



**IREM Institute of Real Estate Management**

**SEPTEMBER 16, 2009**

**Seminar**

**Property Management Pitt Falls**

**Sponsors**

**Institute of Real Estate Management Boston Chapter #4**

**Goldman & Pease, LLC**



## **IREM PROPERTY MANAGEMENT PITFALLS: MISTAKES TENANTS AND THEIR ATTORNEYS ARE DYING TO FIND**

The course will address common mistakes that that Massachusetts Property Managers make in managing their properties - and how to correct them - and will help you avoid legal pitfalls. For example, this course will discuss common mistakes made with regard to pitfalls making one susceptible to liability under M.G.L. c. 93A, including multiple damages and attorney's fees, pitfalls which make collections more difficult, pitfalls involving defamation claims arising out of the use of Twitter, Face book, and YouTube, pitfalls regarding the failure to warn of lead paint claims against property managers, etc. Moreover, this course will assist property managers in spotting the legal issues and taking steps to protect themselves and their clients. This is a course for both newer and more experienced managers because it will address areas of law that have recently changed and were not issues in the past. The property managers will analyze the areas of the law in the context of how it affects them and their clients. Materials will be presented during the course, including an outline, articles on the topics discussed, and sample forms, Most importantly, the course will not simply be theoretical, The Attorneys will discuss real live issues that have been encountered by property managers and discuss the best way to address the issues. Discussion will be conducted on ways the law affects the property managers, and property managers are encouraged to raise legal issues that they have encountered in their practice. The course will focus on areas of the law that every property manager should consider inorder to reduce liability and to maximize recoveries.

**Highlight property management pitfalls that affect property managers; Develop an approach to respond to tough legal issues. Discuss ways property managers can reduce liability and pursue collections on problem accounts.**

**AFTER TAKING THE COURSE YOU WILL BE ABLE TO ANSWER:**

Upon completion of the course, property managers will be able to answer the following:

**I. Unfair and Deceptive Trade Practices, Chapter 93A**

One of the most common pitfalls for property managers occurs when they violate **M.G.L.c. 93A** which exposes them to possible multi damages and attorney's fees. Property managers may be exposing themselves to liability under **M.G.L.c.93A** if they cannot answer the following questions:

- A.** Is it unfair and deceptive to include in a rental agreement:
  - 1. A clause that the tenant will pay constable fees if notice to quit is served on the tenant?
  - 2. To fail to set forth the name and address of the owner of the property?
  - 3. A clause that waives the warranty of habitability?
  - 4. A clause that provides a penalty provision for the late payment of rent which is less than thirty days overdue?
  
- B.** Is it unfair and deceptive for a property manager to request from a slow paying tenant a post dated check for rent?
  
- C.** Is it unfair and deceptive for a property manager to fail to provide services and/or supplies after making a representation or agreement that such services would be provided during the term or any portion of the tenancy?
  
- D.** Is it unfair and deceptive to fail to reimburse an occupant for reasonable sums expended to correct violations of law in a dwelling unit if the owner failed to make such corrections?
  
- E.** What amounts can a Property Manager pay at or prior to the commencement of a tenancy without violating **M.G.L c.93A**?
  
- F.** Is it a violation of **M.G.L. c, 93A** to require a tenant to pay for heat and hot water when there is no written lease?
  
- G.** Is **M.G.L. c. 93A** applicable to all persons and properties managed?
  
- H.** Can a property manager be held liable under **M.G.L.c. 93A** for his failure to fix a defective condition on a property he manages?
  
- I.** Does **M.G.L c.93A** apply in the context of state sanitary code and building code violations?
  
- J.** Liability for Superintendent - Substandard Housing

**II. COLLECTION TECHNIQUES - AGGRESSIVE TECHNIQUES THAT WORK**

Another common pitfall for property managers are renting to tenant's who do everything in their power to avoid paying. After taking this course you should be able to answer the following to help avoid collection pitfalls:

- A.** In what context can I request a personal guaranty?
  
- B.** If the debtor does not own real property, but owns personal property of value, can I attach that property in a collection action against the debtor?

- C. What steps can I take to make debt more collectable against a tenant and/or a condominium unit owner?
- D. What steps can I take to ensure that I can recover interest and attorney's fees?
- E. What is considered a fraudulent conveyance in Massachusetts and what can be done if one occurs?
- F. What is a reach and apply action and how can I use it to collect outstanding amounts due and owing?
- G. What is a trustee process action and how can I use it to assist in collecting amounts due?
- H. What is a "**rolling lien**" in a condominium context and how does this work?
- I. How has the "**Homestead**" status been recently changed in Massachusetts and can you ever get around a "Homestead" filing?
- J. Are all retirement accounts exempt from attachment?
- K. If a town performs a tax taking on a condominium unit, can I pursue common area fees and assessments against the town?
- L. What is the **Fair Debt Collection Practices Act** and do I need to be concerned with this statute?
- M. Under what circumstances is a wage assignment appropriate?

### III. NEW AND/OR GROWING PITFALLS

In addition to traditional pitfalls, the law is always evolving and listed below are some new and/or growing pitfalls that property managers should be aware of:

- A. Failure to warn - Lead Paint, other dangers;
- B. Toxic Mold;
- C. Identify Theft - new security regulations
- D. Tenant/Landlord/Property Manager: Defamation Claims - Twitter, Face book, YouTube, etc.
- E. Nuisance Claims;
- F. CORI and Sex Offender Registry

Sincerely,



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Kelley A. Hannon, IAE

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