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ON-SITE

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4 Signs That Your Gutters Need Cleaning

KEEPE

With the fall leaf season fast approaching, we have been receiving calls from single-family and multifamily rental homeowners concerned about overflowing gutters. The majority of these calls are coming from the Pacific Northwest, including Seattle and Portland.

Here are four signs that your gutters need cleaning, and several tips on how to properly accomplish the task before fall.

1. RAINWATER IS OVERFLOWING

One of the major reasons to have gutters is to drain water from the roof and channel it away from the foundation. This also helps prevent your roof from holding excessive moisture that could lead to the rotting of its wooden parts.

However, when your gutter is filled with debris or wooden particles, it becomes difficult for it to control the water and even channel it away from your property.

2. PRESENCE OF ALGAE, DEBRIS

Algae, debris, and dirt are most likely
See ‘Do’ on Page 12

Between a Rock and a Hard Place *What’s a Landlord to Do in These Difficult Times?*

By JOHN TRIPLETT

Many landlords have been without clear guidance on how to deal with late rent payments, tenants and laws during the moratoriums around COVID-19.

Rental Housing Journal asked a couple of expert Oregon attorneys recently to weigh in on this question: What is a landlord to do in these difficult times?

The attorneys, Bill Miner, partner-in-charge, with Davis Wright Tremaine in Portland, and David J. Petersen, partner, Tonkon Torp LLP and chair of the Real Estate and Land Use Practice Group, had several suggestions for landlords.

Under the current Oregon moratorium, a landlord cannot terminate a tenancy or threaten to terminate a tenancy for nonpayment of rent due based on Oregon law under HB 4213. So far, the moratorium has been extended to September 30.

Landlords so far have avoided being
See ‘What’s’ on Page 14



Ordinance Attempts to Limit Tenants’ Personal Liability in Commercial Leases

By JOHN FANDEL AND NATHAN LUCE
STOEL RIVES LLP

The Seattle City Council passed a new ordinance recently, attempting to limit personal liability for small business owners in commercial lease defaults. As written, it’s unclear whether the ordinance will have its intended effect.

The bill is a response to the ongoing COVID-19 pandemic. It is intended to protect small business owners from personal liability if their business goes under and they cannot pay the rent. More specifically, the bill limits the enforceability of “provisions in a commercial lease or other commercial rental agreement that makes the tenant or one or more persons who are not the tenant wholly or partially personally liable” for lease expenses.

The bill applies to non-profits or qualifying small businesses. For an entity to qualify as a “small business” it must (a) be owned and operated independently from all other businesses (or a franchisee with five or fewer franchise units), (b) have 50 or fewer employees, and (c) be neither a general sales or service business with 10 or more locations in operation worldwide nor an entertainment use with five or more locations in operation worldwide.

The limit on enforcement is effective during the city’s current COVID-19-related emergency proclamation, and for a period of six months after it expires.

The bill’s ambiguous language creates uncertainty regarding its effect. The ordinance only prohibits enforcement of “provisions in a commercial lease or other

commercial rental agreement” that make someone “personally liable.” The issue is that personal liability in commercial leases usually arises when an individual (often the business owner) signs a separate guarantee. The lease itself almost never contains “provisions” that make someone other than the tenant “personally liable.” This ordinance does not address enforcement of a guarantee—an entirely separate legal contract. Therefore, while it appears that the intent of this ordinance is to limit enforcement of personal liability of the type that would arise from a guarantee, it’s not clear whether this ordinance does that.

IMPACT ON LANDLORDS

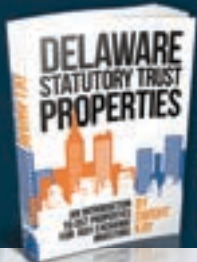
The ordinance also appears
See ‘Ordinance’ on Page 11

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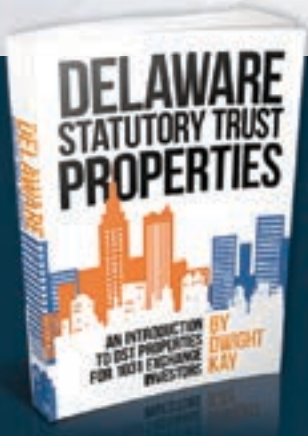
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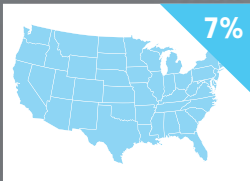
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ABOUT KAY PROPERTIES and WWW.KPI1031.COM

Kay Properties is a national Delaware Statutory Trust (DST) investment firm. The www.kpi1031.com platform provides access to the marketplace of DSTs from over 25 different sponsor companies, custom DSTs only available to Kay clients, independent advice on DST sponsor companies, full due diligence and vetting on each DST (typically 20-40 DSTs) and a DST secondary market. Kay Properties team members collectively have over 115 years of real estate experience, are licensed in all 50 states, and have participated in over 15 Billion of DST 1031 investments.

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Grateful to be Debt-Free: Kay Properties Helps a Client Stay Debt-Free in their \$1M 1031 Exchange into DST Properties for Sale


By the Kay Properties and Investments, LLC Team

Kay Properties is proud to announce the successful completion of five debt-free DST purchases for a couple selling a single-family home in Southern California. They were excited to be able to defer the accumulated capital gains and depreciation recapture taxes that they have accumulated over the many years of owning and managing the property by utilizing Internal Revenue Code, Section 1031. In addition to deferring the taxes by successfully utilizing the 1031 exchange, the clients were grateful to invest and diversify into more passive real estate investments by utilizing the Kay Properties 1031 DST marketplace at www.kpi1031.com.

The Delaware Statutory Trust exchange investments were completed by Kay Properties and Investments team members Chay Lapin, Senior Vice President, and Matt McFarland, Associate.

Chay Lapin, Senior Vice President, stated, “Over a period of approximately 6 months, we helped educate the clients on the potential pros and cons of real estate, 1031 exchanges and DST structured investments. Through ongoing dialogue and correspondence, the clients decided that they wanted to remain debt-free and take a conservative position in their DST 1031 investments. By the time their single-family investment property sold and they officially entered into a 1031 exchange, we were able to work with them to select 5 different debt free DST properties, diversified across five states and across 4 different asset classes.”

Matt McFarland, Associate at Kay Properties, stated, “After successfully completing their DST 1031 investment purchases, the clients informed me that they were confident with their purchases and diversification profile of their 1031 DST portfolio as we head into an ever-changing and uncertain future.”



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**Diversification does not guarantee profits or protect against losses.*

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Court: Landlord ‘in a Pickle’ Must Pay Tenant Allergic to Neighbor’s Support Dog

RENTAL HOUSING JOURNAL

A court has ruled that a landlord caught in a “pickle” must pay a tenant with dog allergies the value of one month’s rent because a nearby apartment was leased to another tenant with an emotional-support dog, according to *The Gazette*, in Cedar Rapids, Iowa.

The apartment building had a no-pet policy, but the landlord made an accommodation required under Fair Housing rules for the tenant with the emotional-support dog.

After years of litigation, In a 4-3 decision, the Iowa Supreme Court overturned a district court ruling that concluded the landlord, 2800-1 LLC, shouldn’t have allowed the tenant to have a dog because of the other tenant’s pet allergies; the lower court then dismissed the case because the law governing accommodations for emotional-support animals wasn’t clear, *The Gazette* newspaper said.

Iowa Supreme Court Chief Justice Susan Christensen, who wrote for the majority, said the two tenants — Karen Cohen, who had severe allergies, and David Clark, who had the dog — had the landlord in a “pickle” trying to accommodate both of them.

However, the landlord, who isn’t identified by name in the ruling, should have denied the dog request because Cohen lived there first and the dog posed a direct threat to her health.

Christensen pointed out that this ruling is based on the specific facts of this case.

“Our balancing in this case is not a one-size-fits-all test that will create the same result under different circumstances, such as when the animal at issue is a service animal for a visually disabled person,” Christensen told the newspaper.

The court concluded that Cohen, who suffered allergic attacks, was entitled to her claims of breach of lease and breach of the “covenant of quiet enjoyment.”

The ruling shows Cohen has a “medically documented severe allergy” to pet dander that causes nasal congestion, swollen sinuses and excess coughing. Her allergic reaction is more severe when exposed to cats, requiring her to carry an epinephrine auto-injectable device to protect against anaphylactic shock.

She needed an apartment that didn’t allow pets and signed a lease from 2800-1 LLC on Nov. 11, 2015 for the term of July 2016 to July 2017. Cohen relied on the lease that stated no pets were allowed in the building.

On Jan. 18, 2016, Clark signed a lease to rent an apartment down the hall from Cohen during the same lease period, according to the ruling. Clark’s lease also included the no-pet provision.

On or around Aug. 23, 2016, Clark gave the landlord a letter from his psychiatrist that explained he had an “impairment in his ability to function.” The psychiatrist asked the landlord to allow Clark to have a dog to benefit his “health and well-being.”

The leasing and property manager notified other tenants in the building to see if anyone had allergies to dogs, according to the ruling. Cohen responded, detailing her allergies to dogs and cats.

The property manager then contacted the Iowa Civil Rights Commission and requested a formal agency determination, even though nobody had filed a complaint, the ruling states. The commission employee said the property manager and landlord should accommodate Clark and Cohen, instead of denying the request for the emotional support dog.

There was no formal finding by the commission regarding

this situation, according to the ruling.

The Davis Brown law firm writes on <https://www.jdsupra.com/legalnews/conflict-over-emotional-support-animals-36699/> that “The court noted that the first-in-time factor ‘tipped the balance’ in Cohen’s favor.” The court also explained that the first-in-time factor aligned with those of other courts that have rejected requested changes to a residential complex’s contract when those changes interfere with the rights of third parties.

“The takeaway: Landlords can and should consider this first-in-time principle in their analysis of accommodation requests where the well-being of two tenants conflict with one another. Though, landlords must remember the first-in-time principle is only one factor in their analysis,” the Davis Brown firm writes.

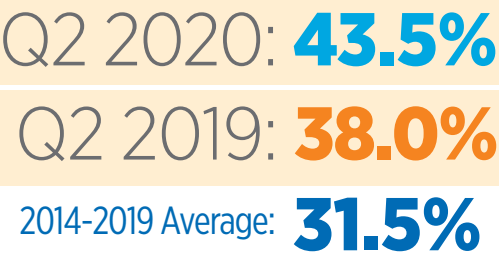
The landlord allowed the dog and assigned Cohen and Clark to use separate stairwells to keep Cohen free from pet dander, according to the ruling. The landlord also bought an air purifier for Cohen’s apartment.

The yearlong efforts were insufficient to prevent Cohen from having allergic reactions to the dog, and she had to limit the time she spent in her apartment. Cohen said she felt as if she had a permanent cold.

Then Cohen filed a small-claims action against the landlord for one month’s rent as damages. After a hearing, the court dismissed Cohen’s case, concluding the landlord made reasonable accommodations of both Clark’s and Cohen’s needs. There was no breach of contract of quiet enjoyment.

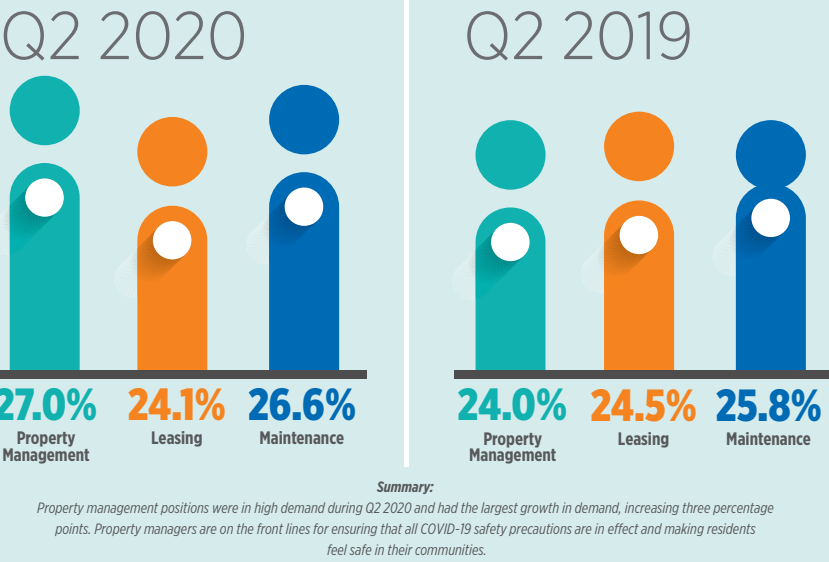
Cohen appealed to the district court, which concluded that the landlord made sufficient efforts that would justify denying Clark’s request, and dismissed Cohen’s claims because the law was unclear. The Iowa Supreme Court then overturned that decision.

Total Q2 Job Postings in Apartment Industry (% of Real Estate Sector)

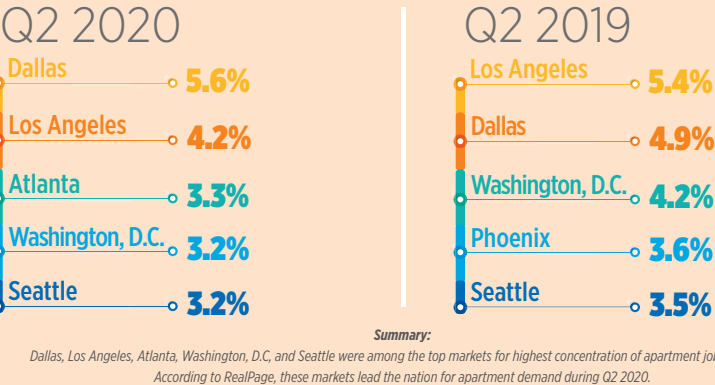


Summary:
Multifamily hiring remains solid amid the Coronavirus pandemic. Nearly 44.0 percent of available real estate jobs in the US were in the apartment sector during the second quarter, far ahead of the five-year average of 31.5 percent. Many property management companies have increased hiring and staffing efforts in preparation for pent-up apartment demand due to stay at home orders.

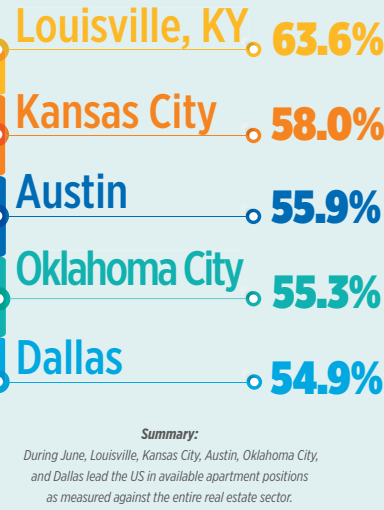
Job Postings by Major Category (As a percent of all Apartment Jobs)



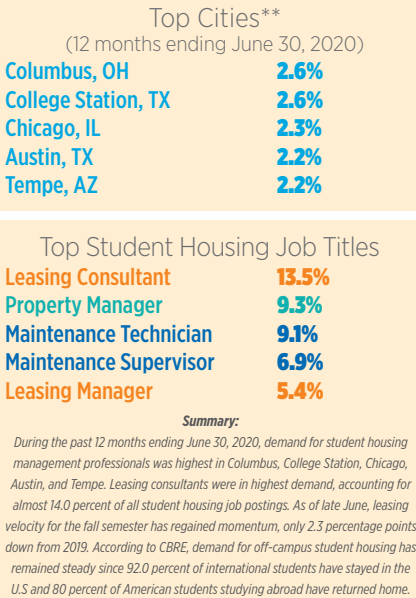
Top MSAs* (As a percent of all U.S. Apartment Jobs)



June 2020: % Apartment Jobs of Total Real Estate Jobs



Student Housing Job Postings** (% of all student job postings)



Competing Sectors (Highest Location Quotients)**



Common Skills (Percent of Jobs Requiring Skill)

	Apartments	Retail Trade	Hospitality
Specialized Skills			
Customer Service	32.1%	45.0%	24.9%
Sales	19.4%	41.2%	7.9%
Scheduling	15.7	21.4%	17.1%
Baseline Skills			
Communication Skills	39.9%	38.9%	34.5%
Organizational Skills	28.7%	22.1%	19.9%
Detail-Oriented	22.6%	14.3%	13.9%
Teamwork/Collaboration	15.3%	15.6%	22.8%

Summary:
The apartment sector often competes with the hospitality and retail sectors for personnel with similar experience and skills. Customer service, communication, and organizational skills were among the most desired skills across all three sectors. The hiring back of retail and hospitality employees has intensified competition for talent, particularly since the labor pool has begun to shrink. In June, the retail and hospitality sectors led the US in job growth. The leisure and hospitality industry hired back 21 million employees. The retail trade hired 740,000 people, nearly doubling the job growth it made in May.



Apartment Jobs Snapshot

Q2 2020

Apartment-Jobs Hiring Resilient in 2nd Quarter

Despite the uncertainty and economic damage caused by the COVID-19 pandemic, apartment-jobs hiring was resilient during the second quarter of 2020, according to the latest report from the National Apartment Association.

In the June report of the National Apartment Association’s Education Institute (NAAEI) Apartment Jobs Snapshot, job openings in the apartment industry comprised nearly 44 percent of positions available in real-estate sector jobs across the country.

This level of available apartment jobs is well above the 5-year average of 31.5 percent.

Many property management companies have increased hiring and staffing efforts in preparation for pent-up apartment demand due to stay at home orders.

HIGH DEMAND DUE TO COVID-19

In terms of specific jobs, property-manager positions were the most sought after.

Property management positions were in high demand during Q2 2020 and had the largest growth in demand, increasing three percentage points. Property managers are on the front lines for ensuring that all COVID-19 safety precautions are in effect and making residents feel safe in their communities.

Around the country, Seattle, Dallas, Los Angeles, Atlanta and Washington, D.C. ranked highest for apartment-job demand.

Leasing momentum for student housing is increasing as universities plan to open on-campus classes, resulting in high demand for leasing consultants. However, this could be subject to change depending on pandemic issues in certain states.

STUDENT HOUSING

During the past 12 months ending June 30, 2020, demand for student housing management professionals was highest in Columbus, College Station, Chicago, Austin, and Tempe.

Leasing consultants were in highest demand, accounting for almost 14 percent of all student housing job postings. As of late June, leasing velocity for the fall semester has regained momentum, only 2.3 percentage points down from 2019. According to CBRE, demand for on-campus student housing has remained steady since 92.0 percent of international students have stayed in the U.S and 80 percent of American students studying abroad have returned home.

SUMMARY

The apartment sector often competes with the hospitality and retail sectors for personnel with similar experience and skills. Customer service, communication, and organizational skills were among the most desired skills across all three sectors.

The hiring back of retail and hospitality employees has intensified competition for talent, particularly since the labor pool has begun to shrink. In June, the retail and hospitality sectors led the US in job growth. The leisure and hospitality industry hired back 2.1 million employees. The retail trade hired 740,000 people, nearly doubling the job growth it made in May.

NAAEI’s mission is to provide broad-based education, training and recruitment programs that attract, nurture and retain high-quality professionals and develop tomorrow’s apartment industry leaders.



Sources: NAA Research; Burning Glass Technologies; GlobeSt; CBRE; RealPage; Greystar student housing job postings as of July 8, 2020; Bureau of Labor Statistics

* MSAs with 100 or more apartment job postings.
** Cities with 75 or more job postings.
*** Location quotients show how concentrated demand is within a particular geography. US-wide average demand equals 1.0; an LQ of 1.2, for example, indicates 20% higher demand than the US average (or 1.2 times the US concentration).

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Why the CARES Act Seems So Uncaring Toward Landlords

By DAVID PICKRON

Landlords, it's time we all pay very close attention.

A second devastating wave of trouble is thundering towards us, and it is imperative that you know how to protect yourselves and your investments.

On July 26, 2020, the 120 days of eviction relief provided by the CARES Act expired. With that, landlords across the United States were given the green light to start the eviction process for non-payment of rent, with the caveat of having to use a special 30-day notice as required by the act.

We are seeing that landlords are generating notices with \$4,000-\$8,000 demands for the last several months of unpaid rent, begging the question that if these renters couldn't afford \$1,000-a-month rent, what makes us think they can come up with \$4,000 to make the landlord whole? It appears that tenants interpreted the eviction moratorium as "we do not have to pay rent," which could not be further from the truth.

So, what happens now?

Over the next 30 days, if the CARES Act is not extended, thousands of people in your area face being evicted and receiving a judgment against them for thousands of dollars.

These costly judgments had to come from somewhere, to help the landlords who have carried their loans and their unpaying tenants for months. For many landlords, the burden was too great, and they did not survive carrying these unexpected costs.

The CARES Act gave businesses large PPP loans to cover employee pay, and some individuals who were unemployed collected more than they would have if they worked, all to help people cover their expenses. What did the struggling landlord get from the CARES Act? Nothing but their properties "seized" by the federal



government if they had a loan backed by Fannie Mae or other government-backed loan (something the landlord did not ask for) and told they could not make decisions for properties they own. This has resulted in landlords who are financially stretched and a pool of potential tenants that are not all that dependable.

COVID has had a significant impact on our society but it is by no means the first time that people have endured challenging situations.

People deal every day with illness, cancer, and other diseases and disabilities that are terribly unfortunate. In the past, tenants who have struggled with these types of issues have leaned on family, savings, or churches to help them make ends meet. With the CARES Act, the landlord was the one forced to carry the bill. We have been beat up enough and the struggle is not over. The current pool of potential applicants in the next 30 days will have evictions and judgments against them that can hurt you. Here is how to protect yourselves:

1. Call your screening company and

make sure they search for eviction records in your local jurisdiction and in the jurisdictions your applicant has lived. Credit bureaus removed eviction and judgment data from their reports last year, so the only way you can find a civil eviction record is for your screening company to go right to the court. Keep in mind, since these are off the credit bureaus, these evictions will not affect credit scores.

2. Ask for proof of payment of rent for the last four months, through bank statements or canceled checks. Do not fall for "they were living with family and did not have to pay rent."
3. Give good landlord verifications. What that means is when you are asked about a current or former tenant, stick to fact-based answers, and stay away from sharing your personal, biased opinion of the people. A factual question you can answer and provide backup for is "Has your current tenant paid his or

her last few months of rent?" It's a simple question with a simple answer of yes or no. We need to protect each other so no one gets hurt again, and that can happen when we ask for and provide good landlord verifications.

Right now, the collection companies are salivating over these new, large judgments to collect on. If you rent to a person who has a judgment, chances are they will be garnished at every job to which they apply, leaving them with less money to pay you rent. With the "free-money" mentality and the ability to obtain a residence after their first eviction, they might consider making their smaller car payment over their larger rent payment and take a chance that a second eviction won't hurt them either. As a landlord, you don't want to experience the pain all over again.

I do not want to see any fellow landlord be victimized again. We are good people who have been responsible enough to be able to provide housing across this country to millions of people. For the most part we are all not rich, but rather are living simple responsible lives, trying to get ahead a little and raise our families. More than ever we must band together to survive in an environment that has been stacked against us by our legislatures and tenants. Together we can weather the storm and come out of this a stronger and more unified group.

The secret to being successful in this business is finding the right tenant, or what I call "business partner," and proper screening is one way to beat the challenges ahead.

David Pickron is President of Rent Perfect and a fellow landlord who manages several short- and long-term rentals. He is a private investigator and teaches organizations across the country the importance of proper screening. His platform, Rent Perfect, was built to help the small landlord find success.

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Working for Housing Stability and Serving Our Community

The impacts of the COVID-19 pandemic are being felt in all aspects of our lives, personally and professionally.

The rental housing industry has had to change how we respond to protecting the health and safety of our residents, and also how we serve residents of our apartment communities.

We have heard many stories of how housing providers have changed the lives of their residents through exceptional service and compassion, demonstrating the valuable role rental housing plays in everyday life and in the strength of our economy.

Our goal remains the same: maintain and expand access to quality rental housing for all residents at every price point.

Rental housing providers are challenged with working with residents who are struggling to pay their rent. This condition is exacerbated by the statewide eviction moratorium which limits housing providers' ability to respond to resident needs.

THE NEED FOR RENTAL ASSISTANCE

WMFHA has long advocated for rental assistance programs that help needy renters affected by COVID-19 keep their homes.

The state of Washington has now allocated \$100 million of CARES Act General Relief Funds to rental assistance, and the Department of Commerce has set forth guidelines to make this rental assistance available and accessible to tenants and landlords across the state.

The rental assistance program is intended to target those with the greatest need while working to distribute the funds equitably.

The funds will be distributed through the Consolidated Homeless Grant (CHG) system by first allocating them to counties and subsequently allowing the counties to sign contracts with local service providers to distribute the money upon a tenant's application.

Tenants are eligible to apply for up to three months of rent payments (arrear, current rent owing, or future rent) owing through December 2020.

Housing providers are eligible to receive up to 80 percent of total rent due or the Fair Market Rent rate in the area where the housing unit is located.

Tenants will be required to complete an Income Eligibility Form. The tenant must have current income (within the last 60 days) at or below 50 percent Area

Median Income (AMI), AND have at least one month of rent not paid or rent that is partially unpaid since March 1, 2020.

Additionally, the household must meet one of these criteria:

- Spend more than 50 percent of their current monthly income towards rent
- Have been previously homeless within the past five years
- Have eviction history within the past seven years
- Have their housing disrupted due to household member race, ethnicity, gender identity, sexual orientation, or religion
- Be at risk of severe illness per the CDC
- Have a household member with a disability, including a physical, mental or emotional impairment

Payment by the rental assistance program constitutes full satisfaction of any balance owed through the date of the agreement. The program does not pay late fees or additional charges for the months covered.

VOTERS AGREE: FAR BETTER SOLUTIONS THAN RENT CONTROL

This summer, the Partnership for Affordable Housing conducted a statewide survey with DHM Research to assess Washingtonians' opinions about housing affordability and rent control.

As policymakers debate short and long-term solutions to the economic fallout of COVID-19 and already-existing severe housing shortages in Washington state, voters overwhelmingly support proven solutions to address housing affordability and oppose rent control.

There is still confusion among residents of what rent control is exactly and what can be done to improve housing affordability other than simply imposing rent control.

KEY POLL FINDINGS INCLUDE:

Housing affordability in Washington is a major concern and persistent problem.

- 80 percent of Washington residents are concerned about housing affordability in the state, including 41% who are "very" concerned.

See 'Working' on Page 10

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Rental-Housing Industry in for More Pain Ahead

RENTAL HOUSING JOURNAL

With the pandemic continuing to spread and additional federal funds to help uncertain, the second half of the year could mean pain ahead for rental housing and a challenging time for apartments, Yardi Matrix says.

Rents are falling as COVID-19 weighs on the multifamily rental housing industry, and “more pain” is coming, the Summer Multifamily Outlook says.

While the pandemic ended the long run of multifamily rent growth, expectations of widespread non-payment of rent did not materialize immediately. Federal unemployment and stimulus payments helped tenants make rent payments. The second half of the year, however, is more of an unknown.

Some summary points Yardi Matrix makes in the report:

- Tenants were subsidized by emergency unemployment aid, which ended in July with an unknown future. At the same time, initial hopes for a “V-shaped” recovery were too optimistic, and the effects of the pandemic will linger until the population is confident about health measures.
- Rents turned negative in the second quarter for the first time since the aftermath of the global financial crisis. Property owners concerned with maintaining occupancy renewed leases with no rent increases. New luxury units are taking longer to lease up, as demand is concentrated on less expensive product. Rents are likely to drop further in the second half of 2020

before rebounding in 2021.

- Multifamily capital remains abundant, but deal flow has slowed as underwriting future growth has become more difficult. Fannie Mae and Freddie Mac remain active, though with more conservative terms and higher reserve requirements. Investment activity dropped sharply, but opportunistic capital is circling, waiting for signs of distressed assets.
- The pandemic will weaken the supply pipeline and delay projects that have not yet started construction.

“The rent situation is uneven at the metro level. Those that have had the largest decreases in rent growth include large coastal markets such as New York, Los Angeles, San Francisco and Silicon Valley, where rents were extremely high to begin with. Some residents are leaving (temporarily, for now) to avoid crowds and to get more space,” the report says.

“Other markets with rent declines in the second quarter include fast-growing locations such as Austin, Seattle, Miami and Denver. Those markets have had large amounts of deliveries of luxury product in recent years, and thousands of new units are coming online just as demand was diminishing due to the pandemic.

“With millions furloughed and employment less certain, demand is being concentrated in lower-cost apartments, which is showing up clearly in the rent numbers. At the end of the first half, rents of luxury lifestyle units fell 1.8 percent year-over-year, while working-class Renter-by-Necessity units were up 1.4 percent,” Yardi Matrix says.

Congratulations to the Winner of the NYS Enterprises Inc./Rental Housing Journal Parking Lot Makeover Sweepstakes!

Chanell Adebisi of DSB Investments is the winner of \$2500 worth of paving services from NYS Enterprises, Inc.



Chanell, who began her career as a leasing agent, has been in property management for about five years. “I have worked very hard to rise in this business,” she said. “This is the career path that I have wanted to be in for a long time. I am hoping one day that I will be able to own some of my own properties.” Chanell has worked for DSB Investments, a family-run business in Renton, Washington, for over a year now.

Congratulations to Chanell and to DBS Investments!



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Working for Housing Stability, Serving Our Community

Continued from Page 7

- The groups that most likely to report that they are “very” concerned about housing affordability are renters (55 percent), those with high school education (50 percent), and those with household incomes below \$50,000 (49 percent).
- Washington residents have seen little progress on housing affordability. In 2019, 82 percent of the state’s residents also reported being concerned about it, which is essentially the same rate as now.

Washington residents strongly prefer that rental rates be set collaboratively between renters and landlords rather than regulated by the government.

- By a margin of more than 2 to 1, residents prefer rental rates be set by an agreement between landlords and their tenants (62 percent) rather than be regulated by the government (23 percent); a margin of 39 percentage points.
- The preference for agreements between landlords and tenants is shared by all demographic groups and political persuasions. The margins for key groups include 34-points in King County, 30-points among household incomes below \$50,000, 17-points among Democrats, and, importantly, 19-points among renters.

Washington residents believe that there are many better ways to address housing affordability than rent control.

- The survey provided respondents with neutral descriptions of rent control and several alternative policies to address housing affordability in Washington. For each policy, they were asked if

it is a better or worse approach than rent control. Across the board, Washingtonians believe that there are better ways than rent control to ensure residents have an affordable place to live:

- By a 63-point margin residents prefer partnerships between state and local governments and the private sector to provide a wide range of housing than rent control (76 percent vs. 13 percent).
- By a 52-points margin residents prefer providing a property tax exemption to property owners who voluntarily agree to keep rents below the market rate than rent control (67 percent vs. 15 percent).
- By a 48-point margin residents prefer more state funding for affordable housing projects than rent control (67 percent vs. 19 percent).
- And by a 42-point margin residents prefer providing rental assistance vouchers to low-income households than rent control (64 percent vs. 22 percent).
- Belief that these policy options are better than rent control cut across all demographic groups.
- Notably, even those who are open to the government regulating rent believe that these are better policies than rent control. Between 61-72 percent of those who said that rent should be regulated by the government believed that these are better policy options than rent control.

Washingtonians continue to believe that the state is on the wrong track.

- More Washington residents believe that the state is on the wrong track (45 percent) than feel that it is headed in the right direction (37 percent).
- Feelings about the state are more divided by political party than any other characteristic. Republicans are twice as likely as Democrats to believe that the state is on the wrong track (61 percent vs. 31 percent). Differences by age, gender, income, education, race, and area of the state are all modest in comparison, ranging no more than 10 percentage points within each demographic group.
- The percentage of residents who feel that the state is on the wrong track is unchanged since April 2019. This shows that negative feelings about the state extend beyond the current crises of COVID-19, the economic recession, and recent protests.

There is clearly a lot of work for our state and local policymakers to tackle as we strive to build stronger, more resilient, and more equitable rental housing opportunities for all. Policies which impede those goals should be avoided in preference of practical solutions which expand housing access for everyone who needs it.

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Ordinance Tries to Limit Liability of CRE Tenants

Continued from Page 1

unintentionally overbroad in its protections.

Notably, it would prohibit landlords from enforcing provisions that would make “the tenant ... personally liable.” Presumably, the intent was to cover situations where the tenant is an individual (rather than a corporation, limited liability company, or other legal entity).



Nathan Luce



John Fandel

But what does this language mean for leases where the tenant is an LLC or other corporate entity? Saying that the “tenant” cannot be “personally liable” is akin to saying that the tenant has no liability whatsoever. Arguably, the ordinance appears to overlook individual business owners who signed separate guarantees, while inadvertently making the tenant entity itself immune to all liability.

For now, landlords should be aware of potential roadblocks to pursuing guarantors (notwithstanding the unclear language in this ordinance). We will continue to monitor implementation and enforcement of this ordinance and will provide updates if clarifying amendments are passed.

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Do Your Gutters Need Fall Cleaning?

Continued from Page 1

to find their way to your gutter one way or the other.

If you notice the presence of birds and critters, you may want to check if there is debris in your gutter.

Failure to clean your gutter of algae and debris may lead to mold growth, which can

damage the exterior area of your home.

3. STAGNANT WATER AROUND THE FOUNDATION

Your foundation is the anchor that holds your home to the ground and prevents moisture or even flood water from getting in.

But a clogged gutter can cause severe

damage to your foundation if not cleaned properly and early.

If you notice a pool of standing water around your foundation, it could be caused by gutters not working properly.

4. STAINS ON YOUR SIDING

If you notice any form of stains or streaks on your siding, it may be time to get your gutters checked and cleaned.

This is because when your gutter is clogged with debris and leaves, water is not able to flow properly, causing it to seep into the siding.

CONCLUSION

Should you hire a professional to clean your gutter amid the COVID-19 pandemic?

While you may be able to handle minor gutter cleaning, you should consider hiring a professional company to handle bigger jobs.

This will help you get the job done on time and correctly the first time.

Most importantly, with the coronavirus pandemic and social distancing ruled, a professional will adhere to local health rules. Our professionals do not need to set foot inside your property to handle gutter cleaning.

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Seattle Rents Continue Decline

APARTMENT LIST

Seattle rents continued to decline for the third month, falling 0.4 percent in July, according to the latest report from Apartment List.

Rents are down 0.9 percent year-over-year in Seattle, where rents lag both the state and national averages for rents. April was the last time Seattle saw a rent increase.

Median rents in Seattle are \$1,342 for a one-bedroom apartment and \$1,671 for a two-bedroom.

RENTS RISING ACROSS THE SEATTLE METRO

While rent prices have decreased in Seattle over the past year, the rest of the metro is seeing the opposite trend.

Rents are up in six of the largest 10 cities

in the Seattle metro for which Apartment List has data.

Here's a look at how some rents compare across some of the largest cities in the metro.

- Bellevue has the most expensive rents in the Seattle metro, with a two-bedroom median of \$2,386; however, the city has also seen rents fall by 1.2 percent over the past year, the biggest drop in the metro.
- Lakewood has the least expensive rents in the Seattle metro, with a two-bedroom median of \$1,512; the city has also experienced the fastest rent growth in the metro, with a year-over-year increase of 2.0 percent.
- Although rents across cities in Washington have been marginally on the rise, the state's growth as a



whole has held steady over the past year. For example, rents have grown by 1.3 percent in Spokane and 0.5 percent in Vancouver.

TACOMA RENTS INCREASED MODERATELY OVER THE PAST MONTH

Tacoma rents have increased 0.3 percent

over the past month, but have remained steady in comparison to the same time last year.

Currently, median rents in Tacoma are \$1,262 for a one-bedroom apartment and \$1,571 for a two-bedroom.

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What’s a Landlord to Do?

Continued from Page 1

stuck between “a rock and a hard place” Petersen said, “because there’s both a moratorium on evictions for nonpayment of rent and a moratorium on foreclosure for nonpayment of mortgages, and they both expire September 30. But unless tenants can start paying rent on October 1 (including back rent), or the foreclosure moratorium is extended, then landlords will be between a rock and a hard place at that time.”

“So for landlords and tenants both, and for their attorneys for that matter, we’re all kind of just in a holding pattern,” Petersen said. “Many tenants are not paying the rent. But many landlords are not paying their mortgages. And nobody can really do anything about it, but come October 1, assuming that the legislature or the governor do not act to do something to extend it or change it, as long as those two things move in lockstep with each other, then it’s not so bad.”

LANDLORDS NEED INCOME FOR MORE THAN JUST THE MORTGAGE

Petersen said in the case of landlords, “They’ve got to upkeep the facility. They’ve got to eat. So it’s not a perfect situation, but certainly probably the biggest single expense landlords have is their mortgage. And they got some relief there because the foreclosure moratorium is big.”

So with the rent moratorium and foreclosure moratorium, “if those two things were to get out of whack, then I think things will tend to go haywire. That’s actually what we were worried about before June 30 when (the moratorium) was extended to September 30, because previously the moratorium was set to expire on July 1.”

So, WHAT IS A LANDLORD TO DO?

Petersen said while not perfect, he would offer a couple of suggestions.

“No. 1, when October 1 rolls around, assuming things don’t change, the rent that’s going to come due from October 1 onward is presently due. The deferred rent, or the pre-October 1 period, is not due until April 1, 2021, so landlords would be best positioned to make clear with their tenant that the money they start receiving on October 1 is applied to past-due rent if you can achieve that because then you’ll be both collecting the past-due rent and you’ll be collecting the current rent, assuming of course the tenant can pay.

“On the other hand, if it’s just applicable to the current rent, then you still got this nut for the past-due rent that you’re not going to collect until April.

“So it’s advantageous for the landlord starting October 1 to apply payments first to the past-due rent. So if you can achieve that, that’s good. The way the law is set up in Oregon is that the tenant has to specifically notify the landlord what the rent applies to, the payments apply to, so if they don’t then the landlord would be free to apply it to past-due rent. So that’s the first thing that I would suggest,” Petersen said.

Miner also offered a couple of suggestions.

“If landlords have instances where they have tenants who they know can pay, but (those) people are taking advantage of this bill, the landlord should contact their legislator and give them specific examples.

“To be fair, I haven’t heard of a lot of tenants who are acting in bad faith. But I think we need to know about it if there are.”

WHAT ELSE IS A LANDLORD TO DO?

“There’s nothing in the bill that says you can’t remind tenants of what they owe,” Miner said. “It’s okay to continue to send a monthly statement saying, ‘Here’s what you owe. Here are all of your utilities.’ You can send those types of statements.”

Other than that, “a landlord needs to wait

until the end of September,” when landlords can send notice in October.

If a landlord asks a tenant to provide information concerning how they plan to pay the rent or a rent payment plan, Miner said that “offering a payment plan and suggesting a payment plan is perfectly okay.” However he said landlords should avoid making any types of threats, or doing anything that sounds like a threat, to the tenant. He said landlords should be very careful especially to stay away from any threats suggesting what may happen after September 30.

Miner says that approaching tenants in a collegial fashion – “We’re assuming that you’re not paying because you’re being negatively affected by COVID, right? We understand these are hard times and trying times ... is there some type of repayment plan that we can work out?” will get the best response.

PUT THE MAGIC LANGUAGE IN ANY AGREEMENT WITH TENANTS

“If a landlord does end up working out a repayment plan, it’s of course important to get that in writing, get it signed by both parties,” Miner said.

“I think if you have a payment plan, you’re still going to want to put the magic language in there that preserves a landlord’s right to bring an action down the road once a landlord is able to bring an action.”

Some attorneys may advise landlords that if they accept partial rent payments, such action could permanently change the amount of rent due in the lease. However, Miner said, “right now the bill suspends the waiver provisions of the statute, which is ORS 90.412.” The current language should protect a landlord from waiver.

“However, tenants’ lawyers are very creative in what they do. And so I think a tenant lawyer could potentially find a run-around of that exception. So I would follow



David Petersen Bill Miner

the rules that are found in 90.412 to be safe.

“A landlord should work with their attorney or with their management company to make sure that they have the magic language in there. And the magic language essentially being: ‘Hey, look, I’m accepting a partial payment. By accepting a partial payment I’m not waiving my right to send you a notice of termination in the future. And everybody agrees that I can, at some point in the future, actually terminate your tenancy if you don’t pay the balance.’ I think something along those lines,” Miner said.


Petersen pointed out another issue involving current leases.


“If landlords already have a lease amendment in place that they entered into with their tenants, pre-June 30, and that amendment is stricter for the tenant than the current rules of the current moratorium, chances are it’s unknown whether or not that will be enforceable.

“The legislature tried to address that in the bill and said that basically any other private arrangement reached between landlords and tenants that was harsher for the tenant than this bill aren’t enforceable. I think it remains to be determined whether that’s legal – if they can interfere with a private contract in that fashion.

“So landlords who have lease amendments in place that attempted to deal with COVID-19 that were less generous to the tenant than the law, depending on the financial incentives, may have an incentive to try to enforce that nonetheless, but it

See ‘Landlords’ on Page 15






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Landlords Caught Between Rock and a Hard Place

Continued from Page 14

remains to be seen whether or not that’s going to happen.”

Petersen added, “I suspect some landlord somewhere will test it, sooner or later, and then we’ll know.”

When asked about the ability to change private agreements, Miner added, “it is an important question of whether the Legislature is violating the Contract Clauses of the Oregon and U.S. Constitutions, especially when the Legislature is allowing individuals who may not be negatively affected by the emergency declarations. If a landlord ends up in a lawsuit alleging violations of the law, the landlord should talk with their lawyer about such an argument. Is the law Constitutional?”

MAINTENANCE, HABITABILITY AND SECURITY DEPOSITS

Both attorneys agreed that landlords and property managers may want to put some maintenance or other improvements on hold unless it affects the landlord’s habitability requirements under Oregon law.

“Defer all the maintenance you can defer,” Petersen said. “You have very limited cash flow and you’re going to have to do triage. Non-essential building maintenance is probably just going to have to wait. I think a tenant would have a hard time complaining that their building is not being maintained to the standards that they’re used to given that they’re not paying the rent.

“There is an implied warranty of habitability in all residential property in Oregon, so the landlord is still going to have to meet that minimum habitability standard,” Petersen said.

Miner said landlords and property managers cannot use security deposits to help pay for maintenance or to help with mortgage payments.

LANDLORDS AND THEIR MORTGAGE PAYMENTS

“Those security deposits are still security deposits that you are holding under the Landlord Tenant Act. If you are having a difficult time with making a mortgage payment, the best thing to do is to contact your mortgage provider and ask if you can get relief, especially if you’ve been economically harmed. Of course, the landlord as a borrower is probably going to have to actually show some economic harm.” Miner said.

Petersen said his advice for landlords who are not getting rent payments from tenants is “to get out in front of it with your lenders. Lenders right now, in our experience, my experience and my firm and my creditors’ rights group, is that lenders are also in a kind of a cooperative mood right now, and they’re perfectly willing to work out payment plans, forbearance agreements.

“Everybody likes certainty, and lenders particularly like certainty. If they can get something on paper that will give them an understanding of how they might get partially paid or when they’re going to get paid, in my experience most lenders are interested in that. So don’t wait until October 1 when you’re in default of your mortgage to call them. Get out in front of it and find out what they’re doing for borrowers now because you may feel alone, but there’s a gazillion similarly situated parties,” Petersen said.

Miner said while many people are focused on and talking about the non-payment of rent, “If there were other violations going on, or other breaches of the rental agreement, make sure that you’re enforcing those breaches.”

Petersen said the courts are operating in Oregon on a limited basis.

“So at least in theory, you could even get into court today on a lease-enforcement

action if your tenant was in default for something other than nonpayment of rent, by violation of a use clause or hazardous materials, or who knows? Anything that’s not nonpayment of rent is still at least, in theory, something that could result in a termination of a lease and an eviction. Now, I highly doubt you’re going to get the kind of rapid response that you normally get for forcible entry and detainer, or unlawful detainer as they call it in California, but you still should be able to do it,” Petersen said.

THE COMING CLASH OF POLITICAL FORCES

Petersen compared some of the differences between commercial landlords and the residential side.

Petersen said on the residential side, there’s going to be an interesting clash between tenants who just can’t make up the past rent and the trend in Oregon to protect tenants.

“That’s going to be really interesting to see how that plays out. On the commercial side, I guess there’s a little less sympathy for the tenant that can’t pay its rent. I think we probably are going to see come April next year – or even October – a rash of evictions, tenants just walking away or filing for bankruptcy. Those are probably the three most likely outcomes.

“I think in the residential market is where the rubber’s really going to hit the road, because the legislature and the governor are going to be stuck between the financial reality for landlords who aren’t getting paid rent, and kind of the political winds that blow in favor of tenants,” Petersen said.

Miner said, “At this moment in time, the tenant lobby is very powerful. They have the ears of important legislators and have been effective in getting their message out. They have also been able to use actions a few bad apple landlords to push through sweeping laws that has a negative effect on

the vast majority of landlords. For whatever reason, the legislature is afraid to go up against these tenant groups.

“I think it is really important for the landlords to get organized. Right now, they are not speaking with a cohesive voice. Landlords need to understand what their associations are doing and saying, because I do think that there have been some instances i where some pro-landlord organizations or individuals associated with those organizations are saying, ‘Oh, these types of changes are just fine.’ And so some of the pro-tenant legislators are saying, ‘Oh, look, we have at least one landlord that’s okay with this; therefore we’re covered.’

“Again, it’s important for landlords to know what’s going on with their associations. Ask the questions like, ‘What do you think of this? What are you doing to protect us?’ Ultimately I think we’re going to keep seeing the same types of proposals and disregard for the negative affects of landlords until we start fighting it at the Legislative level and in the Courts. How far can a Legislature go to challenge our existing contracts? How far can a Legislature go to lump all landlords in the same category? How are we expected to continue paying our obligations?”

“It’s one thing to have an emergency, and to be able to interfere with people’s contracts because of an emergency, but is the Legislature’s response to the emergency too broad?” Miner said.

“If there are people out there who are taking advantage of this, if there are tenants out there who can pay but are choosing not to pay for whatever reason, then they’re taking advantage of the situation. I would imagine that the governor and the legislature – that’s not their intent either.

“So we need to really narrow future laws to make sure we have common sense solutions, and the best way to do that is to get the landlords to the table,” Miner said.

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