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IREM legal survey identifies top issues impacting RE managers

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A just-released survey identifies current and emerging legal/liability issues impacting real estate management professionals and, by extension, the landlords who employ them. Sponsored by the Institute of Real Estate Management and funded jointly by IREM and the National Association of Realtors, the survey queried IREM members in leadership positions with the organization about legal problems confronting them and their industry colleagues, and elicited perceptions about the impact of current economic conditions on these problems. An analysis of upwards of 700 relevant cases decided over the past two years as well as related legislative and regulatory activities during the same period also are included in the independently conducted survey.

IREM president Pamela Monroe, CPM, explaining the rationale for the survey, said: "A while back, IREM members identified 'risk management' as one of several critical issue affecting today's real estate management industry (others included troubled properties, sustainability, technology, workforce development, and business competition). We undertook the survey to help our members and industry colleagues' better address proliferating risk management challenges in their business practices, thereby enhancing their performance on behalf of the owners, investors and other constituents they serve."

Top Concerns Now:

Debt Collection, Slip and Fall Disputes, Frivolous Lawsuits

The most significant current legal problems survey respondents identified are those relating to the day-to-day business of managing properties. Debt collection is a major area of concern, with 69% of respondents stating that it was a significant source of current disputes. Among the economic factors adversely affecting debt-collection activities, said respondents, are the large numbers of retailers going out of business, growing lease defaults, and increasing numbers of residential tenants losing their jobs.

"Slip-and-fall" accidents and frivolous lawsuits, cited by 69% and 44% of respondents, respectively, also rank as top causes of current disputes. As with debt collection, many respondents believe the economic downturn is exacerbating both types of disputes. Some suggest that the depressed economy will lead more people to try to cash in on slips and falls. Others suggest that opportunists looking for easy money target landlords in frivolous suits, hoping to cheat the system in these hard economic times. Similarly, events on a property - situations in which a landlord or manager is blamed for a crime perpetrated by a third party - which ranked right under frivolous lawsuits as a key concern, is linked strongly to the recessionary environment. Some respondents cited the lack of jobs and other adverse economic conditions as reasons for the increasing crime rate. Others observed that as the economy continues to decline, areas that were once rarely affected (by crime) have now been hard hit.

Hot Issues on the Horizon:

Wrongful Termination and Fair Housing

When asked to predict which problems would become more significant over the short term - the next two years - survey respondents again cited debt collection, frivolous lawsuits, slips and falls and events on a property. One employment issue - wrongful termination - also is seen to be increasing in importance.

By comparison, when the respondents were asked to rank potential future issues, several fair housing issues - handicap discrimination, advertising and target marketing, familial status discrimination and race and religious discrimination - ranked at the top of, or high on, the list.

Training Needs Identified

Survey respondents also weighed in on where additional training may be needed to better deal with key legal issues and concerns. Their responses generally track the key issues identified in other parts of the survey, with training needs in the areas of debt collection and slip-and-fall incidents topping the list. Training also is perceived to be quite important to better handle issues related to potentially libelous occurrences on properties other than slips and falls; also, employee defamation and wrongful termination, and aspects of fair housing.

Key Findings of Case Law and Statute Analysis

Here are some top-line survey findings:

- * Debt Collection - Most of the 22 cases examined were dismissed or ended with a summary judgment for the defendant. The defendant was found liable in only one case.
- * Slip-and-Fall - 261 cases and jury-verdict reports were analyzed. In the 185 cases in which liability was determined, the landlord or management company was found not liable 70% of the time. The finding of no liability was made before trial in 22% of all cases. And most cases (56%) in which the defendant was found not liable required a trial. This is unusual as most cases involving other premises liability issues that decided for the landlord or management company did not require trials.
- * Crimes on a Property - 61 case law and jury verdict reports were examined. In the 43 cases in which liability was determined, the landlord or management company was found not liable 77% of the time, most often without a trial.
- * Condition of Tenant's Premises - Although survey respondents did not indicate a significant number of current disputes in this area, the case-law survey indicated otherwise. Some 212 relevant cases were decided over the past two years. In cases in which liability was determined, the landlord or management company was found not liable 60% of the time. Moreover, the findings of no liability were made before trial in 28% of all 212 cases. No trial was required in 73% of the cases in which the defendant was found not liable. On a separate but related note, the most common situations giving rise to large verdicts and settlements for landlords and real estate managers arose in residential settings and involved lead-based paint, fires, and dangerous dogs.