternately, some flexibility can also be introduced by setting rules that require borderline applicants to provide larger deposits or more prepaid rent. Introducing such flexibility to your application process can make sure, for example, that you do not turn down good applicants who have a single, justifiable problem on their credit report. Use of such borderline conditions can result in a more fair process for your applicants as well. As with all aspects of managing rental housing, apply your policies for borderline applicants consistently regardless of the protected class of the applicant.

How to Turn Down an Applicant

In general, if you have posted fair rental criteria and you screen *all* applicants against those criteria, you may safely reject an applicant who does not meet your guidelines. Opinions vary regarding the amount of information that is required to be given to an applicant who is denied a rental unit. (Note: if you are managing public housing or publicly subsidized units, your disclosure requirements may be greater than the ones described here.) We recommend, at the minimum, following the guidelines defined by the federal government in the Fair Credit Reporting Act for denial of credit. Check to see if your local jurisdiction requires additional disclosure.

The following is intended as a general overview of how it works for two different types of applicant rejections. See the law itself for an exact description: ⑥

- **If the rejection is based on information, in whole or in part, from non-paid sources** (the word of a previous landlord, for example): While landlords of private housing are not required to disclose immediately the reason for rejecting applicants in these situations, private landlords *are* required to advise applicants of their right to submit, within 60 days, a written request for that information and their right to a response from you, within a reasonable period of time, disclosing the nature of the information upon which the adverse decision was made. (Note that, in many types of publicly -assisted housing, landlords *are* required to explain the basis for rejecting an applicant without waiting for a written request.)

Sample wording: “Based on a check of information you provided in your application, you do not meet our posted rental criteria. If you have questions about this decision, you may submit a request in writing to (your name and address) within 60 days, and we will explain the basis for the decision within a reasonable period of time.”

Of course, if you receive such a request, then report the nature of the information upon which the adverse decision was based. Again, if your screening criteria are free of illegal discrimination and you have applied your criteria consistently, then you may safely reject applicants who do not measure up.

Note this small additional requirement if the rejection is based on information from a person who is your “affiliate” (e.g. a co-worker or co-owner): The process is identical to that described above, except that the required response time is specifically stated: 30 days or less from the date the landlord receives the rejected applicant's written request.

Of course, when possible, keep it simple. For example, if you are turning down an applicant simply because you accepted an earlier applicant, just say so. Or, if one look at the application indicates that the person doesn't have nearly enough income to rent the unit, don't make the applicant wait a week to find out - again, just say so.

⑥ For more information, contact the Federal Trade Commission by phone at (202)326-3128, or by mail at: 6th Street & Pennsylvania Ave., NW, Washington, DC 20580. A full copy of the text of the FCRA can be obtained over the Internet at <http://www.ftc.gov>.

- **If the rejection is based, in whole or in part, on information from a credit report, screening company, or other organization that you pay to provide screening information:** Because of the potential for abuse of, or misinformation in, credit reports, the Fair Credit Reporting Act requires that very specific information be provided to applicants who are rejected based on information obtained from a “consumer reporting agency.” While the information may be provided orally, it is a good idea to give written notification just to make sure you are in full compliance with the Act. The following is only intended as a brief orientation. The screening company or other consumer reporting agency you work with should be able to answer your questions and provide you with a simple, written form to help ensure you are in full compliance with the Act.

In situations where adverse decisions are based, in whole or in part, on information from a consumer credit report, a landlord is required to provide the rejected applicant all of the following information:

- Notice of the rejection. Sample wording: “Based on information we have received from your credit report (or other paid source) you do not meet our written rental criteria and we have therefore chosen to deny your application for tenancy.”
- The name, address and telephone number (including a toll-free number if the agency is one that keeps nationwide consumer files) of the consumer reporting agency used that furnished the information.
- That the consumer reporting agency did not make the decision to reject the applicant and therefore it is likely that they will not be able to explain the reason for the adverse decision.
- That the applicant has the right to contact the consumer reporting agency within 60 days to receive a free copy of their report.
- That the applicant has the right to dispute the accuracy or fairness of information in a consumer report furnished by the consumer reporting agency.

(Note: Have applicants get a copy of their consumer report directly from the credit reporting agency, rather than, for example, providing the applicant with a photocopy of the report you received.)

Again, in the interests of proving you have met disclosure requirements, you may want to hand out an information sheet with the disclosure process described and appropriate addresses provided. Contact a local property management association for more details, and again, check your local law for additional disclosure requirements.

Other Screening Tips and Warning Signs

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the chapter on *Warning Signs of Drug Activity*.

- **Consider using an “application interview.”** Some landlords have started conducting a brief oral interview, often at the same time they accept the written application. Landlords who use this approach find it has these advantages: First, applicants don't know which questions are coming, so it is harder to make up a story - something that shouldn't bother an honest applicant, but may uncover a dishonest one. Second, the landlord has the opportunity to watch responses and take

mental notes of answers that seem suspicious. For example, honest applicants usually know their current phone number or middle name without having to look it up.

The interview involves, at minimum, making sure the applicant can repeat basic information requested on the application form without reading it. For example, the landlord might ask the applicant to verify his or her full name, current phone number, current address, and other pieces of information that most honest applicants will be familiar with without having to look up.

As with all policies you set, if you decide to do application interviews, you should include a commitment to making reasonable accommodations for those who cannot comply due to status in a protected class - e.g., a handicap that causes a speech problem, or possibly language skills associated with a particular national origin.

If you choose not to use an interview approach, at minimum observe the way the application is filled out. Applicants may not remember the address of the apartment they were in two years ago, but they should know where they live now, or just came from. Generally, honest applicants can remember their last address, the name of their current landlord, and other typically “top -of -mind” facts about their life.

- **Consider a policy requiring applications to be filled in on site.** Some property managers require all application forms to be filled in on the premises - an applicant may keep a copy of the form only after it has been filled in, signed, and a copy left with the landlord or manager. Applicants who are unsure of some information should fill in what they can, and come back to fill in the rest. Such a policy should not be a barrier to honest applicants - in most cases, they would have to return to bring back the signed application anyway. However, the policy can dampen the ability of dishonest applicants to work up a story.

Assuming you have communicated your commitment to keeping illegal activity off your property, such a rule may also allow dishonest or dangerous applicants to exit with minimal confrontation - without an application in hand they are less likely to pursue making up a story and, once off the premises, they may simply choose not to return.

Again, if you use such a policy, make sure it includes making reasonable accommodation for people whose particular handicap, or other protected characteristic, would otherwise result in the policy being a barrier to application.

- **Watch for gross inconsistencies.** When an applicant arrives in a brand new, luxury sports car and fills out an application that indicates income of \$1,000 a month, something isn't right. There are no prohibitions against asking about the inconsistency or even choosing to deny the applicant because the style of living is grossly inconsistent with the stated income. You may also deny the applicant for other reasons that common sense would dictate are clearly suspicious (credit reports can also reveal such oddities - for example if the applicant is paying out much more per month to service credit card debts than the applicant is taking in as income, something isn't right). Many don't realize it, but unless such a decision would cause a disproportionate rejection of a protected class (e.g., race, color, religion, and others) the law allows room to make such judgment calls.

While you may not discriminate on the basis of race, color, religion, sex, handicap, national origin, familial status (the presence of children), marital status, age, and in the City of Buffalo, sexual orientation, you may discriminate on the basis of many other factors, *provided the effect is not a disproportionate denial of a protected class*. If you deny the applicant for such a reason, record

your evidence and the reason for your decision. Be careful when making decisions in this area, but don't assume your hands are tied. The law is written to prevent discrimination against protected classes. You are not required to look the other way when gross inconsistencies are apparent.

- **Be aware that people involved in illegal activity may use “fronts” to gain access to your property.** You may rent to someone who has an acceptable rental history and no record of illegal activity, yet once that person moves in, boyfriends, girlfriends, or other acquaintances or family members move in and begin dealing drugs and generating other crime or nuisances. In some cases, the people you thought you rented to don't move in at all - after using their good references to rent the unit, they give the key to drug dealers, for a fee. *Across the nation, it is the permission given by tenants to guests and others who have not signed the rental agreement that causes the greatest degradation in the quality of life in rental housing communities - both public and private.*

Warning applicants that they will be held accountable for their household members and guests, and then enforcing such a requirement with your tenants, is a cornerstone of protecting your property and the surrounding neighborhood. Make sure your tenants know that they must control their household members and guests, and if they cannot, they should ask for help quickly. Tenants must understand that lease violations committed by non -tenants who are on the property with the permission of the tenant can bear the same consequences as would apply if the same act were committed directly by the tenant. Further, your rental agreement can set *some* limitations on the number of additional occupants who may move in with the tenant, however the State of New York's “roommate law” (RPL § 235(f)) does not permit a landlord to restrict occupancy to those on the rental agreement only (for more on this topic, see the discussion on this point in the chapter on Rental Agreements, page 46).

- **Watch out for Friday afternoon applicants who say they must move in that very weekend.** Drug dealers know that you may not be able to check references until Monday, by which point they will already be in the rental unit. Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. Could it cost you some rent in the short run? Yes. Will it save you money in the long run? *Absolutely.* Ask any landlord who has dealt with a drug problem in a rental unit. It is worth avoiding. (Some landlords allow weekend applicants to move in if they can independently verify their story. But you are better off waiting until you can verify the entire application.)
- **Observe the way applicants look at the unit.** Do they check out each room? Do they ask about other costs, such as heating, garbage service, and others? Do they mentally visualize where the furniture will go, which room the children will sleep in, or how they'll make best use of the kitchen layout? Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning an honest living care about their home and often show it in the way they look at the unit. Some who rent for illegal operations forget to pretend they have the same interest.

Also, if the applicant shows little interest in, any of the property *except* the electrical service, take note - both meth labs and marijuana grow operations can include rewiring efforts.

- **Consider alternate advertising methods for your property.** Houses that are within a few miles of colleges or business parks may be desirable housing for students or professionals. Some landlords have found success in posting advertising at such locations, thus targeting people who already have a credible connection with the community.

If you are going to consider such an approach, keep in mind that fair housing guidelines apply in all aspects of managing rental housing, including advertising selection. Advertising through community colleges only may be acceptable, because such colleges typically enroll a broad cross-section of the community. But, for example, it would be inappropriate to advertise exclusively through a church newsletter or through the newsletter of a private club whose membership is not representative of the greater community. Such approaches could set up patterns of inappropriate discrimination. Either expand your media selection or change it altogether to make sure you are reaching a fair cross-section of the public.

- **Consider driving by the tenant's current residence.** Some property managers consider this step a required part of *every* application they verify. A visual inspection of applicants' current residences may tell you a lot about what kind of tenants they will be. Be sure you are familiar with drug warning signs before you look at previous residences.
- **Announce your approach in your advertising.** Some landlords have found it useful to add a line in their advertisements announcing that they do careful tenant screening or that they run credit checks. The result can be fewer dishonest applicants choosing to apply in the first place. Select your wording with care - you don't want to use phrasing that in your community might be interpreted as "code" for telling a protected class that they need not apply. Again, it is important to make sure that the opportunity to apply for your units - and to rent them if qualified - is open to all people regardless of race, color, religion, sex, handicap, national origin, familial status, marital status, age, and sexual orientation.

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.

RENTAL AGREEMENTS

Get it in writing.

ADVICE WE WERE GIVEN:

“We've solved a lot of problems by using the right paperwork at the beginning of the rental term - it improves our legal position and it lets the tenant know we are serious from the start.”

The Basics

Minimize misunderstandings between you and your tenant, thus building a basis for clean and fair problem resolution down the road.

Use a Current Rental Agreement

In New York, even more than in most states, the quality of the rental agreement ^⑦ is the cornerstone of the landlord's legal ability to maintain appropriate control over rental property. With a well -constructed rental agreement (and a commitment to enforcing it), a landlord can expect to keep most problem behavior from getting out of hand and good tenants can expect to enjoy a rental community that is free of chronic crime and nuisance problems caused by adjacent tenants or their guests.

Unfortunately, some landlords don't use a rental agreement at all, and many continue to use the same rental agreement they started with years ago. Federal and state law can change yearly, and case law is in constant evolution. By using an outdated rental agreement, a landlord may be giving up important rights. If a problem tenant chooses to fight in court, an outdated rental agreement could cost the landlord the case.

Sources for up-to-date rental agreements will vary by state. In many areas property management associations provide rental forms and consider it their job to make sure they are consistent with current law. Local legal document publishing companies may also be good sources for effective rental agreements. Some landlords use a custom -developed rental agreement designed in partnership with an attorney or a New York -tailored rental agreement commonly available at stationery stores. If you plan to use an “off the shelf” rental agreement, make sure that you are buying a form developed specifically for use in the state of New York. “Generic” rental agreements, sold nationwide, will not work as well as more tailored agreements.

^⑦ In this chapter the term “rental agreement” refers to both long-term residential leases, as well as month-to-month style agreements.

Month-To-Month, Or Long-Term Lease?

Throughout Buffalo, a landlord can use a month-to-month rental agreement that allows either party to terminate the tenancy without specifying a cause by giving at least a month's notice. ⑧ (Although this option is available in most private party rental situations, it is generally not available in situations where a tenant's rent is either publicly subsidized or regulated by rent control laws.)

While the maximum power to evict is gained by using a month-to-month rental agreement whenever it is legal to do so, such an arrangement may not be the best in every situation. Market factors, as well as the expectations of local landlords and tenants, will also play a role in determining the best approach.

Regardless of the type of agreement used, keep in mind that no tenant is protected from a landlord's enforcement action if the tenant repeatedly fails to comply with a legal provision of a lease or rental agreement. If tenants are in violation of key elements of New York State's landlord-tenant laws, or are not in compliance with the lease, a landlord may require the behavior to be corrected and, if it isn't, terminate the rental agreement and require the tenant to move out.

Also, while the terms of your rental agreement are important, even the best rental agreement is not as valuable as effective applicant screening. The most important part of any rental agreement is the character of the people who sign it. No amount of legal documentation can replace the value of finding good tenants.

Elements to Emphasize

Inspect the rental agreement you use to see if it has language addressing the following provisions. If they are not in the rental agreement, consider adding them. To gain the most prevention value, you will need to point out the provisions to your tenant and communicate that you take your rental agreement seriously.

Note that this list is not at all comprehensive - it only represents elements that are occasionally overlooked and are particularly important for preventing and/or terminating drug-related tenancies. The discussion offered below is intended to be general in nature and is not intended to be used as a template for specific lease language. The actual language used to express the concepts described below varies substantially in some of the New York leases reviewed for this project.

1. **Subleasing is not permitted without the advance written consent of the Landlord.** Make it clear that the tenant cannot assign or transfer the rental agreement and may not sublet the dwelling without the express, written permission of the landlord, which permission will not be unreasonably denied. ⑨ You may also want to clarify that a violation of this provision will be considered a substantial violation of the terms of the tenancy and would render the tenancy “objectionable.” In general, your best approach will be to require those who wish to sublet the apartment to be screened just as you screened the original tenant. Assuming your screening process is reasonable for the original tenant, it would seem reasonable to apply the same criteria to others who require your permission prior to moving in.

⑧ The definition of “a month's notice” is described in the following manner. “Either party may terminate a month-to-month tenancy by giving at least one month's notice before the expiration of the term. For example, suppose rent is due on the first day of each month. The landlord must tell the tenant by September 30th before the October rent is due that he wants the tenant to move out by November 1st.”

⑨ Under New York law, in buildings that have 4 or more units, a landlord cannot unreasonably withhold consent to sublet. Note that, in buildings with three units or fewer, landlord could use a lease clause that forbids subletting entirely. Nevertheless, permitting subleasing if the applicant meets screening requirements seems to be a reasonable approach in any size unit.

You must maintain control over your property - too often the people who run the drug operation are not the people who rented the unit. This provision will not stop all efforts to sublease, but it may prevent some and it will put you in a stronger position if you have to deal with a problem subtenant.

2. **In private rental situations, require tenants to comply with occupancy limitations permitted by New York's "roommate" law and forbid total occupancy to exceed that allowed by local code.** New York's "roommate law" (RPL 235f) in effect allows a tenant to move in *immediate* family members as well as one other person *not* related to the tenant (known in the tortuous language of the statute as an "occupant") and that "occupant's" dependent children. ⑩ The law expressly prohibits a landlord from lease language that would limit a tenant's rights under the roommate law. Nevertheless, it remains important for a landlord to specify that compliance with the allowable limitations of the roommate law is required, so that, should a tenant allow a number of unrelated occupants to move in (an occurrence that sometimes coincides with an increase in illegal activity), the landlord can take lease enforcement action.

In addition to generally requiring compliance with the law's allowable limits, two elements are particularly important to emphasize in the lease:

- **"The tenant shall inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord."** The preceding sentence is a direct quote from the roommate law. ⑪ Although we have a bias in this manual to relying on plain English, we must note here the roommate law defines no less than four types of people who can take up residence in a dwelling unit: *tenants* (essentially those adults who sign the lease); *immediate family* members of tenants; *occupants* (adults who are not members of the tenant's immediate family); and *occupant's dependent children*. Under the law, the only additional residents whose names need be disclosed to the landlord are those of "occupants." Use of this type of requirement will help regulate the number of unrelated people who move into a rental.

An exception to the "roommate" law requirement is found in publicly assisted housing, because in this case, the Federal guidelines take precedence over the State guidelines. In the state of New York, a landlord of HUD assisted housing - including, in this case, Section 8 tenants - could set some restrictions that private landlords cannot. For example, in public and Section 8 housing, a New York landlord can deny the right of *any* additional adult resident - immediate family member or not - to move into a rental unless the tenant meets the requirements that the Housing Authority will have for such an occurrence, which will include among other issues, disclosure of that additional adult's income.

⑩ To be exact, if only one tenant is recognized by the lease, that person may move in both immediate family members and one additional occupant as described above. However, if two or more tenants sign the lease, while each may move in immediate family members, a landlord could forbid an additional "occupant" from moving in unless one of the tenants on the lease moves out.

⑪ RPL 235f

The reason why these issues are being raised in a manual on keeping illegal activity out of rental property is this: While most of the time that tenants invite additional people to move into a dwelling it is for appropriate reasons, there is also a high correlation between illegal drug activity and the presence of unidentified additional people living in a dwelling unit. Across the nation, the number one source of illegal drug activity from rental property is from the actions of people *not* on the rental agreement who have been permitted to dwell at the property by a legal tenant. Assuring your tenant that you will take these clauses seriously may curb illegal behavior by others. Having the stipulations spelled out in the rental agreement will put you in a better legal position should it become necessary to enforce.

3. **No illegal activity generally, and no drug activity specifically.** Make it clear that the tenant must not allow the distribution, sale, manufacture, or usage of controlled substances on the premises. You could also add various other types of crimes such as prostitution or other felony level criminal behavior on the premises. It's already illegal, but spelling it out in the rental agreement can make it easier to take lease enforcement action for the problem.
4. **The tenants are responsible for conduct on the property.** Tenants should understand that they will be held responsible for the conduct of themselves, all others whom they permit to live on the premises, and any visitors on the premises with the tenant's permission. Generally speaking, landlord -tenant laws are designed to allow the tenant the same "my home is my castle" right to privacy as that enjoyed by any owner-occupant. However, with the right to private enjoyment of the "castle" comes the responsibility to control what goes on there and this type of lease language emphasizes that concept.

For people who plan to "front" for illegal activity, this underscores the point that they will be given as little room as possible to protect themselves by claiming that acquaintances, and not themselves, were involved in the activity.

Wording on this provision should be done with care - you may not go so far as to hold victims responsible for the behavior of people who abused or intimidated them into silence.

5. **The tenant will not unduly disturb the neighbors.** Make it clear that the tenant will be responsible for making sure that all persons on the premises conduct themselves in a manner that will not interfere with the neighbors' peace. The issue here is not the occasional loud party. The issue is prevention of chronic nuisance behavior that can severely impact a neighborhood if the behavior is left unchecked.

What does disturbing the neighbors have to do with drug crimes? It doesn't necessarily. But we know that managers who attend to their own obligations and require tenants to meet theirs are far more effective in preventing drug activity than those who look the other way as complaints of noncompliance roll in. It is almost never the case that a drug criminal's first observed, evictable offense is the dealing or manufacturing of narcotics.

6. **The landlord may cancel the lease if the tenant is found to be “objectionable.”** Unless the agreement specifies that the landlord has the power to cancel the lease due to violations of it, with the exception of a few statutory violations (e.g., nonpayment and conducting illegal trade or business), a landlord in the state of New York could not terminate the lease of a tenant who commits serious lease violations, such as chronically disturbing the neighbors' peace or even causing substantial, intentional harm to the property. ^⑫ In effect, very few of the lease provisions recommended in this section would be enforceable without a clause in the lease that permits the landlord to cancel it in the event of serious or repeated violations. This is one of the key reasons that residential lease language in the state of New York is so important.

Pre -Move -In Inspection

Prior to signing the rental agreement, walk through the property with the tenant and make a visual inspection together. Some landlords use check in/check out forms developed for the purpose, others take photographs which are then signed by both parties, and still others make a pre -move -in video tape with the tenant. Regardless of the approach, agree on what repairs need to be done. Write down the agreement and have both parties sign it. Make any agreed-upon repairs and document that those have been completed as well. Give copies to your tenant and keep signed and dated copies in your files.

Note, if you are accepting Social Service applicants and wish to enter into a “Tenant Responsibility Agreement” this type of pre-move in inspection will be required on forms provided for the purpose.

Now, should your tenants damage the property, you have a way to prove it happened after they took possession of the unit. (Note: This also protects *tenants* - the pre-move -in inspection can prevent a bad landlord from trying to hold a tenant responsible for problems that predated the tenancy.)

The pre -move -in inspection can reduce the likelihood of some tenants causing damage to the premises. It can also protect you against the rare case of a tenant who may attempt to block a legitimate eviction attempt by damaging the premises and then claiming that the damage was preexisting.

“House Rules”

Many apartment managers, as well as some single-family housing managers, provide “house rules” that spell out general rules of the property and its common areas. Generally, property managers have found success with development of guidelines that restrict excessive noise levels, define behavior for common areas of the premises, and spell out rules for use of unique facilities such as pools or common laundry areas.

In general, managers of apartments may set additional rules for those common areas that are, in effect, “occupied” by management, not tenants. For example, as the “occupant” of the common areas of an apartment complex, a manager may be able to ask police to remove visitors who are engaged in fights or other intimidating behavior taking place in the courtyard of the complex. In this instance, as in others, managers may exercise more direct, immediate control over problems in the common areas of the property than they can over problems occurring on or inside the specific, privately rented property.

^⑫ See Real Property Actions & Proceedings Law §711.1

The following is an adaptation of “house rules” that have been used successfully to establish guidelines for regulating behavior in the common areas of rental property. In multifamily property, it is important to set rules for the common areas to ensure that the manager has the ability to exclude nonresidents and that the manager has established guidelines for the appropriate behavior of residents.

This is just one example of an approach. Prior to use, it should be modified for your needs and reviewed by your attorney.

If any tenant, household member, or guest of any tenant engages in any of the following prohibited activities, such activity shall be considered a violation of the tenant's lease. Any nonresident will be directed to leave if that person does one or more of the following prohibited activities. Prohibited activities include:

1. Making unreasonable noise.
2. Engaging in fighting or in violent, tumultuous, or threatening behavior.
3. Substantially interfering with any right, comfort, or convenience of any (Name of premises) resident or employee.
4. Engaging in any activity on or near the premises that constitutes a criminal offense.
5. Damaging, defacing, or destroying any property belonging to (Name of premises) or to any employee or resident.
6. Littering on (Name of premises) property.
7. Driving in a reckless manner on or near the property.
8. Consuming an alcoholic beverage in the common areas or possessing an open container of any alcoholic beverage in the common areas.

Any nonresident who fails to leave the premises after being directed to do so will be subject to arrest and prosecution for criminal trespass.

Key Pickup

As a final prevention step, some landlords require that only a person listed on the written rental agreement may pick up the keys. This is one more step in ensuring that you are giving possession of the property to the people on the agreement and not to someone else.

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 evictable 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.
- **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.

- **If you believe that unknown additional occupants may be living in the rental, pursue the issue immediately.** Subject to a few limitations, tenants in New York are generally permitted to move in as many immediate family members as they wish, plus one additional “occupant” along with that occupant’s dependent children. However, if your rental agreement so specifies, you certainly do not have to permit a tenant to move in *more* than one additional “occupant” (essentially an adult who is not a member of the tenant’s immediate family). Further, a landlord has a right to require a tenant to disclose the name of any “occupant” they move in within 30 days of a request by the landlord to do so. The key is to enforce lease requirements on this issue promptly, thus reducing the likelihood of the tenant moving in illegal occupants and increasing your reputation as a landlord who requires compliance with rental agreement language. If you are aware that a tenant has moved in more than one additional occupant, either require the additional occupants to fill in a rental application and apply for tenancy, or serve the appropriate notice that would require your original tenant to remove the additional occupants 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 landlord’s 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 “retaliation” 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* (and occasionally even *years*). 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. Nonpayment notices (directing the tenant to pay or face termination of the lease) are some of the faster eviction notices that a landlord can serve.
- **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. The chapter on *Crisis Resolution* gives additional information about steps to take if a neighbor calls to complain.

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.

Landlords. A landlord’s 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 landlord’s 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, rental agreements typically require tenants to do sufficient basic housekeeping to keep the dwelling unit safe and Buffalo's City Charter requires residents to ensure that plumbing, cooking and refrigeration fixtures and appliances are maintained in a clean and sanitary manner (242-10 section F). Therefore, if the tenant is not complying with the City Charter, the tenant, in this instance, would also be in violation of the rental agreement. If the City is attempting to determine whom to cite for a violation - the owner or the occupant - a record of the cleanliness of the unit at move -in combined with a paper trail showing the landlord's willingness to notify the tenant of the lease violating behavior will go a long way to clarifying accountability, not to mention potentially solving the problem before it gets so out-of-hand that the City need get involved.
- **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 - occupants 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 an applicant's) race, color, religion, sex, handicap, national origin, or familial status. As mentioned earlier, the State of New York add marital status and age and the City of Buffalo adds sexual orientation. 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 “cure” and “no-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

bring an eviction proceeding to regain possession of the property. See the chapter on *Law Enforcement* for more information.)

Tenants. A tenant's responsibilities are fundamentally to ensure 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, with the tenant's permission, on a regular basis. As discussed earlier, it is particularly important in the state of New York for a landlord to spell out the type of obligations listed in this paragraph in the rental agreement and to emphasize in that document that serious or repeated violations of the rental agreement would render the tenant "objectionable" and, as such, be valid cause for termination of the lease or rental agreement.
- **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 *landlord's* responsibilities. For example, if a landlord refuses to fix a broken furnace, the tenant may have the right to withhold rent until the repairs are done. In such a circumstance the tenant may also be able to collect other fines or financial penalties from the landlord as well. (Tenants, however, are well-advised not to withhold rent from a landlord, in such a circumstance, without first speaking with a qualified landlord-tenant attorney about the situation.)
- **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. If a bad tenant can also claim that you are not meeting your responsibilities, you may have difficulty succeeding with an eviction. Conversely, if it is clear you make

every effort to meet your responsibilities (and you document it), a tenant will be less inclined to fight an honest eviction effort.

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 to 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. **Give appropriate advance notice.** Generally, landlords have the right to do maintenance inspections of rental property if the tenant is given proper notice. In New York, "reasonable" prior notice must be given, which is most often interpreted as being at least 24 hours in advance. In an emergency, such as a fire, a landlord may enter an apartment without a tenant's consent.

If the inspection is routine, keep the approach friendly. 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.

Finally, note this caution: while the law permits a landlord to enter an occupied rental with reasonable prior notice, it does *not* permit the landlord to force his/her way into a unit when a tenant refuses that entry, even though appropriate prior notice was given. This is why a tenant's repeated failure to permit a landlord to enter, after receiving reasonable notice, should be defined in the lease as a serious violation of its terms and cause for termination. With such a lease clause in place, a landlord can then notify the tenant that unless entry into the unit is permitted, the lease will be terminated. Without such a clause in place, a landlord has less recourse in the face of a tenant's refusal to permit entry.

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 has the appropriate language stipulating that the tenant is responsible for utility bills, and the tenant stops paying for those services, you have grounds for notifying the tenant that, unless the tenant gets back into compliance with the lease, the lease will be terminated, and should the tenant fail to then move out, eviction proceedings begun. 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. For example, most termination notices and lease violation notices that a landlord would serve on a tenant in the state of New York can be either written or oral, and served in a number of ways, so long as the notice is “timely, definitive, and unequivocal.” However, most authorities interviewed for this manual recommend written notices and emphasize the value of a keeping a paper trail over the relative ease of giving notices verbally. Essentially, it is important to keep documentation that shows your good -faith efforts to keep the property habitable, to give your tenants opportunities to correct lease violations, and to show any changing agreements with a tenant - ideally dated and signed by both parties.

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.

APARTMENT WATCH/PROMOTING COMMUNITY

How to turn an apartment complex into a community

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:

“Please 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 “neutral” 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 “know 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 crime prevention officer in your area for more details. Crime prevention 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. The chapter on *Preparing the Property* covers environmental design approaches in detail. 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.

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:

1. **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 required 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 are 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.

2. **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 man's cocaine.” Meth is usually ingested, snorted, or injected. A new, more dangerous form of methamphetamine, “crystal meth” or “ice,” can be smoked.

“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.

3. **Tar Heroin.** Fundamentally, heroin is a powerful pain killer - 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.

4. **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. Today's 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 user's eyes may also appear bloodshot or dilated. Usage of marijuana crosses all social and economic levels.

Marijuana is generally sold in plastic bags, or rolled in cigarette paper. The smell of the smoke has been described as a “musky” cigarette smoke.

Warning Signs In Residential Property

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. For information on signs of dishonest *applicants*, see the chapter on *Applicant Screening*.

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 who have reported a relatively low income. 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.** 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.
- Rewiring efforts or bypassed circuitry. Again, grow operations require a lot of electricity - some use 1,000 -watt bulbs that require 220 -volt circuits. The extra circuitry generally exceeds the power rating for the rental and can burn out the wiring - resulting in fires in some cases, or often the need to rewire before you can rent the property again.
- **Various obvious signs.** For example, basements or attics filled with plants, lights, and highly reflective material (e.g., tinfoil) to speed growing.

Meth Labs. Meth labs, though prevalent in some other parts of the nation, are not common in the state of New York. However, given that the possibility exists, we have included the following brief information here for general knowledge, reprinted from the National Landlord Training Program manual.

In states where clandestine labs are prevalent they 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. 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.

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.

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 are feeling any adverse symptoms (for example headaches, nausea, skin irritation, or other symptoms) or otherwise have reason to believe your exposure has been extensive, contact your doctor - some of the chemicals involved are highly toxic.

General. 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, deadbolts 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.)

CRISIS RESOLUTION

Stop the problem before it gets worse.

COMPLAINTS WE HAVE HEARD: ⑬

“The problem is these landlord -tenant laws don't give us any room. The tenants have all the rights and we have hardly any. Our hands are tied.”

“The system works primarily for the tenant - for -cause evictions are very difficult to do. The judges bend over backward to help the tenant.”

ADVICE WE WERE GIVEN:

“Serving eviction papers on drug house tenants is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers than for a lot of it afterwards.”

“Tell them to read a current copy of the landlord -tenant law. Too many landlords haven't looked at it in years.”

The Basics

Address problems - quickly and fairly - as soon as they come up. Know how to respond if a neighbor calls with a complaint. If eviction is required, do it efficiently. If you don't know, ask a skilled attorney.

Don't Wait - Act Immediately

Effective property management includes early recognition of noncompliance and immediate response. Don't wait for rumors of drug activity and don't wait for official action against you or the property (e.g., warning letters, fines, closure, or forfeiture). *Prevention* is the most effective way to deal with rental -based drug activity. Many drug operators have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, dishonest tenants will learn that they can't take advantage of you or your property.

The following are three of the more common reasons why landlords put off taking action, as well as some reasons why you may want to act anyway:

- **Fear of the legal process.** Many landlords don't take swift action because they are intimidated by the legal process. However, the penalty for indecision can be high - if you do not act, and then accept rent while knowing that a tenant is in noncompliance, you may compromise your ability to take any future action about the problem. Your position is strongest if you consistently apply the law whenever tenants are not in compliance with the rental agreement or your landlord -tenant laws. Your position is weakened whenever you look the other way.

⑬ Note that some “complaints” contain inaccurate or incomplete assumptions about legal rights or procedure.

- **Fear of damage to the rental.** Some landlords don't act for fear the tenant will damage the rental. Unfortunately, such inaction generally makes the situation worse. Problem tenants may see your inaction as a sign of acceptance. You will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged rental anyway - if they are the type who would damage a rental, sooner or later they will.
- **Misplaced belief in one's tenants.** While developing this manual, we heard this story, and similar ones, with considerable frequency: “The people *renting* the property, aren't dealing the drugs. We haven't had any problems with them. The drug dealers are their friends who often stay at the property. So what do we do? The tenants aren't making trouble - it's these other people.” Ask yourself: Did your “innocent” tenants contact you or the police when the drug activity first occurred? Or did they acknowledge the truth only after you received phone calls from upset neighbors or a warning from the police? (Also: Is your “innocent” tenant breaking your rental agreement by having long-term guests or subtenants?)

To be sure, tenants can be victimized by friends or relations - for those tenants who seek you out and ask for assistance, help as best you can. But be careful of stories you hear from tenants who don't admit to problems until after you have received complaints from neighbors or police. The sooner tenants who “front” for others realize they will be held responsible, the sooner they may choose to stop assisting in the crime.

The Secret to Good, Low -Cost Legal Help

If you are not familiar with the process for eviction, contact a skilled landlord -tenant attorney *before* you begin. By paying for a small amount of legal advice up front, many landlords have saved themselves from having to pay for a lot of legal help further down the road. The law may look simple to apply, but as any landlord - or tenant - who has lost in eviction court can attest, it is more complicated than it seems. While researching this manual, we repeatedly heard from both landlords and legal experts that the vast majority of successful eviction defenses are won because of incorrect procedures by the landlord and *not* because the landlord's case is shown to be without merit.

If you don't know a good landlord -tenant attorney, find one. If you think you “can't afford” an attorney, think again. Too often, out of fear of paying an attorney fee, landlords make mistakes in the eviction process that can cost them the equivalent of many months' rent. Yet many evictions, *when done correctly*, are simple procedures that cost a fraction of a month's rent in attorney's fees.

Finding a good landlord -tenant attorney is relatively easy. Check your yellow pages phone directory for those attorneys who list themselves as specialists under the subcategory of “Real Property Law” or “Landlord and Tenant.” Generally, you will find a very short list, ^⑭ because few attorneys make landlord - tenant law a specialty. Call at least three and interview them. Ask about how many evictions they do per month and how often they are in court on eviction matters. In our experience, the safest bets are those attorneys who do many evictions - they see it as a major part of their practice, not a sideline that they ' advise on infrequently. Once you find attorneys who have the necessary experience, pick the one you feel most comfortable working with and ask that person to help.

^⑭ In some smaller jurisdictions you may not find any attorneys listed as specialists in this type of law. In such a case, try contacting a local property management association for referrals or call a few local property management companies and find out who they use, then interview the attorneys to find the one you feel comfortable with.

If a Neighbor Calls With a Complaint

If a neighbor calls to report drug activity - or any other type of dangerous or illegal activity - at your rental, take these steps:

1. **With the initial call, stay objective and ask for details.** Don't be defensive and, equally, don't jump to conclusions. Your goal is to get as much information as you can from the neighbor about what has been observed. You also want to avoid setting up an adversarial relationship - if it *is* illegal drug activity, you need to know about it.

Also, make a commitment that you will not reveal the caller's name to the tenant without permission (unless subpoenaed to do so). In the past, some landlords - perhaps believing that neighbor reports were exaggerated - have treated dangerous situations too casually and told criminals the names of neighbors who called to complain. If the neighbors have exaggerated, you do no harm by protecting their names. If they haven't, you could put them in real danger by revealing too much.

Ask the caller for:

- **A detailed description of what has been observed.**
- **A letter documenting what has been observed, sent to you and to your local law enforcement agency's narcotics division.** If you have Section 8 tenants, have a copy sent to the local Public Housing Agency also.
- **Name, address, and phone number, if willing to give it.** If neighbors don't know you, they may be unwilling to give you their names on the first call. This is one reason why we recommend you meet neighbors and trade phone numbers before a crisis occurs. Consider: If the only thing neighbors know about you is that you have rented to a drug dealer, they will have reason to be cautious when they call.
- **Names of other citizens you can call who could verify the complaint, or ask that they encourage other neighbors to contact you.** You will need more evidence than the phone call of a single neighbor to take meaningful action. Explaining this need may help further encourage the neighbor to ask others to call. Also, having multiple complaints can help protect the caller by taking the focus off of a single complainant as the "cause" of the drug dealer being discovered.

A single call from one neighbor doesn't necessarily mean your tenants are doing anything illegal. However, a single call is justification to pursue the matter further.

2. **Find out more.** Go to other sources for additional information and assistance. Your goal is to collect enough information to verify any problems at the rental, and then to take appropriate action.
 - **Get in touch with other neighbors.** Even if your tenant is running a high-volume dealing operation, it is likely that some neighbors will suspect nothing - many citizens are unobservant or give their neighbors a wide benefit of the doubt. However, while some neighbors may be unaware of the scope of the problem, it is also likely that others will have a lot to tell you.
 - **Contact a community policing officer or contact an investigator.** Get in touch with a community policing officer for the area in which your property is located if you have verified police activity at that address.

- **If you feel comfortable doing it, consider a property maintenance inspection.** Again, few tenants involved in serious illegal activity are model renters. Discovery of maintenance violations may provide sufficient basis for serving notices without having to pursue the more difficult route of developing a civil level of proof that dangerous criminal behavior has occurred.
3. **Once you've identified the problem, address it.** If you discover that your tenant is innocent, contact the neighbor who called and do your best to clear up the matter. If you discover no drug activity but strong examples of disturbing the neighbors' peace or other violations, don't let the problem continue - serve the appropriate notices. Likewise, if you become confident your property is being used for drug activity or other dangerous behavior, take action. Advise the police narcotics division of your findings and your plan. The following section outlines basic options for eviction that a landlord might pursue with tenants involved in illegal activity.

Eviction of Tenants Involved In Illegal Activity

Once a landlord has determined that tenants are involved in the type of activity that harms the community, the next step - after reporting any criminal activity to the police - is determining the most appropriate method for ending the tenancy and regaining possession of the property. The following options are the most likely ones that a landlord would use in such a situation. While additional causes for terminating a lease in the state of New York exist (associated with issues such as foreclosures, "squatters," or when a lease permits termination in event of tenant bankruptcy), these are the most likely approaches in the situations associated with illegal activity:

1. **If evidence allows it, consider terminating the lease and bringing an eviction based on the tenant's use of the premises for "illegal trade or manufacture, or other illegal business."** ^⑮ This is a rarely used, but entirely legal, method for evicting a tenant involved in the sale, manufacture or distribution of illegal drugs from a rental unit. If this type of eviction is planned, advance discussion with a qualified landlord-tenant attorney is very strongly recommended. Also, given the accusations involved, the testimony of a police officer is often a necessity to prevail in court, should the tenant choose to fight the eviction.

If your tenant wishes to fight in court, you will need to establish a civil - not criminal - level of proof that drug trade has occurred. This is a lower level of proof than local law enforcement would need to get a conviction. Nevertheless, allegations of drug activity or other dangerous activity should be made with care. Again, given the seriousness of the charge, always contact an attorney before proceeding with this option.

Note that frequently, if the tenants are involved in illegal activity, they move out quickly rather than fight the eviction - it won't help their drug operation to appear in court. One exception is Section 8 tenants who, for reasons unrelated to the drug activity, may be more inclined to resist eviction (as described in the chapter on *Applicant Screening*).

^⑮ See Real Property Actions and Proceedings Law §711.5

2. **If you have the option, consider a “no -cause” or “nonrenewal' notice.** In some rental situations, such as month-to-month rentals or at the expiration of a lease term, you may be able to evict without giving a cause. With most month-to-month tenancies in New York, you may terminate the rental agreement by giving your tenant notice at least one month in advance of the end of the term - so if the rental period ends on the last day of each month, and you want your tenant's last month to be June, serve the months' notice no later than May 31. For those who have this ability, a no -cause eviction is often the preferred method, even when the tenant has committed major violations of the lease, simply because no proof of “cause” is required in court.

3. **Consider serving notice for other apparent causes.** “Cause” in this case could be disturbance of the neighbors' peace, nonpayment of rent, or any other significant issue of noncompliance with the lease or rental agreement. Again, if you have drug activity, an inspection will likely reveal a failure to maintain the property as provided in the rental agreement, illegal occupants living in the unit, and/or other noncompliant behavior. Note that notices served for many types of noncompliant behavior should give the tenant the option to “cure” the problem - that is, if the tenant can fix the problem in a defined period of time, the tenant will be allowed to stay in the unit. However, although a tenant may comply with requirements to change lease -violating behavior, should the behavior recur, the argument for the tenancy being “objectionable” (and thus a basis for termination of the lease) grows stronger. Broadly, the approach for using this type of “for -cause” eviction in the state of New York will take one of two forms:

- **Nonpayment evictions.** Before a landlord can begin a court action to remove a nonpaying tenant, the landlord must begin by making a demand for the rent. ^{①⑥} It is only after the tenant fails to comply with such a demand that the landlord can begin the court action. While the process may sound simple, because cases can be lost in court on the basis of how a demand was made, those who have not enforced a nonpayment eviction through a court action are well-advised to get basic legal advice on how to do so *before* starting the process.
- **Other lease violations.** If an eviction for noncompliance with a lease or rental agreement goes to court, the fundamental question is not, “did any lease violation occur?” but rather “were the violation(s) that occurred sufficiently serious to merit eviction?” In the language of the law, it is up to the court to decide whether the violations are sufficient to deem the tenant “objectionable.” ^{①⑦} Therefore, particularly in the case of evictions for lease violations - which is what almost all “for - cause” evictions are about - it is important that a landlord document the types of problems present at the premises and the efforts the landlord made to have the tenant correct the problems. Except in the case of truly extreme behavior (obvious examples might be assaulting the landlord or causing intentional substantial damage to the premises), a landlord will need to establish a trail of warning notices that document either recurring instances of the lease violating behavior or show the tenant's failure to correct a “curable” lease violation when requested to do so.

^{①⑥} New York State law requires that a landlord either “make a demand for the rent” or that a landlord use a written, three-day notice - requiring payment or move out - served in a prescribed manner. See RPA&P §711.2

^{①⑦} See Real Property Actions and Proceedings Law §711.1

Example: one instance of a tenant engaging in a late night shouting match in a courtyard may be a lease violation, but would likely not qualify as cause for eviction. On the other hand, if similar behavior has occurred a number of times over a number of months, and the landlord can show multiple warning notices for it, the pattern of evidence would likely support the idea that the tenant is “objectionable.” This is also where the strength of a New York lease is tested most - the degree to which the lease plainly and appropriately describes violations that would render the tenancy objectionable and cause lease termination, is the degree to which the lease is useful in supporting eviction of a problem tenant.

4. **Consider mutual agreement to dissolve the lease.** A frequently overlooked method. Essentially, if both you and your tenant can agree that the tenant will move by a specific date, you may not need to proceed with a formal eviction at all. In some instances this can be beneficial to both parties. Write the tenant a letter discussing the problem and offering whatever supporting evidence seems appropriate. Recommend dissolving the terms of the lease, thus allowing the tenant to search for other housing without going through the confrontation of a court-ordered eviction. Let Section 8 renters know that a mutual agreement to dissolve the lease does not threaten program eligibility.

Make sure the letter is evenhanded - present evidence, not accusations. Make no claims that you cannot support. Have the letter reviewed by an attorney familiar with landlord-tenant law. Done properly, this can be a useful way to dissolve a problem to both your tenant's and your own satisfaction without dealing with the court process. Done improperly this will cause more problems than it will solve. Don't try this option without doing your homework first.

Again, if illegal activity is occurring, most tenants will take the opportunity to move on. Finally, if you evict someone for drug activity, share the information. Landlords who are screening tenants down the road may not find out about it unless the information is documented. If it is a Section 8 renter, make sure the Buffalo Municipal Housing Authority has a letter from you on file. Also, contact the screening company or credit reporting service you use and advise them of the circumstances - they may also be able to keep track of the information.

The Court Process

The popular belief is that a lease termination notice is sufficient to force a tenant to move out by the date specified for cancellation or nonrenewal. In fact, the notice is just the first step. Technically, the landlord's notice to vacate means that, should the tenant not move out by the date specified for lease termination, then the landlord may file suit to regain possession of the property (usually suing because a tenant is “holding over” - that is, remaining on the property past the end of the lease term). While many tenants will move out when the term expires, if a tenant does not, the landlord will need to start a legal action with the local courts to regain possession of the property.

In cases where a tenant wishes to resist eviction, the tenant will be allowed to remain on the premises, until a landlord has received a court judgment against the tenant.

Landlords may not take the law into their own hands by using force or unlawful means to evict tenants. For example, a landlord may not use threats of violence, remove a tenant's possessions, lock the tenant out of the apartment, or willfully discontinue essential services such as water or heat. ¹⁸ Penalties for taking such action can be substantial - for instance, a tenant who is locked out of his/her apartment in this manner may recover triple damages in a legal action against the landlord.

To use the force of law to remove a tenant, a landlord must sue in court and win the case. An eviction proceeding may be brought in Buffalo City Court. In order to commence an eviction proceeding, the tenant must be served with a petition (a formal written request) giving notice of the reasons for the eviction. Once the action is commenced, a court date will be set where the tenant will be given an opportunity to assert a defense.

Ultimately, only a sheriff or marshal can carry out a court eviction of a tenant - that is, only a sheriff or marshal has the legal right to remove a tenant - by force if necessary - for failing to comply with a court order to move out. ¹⁹ In the City of Buffalo, the City Marshal is located at 50 Delaware. The Marshal's number is (716) 847-8430. Legal forms for evictions may be purchased at most stationery stores.

Perhaps the most compelling point we can make about the entire eviction process - from service of notice to arguing in court - is this: *Eviction is an expensive, time-consuming way to “screen “tenants.* You will save much heartache and considerable expense if you screen your tenants carefully *before* you rent to them, instead of discovering their drawbacks after you are already committed.

Levels of Evidence

An eviction trial is a civil proceeding. This means that civil levels of proof are typically all that are required to succeed. For example, in eviction court landlords have established a strong proof of drug activity in a rental by providing the following:

- Credible testimony of neighbors who have observed related behavior (such as that described in the chapter on *Warning Signs of Drug Activity*).
- Their own testimony about additional signs that may have been observed on inspection of a unit.
- The subpoenaed testimony of a police officer who has made an undercover buy from a tenant or arrested a tenant for possession of drugs.

From a *criminal* standpoint, this level of proof would generally not be enough for the police to get a search warrant. But it can well be enough to prove suspicion of chronic drug activity for a civil court. Of course, the actual level of proof required will be determined by a combination of local law, court precedents, the presiding judge, and the “trier of fact” - either a judge or jury - who hears the case. (For more on the issues of criminal versus civil law, see the following chapter on *Law Enforcement*.)

¹⁸ Real Property Law §235

¹⁹ Real Property Actions and Proceedings Law §749.

If You Have a Problem with Neighboring Property

When chronic problem activity is present in a neighborhood, every affected citizen makes a conscious or unconscious choice about what kind of action to take. The choices are to move away, to do nothing and hope the problem will go away, or to take action to stop the problem. Doing nothing or moving away usually means the problem will remain and grow larger - somebody, someday will have to cope with it. Taking action, especially when it involves many neighbors working together, can both solve the problem and create a needed sense of community.

Many neighbors are under the impression that solutions to crime are the exclusive responsibility of the police and the justice system - that there isn't much an individual citizen can do. Actually, there is a lot that citizens can do, even must do, in order to ensure they live in a safe and healthy neighborhood. Getting more involved in your neighborhood isn't just a good idea - it is how our system of law and civic life was designed, and the only way it can really work. With that in mind, the following is a list of proven community organizing techniques to help you begin.

1. **Find others concerned about the problem and enlist their help.** As you consider the steps described below, keep in mind that multiple neighbors following the same course of action will magnify the credibility and effectiveness of each step. In particular, several neighbors calling a government agency separately about the same problem will usually raise the seriousness of the problem in the eyes of the agency. Involvement of multiple neighbors also increases safety for everyone. People involved in illegal activity might target for revenge one neighbor they perceive as causing them problems, but are less likely to try to identify and harass multiple people.
2. **Make sure police are informed in detail.** It doesn't matter how many police we have if people don't call and tell them where the crime is. Even if you have had the experience of calling without getting the results you expect, keep calling. As you also follow other recommendations of this section, keep working with police throughout the process.

Of course, establishing a connection with a particular officer who works the area regularly is often a key to success. Other strategies include:

- **Report incidents when they occur.** Call 9-1-1 if it is an emergency or call police narcotics detectives, gang units, and other special enforcement units as appropriate. You may need to do some research to find out which part of what agency deals with a particular type of problem.
 - **Keep activity logs or diaries** about the address when disturbances are frequent, and encourage neighbors to do the same. Share copies of these logs with an officer, in person if possible.
 - **Encourage civil abatement action.** When speaking with enforcement officials, be aware that, in addition to criminal investigation, police often have the option of using civil law to help solve a problem - such as fining the owner or closing property that is associated with illegal drug activity.
3. **Consider direct contact with the property owner.** Many activists contact the owner directly and ask for help in solving the problem. While police officers may do this for you, it is also an option available to any citizen directly. Understand that there may be a risk to your personal safety in contacting some irresponsible owners, so be sure to plan your approach carefully. In general, try a friendly, cooperative approach first - it usually works. If it doesn't, then move on to more adversarial tactics. Here are some tips for the friendly approach:

- **Use tax records to find the owner.** Local property tax assessment records generally will identify who owns the property.
 - **Contact the owner.** It is amazing how often this simple step is never taken. Discuss the problem and ask for assistance with stopping it.
 - **Suggest this training.** If the property is a rental, consider delivering a copy of this manual and encourage the owner to attend a Landlord Training Program in your area.
 - **Describe events.** Provide the owner with specific descriptions of events: Answer the questions who, what, where, when, and how about each event.
 - **Give police references.** Give the property owner the names of officers who have been called to the address. (Names of specific officers are far more useful than general statements like “The police have been out frequently.”)
 - **Help locate criminal records if appropriate.** Learn how to access criminal background information, or how the property owner can. For example, if an occupant has a criminal record in your county, the local court house should have records.
 - **Share activity logs.** Give copies of activity logs to the landlord, if it appears the landlord will use them to support lease enforcement actions.
4. **Enlist the help of others.** If it becomes apparent that the problem will not get resolved without more effort, it may be time for more aggressive action. This may take a higher level of organization and structure for the neighborhood. Here are some approaches to apply more pressure:
- **Remind others to call.** After any action you take, call several other neighbors and ask them to consider doing the same thing, whether it is reporting an incident to police, calling the landlord, or speaking to a local official. *Do not* ask neighbors to call and repeat your report. *Do* ask neighbors to make an independent assessment of the problem you have observed and, if they also consider it a problem, to report it as well.
 - **Call the Public Housing Authority.** If the residents are receiving public housing assistance, contact the local Housing Authority and report the problems observed.
 - **Call code inspection.** Call your local building maintenance code enforcement department to report maintenance code violations. Maintenance codes address exterior building structure and appearance, interior structure and appearance, as well as nuisances in yards such as animals, abandoned cars, trash, and neglect. Most properties with problem residents will have many violations of maintenance codes as well.
 - **Consider calling the mortgage holder.** Sometimes the holder of the mortgage on a property can take action if the property is not in compliance with local law. Generally, if a financial institution is holding a mortgage on real property, the name of the institution will be listed on the title records, kept by the county.
 - **Write letters.** Citizens have the power to write letters to anyone - mayors, council members, chiefs of police, building inspectors, and many others. Your written documentation can add credibility and legitimacy to a problem that may not have received as much attention as it required. The first letters should be to those in a position to take direct action - a police officer, code inspector or other person tasked with addressing problems like the one you are working on. Don't write letters to managerial or political authorities until you have given the “chain of command” a chance to work. Do write letters to such authorities if it becomes apparent that the help your neighborhood needs is not forthcoming. When necessary, follow up calls or letters with personal appointments.

5. **Two strategies of last resort.** Generally, these activities should be undertaken only by a well - organized group, and only when consistent, diligent work with police, neighbors, and city officials has made little or no progress.
- **Consider getting the media involved.** After making a concerted effort to get results through other means, discussing the problem with the media can be a way to focus more attention - and sometimes resources - on a problem. However, going to the media with your complaint before communicating clearly to the accountable organization can be counterproductive - it can cause justifiable resentment in public officials who feel “blindsided” by the media attention on an issue about which they, had no prior warning. Also, be aware that if the problem is associated with criminal drug or gang activity, attracting media attention that results in your being the featured interview subject can put you in a position where your personal safety is more at risk.
 - **Start legal action against the property owner.** Citizens harmed by a nuisance property can also pursue lawsuits directly. In the final analysis, even the most negligent property owners will take action when they are made to understand fully that it will cost more money to ignore the problem than it will to stop it. The legal options for this type of approach vary substantially by jurisdiction. In general, this is not an easy process to pursue and should be considered only as a last resort. Again, the vast majority of neighborhood problems can be solved without having to go through the time and expense of legal action.

While there are various approaches to taking legal action against a property owner, one that seems worthwhile to explore for some types of extreme situations is this: New York State's Real Property Actions and Proceedings Law §715 grants a unique power to, among others, both law enforcement agencies *and* to any person who lives, or owns property, within 200 feet of a specific type of problem property. In effect, law enforcement agencies and neighbors each have the right to require the landlord to evict a tenant when the property is used in whole or in part as a “bawdy house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade, business or manufacture.” The law specifies that, should the landlord fail to take that action, the neighbors, or the law enforcement agency, may evict the tenants *just as if they, themselves, were the landlord of the property*. Further, in such a situation the court could cause the owner of the property to pay civil penalties. Again, this type of approach shouldn't be undertaken without a careful study of the legal implications in doing so. Nevertheless, it is important to be aware of the option so that it can be considered.

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:

“In 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 Police

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 - 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 marshal 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 and providing records of search warrant results.

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 “turn 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.

Your best approach, therefore, is to work with the community policing officers assigned to the area in which your property is located. An established relationship with officers who know the area and its residents can make a tremendous difference in your ability to obtain information and cooperation.

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 (see the previous chapter on Crisis Resolution). 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.

Bawdy House Law

Real Property Actions and Proceedings Law Section 715, “The Bawdy House Law” permits a municipality or a property owner within 200 feet of a problem property, to bring an eviction proceeding in Buffalo City Court against tenants involved in an illegal business. An illegal business is defined as drug dealing, prostitution or gambling at the subject premises.

RPAPL §715 requires that the initiating party provide written notice to the owner of the subject premises regarding the problems at the property, and that he must make an application to remove the involved persons within five (5) days. If the owner fails to make an application the municipality or owner may commence an eviction proceeding to have the occupants removed. The landlord will become a party to that eviction proceeding and the Judge is authorized to impose a civil penalty up to \$5,000.00 for the failure of the landlord to address the problem. Currently, Buffalo City Court Housing Judge Diane Y. Devlin hears all Bawdy House cases. SEE HANDOUT FOR FULL TEXT OF RPAPL §715.

Nuisance Abatement

Chapter 294 of the City of Buffalo Ordinances is the Nuisance Abatement law. This action is filed by the City of Buffalo in New York State Supreme Court. Pursuant to Chapter 294, two or more convictions for the following offenses is necessary to commence an action: drug possession/activity, prostitution, obscene performances, promotion of obscene material, operation of a business not licensed as required by law, a building used for unlawful activities as described in § 123 of the Alcohol Beverage Control Law, a violation under Chapter 511 of the Zoning Ordinance of the City of Buffalo, a criminal nuisance as defined in §240.45 of the Penal Law, or certain Vehicle and Traffic Law violations.

The remedy pursued by the City is to first seek a preliminary injunction, allowing the immediate closure of the building pending further proceedings and eventually closure of the building ordered by the Judge for up to one year. In addition, the Court can impose a \$1,500.00 fine for each day the nuisance remains unabated and a \$1,500.00 fine and/or 15 days in jail for violation of the Court Order. SEE HANDOUT FOR FULL TEXT OF CHAPTER 294.

Federal Asset Forfeiture

Traditional common law enforcement targeted the perpetrator of the crime and concentrated on conviction and punishment. It did look to the property that the criminal either used or generated from his crimes. The federal forfeiture law combines traditional law enforcement with the removal of property from the criminal enterprise to achieve a more long-lasting deterrent effect on the illegal activity.

Crimes are committed for 2 reasons:

- Money/Profit
- Passion

The federal asset forfeiture program targets the money/profit motive.

3 Main objectives for forfeiture:

1. Punish and deter criminal activity by depriving criminals and those that help them of their property either used or acquired through illegal conduct.
2. Enhance cooperation among federal, state, local and foreign governments through equitable sharing.
3. Provide revenue to enhance law enforcement to catch more criminals.

3 Types of Property that can be forfeited:

1. Proceeds
2. Facilitating
3. Corpus Delicti
 - Proceeds - anything acquired, generated or derived from the illegal activity. This can be money, cars, boats, houses, jewelry, businesses, horses, etc. The government is allowed to trace the proceeds to specific property if need arises, i.e. Purchase of a house with drug proceeds.
 - Facilitating Property - any property, real or personal, that makes the underlying criminal activity easier to commit. For example, if a drug dealer uses a house to store and sell drugs, the house is said to facilitate the drug dealing.
 - Corpus Delicti property - this is property that is so integral to the criminal activity, that without it, there would be no crime, i.e. Smuggling of goods, money in currency reporting cases.

Federal forfeiture is used to combat many different criminal activities such as:

- Drugs
- Illegal Gambling
- Health Care Fraud
- Child Pornography
- Telemarketing
- Money Laundering
- Alien smuggling
- Customs violations

Civil Forfeiture:

1. Owner of property does not have to be charged with a crime.
2. Civil forfeiture does not depend on the conviction of the wrongdoer.
3. Seizure is necessary before proceedings can commence (constructive seizures allowed -real estate)
4. Burden of proof is preponderance of the evidence -on the government.

5. The defendant in civil forfeiture is the property.
6. Civil forfeiture is usually remedial.
7. Almost all Civil forfeiture statutes now have an innocent owner defense available.
 - Innocent owner had no knowledge of the illegal activity and if aware of the illegal activity did everything that one could do within reason to prevent it.

Civil Forfeiture of Drug houses. Title 21, United States Code, Section 881(a)(7) provides for the forfeiture of real property that was used to facilitate felony distribution, possession or manufacture of controlled substances.

Guidelines used by the United States Attorney:

- More than one search warrant and arrest at a location.
- Provide notice to owner to allow him to correct the problem.
- Allows our office to monitor the situation, is it better, or does it remain a problem property?
- Are they the same tenants involved (not just arrested) or different people altogether?
- What are the owner and mortgagee doing in response to the problem? Are they taking all reasonable steps to prevent future illegal activity?

Procedure:

- Forfeiture is initiated by government filing a complaint in federal court against the property
- No physical seizure unless exigent circumstances
- Owners and those with legal interests have 30 days to file claims and 20 days thereafter to file their answers to the complaint
- Assigned counsel only if it is principal residence
- Full discovery available, i.e. depositions, interrogatories, production
- Summary judgment
- Trial
- Obligation for mortgage and taxes continue until final order from the court

Burden of Proof is on the government to show by preponderance of the evidence that the real property facilitated the drug dealing.

However, burden is on owner to prove yourself an innocent owner by preponderance of evidence.

Some examples of reasonable actions:

- Calling the police
- Working with the police
- Having month to month leases with specific provisions if reasonable belief of illegal activity
- When you learn of problems, send certified letter warnings to all tenants
- Evicting not only those arrested, but those that let their apartments or living units to be frequented by those arrested
- Putting up gates
- Installing cameras
- Hiring security guards
- Giving keys to the police
- Participating with block clubs and neighborhood watches
- Encouraging neighbors to call landlord if problems
- Screening new tenants with criminal record checks
- Mortgage holders to ensure that property is not being subject to illegal activity... can enforce by calling in the note immediately
- Working with the SOS Task Force

Some federal cases hold that an owner must do all of the above to be considered an 'innocent owner'.

If property is forfeited:

- If you lose a forfeiture case, you cannot deduct the loss on your taxes
- The United States Marshals Service dispose of the property in any one of the following methods:
 - Sell it on open market
 - Transfer the property to a municipality or community organization
 - Will insist on strict guidelines in its future use
 - Consider if the property needs to be demolished
 - If demolished, City assesses costs against previous owner

RESOURCES

“The only thing necessary for the triumph of evil is for good people to do nothing.”

— Edmund Burke

Tenant Screening Service

Your local phone directory lists a variety of Credit Reporting Agencies under that category, some of which regularly work with landlords. In most directories, you will also find listings of companies that can help you with tenant screening under the heading of Property Management

While credit reports are standard, other services vary, and may include: providing records of courthouse eviction proceedings; tracking landlord complaints on problem tenants; search of public records for judgments, tax liens, or lawsuits; criminal background checks; employment verification; verification of address; and reference checking with the present and previous landlords. Your best bet is to contact a few different companies, interview them about their level of service (and fees), and check their references and reputations with other landlords

Police

To report an emergency, call 911.

To request Non-Emergency Police Assistance call 853-2222.

In addition to 911 and non -emergency numbers, other police services in the City of Buffalo that you may want to contact include:

- Police Department Districts. Five Police Districts are established around the city at the following locations:

A DISTRICT

1847 South Park Avenue

Buffalo, New York 14220

Phone: 851-4415

B DISTRICT

695 Main Street

Buffalo, New York 14202

Phone: 8514403

C DISTRICT

693 East Ferry

Buffalo, New York 14211

Phone: 851-4412

D DISTRICT

669 Hertel Avenue

Buffalo, New York 14207

Phone: 851-4413

E DISTRICT

2767 Bailey Avenue

Buffalo, New York 14215

Phone: 851-4416

Mayor Byron W. Brown

Abandoned cars

Animals (Stray)

Buildings (City owned) - Complaints and Board Up Request

City Ordinance Information

Drug Activity and Nuisance Abatement

Fallen Trees

Fire Prevention and Inspection Assistance and Information

Housing Code Information and Complaints

Legal Claims

Non -Emergency Police Complaints

Road Maintenance

Rodent Complaints

Sanitation Collection

Senior Services

Sewer Cleaning and Repair

Sidewalk Complaints

Snow & Ice Ticketing or Elderly Assistance

Street Cleaning

Street Lights

Traffic sign & signal replacement or repair

Water Division Information

Youth Resources

Zoning Information

Assessment, Assessment exemptions or Tax Bill/Payments _____ 851-5733

POLICE DEPARTMENT or FIRE EMERGENCY _____ 911

Anonymous Narcotic and Criminal Tip Line _____ 847-2255

Parking Violations Bureau and Parking Tickets _____ 851-5183

Permits and Building Permits _____ 851-4949

**Erie County Health Department's
Childhood Lead Poisoning Prevention Program**

1. INTRODUCTION:

- What is lead?
- Why is lead a problem?
- Where can lead be found?
- Lead-based paint hazards
- Property owner responsibilities
- Lead Paint
- Childhood Lead Poisoning Prevention Program
- Sources of additional information

2. WHY IS LEAD A PROBLEM?

- Health problems in children under 6 years old
- Health problems in an unborn child
- Health problems in adults

3. WHERE CAN LEAD BE FOUND?

- Paint
- Dust
- Occupational
- Soil
- Water

4. LEAD PAINT HAZARDS

- Where lead-based paint is found
- Recognizing lead-based paint hazards
- Controlling lead-based paint hazards
- Managing lead-based paint hazards

5. PROPERTY OWNER RESPONSIBILITIES

- Laws/Codes
- Disclosure Law
- Routine monitoring and regular maintenance
- Protect occupants from potential lead paint and lead in soil hazards
- Work with lead programs inspectors

6. CHILDHOOD LEAD POISONING PREVENTION PROGRAM

- Blood lead level tests reporting
- Response to elevated blood lead levels
- Case management
- Environmental Investigations

ADDITIONAL SOURCES OF INFORMATION

Childhood Lead Poisoning Prevention Program 961-6800

Erie County Health Department

-Questions on health effects, safe lead hazard control work, informational pamphlets, reducing lead hazards

National Lead Information Center 1 -800424 -LEAD

-Answer questions on lead

-List of laboratories that analyze paint and dust samples for lead

-Real Property Disclosure Rule

-Pamphlets available:

Lead Poisoning and Your Children

Protect Your Family from Lead in Your Home

Reducing Lead Hazards When Remodeling Your Home

Office of Lead Hazard Control 1-800-LEADUST

HUD

-List of trained inspectors

City of Buffalo - LeadSafe Rehabilitation for Housing from Owner Occupants 851-5317

Community Foundation of Greater Buffalo 852-2857

712 Main Street

Buffalo, NY 14202

Laws and Ordinances

These are generally available through your local public library. State laws are also available through your state legislature's information service. Contact your local county and city governments for applicable ordinances.