GENSTONE
REALTY

Rentals & Leases Workshop Summary

Rentals & Leases

Working with renters and landlords has much in common with buyers and sellers. Most of the procedures and information needed about the property and the prospective renters are the same. The big difference is how long the renter occupies the property, how it is used and modified, and the approval process.

Working with Landlords

Much of what we do with owners who want to sell a property is what we do with rental property owners who want to lease it. We explain our services, advise monthly rent amounts, provide a listing agreement, and put the rental listing in MLS. One difference is that a landlord assesses what the renters may physically do to the rental and how likely the rent will be paid on time. Likewise, a lender assesses a buyer's ability to pay, and the payment to the seller is one time, whereas a landlord has a payment concern each month.

Advising Landlords on Laws and Regulations

Because the landlord assesses the renters, it brings up some issues relating to federal, state, and local requirements and regulations and Fair Housing law. As their representative, we need to assist the rental owner in understanding and abiding by those laws. We also need to be aware of the law in our or the landlord's rental promotion.

Fair Housing in Property Promotion

When promoting or describing the rental benefits, just describe the property's features and not the type of renters. For example, "walk to the bus stop/subway/shopping" is a physical disability issue. Instead, use "close to." "First-floor main bedroom" is fine unless "perfect for a retired couple" is added. The term "not de-leaded" is a subtle way to turn away families with children under six where the presence of lead paint would keep them away. Let the renter decide when receiving the disclosure.

Lead Paint Disclosure

The lead paint disclosure applies to all rentals with a 100+ day lease for properties built before 1978. Inform the landlord and provide the EPA pamphlet "Protect Your Family from Lead in Your Home" to the tenant. Also, provide the Lead Paint Disclosure form signed by both parties unless a lead paint disclosure is in the lease text.

Renter Selection by the Landlord

Fair housing discrimination can manifest itself when a landlord decides whom to rent. Don't give the landlord any unnecessary information about the race/color, national origin, religion, sex, familial status, disability, age, marital status, or sexual orientation of the potential renter, which could influence the decision. Because familial status is in the law, the landlord cannot discriminate against families with children. The exception is the 55+ designated housing communities.

Occupancy Standards for Landlords

Federal, state, county, and local governments have rules/guidelines about the number of people that live in a bedroom or livable square footage. HUD guidelines are two persons per bedroom. If another room in the property could be considered a bedroom, that increases the number by two, and if the bedrooms are large enough for more than two, that's another increase. Because of that flexibility in interpretation, some local governments have more specific rules. The landlord should abide by the local rules, if any, and be somewhat flexible on the HUD guideline of two per bedroom.

Unrelated Tenant Standards

The rules vary by local governments, so find out the local standards to advise the landlord. Students are not a protected class, so there is some discretion there. Some localities state no more than three, and some four unrelated adults. Some are silent on the number of unrelated adults, so the landlord could decide if there are no protected classes involved.

Number of Incomes to Qualify and Smoking

Landlords could limit to no more than two incomes. It may be difficult not to accept Social Security or government pensions in states or counties with age as a protected class. Smokers are not in a protected class, so no smoking allowed on the property can be an acceptable lease term.

Pets and Service Animals, Emotional Support Animals (ESA's)

The landlord has the right not to accept pets or can make rules about what type of pet, size, or breed. Pet deposits may be required. Then there are animals not legally "pets." Those animals must be allowed to occupy a rental and not charged a pet deposit. The reason is that Fair Housing laws do not allow discrimination against those with physical and mental disabilities. There are two types of these animals, not considered pets, which must be allowed on the property:

- **Service animals** – These trained animals to recognize and respond to the person's disability by doing work or tasks. They are housebroken and leashed.
- **Emotional support animals** – These animals are pets, but they provide disability-relieving support to the individual. They don't require training, and the primary role is to provide disabled owners with emotional comfort. Since the ESA's owner has a disability, they can reside in housing with a "no pet" policy as a "reasonable accommodation." The landlord has the right to ask for documentation for an ESA from a licensed mental health professional on their official letterhead. The landlord may not ask the tenant the nature of their disability. The reasonable accommodation aspect would allow a landlord to refuse an animal too large for the property.

Landlord Inquiries about a Prospective Tenant's Disability

Disabled tenants have the right to apply for and live in a rental regardless of their impairment. This applies to a person with a mental or physical disability that substantially limits that person's ability to perform one or more major life activities. Often it relates to mobile, visual, or hearing impairments. The landlord may not inquire or ask for medical records unless the prospective tenant asks for a reasonable accommodation because of the disability.

The Right to Reasonable Accommodation

Disabled tenants may request the landlord make reasonable accommodations to rules, policies, practices, or services to afford the person equal opportunity to use and enjoy the rental unit and common areas. There must be a relationship between the modification and the disability. An example is a request to have a parking space large enough for wheelchair access.

Modifications to the Unit

If reasonable, landlords must allow disabled tenants to modify the unit at the tenant's expense. Those modifications are subject to the landlord's approval. As long as they are "reasonable," the landlord cannot outright reject them. An example would be a ramp leading to the property entrance. If those modifications create an unacceptable living condition for a future tenant, the tenant must restore it to its original condition before leaving. The landlord may ask the tenant to put money in an interest-bearing escrow account for that purpose.

Working with Prospective Renters

There are two benefits of working with renters. The first is an opportunity to establish relationships with potential future buyers to impress them with your abilities who may refer buyers to you. The second is receiving your split of the brokerage fee, which typically is one month's rent amount – half to the listing side and a half to the rental client side. Because that is a modest amount, make your time with the renter efficient.

Perception of Unequal Treatment

Because it's the right thing to do, and under Fair Housing laws, we must treat all buyers and renters the same way. As long as every potential renter is treated and given service the same way, there is no need for concern. Avoid any behavior with potential renters where the effect would limit housing choices. For example, if you decide not to do rentals and tell a person who inquires about renting you don't handle rental clients, you can't make an exception to handle one at another time. On the other hand, suppose you decide to handle rental listings and rental customers. In that case, you can place parameters, such as relatives only, certain geographical areas (zip codes), or over a stated monthly rental amount. To protect against a perception of unequal treatment, put the parameters in writing with a date. It can be changed later if needed.

Meet with Prospective Renters

Make an appointment with prospective renters, and interview to discover needs as you would with buyers. Let them know what you will do to find the right rental. Have them sign the agency disclosure form. Financially qualify them to know if they are in a position to be approved by a landlord. Then, find and show potential properties from MLS.

Financial Qualification

Here is a suggestion to save time and potential disappointment. Have the potential renter run their own three credit reports, including credit scores. Your having this information serves multiple purposes. First, the renter knows what's there and can correct any errors now. Second, you know whether a landlord is likely to approve them based on the credit scores, so you don't spend much time getting a lease agreement to landlords who will reject it. Third, if the credit reports are reasonable, it saves time for the landlord's approval process.

With recent credit reports in hand, the landlord won't have to pull a credit report to decide in some cases. Further, have the renter get a copy of the last two bank statements and the last two paychecks, which the landlord will probably request. *(Basic rule – income needs to be three times the rental amount.)* Then, when submitting the lease application, include the credit report, the bank statements, and the paychecks.

Rental Documents

Use the lease application and the appropriate lease agreement for your area or the landlord's supplied one. Have the prospective renter complete the lease application and provide a check for the credit check/application fee. Then, submit them to the listing agent or directly to the landlord or property management company, as appropriate. When approved, the renter signs the lease agreement.

Continuing Contact with the Future Buyer

It's not over when the lease is signed and the renter moves in. Since you demonstrated your expertise, stay in contact with this person regularly, especially a few months before the end of the first-year lease, in case they are thinking about buying. This person may provide leads to people they know who are thinking of buying or selling. Use your experience with this rental to expand your influence and potential for more business!