

With the deadline for MREMA's quarterly article knocking at my door, my Paralegal and I reviewed dozens of pressing issues that needed to be addressed. We have chosen three.

Smoke Detectors

Maine law requires that every rental unit in a multi-family building must have at least one smoke detector on or near the ceiling in areas within each bedroom or at the entrances leading to each bedroom. Multi-unit buildings that are four stories or higher must have additional smoke detectors installed in each closed corridor and closed hallway on each floor. As of October 31, 2009, any smoke detectors that are installed in a multi-family building must be powered both by the electrical service and by battery. Note that any smoke detector located within 20 feet of a kitchen or a bathroom (containing a tub or a shower) must be a photoelectric type smoke detector. Every smoke detector must be of a type approved by the State Fire Marshall.

An individual who violates the smoke detector law is guilty of a civil violation and subject to a penalty of up to \$500.00 for each such violation. The Court has the discretion of waiving the penalty if there is satisfactory proof that the violation was corrected within ten (10) days of the issuance of a

complaint.

If you have a tenant who is either deaf or hard of hearing, you are required, upon the request of a tenant, to provide an approved smoke alarm sufficient to warn the tenant of smoke. If the property manager fails to act within 24 hours, the tenant may purchase, install and maintain such a smoke detector and deduct the actual cost from the monthly rent.

At the commencement of each tenancy, it is the landlord's duty to confirm that each smoke detector is in working condition. After written notification of any deficiencies by the tenant, the landlord is required to repair or replace any defective smoke detector. On the other hand, it is the tenant's duty to maintain the smoke detectors in working condition by keeping charged batteries in them, by testing the smoke detectors periodically and by doing nothing to disable them from working.

The smoke detector statute can be viewed at Title 25, Section 2464 of the Maine Revised Statutes. The Commissioner of Public Safety has been instructed to adopt rules to implement this law. Preliminary guidance is available on line at www.mainechief.com/documents/p1162.pdf. When final rules are adopted, they will be available at www.maine.gov/dps/fmo/laws/rules.html.

It should be noted that a few municipalities have enacted ordinances at least as rigorous as this statute, some of which contain more severe penalties. Noncompliance with either state statute or local codes could become the basis for a civil action for damages in the event of personal injury or damage to property. Strict compliance with the law is mandatory. Criminal prosecution has been initiated in a few jurisdictions following the deaths of tenants where landlords failed to install smoke detectors.

Radon Testing

During the last legislative session a law was enacted that requires landlords to have their residential buildings tested for radon no later than 2012, with subsequent testing every ten (10) years thereafter. It is not clear from the statute itself, or from the legislative history, whether the phrase "by 2012" is intended to require that the testing be done prior to the commencement of that year, or prior to the end of that year. See Title 14, Section 6030-D of the Maine Revised Statutes.

Home testing kits are not permitted. Radon tests must be conducted by a person who is registered with the Department of Health and Human Services.

If test results reveal a level of radon of 4.0 picocuries per liter of air or above, the landlord is required to take all necessary steps to mitigate the level of radon to a number below that standard. "Mitigation services" must be provided by a person registered with the Department of Health and Human Services.

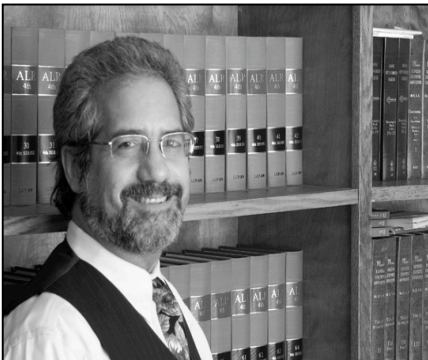
Landlords are required to provide written notice to tenants and potential tenants regarding the presence of radon in the building. This information must include the date and results of the most recent test and must explain the risks associated with exposure to radon. Standard disclosure forms are being prepared by the state and will be accessible at some point during 2010. Go on line at www.state.il.us/IEMA/radon/pdf/DisclosureRadonHazards.pdf.

If a landlord fails to comply with the requirements of state law, he or she would be subject to a fine of not more than \$250.00 per violation. It is likely that enactment of this new law will strengthen the hand of Plaintiff's lawyers who are filing litigation on behalf of individuals who have been harmed by exposure to radon.

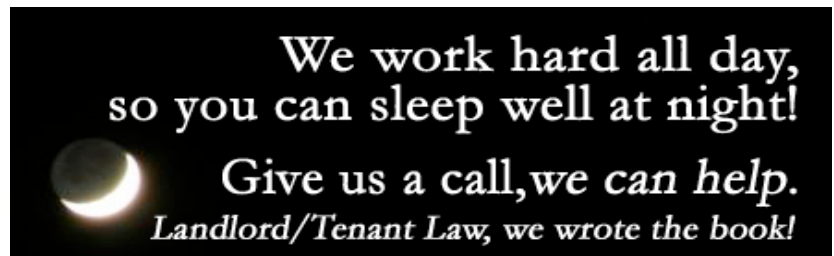
Staff Training

We have recently published the revised edition of our book "Maine Landlord-Tenant Statutes & Commentaries". We have included updated analyses and case references on all State statutes relating to landlord-tenant relations. We have paid particular attention to the various substantive changes that have occurred within the last two years. When emergency situations arise, you may not be able to contact your lawyer immediately. It is very important for you to have knowledge of the laws when dealing with your tenants and, quite frankly, when dealing with your lawyer. You need to understand the law in order to be able to ask the right questions and get the desired results. To order a copy of the book, please contact us.

Please mark your calendar for our full-day seminar on Landlord-Tenant Process & Procedures on April 9, 2010 at the Ramada Inn in Lewiston. This seminar will include the most comprehensive and hands-on practical book that we have ever published. MREMA members will be eligible for a 25% fee discount. If you are not sure that you are on our mailing list, please contact Karen Cook at kcook@shankmanlegal.com or call her at 786-0311.



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