



A Guide to **Property Management** and **Residential Rentals**



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What Property Management Activities Require a License?

The definition of “Broker” in Section 1-10 of Real Estate License Act of 2000 (RELA) includes a number of property management and leasing activities which require a license under RELA. The activities requiring a license include the following:

- rents or leases real estate
- offers to... rent, or lease real estate
- negotiates, offers, attempts or agrees to... rent or lease real estate
- lists, offers, attempts, or agrees to list real estate for... lease
- supervises the collection, offer, attempt, or agreement to collect rent for the use of real estate
- advertises or represents himself or herself as being engaged in the business of... renting or leasing real estate
- assists or directs in procuring or referring of leads or prospects, intended to result in the... lease, or rental of real estate
- assists or directs in the negotiation of any transaction intended to result in the... lease, or rental of real estate
- ... lease real estate at auction





This Guide is intended to provide members of the Illinois REALTORS® an overview and description of some of the principal laws and regulations that exist in the realm of residential rental property management. In many instances, additional information or advice may be needed so review of the law and consultation with an attorney is highly recommended.

Federal/State and Local Fair Housing Laws

A knowledge of fair housing is critically important in property management and leasing. For an overview of fair housing, visit www.IllinoisRealtors.org/FairHousing.

Violation of a federal, state, or local fair housing law will result in the suspension or revocation of your real estate brokerage license.

NOTE: Keep in mind that some municipalities have their own fair housing ordinances which may include more and different protected classes than those contained in the federal or state fair housing laws. Check with the city, village or county where the rental property is located regarding any applicable fair housing/human rights ordinances.



Keys to Effective Management of Rental Property

- Ensure all public properties are compliant with Title III of the Americans with Disabilities Act. Get information on how to comply with federal regulations: www.ada.gov/doj_hud_statement.pdf
- Research and be compliant with any local **ADA/ accessibility laws**.
- Have and follow a **standard application process** and **verify** the application information.
- Create a **standard screening policy** and use consistently with all prospective tenants.
- Screen tenants with **credit check** first. Ensure your company is aware that the Fair Credit Reporting Act (FCRA) will impact your practice if you request credit reports and/or background checks. *If you have **no** involvement in tenant selection, you should not perform credit checks. Leave that to those who will make the decision.
- Be aware of the requirement under the FCRA that you must provide a written **"adverse action notice"** to those applicants who are denied a rental unit or whose terms of a lease are adversely affected due to a negative credit report and/or a negative reference.
- If prospective tenant passes all screening, a **background check** can be used to determine criminal history within the past seven years. Run background check last.
- For information on federal background check guidance, see **NAR's best practices** information: www.nar.realtor/articles/fair-housing-act-criminal-history-based-practices-and-policies
- Be sure to have a **set policy on criminal history** and do not implement a blanket ban on prospective tenants with an arrest record. Convicted persons should be examined on a case-by-case basis.
- **Communicate frequently** with tenants; be attentive; respond quickly to maintenance requests.
- Use **professional and secure accounting and database software** to track all the detail (e.g., clients, tenants, rents, deposits, lease agreements, repairs, and vendors such as plumbers).
- Pay close attention to the **wording you use in any advertisement**. This is the key question in advertising a potential use of a property: "Is the use legally permitted and are the physical characteristics of the property accurately described?"
- It is absolutely critical that you know whether any **local landlord/tenant or fair housing ordinances** apply. These laws can differ widely among local governments. Be up-to-date and cognizant of all requirements.

Eviction actions are governed by the Illinois Forcible Entry and Detainer Statute (735 ILCS 5/9-101). This law lays out the procedures by which a landlord can legally have a tenant removed from the rental unit.

Basics of Eviction Laws

A landlord cannot forcibly evict a tenant on his own. If a landlord wants to evict a tenant and the tenant does not leave voluntarily, the landlord must file a lawsuit to have the tenant evicted. A landlord can evict a tenant for various reasons including:

- Improper possession after the oral or written lease has expired.
- The tenant has breached some part of the lease including not paying the rent.
- The tenant is doing something illegal in the unit.

Required Notice

The eviction law is very specific about the form and content of written notices and how those notices are to be served upon tenants before a lawsuit evicting a tenant and seeking possession is filed. Even if the facts favor the landlord, the landlord can lose the case if the proper notice is not given or the procedures for serving notice on the tenant are not followed precisely. Legal advice and assistance is prudent in eviction cases.

Non-Payment of Rent

When the tenant has not paid the rent on time, the landlord must give a written 5-day notice that the lease will be terminated unless the rent is paid. If the tenant pays the full amount of rent due within this 5-day period, the landlord must accept it and cannot terminate the lease or proceed with eviction.

Tenant Violation of Lease

If a tenant violates the lease for other than non-payment of rent, the landlord can give the tenant a written 10-day notice, which explains the violation and asks the tenant to move out if the problem is not fixed within 10 days. The landlord can only pursue eviction if the problem is not fixed within the 10-day notice period.

Generally, notice is not required if the lease automatically ends on a specific date and there is no permitted holding over. Check local ordinances for any different requirements.

If the lease includes an automatic termination provision, and the landlord has not permitted a holdover, the landlord simply asks the tenant to move out. If the tenant refuses, the landlord can file an eviction suit without giving any other notice (although the landlord may want to give a formal notice to avoid any issues after the lawsuit is filed) or waiting any time beyond the end of the lease term.

A 30-day notice is used when no lease exists. Whenever there is a verbal month-to-month agreement, the lease can be terminated by either party with a 30-day notice. The landlord should always formalize the termination of the rental relationship with a 30-day notice.

Typically obtaining possession of the unit so that the unit can be leased again is the key consideration in an eviction proceeding and collecting past due rent is secondary.

NOTE: The information provided here is just an introduction to the procedures and requirements associated with evictions. Consult with an attorney on the specific steps that must be taken (e.g. service of summons by the Sheriff's office and the filing of the lawsuit).



Screening Prospective Tenants

Credit and background checks on tenants can be the most important step in renting property. Property owners who do not screen tenants can be easy prey for drug dealers and others conducting illegal activities, and can cost the landlord thousands of dollars. It is often advisable to recommend to your client that they retain a tenant checking service to check credit records, criminal background, and other public records. If you are providing these services for an owner client, you need specific legal advice as to federal laws and local ordinances that apply. Also, remember documentation related to licensed activities must be retained by a licensee for five years.



The Illinois Security Deposit Return Act

The Illinois Security Deposit Return Act provides a procedure for landlords to follow if the landlord/manager will not be returning the entire security deposit to the tenant. The landlord/manager of a building or complex containing five or more units must provide a written estimate of repair costs (including landlord/manager's time) within 30 days of tenant vacating the property and the difference returned within 45 days. If the amounts are not known by a landlord by the time a security deposit must be returned, the landlord needs to return the security deposit and then be prepared to file a separate lawsuit against the tenant. This Act now allows for email notification to be made and will satisfy the written notice requirement. To read the main section of the Act with which a landlord/manager should become familiar, visit www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2202&ChapterID=62

(765 ILCS 710/1) (from Ch. 80, par. 101)

NOTE: Some municipalities have their own Residential Landlord-Tenant Ordinances which include, among other things, different provisions on security deposits. Always check with the municipality to see if there is a local ordinance. To view the city of Chicago's ordinance, visit www.cityofchicago.org/content/dam/city/depts/dcd/general/housing/RTLOEnglish.pdf

Criminal Activity on the Leased Premises

Landlords are supposed to include language in their leases (or have a lease addendum) which states that if the lessee or occupant, on one or more occasions, uses or permits the use of the leased premises for the commission of a felony or Class A misdemeanor, that the lessor shall have the right to void the lease and recover the premises. Failure to include this language in the lease does not impair the rights of the lessor to terminate the lease based on the criminal activity, but is still a good idea.

Illinois Radon Awareness Act

There is a provision in the Illinois Radon Awareness Act which applies to properties containing residential dwelling units. The section requires that if a lessor is notified by a tenant of a unit located below the third floor of an elevated radon test result that the lessor must either conduct his/her own test that shows no hazard, conduct remediation procedures to eliminate the hazard or disclose the elevated radon level to any new prospective lessee of that dwelling unit. This disclosure is only required if there is a bad test result outstanding.

Safe Homes Act

This Act deals with the rights of tenants who are under threat of domestic or sexual violence. This Act allows tenants to change the locks or break the lease in certain limited circumstances.

To read the entire Act, visit www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2817&ChapterID=62

Changing or Re-keying of Dwelling Unit Lock

Landlords are required to change or re-key the lock after a dwelling unit has been vacated and before the new lessee takes possession of the residential unit. To change or re-key means:

- Replacing the lock
- Replacing the locking cylinder mechanism so that a different key is necessary
- Changing the combination of a digital lock
- Changing an electronic lock so the method of unlocking has been changed, or
- Changing the access method if other means are used to enter an individual unit

This law applies only in Cook County. It does not apply to a rental in a building with 4 or fewer units where the owner is also an occupant of the building.

Municipal Landlord Licensing and Inspection

Based on a review of case law and the statutory authority granted to municipalities, it is clear that municipalities have the power to inspect rental units. However, ordinances regarding inspections should be designed to ensure that the rental units are maintained in a manner that is consistent with the municipal building code. Safety and habitability of each rental unit should be the main purposes of such ordinances.

Members of Illinois REALTORS® can contact their local Government Affairs Director (GAD) assigned to their local association if there are questions or concerns about the topics and issues discussed in this section. Issues related to enforcement of local ordinances dealing with rental property can be brought to the attention of the local GAD or local association for review.



It shall be the responsibility of the owner of a structure to supply and install all required detectors. It is the responsibility of the tenant to test and provide general maintenance for detectors within the tenant's dwelling or rooming unit, and to notify the owner or the owner's authorized agent in writing of any deficiencies which the tenant cannot correct.

Carbon Monoxide Alarm Detector Act

The Carbon Monoxide Alarm Detector Act requires that most dwelling units be equipped with at least one carbon monoxide detector within 15 feet of every room used for sleeping.

The Act specifically provides the following:

- The tenant is responsible for replacement of any required batteries in the carbon monoxide alarms in the tenant's dwelling unit, except that the owner shall ensure that the batteries are in operating condition at the time the tenant takes possession of the dwelling.
- The tenant shall provide the owner or the authorized agent of the owner with access to the dwelling unit to correct any deficiencies in the carbon monoxide alarm that have been reported in writing to the owner or the owner's authorized agent.

Illinois REALTORS® members can download the Carbon Monoxide brochure at www.IllinoisRealtors.org/Downloads (member log-in required).



Smoke Detector Act

Every dwelling unit shall be equipped with at least one approved smoke detector in an operating condition within 15 feet of every room used for sleeping purposes.

The detector shall be installed on the ceiling and at least 6 inches from any wall, or on a wall located between 4-6 inches from the ceiling. Every structure which (1) contains more than one dwelling unit, or (2) contains at least one dwelling unit and is a mixed-use structure, shall contain at least one approved smoke detector at the uppermost ceiling of each interior stairwell.

In the case of any dwelling unit that is newly constructed, reconstructed, or substantially remodeled on or after January 1, 2011, smoke detectors permanently wired into the structure's AC power line must also maintain an alternative back-up power source, which may be either a battery or battery or emergency generator operated.

Owner and Tenant Responsibilities

It shall be the responsibility of the owner of a structure to supply and install all required detectors. The owner shall be responsible for making reasonable efforts to test and maintain detectors in common stairwells and hallways.

It is the responsibility of the tenant to test and provide general maintenance for detectors within the tenant's dwelling or rooming unit, and to notify the owner or the owner's authorized agent in writing of any deficiencies which the tenant cannot correct. The owner is responsible for providing one tenant per dwelling unit with written information regarding detector testing and maintenance. The tenant shall be responsible for replacement of any required batteries in the detectors in the tenant's dwelling unit, except that the owner shall ensure that such batteries are in operating condition at the time the tenant takes possession of the dwelling unit. Single Family Homes: Every single-family residence shall have at least one smoke detector installed on every story of the dwelling unit, including basements.

Lead Based Paint in Residential Units Health Effects of Lead

According to the U.S. EPA website, childhood lead poisoning remains a major environmental health problem in the United States. Lead is dangerous to children because:

- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them. Also, very young children might eat lead paint chips.
- Children's growing bodies absorb more lead.
- Children's brains and nervous systems are more sensitive to the damaging effects of lead.
- If not detected early, children with high levels of lead in their bodies can suffer from damage to the brain and nervous system; behavior and learning problems, such as hyperactivity; slowed growth; hearing problems; headaches.



Existing Laws on Lead Paint

Federal law requires property owners to:

- Provide a disclosure form disclosing any knowledge of lead-based paint or lead-based paint hazard when selling or renting a house/apartment built before 1978.
- Include a lead warning statement in leases.
- Use lead-safe work practices when making certain repairs and renovations.
- Provide a copy of the federal HUD/EPA pamphlet on lead paint entitled, "Protect Your Family from Lead in Your Home."

Illinois REALTORS® members can download the federal lead paint pamphlet and the disclosure forms at www.IllinoisRealtors.org/Downloads (member log-in required).

Illinois state law requires property owners to:

- Allow inspection of property by a public health agency when a resident is found to be lead-poisoned.
- Follow regulated mitigation procedures when a lead hazard has been identified.
- Post lead hazard warning signs at work sites when property houses two or more families.

- Disclose any known lead hazard to renters in buildings built before 1978.
- Post notices in the common area of a building when the property owner has received a mitigation notice. The notice form can be obtained from the local health agency or the Illinois Department of Public Health.
- Property owners are not allowed to enter into a new lease if an existing lead hazard has not been mitigated.

City of Chicago regulations require property owners to:

- Abide by a duty to maintain lead-hazard free property.
- Allow inspections of all units for lead hazards when requested by the Chicago Department of Public Health (CDPH).
- Abide by a duty to maintain property according to any existing mitigation plan.
- Provide a mitigation plan, subject to CDPH approval, when a lead hazard is identified.

For detailed information on how to comply with lead prevention laws and lead safety, visit www.lead-safe-illinois.org/owners.

Federal rule on lead safe work practices in renovation work

Are you renovating, repairing or painting a home, child care facility or school built before 1978? According to the U.S. EPA website, federal law requires that contractors performing renovation, repair and painting projects that disturb more than six square feet of paint in homes, child care facilities, and schools built before 1978 must be certified and trained to follow specific work practices to prevent lead contamination. If as a REALTOR®, you recommend contractors to your clients, or if as a landlord, you use various contractors, you should make sure that these companies have the training and are certified to conduct repair and renovation work in a manner that complies with these "lead-safe" work practices and procedures. If an owner or property management firm uses an employee to perform repair and renovation work, then that employee must be certified and trained in these required practices. To read more about this rule, visit www.epa.gov/lead.



Search Warrant and Owner Consent

Federal courts have dealt with the issue of searches or inspections by governmental units. In any municipal inspection ordinance, there must be a consent provision. The owner/occupant is permitted to deny access to the municipal inspector to enter the property. If the owner or occupant does not grant consent, the municipality must seek an administrative search warrant in order to gain access to the rental unit to perform an inspection.

Inspection/Licensing Fees

Any related fees that a municipality imposes must reasonably reflect the cost of providing such services (the hours required for the physical inspection, the administrative follow-up, etc.). Illinois REALTORS® members may view the list of Illinois municipalities that have inspection requirements at www.IllinoisRealtors.org/Downloads (member log-in required).

Other Municipal Requirements

Several municipalities in Illinois impose other kinds of restrictions and requirements on owners of residential rental property. These requirements include the following:

Occupancy Standards - Most municipalities in Illinois have ordinances which put limits on the number of occupants that can inhabit a residential unit based on the size of the unit or the number of bedrooms in a unit.

Crime-Free Requirements - Some municipalities require the use of a "crime-free lease addendum." This kind of addendum states that it is a violation of the lease to commit a crime anywhere on the property (e.g. sale of drugs). There are a few municipalities in Illinois which encourage or require a landlord or agent to attend a seminar on crime prevention on rental property.

Nuisance Abatement - Several municipalities in Illinois require the owner to take specific steps in regard to property maintenance/care in order to prevent criminal nuisances or activity. These requirements usually are required after the police have identified the occurrence of a nuisance or crime on the property.

Building Registration - The main purpose of this type of ordinance is to obtain contact information for the owner and agent of the owner in case of an emergency or a tenant problem on the property. (Chicago has such a requirement for buildings with four or more units.)

NOTE: You should check with the municipality in which the rental unit is located to see if these kinds of ordinances or regulations exist in the town where you own or manage rental property.

Web Resources

New legislation that affects residential rental real estate is continually being proposed and considered in the Illinois General Assembly.

Illinois REALTORS® can stay abreast of these proposals and RVOICE activities at www.IllinoisRealtors.org/Advocacy



www.IllinoisRealtors.org

Illinois REALTORS®
522 S. Fifth Street
Springfield, IL 62701

Illinois Department of Financial and Professional Regulation
www.idfpr.com

Institute of Real Estate Management
www.IREM.org

City of Chicago - Housing
www.cityofchicago.org

U.S. Housing and Urban Development
www.hud.gov

Illinois Housing Development Authority
www.ihda.org

Illinois State Bar Association
www.isba.org

Becoming a Landlord
www.fanniemae.com/content/tool/landlord-guidance.pdf