

ACE Property Management



How to Manage Properties that Preform



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Learning Objectives

At the end of this course, the student will be able to:

1. Explain the importance of working for a landlord and reducing their risk.
2. Describe reasons to use other than a 'state lease' that may benefit your customer – the landlord.
3. Explain the importance of using an attorney to create the lease as well as handle evictions.
4. Describe the proper steps to take if a maintenance issue comes up on a property.
5. List ways to build a business that centers around your customer's concerns with their property.
6. List items that should be included when screening potential tenants.
7. Describe the law and rules associated with service and emotional support animals.
8. Create a credit check policy for your company that is consistent and fair.
9. List items to include in the company lease.
10. Describe the law for property owners as it applies to screens.
11. Describe Chapter 83 as it applies to what is and is not allowed by law.
12. Describe Chapter 83 as it applies to security deposits and proper handling.
13. Describe how FIRPTA can impact the property management process.

Timeline

Introduction	10 min.
Chapter 1: Foundations for great management	40 min.
Chapter 2: Tenant Screening	35 min.
Chapter 3: Leases	25 min.
Chapter 4: The Law/Case law	20 min.
Chapter 5: Tips, Tricks, and Miscellaneous	20 min.
Total	150 min. (3 hrs CE)

Introduction

This course was written to give you the tools to build a strong real estate and property management business, to understand the applicable laws, and to represent the customer in a way that makes you a genuine benefit to them and their portfolio. We will give you the tools necessary here to help avoid all the distractions and superfluous activities that can get in the way of closing customers for life.

VISION

In our extensive interaction in the real estate market both as consumers and practitioners we have had the experience of seeing both the highs and lows of service and professionalism in the real estate industry.

One common thread we have realized is that professionals close deals and closers are professionals.

We developed our courses as a means of setting a definitive road map guiding Realtors to recognize and develop the practices that are common to professional “deal closers”.

Our mission is to bring a level of professionalism into a profession that at times sorely needs it. We are the caretakers of our clients’ most valuable assets and as closers, as an ACE (Accredited Closing Expert) we hold this trust sacrosanct.

That being said, we have attempted to use a little humor throughout this book to make it a little easier to read. Some may say this is unprofessional as professionals never laugh, wear a permanent scowl, and eat nothing but a diet of rusty nails. The subject matter we go into here is often dense and we wanted to take some pity on you having to read all of this. We hope a little levity will not only make it a bit of fun but also help you to remember it.

Expectations from attendees of this program:

- To endeavor to conduct every transaction in the most professional and effective manner for, most importantly, the consumer (customer) but also extending to the other professionals with whom the transaction requires you to interact.
- To continue to educate yourselves at all times on the ever-changing aspects, both legal and market related in their industry.
- To clearly keep in mind the goal of the transaction and not get bogged down in the minutia and personalities that tend to distract from that.
- To find solutions and solve problems not to doubt and aggravate issues.
- To not be afraid to say “I don’t know” once but never twice.
- To work within the realm of your expertise.

Overall goals for the Real Estate Professional

To make certain they truly are the expert they are putting themselves out to the customer to be, and to help them to communicate that to the customer in everything they do in their relationship. Customers are looking for someone smart, talented, likable, and honest. Our goal is for agents that take this class to not only meet but exceed their customers hopes.

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Closing/review

Chapter 1:

Foundations for great management

Property management can be an exceedingly difficult and thankless job. Often one finds themselves dealing with difficult or complaining tenants and stubborn, unrealistic, or cheap landlords. This often makes property managers fall into the trap of being difficult and even miserable to deal with. Dealing with problems all day long, doing the best you can with the resources you are provided, and then getting criticized by one or both parties you are working for is very demoralizing. We need to realize on the way in that this is a big part of what being a property manager is. There are things we can do to help minimize the aggravation from both tenants and landlords which we will discuss later. Right now, we need to look at one of the key concept's property managers seem to forget all the time. **We work for the landlord.** It almost seems sometimes that within the whirlwind of abuse and threats that often plague our daily existence we lose sight of the fact that the landlord is our customer. For this reason, we need to focus on them and what is in their best interest.



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We can often lose sight of the landlord's best interest when we are working with a tenant we like, or we feel like the landlord is being unfair, or the tenant happens to be a persuasive person. One way or the other, our position needs to remain clear: ***we are hired by the landlord to protect their interest. This protection includes making sure they don't do something that will break the law and open them up for liability.*** Sometimes serving the landlord can be telling them "no" to something they want to do because it will open them up for undue liability and thus is actually riskier than they think it is. Your job is to know the risks and to be able to explain them effectively to your customer in a way that not only answers the customer's question but also shows the customer that you are someone that "knows their stuff".

The way to avoid harming the landlord's best interest is to not side with the tenant ... ever, unless the landlord would be violating a law, or ordinance or are asking you to do so. No matter how compelling and likeable the tenant is we must keep clearly in mind who signs our pay checks. If the landlord does propose something that violates the law you must advise them against this course of action of course. In this way if the landlord decides to proceed with the advised against action your opinion will be validated if negative consequences are experienced. If the warned of response does not

occur you can always circle back to that it opened them up for risk that you felt was disproportionate to the benefit the landlord would have received.

Another particularly important tool that a great property management company should have is a **quality lease**. I know that there is a state provided lease, but this is by no means the only lease that landlords can use. It is however the only lease that we as real estate agents can fill out. This means that if you are going to get a new lease created for your property management customers you will need a non-licensed person to fill it out or an attorney. Why would you want a lease other than the state lease? and what should it be like? Well, there are several.

1. You represent the Landlord and any lease you provide should favor them.
2. Having a more Landlord-friendly lease you can provide is an asset/selling point for your services.
3. You will want an attorney to create this lease.
4. Have an eviction attorney create this lease if possible.
5. It needs to not contain unconscionable terms.
6. The attorney that creates it should be the same one who will represent the landlord and the lease in any eviction.

The attorney that creates your lease should be your eviction people. They have the most experience with what the courts will and won't accept. The state lease for instance, will leave your customer in a position where they can be owed several months of rent by the time an eviction is complete and still need to return the security deposit to the tenants. A better lease can prevent that. With that being said, there are many rights and responsibilities that cannot be waived, and if a lease tries to waive them or is too one sided the court may rule the lease to be unconscionable. In this case the court can throw out part or all the lease. This is the reason why a strong landlord friendly lease should be made by the folks that know the things the courts will and won't accept **in order to build a lease that better protects your customer.**

When taking on a new asset under management it is important to establish an understanding of both sides' expectations. In no place is this more critical with property management than with maintenance. As a property manager you should have certain maintenance criteria that your properties adhere to. Those should be explained to the customer along with your reasons for doing so. Your maintenance policy should always be built around asset preservation and appreciation. When a customer trusts their property to us we need to not just tell them what we will do but also why we do it. Your "why" should not just explain why the things you do are in your best but should focus on why the things you do are in the customer's best interest. Everything you say should show the customer that you have put the time and effort in to consider your business and what value you can bring to the people that chose to do business with you. A great discussion of your company's philosophy of maintenance is an excellent way to do that.

Property managers can easily wind up being the harbingers of only bad news. In fact customers may learn to dread our phone calls if we are not careful. Think about it, when does the property manager usually call? When someone is not paying, something is broken, or the city just posted a notice. The call to tell the owner that their property just won the real estate lottery is, believe or not, not a common occurrence. For this reason, we want to stay engaged with our property management

customers not simply when bad things are happening. Routine calls to check in with them and let them know that things are going well and to check on your customer is an amazing value add that most managers do not invest in. Staying engaged will help us to stay front of mind and even potentially find out about issues the customer may be having with our service that they haven't been bothered enough to raise yet. This gives you a great opportunity to relieve a pain point prior to it becoming a termination letter. Speaking with the customer occasionally also gives you a chance to review their account prior to calling and make sure all looks good and when you speak to them get new business from them or their sphere of influence.

One of the top pain points for most property management customers is the unavailability or under availability of their manager. There will be lots of aggravating and difficult phone calls and emails in the property management business. When you chose to engage in this business that is what you signed on for. Not answering your phone or leaving emails un-responded to is either cowardice or a reflection of an inability to do the job **customers are paying them for**. What I mean by that is, I don't think anyone markets



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to get their property management customer by saying something like "don't worry about contacting me I never respond to my customer when they reach out". Or maybe, "I usually wait for customers to contact me two or three times an issue before responding to make sure it's really an issue. I don't want customers wasting my time." If that is the truth of how we run our business and we included that in our sales pitch to our customers....we would have no customers!!! We represent the exact opposite typically in our sales pitch because we know it is what the customer wants yet we let this critical area be the number one customer complaint they have. This means answering phone calls when people call or returning them immediately if you can't answer when they call. If calls are left after hours these calls are the first things dealt with each day prior to moving on to new business. Being on top of all emails is critical as this is where most communication is done. An empty in box policy is a great way to enforce this with your email communications. Stay in touch with your landlords to show them they are important to you and that you do what you say. Customers don't replace people like that quickly.

If maintenance issues do come up at a customer's property, make sure to communicate that to them quickly. You never want those complaints to get to them before you have told them about it. If the tenant complains to the landlord, the landlord starts to think "why exactly am I paying that property manager if I am taking these types of calls". For this reason, we want to avoid giving landlord contact info to the tenants whenever possible. We are the landlord's liaison, and all information needs to come through us. That being said, when we find out we need to make sure to immediately make the landlord aware of it and offer them options as to how to handle the issue. We are the professionals, so we need to come armed to the table with options.

As the professionals we can often find ourselves in a position of knowing more about property management than our customer does. This gives us the opportunity to educate the customer about how to best handle their assets. We should never squander this opportunity. Whenever you educate your customer in a clear and helpful way you help them to realize just how much we bring to the table. It is building in job security for you because the customer is looking for someone competent. As it turns out,

telling someone “yeah I’m competent” is not nearly as effective as showing them how your competence brings ideas and options to the table they were not aware existed. Things like what are the best banks for a landlord to use, which lenders have the best financing options for investors, and what laws they should be aware of and methods you have to avoid running afoul of them.

Another item to address is your property management agreement. **This agreement needs to offer the best protection for you it can, clearly spell out the responsibilities of the parties, while simultaneously not being too intimidating to potential customers.** There is often a battle waged between business owners and their attorneys when it comes to the creation of contracts. The attorney wants to minimize risk and the businessperson wants a contract shorter in length than an encyclopedia (old school Google). The attorney is motivated by not incurring liability on themselves for not making you aware of a risk and when they get involved with things it is usually because the worst-case scenario has happened. Attorneys are not brought in when deal are running smoothly, and partners are getting long. For this reason, they tend to have a particularly cynical view when it comes to the possibility of deals going sideways. You always want to seek out legal counsel but temper it with the understanding that some risk may need to be endured to create a management agreement a customer will be willing to sign. The criteria you should consider for your management agreement are:

- ✓ It is easy to understand. (Minimize legalese)
- ✓ That protects you.
- ✓ That does not seem too onerous. (If it uses a more paper than a ticker tape parade start editing)
- ✓ Is clear on the scope of services. (Needs to spell out exactly who does what when)

Another thing to consider is your system for taking on new properties. When taking on a new property you want to do a walkthrough (especially if it is vacant) to make record of the properties condition when it was turned over to your company. Pictures should be taken, and a cloud file started to establish a clear record to protect yourself if the relationship with the customer later sours. If the property is part of an HOA or Condo association, you want to make sure to get copies of the condo/HOA docs if possible and you must get a copy of the rules and regulations. If the property you are taking on is a new purchase for the investor make sure to also get a copy of the assignment of lease from the previous owner. This in conjunction with your management agreement gives you the greatest flexibility when needing to prove standing to speak on the owner’s behalf in regard to the property.

Class Exercise

List 3 to 5 things that would make a property management company hard for a customer to replace:

1. _____
2. _____
3. _____
4. _____
5. _____

Part II

Who is our customer? Write some characteristics of our customers.

1. _____
2. _____
3. _____
4. _____
5. _____

What would this kind of customer care about?

1. _____
2. _____
3. _____
4. _____
5. _____

What can we do to build our business around these customers' concerns?

1. _____
2. _____
3. _____
4. _____
5. _____

The key to running a successful business is identifying a need and figuring out how to better meet that need than it is currently being met. In the management businesspeople often lose sight of the customer and simultaneously with what their needs are. When that happens, it is impossible to have a business built on meeting needs that we can no longer identify. It starts with the customer always.

Chapter 2:

Tenant Screening

When asked why landlords hire a management company one of the top reasons always involves finding good tenants. The method that is most effective for weeding through applicants is the tenant screening process. The screening process should be mandatory and can be an additional revenue stream for your company. IT should include:

- Credit
- Background
- Evictions
- Income



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All of these things give us potential indicators of the likelihood of a tenant performing under the terms of the lease they are proposing to enter into. We want to have the most robust information we can in order to give our landlord the best possible recommendation whether to proceed with a certain customer.

Normally we want the cost of the background check to be the responsibility of the tenant. If there is no HOA then it is a no brainer the tenant pays, and we run our own screening. If the other agent sends us the screening information we still require the tenant to pay and we run our own screening. Why you may ask. The answer is simple. What is the motivation of the tenant's agent? To get these tenants into a property so they can stop showing them rentals and to get paid. What is our motivation? To make sure the landlord gets a good quality tenant that pays in full, on time, and maintains the property. Do you see any overlap in the motivations? I sure don't. Basically, this means the tenant's agent is incentivized to find the least detailed and thorough screening they can as it gives them the greatest likelihood of accomplishing their goals. It has happened many times where we have been presented a credit and background check only to run our own screening and discover numerous things that were missed on the one the tenant's agent presented to us. We never want a situation where the owner comes back to us saying how come we didn't know this person had _____ on their credit or background.

What about a situation where there is an HOA that requires the tenant to pay an application fee as well? Should the tenant be responsible to pay for screening twice? Can the landlord just request a copy of the HOA's or accept the tenant if the HOA does? Yes they can but all of these options have risks associated with them. Let's start at the top. Yes the landlord can require the tenant to pay for their management companies' application to be done regardless of what the HOA requires. The issue is this is a potential discouragement to potential renters that can make a property stay on market longer than it should. That is a risk the landlord needs to be made aware of. If we go with option two, and just let the HOA screen them there is no certainty of the quality of the HOA's screening. The folks that make up the board of an HOA are all volunteers and while some of these folks would have made great SS soldiers in Germany that doesn't mean they know the difference between a background check and their backside. So, there is risk associated with that, and once again you need to make your customer aware of that.

The third option is that the landlord pays for the tenant screening in a situation where there is an HOA. The benefit of this it reduces risk to the owner. The downside is it costs the owner money to pay for that risk reduction. This issue is a phenomenal opportunity to explain the various options to the customer and give them the opportunity to pick which risks they are most comfortable with after having everything explained to them.

When it comes time to screen the potential tenants there is a technique called "actually doing your freaking job and screening them" I like to encourage agents to employ. There are a few things that property managers often don't do instead opting to just review the credit and background checks. **The other things you want to make sure are being done as part of your screening are:**

- Check with the clerk of courts from where they are coming from (no outstanding litigation or evictions)
- Call the landlord references.
- Cross check the landlord's names given with the address and tax roll.
- Confirm they work where they say they do.

Ronald Regan famously said, "Trust but verify."

Another item that comes up routinely during the tenant screening process is pets. **More specifically service and/or emotional support animals.** These two things are quite different but neither allow us much latitude when it comes to denying a tenant. Let's start with service animals:

- A service animal can be a dog or mini horse only.
- It must be trained to help with the performance of tasks that relate to the tenant's disability.
- Service animals are regulated by the ADA.

An interesting fact about service animals is that it is a crime to lie about an animal being a service animal. Agents often use the term service animal and emotional support animal interchangeably and that is a serious issue if someone chooses to take issue with it. The actual law is quoted below.



A person who knowingly and willfully misrepresents themselves, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

Emotional support animals differ in several ways. They are not required to do anything but make the tenant feel better for having them. This is obviously a much lower threshold to cross. Some things to know about emotional support animals are:

- Governed under FFHA (Federal Fair Housing Administration)
- Can be just about any kind of animal.
- With non-veterans request a copy of the ESA letter for emotional support animals
- Keep any proof on file for all dogs including confirmation of shots.

An additional note with ESA's and service dogs is in regard to proof from veterans. You can request a copy of the Nexus letter for emotional support or service animals with veterans. With both ESA's and service dogs you can NOT prohibit them from renting due to their animal. In addition you can NOT charge a pet deposit or fee. One final thing with pets is that as a manager you should request and keep on file all records of vaccinations and inoculations for tenant pets.

When we are screening tenants the first thing we want to run is the credit check. Rejecting someone for credit reasons is less risky than doing so due to background. Rejecting someone for criminal history can be a FFHA issue of discrimination. With that in mind we should check the credit first and reject them if they do not meet the company credit criteria and only then run the background check. When creating your company's credit check policies here are some things to keep in mind:

- Have a **consistent** policy for credit checks.
- 7-year lookback is commonly accepted.
- Be reasonable with considering mitigating circumstances.
- If you reject for credit reasons an adverse action letter should be provided according to FCRA

A rejection due to a failure to meet credit criteria requires you as the property manager to provide and adverse action letter to the potential tenant. This is an informational letter that lets them know that they have the ability to request a free credit report and other credit related items. Providing it is easy and failing to do so opens you up to failure to comply with federal laws.

When it is time to do the background check we need to make sure of several things. As mentioned earlier, these should be done after credit checks as they can cause a violation of FFHA. To avoid that we **need to have a fair and consistent policy**. Here is an example:

- ✓ Arrest records are not enough to deny.
- ✓ Should not deny for non-violent crimes.
- ✓ Should consider mitigating circumstances (age when crime was committed length of time since conviction)
- ✓ Deny if violent felonies less than 2 years old.
- ✓ Deny for drug convictions.

When it comes time to do the income verification there are a few things we need to look at and then apply a little bit of the least common thing in the universe: common sense. When we do the income check we are trying to make sure the tenant makes enough to afford the rent for the property they are trying to lease. The typical place we will look are:

- ✓ Pay stubs.
- ✓ Bank statements
- ✓ Letters from employers (when paid in cash)
- ✓ Current rent comparison

Many management companies use an income multiplier such as the tenant needs to make a minimum of three times the gross rent in income. Consistent tools like this can be helpful but may need to be modified depending upon the type of area a property is located in. Lower income properties tend to have lower multipliers due to the fact that most folks that would live in those areas do not make enough to meet a tree times rent criteria. Consistency is great but we need to keep our properties performing as well so this is a real-world situation that you often may find yourself needing to adapt to. This is an item to discuss with your landlord. Let them know the risks, benefits, and your opinion on what should be done and then let the owner make the decision. It is their property remember.

Sometimes we have situations where tenants are on the bubble. They are perhaps just under our criteria or they meet most but not all of the criteria. Maybe they had a recent eviction, or their credit is poor. Do we simply tell them to hit the road? Well maybe there are some tools we can come up with to help us get them into the property and still alleviate the additional risk our landlord might be taking on. Or maybe just give them a chance to plead their case. Here are a few things that can help:

- ✓ Providing an additional security deposit can help with a poor credit tenant if your lease calls for security to be considered rent if the landlord has to file eviction.
- ✓ Personal letter explaining the circumstances surrounding an issue. Sometimes good people get down on their luck. If there is a good reason for failing to meet the criteria that can be presented to the owner.
- ✓ For commercial getting a PG. A personal guarantee gives you someone personally on the hook if the tenant fails to pay and makes a commercial lease significantly less risky.

Now that we have our tenants screened let's take a look at the next step, entering into the lease with them.

Chapter 3:

Leases

The lease is basically the marriage vows for this relationship we are starting with the tenant. They will lock us into terms that may well extend past the life of the lease itself. With that in mind there are some things we need to think about when it comes to the lease we use. Will we be filling out this lease yourself? Are you a licensed agent? If the answer to both of these questions is yes, then you must use the states lease. You do not have a choice regardless of if an attorney is the one that created it for you. Now if your unlicensed assistant is filling out the leases it is fine. I know that seems crazy, but I don't make the laws just try to keep you from a modeling career in orange jumpsuits. Okay, maybe not orange jumpsuit bad but at least bad enough to get you fined and risk your license. So let's not do that.



As we mentioned earlier some critical things you want in your company lease (that non-licensed folks will be filling out) are:

- Attorney prepared. (Especially an eviction attorney)
- Strong and leave little or no wiggle room for tenants.
- Make sure the attorney will be willing to defend it. (Often will defend at a discount if you used their lease)
- Should be weighted in favor of the landlord.
- Should forfeit security deposit if eviction must be filed.

Your lease should also address wear and tear items. The case laws define what ordinary wear and tear is, but the landlords lease can redefine these things and the courts will honor that. If not addressed in the lease, ordinary wear and tear are things like:

- Routine painting
- Pressure Cleaning
- Rust & Grease on the stove
- Pin holes in walls
- Carpet cleaning
- Burst pipe not caused by tenant negligence.

The items that are not considered ordinary wear and tear are things like:

- Broken or stolen items
- Intentional damage
- Keys not returned.
- Removal of improvements

One pain in the neck item that landlords are on the hook to provide and maintain are screens. The law requires the landlord to:

- Provide screens prior to the tenant moving in
- Keeping them in good repair
- Should be checked annually.
- Can be assigned to the tenant in your lease. (not normally if tenant is part of a housing program)

If your management company deals in shorter term leases, which are leases shorter than 6 months, then you will need to collect sales tax in addition to the rent. This is an item that should be added to the lease. If your company is the one collecting the rent you will most likely need to be the one making the sales tax payments. It is especially important to have good records to keep this from ever being an issue.

Finally there are some important lease notes we should discuss:

- Make sure the lease is signed by the CTL date.
- If not correct the CTL
- A CTL is not needed to do a lease but if it exists it needs to be adhered to in order to avoid attempted invalidation of the lease.
- If a Lead Based Paint disclosure is needed, provide it and get it fully executed.
- Make sure if you have an attorney provided lease it includes the LBP.
- ***Provide a copy of the Landlord Tenant Act with your lease.***
- Rent is due on the 1st and is late on the ____
- Leases longer than a year should be created by an attorney and also require 2 witnesses.
- When prepping lease check the deed to confirm no one was added or removed from title.
- There is no commercial lease form. An attorney should always write these for you.

Keeping these things in mind should result in a better leasing experience for you and your customer. Showing you have this critical portion of the business handled in a well thought through manner results in customer more willing to accept that you have the other aspects of the business in hand as well. This leads to greater client trust and a willingness on their part to accept what you suggest.

Chapter 4:

The Law

One thing that is mandatory to be a good property manager is to have a good working knowledge of the law. We need to know and advise our customers as to what they can and can't do within the bounds of legality. So is the law whatever the lease says? Well that is a yes and no situation. As we discussed earlier there are things that can be in a lease that the courts will deem to be unconscionable and thus not valid. There is also the possibility that lease you use does not say anything about the matter. What happens when the lease is silent? The answer is: The law is used to fill in any missing items. So, where do they get that information from? There are really three areas where the information will come from to fill in a lease that is silent:

1. The State Residential Landlord Tenant Statutes
2. Case Law
3. County Ordinances

The main source to go to for how the state views the landlord tenant relationship will be The Florida Residential Landlord Tenant Act also just simply called "The Landlord Tenant Act". The landlord tenant act has guidance in it for most of the things that commonly occur in the landlord tenant relationship. For that reason, we are going to look at it now, so you know:

- What things are and are not allowed by law.
- What things the tenant can and can't do.
- What things the landlord can and can't do.
- What the remedies you have available to you are.
- What things can and should be addressed in your own lease.

So let's just jump right into this super fun and interesting (intense amounts of sarcasm being used here) document and see what there is to know to run our management companies in accordance with the law.



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The Case Law & other laws to be aware of

FIRPTA is a concern for property managers. If the owner is a foreign national your management company could be on the hook for any non-paid income taxes if you were not making a FIRPTA withholding from their rental income distributions. On the purchase side it is the buyer's responsibility to make sure the FIRPTA withholding is made. In the real world the title company is the one that does this, but if they didn't, the buyer would be responsible for the uncollected taxes. Ouch!!! Right? In the case of a rental property income the FIRPTA withholding needs to be 30% of the gross rent. That gross includes any lease expenses the tenant pays. Double OUCH!! What really stinks is that if we as the property manager do not collect this tax we may be responsible to pay it for the landlord. The reason why the IRS holds domestic folks responsible for the taxes when a foreign national doesn't pay is pretty practical. They know where to find the domestic person. The foreign national they may never be able to locate again, and the IRS really wants their money.

To avoid issues with FIRPTA you want to make certain your owner has a TIN. This lets you know they have a domestic corporation or a means of being taxed. This relieves you of the necessity to collect FIRPTA tax. We can assume they are annually filling with the IRS using their TIN number and we can treat them as a domestic customer. If they do not have a TIN number, then you will need to get a W-8 ECI form signed. This will relieve us as their property manager from being responsible for the collection of their FIRPTA tax.

Another situation that can occur is that a condominium or homeowner association may require the tenants to pay them the rent rather than the owner or their appointed property management company. This situation occurs when the owner has not paid their HOA fees. In order to do this, the association must send a demand letter to the tenant directing them to pay their future rent to the association for the benefit of the owners account balance. There is not anything the owner can do to stop this unless the association has made a bookkeeping mistake. Which is a real possibility so especially if you are responsible for paying the HOA fee makes sure to get proof, and keep it on file, for the bill being paid.

A couple of interesting things to know about utility liens. The first is that utility liens can only be filled in the name of the owner. No liens can be filled for the tenant as they do not own the property and a lien is a claim against the value of a property for an unpaid amount. The landlords remedy if the tenant has failed to pay for their utilities is to evict the tenant for breach of their lease agreements. The landlord does have the right to evict for non-payment of utilities.

Bad checks are something that has always been a potential issue for landlords. How does the law protect us from tenants that like to write checks their backsides can't back up? Well, there is a statute just for such occasions:

Florida's Bad Check Statute — F.S. 68.065 — says that if you provide a written demand that the money under the **bad check** be **paid** and the money isn't **paid** within 30 days, then you may be entitled to **3 times** the amount initially owed. Additionally, court costs and reasonable attorney's fees may be reimbursable.

This applies to checks over \$150.00 and gives the tenant 30 days to replace the check or be guilty of a 3rd degree felony. You would need to send it to the states attorney to prosecute. That being

said do not use this information for extorting payment from the tenant. Saying “you better make this check good, or I am going get you into legal trouble” may be a crime as well. You can let them know that passing bad checks is against the law and they also need to pay their bills, but you want to be super careful to avoid saying something like if they don’t pay you will send them to jail.

Since the advent of the air b and b world we find ourselves in, issues with transient tenants have come much more to the forefront of landlord consciousness. Many landlords want to rent their properties out as short term, hotel like, rentals. With that though comes a myriad of issues and a lot more work. This transient occupant and the landlord’s ability to get rid of one that outsays their agreement is one of them. Here is what the state has to say:

FS 82.035 Gives the definition: a person whose residency occurred for a brief length of time, has no lease, and whose occupancy was intended as transient in nature.

So, how do we tell if someone is a transient occupant? Here are some criteria according to the state and case law.

- No ownership, financial, or leasehold interest
- No utility bills in their name
- Cannot produce documents, correspondence, or ID’s listing that address.
- The person pays little to no rent.
- The person does not have a designated space.
- The person has minimal or no personal belongings at the property.
- The person has an apparent residence elsewhere.

If the occupant makes minor contributions for household goods or towards expenses this on its own does not establish their residency.

Another situation you can run into as a management company is an agreement where the tenant has an option to purchase. This is an example of a unilateral agreement. Only one side has a right and one side has an obligation. The owner has an obligation to sell the property at a stated price and the tenant has the right, but not the obligation, to buy it at this price. There are a few things to know about purchase options:

- Amount paid for this right should be reasonable, or it is unenforceable.
- Fixes the purchase price.
- Non-refundable
- Commissions are typically paid partially on these. In the listing agreement there is a section where a listing agent should mark what percentage they get of any option money received. If the option is executed any money the agent has received is counted against their commission due. If it is not exercised the owner and agent each keep their portion of the option money and the owner is relieved of his obligation to sell.

A similar thing you could run into is the right of first refusal. This is similar but vastly different than the purchase option. The right of first refusal just means the owner must first offer the property to the tenant at whatever terms the owner chooses, and the tenant can choose to buy at that price or not. This is a right for the buyer not an obligation for the owner. The owner is not required to sell. Only if they choose to then the buyer has the right to be first in line to buy.

Let's take a quick peak at every management companies "favorite" document. The 3-day notice to pay. Here are a few notes on these important forms:

- Do not sign three-day notices.
 - Have the owner sign them.
 - If you sign as a property manager, you become a debt collector.
 - You will need to comply with FCCPA & FDCPA.
- Don't include weekends or Holidays.
- Include the address of the property.
- Include correct amount plus any items that the lease calls to be charged as additional rent.
- Do not include late fees unless they are defined as rent in the lease.

If mailed it must include the time mailed

What about doing things to help persuade the tenant to move? Can the landlord do things to make living at the property less convenient and thus incentivize the tenant to leave? Nope! The term for that is "self-help" and it is a big no-no. Here are some examples of self-help:

- Turn off power.
- Change locks.
- Remove doors.
- Restrict access to their property.
- Boot their car.

The simple filter to use to determine if it will be seen in court as self-help is: is this being done to force the tenant to leave or pay rent?

For this section I have to thank Harry Heist who does an amazing job of explaining the very ticklish subject of abandonment. When exactly is a property abandoned?

- Looking abandoned is not enough.
- Electricity and water off...not enough
- Neighbor says they are gone.....still not enough.
- Rent unpaid.....nope still not enough.

To legally be considered abandoned the property must have no one living in it for 15 days and rent is unpaid for that time period. Getting this wrong is a really big deal. If you do you could be looking at:

- 3 months' rent plus legal fees.
- 3 times tenants stated value of items they claim were disposed of
- Criminal charges (they don't pay and you go to jail. NOT COOL)

Ordinances

This is something to more so be aware of than any particular guidance. Many local municipalities have ordinances that affect how properties are rented and or managed. You need to make sure you are up to date on all of these. You need to also comply with city, state, & federal ordinances as well. An example of a common ordinance you should be aware of is discrimination ordinances. This means not just race, age, religion, national origin, color, sex, handicap, familial status. An ordinance can exist that extends that to Political affiliation, veteran, domestic violence history, source of income, sexual orientation, participants in housing programs, etc.

If you know the law you keep yourself and your owner from getting into trouble and it allows you to cut the legs out from the tenants that try to use the law to take advantage of the landlord, you, or the system. You always want to know the law better than your tenants do.

Chapter 5:

Tips, Tricks, and Miscellaneous

There are way too many things that go on in management to ever hope to cover them all in one class but here are a few miscellaneous items that we would like to cover to help you on your way to exceptional property management service. **One thing you want to make sure to address is having a hold harmless agreement within your property management agreement.** Liability is everywhere and minimizing your exposure with a hold harmless agreement will help protect you from issues that arrive from things like simple negligence. Another item of concern is service. If you are the property manager for a foreign national, you may be the point of service for legal documents. The issue becomes your ability to get those documents to them in a timely manner. Once you are served the legal clock is ticking, and you will be responsible to get those documents to the owner as quickly as possible, so they do not lose their ability to adequately prepare and defend themselves. Usually, you will want to find out who the owners legal council is in the area and see if they can be made the point of service. It removes this responsibility from you and gets the documents to the better prepared party to handle it.

TIPS
& tricks

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One thing that can be very arduous to deal with are open permits. These can be very time consuming and can be a real labor killer for a management company if you are the one handling it for the landlord. **Regardless, if you are the one handling it or not there is some good news with permits that you can either use to help your customer out or advise them of to gain some credibility.** Here is the good news:

Open permits can be closed for up to 6 years without having to resubmit.

Reopening the permit is up to the discretion of the building official

The one issue is it does not apply if there is a safety risk (Electrical)

Homeowners can't be penalized for permits opened by previous owners.

Deposits and fees are another thing we should discuss here. Deposits have one major drawback; they need to be returned if the tenant does what they are supposed to technically. The issue is that you are the one that is on the hook to prove they didn't get the property in that condition. Good pictures help with this but even so pictures often miss things or are ambiguous enough that we are stuck paying for something the deposit should have been withheld for. How exactly are you supposed to prove that the house smells like dog now and it didn't before? For all of these reasons you should consider charging fees and not deposits. Having a pet fee and or a cleaning fee are both great ways to assure the money is there to get the work done we know will be needed at the same time removing the burden of proof from our side of the equation that the properties condition has changed.

The more things we can have the tenant be responsible for the better the return will be for our landlords. There are certain things we can do to help assure our landlord of consistent returns. Here are a few:

Having the tenant be responsible for maintenance items is a good thing.

Have the tenant be responsible for repairs under a certain dollar amount.

Have landlord consider a home warranty.

*Make sure tenant is responsible for an amount at least as high as the deductible on the landlord's home warranty.

One piece of the equation that management companies often struggle with is their numbers. You need to have a great accounting software that fully integrates with all cashflows in and out. Even better is one that gives the investor updated rates of return for various time periods. Software that allows for the current market value to give the investor an internal rate of return based on incomes received and current market appreciation is an excellent way to keep your investors feeling good about their real estate investment and your ability to handle it for them as a manager. You need to have a software you know how to use that gives you numbers you feel comfortable about and are ready to stand behind. You want to have your accounting to be a strength and not a weakness of your company, It will make it much easier to keep and gain customers going into the future and it will allow you to market with much greater confidence.

Maintenance is a huge topic in management, so it is probably best to give you a few bullet points of things to be aware of:

Have a plan to maintain reserves.

Have a maintenance system.

Have a vendor list.

Have an inspection system.

Systems for maintenance and inspections should be standardized.

Here are a couple of odd ball things we have used at times with great success when it comes to collecting delinquent rent. One thing we do is to email to the customer a copy of their late notice on the 5th day after the rent is due (the end of our grace period). This often results in tenants sending us the money they owe us. If they don't, we email them the next day a copy of the three-day notice we will be posting. This often does the trick and gets us paid without the aggravation of having to physically go post the notice on the property. Obviously, an emailed three-day notice is not legally effective, but it does serve the purpose of rattling the tenants cage to let them know we are serious. Anything you can do to improve your collections and minimize your evictions is a huge help to your customer's bottom line.

A couple of last notes:

- Management contracts: Make sure to cover what's included. You want to make sure you fully describe your scope of work and to highlight anything that is specifically not included in what you will do. Getting out in front of a potential problem with a customer is a huge time and money saver. As the old saying goes "a n ounce of prevention is worth a pound of cure".
- 2 securities is better than last month and 1 security. Having two security deposits feels the same to the tenant as doing last and security with the benefit of having twice as much to protect the condition the property is returned in and the tenant still owes you all 12 months of rent.
- Harry Heist is a great reference!! www.evict.com The guy is a legend in the industry.

Hopefully, this information is helpful to you and will help you to be a better manager and help you to make better returns for your customers.

Conclusion

We have tried to give you ideas, tools, tips, tactics, and a better understanding of the laws and ordinances that govern our business. To build a real estate or property management business you need one thing: **customers**. You can constantly be out looking to gain new customers as you lose ones you already have or fight to build and grow a loyal customer base. ***Loyal customers come to people who make it their mission to do their job exceptionally well.*** People that hold themselves to that standard are few and far between. If you are that kind of person then you have very lucky customers indeed. It is our job to look out for them and their assets as if they were our own. We need to be the person that they depend upon to protect them better than they could themselves because we have the benefit of specialized knowledge and experience. **We need to become one of our customer's prized assets. To be their true 'go-to' person for property management.**