



# Letter of the Law

A Periodic Publication from the Law Offices of Ernest H. Hyde

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## **IMPORTANT MESSAGE**

*A message from Ernie*

*We are moving our Letter of the Law into the online age. Our newsletter will be available on our **NEW** website at [www.erniehyde.com](http://www.erniehyde.com) in pdf form for your printing and reading as desired. If you would like to be informed when new issues are ready, subscribe online at our website. If you do not use a computer and want to continue to receive our newsletter on paper, please write us or call us at 978-425-0005 and tell Cindy you want to remain on our hardcopy list. After this newsletter, only those who subscribe to the newsletter online or through Cindy will receive it. It is still free with our compliments. We hope our articles over the past 13 years have been helpful and interesting to you. Please visit our **NEW** website.*

## **COSTLY LANDLORD MISTAKES**

by Francine Traiger Poor

If you are like many small property owners, you've probably assumed that there was nothing to renting an apartment except finding a tenant and collecting the rent. Unfortunately, there's a lot more to being a landlord and what you don't know can hurt you.

### Screen Your Tenants

It's hard to evict tenants once they are in the premises, even for non-payment of rent. It's much easier not to rent to a problem tenant in the first place. Some simple research can help you to avoid future problems.

Have each tenant fill out an application, a simple form is available from the Greater Boston Real Estate Board/Rental Housing Association, (go to <http://www.gbreb.com/rha/> for more information). Be careful not to ask for irrelevant or unlawful information, such as race, religion, age, or sex, which could give rise to a discrimination claim. If you have access to a credit reporting agency, do a credit check and speak with the present and previous landlords and work references. Ask specific questions. Did the tenant pay all rent due? On time? Did they keep the apartment clean?

*In this issue.....*

*Landlord/Tenant Law—Costly Landlord Mistakes.*

*Criminal Law—Illegal Search and Seizure.*

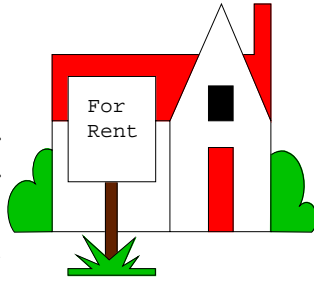
*New Telephone System—New ways to communicate with us.*

*Estate Planning—Do not fall for ads designed to convince you of a need for documents in your estate plan.*

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## Put it in Writing

With a written rental agreement, you can spell out the terms of the tenancy and who is responsible for what. Another reason for using a written lease or tenancy-at-will agreement is to take advantage of specific clauses which define the terms of the tenancy. You can restrict the tenant's right to sublet and right to bring in new occupants without your approval. The tenant also has the right to have pets unless there is a written agreement to the contrary. If you want the right to a key, and to restrict the tenant's right to change locks, you must reserve that right in a written agreement. A written agreement also allows you to require the tenant to pay for heat and hot water.



Other advantages of a written rental agreement or lease are clauses allowing you to collect attorney's fees in the event of an eviction, provide for the method of service should legal action become necessary and define the amount of notice you have to give in the event you choose to evict. If you're using a standard lease form or rental agreement, read it over carefully to make sure you understand what you're signing. If you need to make changes, make sure that all changes are made on all copies of the lease. You and the tenant should both initial each change. And make sure that all paperwork is complete before you give the tenants the keys and let them move in.

## Understand Your Responsibilities

The area where most landlords run into problems is with the tenant's security deposit and last month's rent. Since the rules are different for security deposits and last months rent deposits, it is important for you to make it clear as to which kind of deposit you are taking. If the tenant pays by personal check, be sure the description of the payment in the "memo" section of the check is correct. If the tenant pays in any other way, be sure to give a receipt which includes an accurate description of the payment. For a security deposit, you must:

- place it in an escrow account in a Massachusetts bank in both your and the tenant's name;
- give the tenant a receipt showing the amount of the deposit, your name, the address of the premises, and the name of the bank and the account number in which the security deposit is being held;
- give the tenant a statement of the present condition of the premises (The Greater Boston Real Estate Board has a form to comply with this requirement.);

- if the tenant submits to you a separate list of damages, return a copy of the tenant's list to the tenant within fifteen days of receiving it, with either your signed agreement with the list or a clear statement of your disagreement attached;
- pay the tenant 5% interest per year (or the amount of interest you receive from the bank each year if that is less) on the deposit;
- keep careful records on the security deposit and make them available to the tenant at your office during normal business hours;
- transfer the deposit to the new owner when you transfer the premises;
- you must return the deposit within 30 days after the end of the tenancy. You may only deduct unpaid rent which has not been validly withheld or deducted and the cost of damage the tenant has done to the premises (This does not include normal wear and tear);
- if you deduct for damages, you must provide the tenant with an itemized list of damages, signed under penalties of perjury, itemizing in precise detail the nature of the damage and the repair necessary to fix it. You must also provide written evidence, such as estimates, bills, invoices, or receipts, indicating the actual or estimated repair cost, within 30 days after they move out.

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This must be followed exactly, or you may have to pay treble damages plus attorneys fees.

For the last month's rent, you must give the tenant a receipt that states:

- the amount of the rent,
- the address of the premises,
- the person receiving the rent,
- that you must pay 5% interest.

You must pay the tenant 5% interest yearly or notify the tenant that the interest may be deducted from the next rental payment. You don't have to hold the last month's rent in an escrow account, but you may not deduct for damages to the unit from the last month's rent. If you do use an escrow account for last month's rent, you may pay the tenant the amount of interest you actually receive in the account, if it is less than 5%.

If you fail to comply with any of these requirements, the law allows the tenant to sue you for damages including return of the deposit. For some violations, damages include three times the interest due or three times the amount of the deposit, plus the tenant's attorney's fees.

Under current law, the security deposit provides very little protection against a tenant damaging the apartment. Almost any damage will cost more than the deposit. If you try to keep any part of the deposit for damages, you can be almost certain of a lawsuit from your tenant. And if the court disagrees with any part of the deduction, the tenant's award could be trebled, and you will have to pay the tenant's attorney's fees. It's a lot cheaper and less aggravating to protect yourself by carefully screening tenants.

#### Don't "Let it Slide."

Stay on top of late rent payments. Once a tenant at will (without a lease) is one week late on his or her payment, it is time for a notice to remind them of their obligation to pay on time. If the tenant becomes one more week late after being given the notice, it is time for a 14 day notice to quit. Allowing a tenant to become several months

late in payment can be disastrous financially. Many times the tenant will not be able to pay a large rent bill, requiring the landlord to spend significant amounts of money to get paid.

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### **WHEN POLICE OFFICERS FAIL TO FOLLOW THE LAW**



What happens when police officers fail to follow department policies or the law when it comes to investigations? Evidence is suppressed, which means it is lost from the case because it cannot be used at trial by the prosecution.

When a defense attorney determines that the rules have not been followed by the police, he files a motion with the criminal court and asks that the evidence attained during the violation of the rules be suppressed. The attorney sets out the statute and case law in a memorandum in support of the motion. A hearing is held where the prosecution and the defense is permitted to offer evidence that either the rules were followed or they were not.

During this hearing, the police officers testify to how the evidence was gathered and the defense calls witnesses to dispute the officers' version of the events, if any witnesses are available. The judge then makes the decision to allow the motion or deny it. If he allows it, the evidence is suppressed and not allowed into the trial. If he denies the motion the evidence is allowed to be offered at trial but may be excluded for other reasons.

An example of evidence suppression is when a police officer stops an automobile for a simple motor vehicle infraction but because the passengers and driver are young people, he takes the stop a little too far. He asks if anyone has any drugs or alcohol in their possession? When they answer in the negative, he asks them to step out of the car so he can search it. In the driver's console or glove compartment he finds a baggie of marijuana and a pint of whisky. None of the occupants of the car are twenty one years of age. The officer now has evidence of a crime. Since none of the occupants acknowledge they own the contraband, they are all charged.

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The evidence is a product of an illegal search and seizure. It was acquired in violation of the occupants' Constitutional rights. It, therefore, will be suppressed and not permitted to be used by the prosecution at trial as a sanction for the violation. This results in the charges being dismissed because there is no admissible evidence of a crime available to the prosecutor.

Our Constitution protects us from unlawful searches and seizures because they are intrusions into our privacy and they should not be taken lightly. This is one of the many ways our Constitution protects us from unwarranted intrusion and harassment.

### NEW TELEPHONE SYSTEM

We have installed a new telephone system to handle our incoming calls and to provide you with voice mail options when calling any of us in the firm. When calling our office, you will still be greeted by a live person as much as possible unless we are on another phone call. If you wish to be directed to voice mail the person can direct your call there. You may also key in the extension of the person you want to leave a voice mail message for or who you want to speak to if they are available at that time. Our extensions are: Cindy 201, Ernie 202, Francine 203 and Dawn 204. We hope this new system will provide you with more options with which to communicate with us.

### ESTATE PLANNING CONFUSION

We can usually tell when some law firm hits the air waves with an advertising about estate planning, our phone starts ringing. People call to tell us they need a living will, or a living trust, or some other document used in estate planning. Folks, the truth is, the ads are meant to confuse you enough so that you think you need all of these documents to protect your assets. Wrong!

First a living will is not recognized as an enforceable document in Massachusetts, although some attorneys insist on writing them to give direction to a health care proxy, a person you select to make your medical decisions. If you pick an appropriate person and write them a note or better yet, sit down and have a detailed conversation with them about your wishes, you can probably save \$500.00 or more. Furthermore, if you change your mind about how you want your medical decisions made, you can do the same and save even more.

As for living trusts, you may or may not need one. Don't assume, without consulting a lawyer or two, that you need everything you hear about on the radio or television. The ads are filled with jargon in order to make you think you are missing out on something in your plan or that you absolutely need in your plan. Only a qualified attorney with assistance from you or your financial planner can determine what you need in your estate plan. Go to your attorney with a list of your assets and their form of ownership, in order to prepare a proper estate plan.

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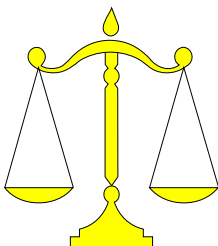
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