

REVIEW OF THE 2008 LEGISLATIVE SESSION

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The 2008 Regular Session of the 60th Washington State Legislature adjourned on Thursday, March 13. Of the 1,747 pieces of legislation introduced, 331 were passed by the legislature before ending their constitutionally scheduled 60 day session.

The last day for Governor Gregoire to act upon bills is Saturday, April 5. The Governor has four options: (1) sign bills into law; (2) veto bills in their entirety; (3) partially veto bills (entire sections on policy bills; entire sections or subsections within sections of appropriations bills); or (4) take no action. If option 4 is done the bill becomes law at the end of 20-days; the Governor has no “pocket veto” as the U.S. President has.

The Legislature will reconvene on January 12, 2009 for a 105-day session.

The following are bills of interest that WMFHA followed this session:

WMFHA Leads Compromise on Storage of Tenant's Property

Landlords will be required to store a tenant's property only if the tenant gives the landlord notice in writing under legislation signed by Governor Gregoire.

The new law, which takes effect June 12, comes after months of negotiation between WMFHA's Joe Puckett, members of the Washington Rental Housing Industry Coalition (WRHIC) and tenant groups. WMFHA sought to overturn a January 2007 Appeals Court ruling that interpreted the law to read that landlords are required to store tenants' property when a physical eviction is conducted. Unfortunately, given the current make-up of the legislature, our effort to overturn the court ruling failed to garner the support of Senate Democratic Leadership and was not brought up for a vote by the chamber in 2007 despite passing the House of Representatives by a vote of 97 – 0.

Under this year's compromise, Substitute House Bill 1865, prime sponsored by Rep. Brendan Williams (D-Olympia), provides the landlord will only be required to store property if the tenant gives written notice to the landlord within 3 days after the writ of restitution is delivered to the tenant that the tenant wants the property stored. If the notice is not given, the landlord can put the property on the nearest public property curb. If the property is to be stored, the landlord can store the property, at least temporarily, at the rental premises and can move the property to a storage facility at a later date. The landlord will be required to store the property for either 7 or 30 days depending on the value. If the property is valued at less than \$100, the landlord can sell or dispose of most items after 7 days. If the property has a value over \$100 the landlord must try to sell the property before disposing of it. If the tenant has a disability and the disability prevents or impairs the tenant or tenant's representative from giving the written notice, the landlord must store the property.

Condominium Conversion Bill Signed by Governor

Developers seeking to convert apartments to condominiums must give 120 days notice to tenants instead of the current 90 day notice as a result of the passage of legislation negotiated between developer and tenant groups during the 2008 legislative session. The new law, Substitute House

Bill 2014, prime sponsored by Rep. Marilyn Chase (D-Shoreline) takes effect August 1 of this year.

In addition to the increased notification period, a condominium declarant may be required by a city or county to pay relocation assistance of an amount not to exceed three months of a tenant's rent, to tenants who elect not to purchase a unit, are in lawful occupancy of a unit, and whose household income is below 80 percent of the median income. Elderly or special needs tenants are eligible for the greater of the either the abovementioned or the sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars. Relocation expenses may include the costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, and rent differentials for up to a six-month period.

Interior construction for the purpose of converting buildings into condominiums may not commence during the 120-day notice period unless: all residential tenants who have not elected to purchase a unit and who are in lawful occupancy in the building have vacated; the purpose of the construction is to prepare vacant units to be used as model units or for a sales office; and the declarant has offered existing tenants the opportunity to terminate their existing lease or rental agreement without cause or consequence.

Procedures for Eviction Based on Non-payment of Rent Clarified

In another example of cooperative negotiations, Joe Puckett and lawyers representing landlord interests negotiated clarifications with tenant advocates to the special procedures regarding evictions for non-payment of rent. The current procedures have been the subject of dispute and conflict involving both lawyers and judges for several years. The revised procedures will allow landlords to continue to use the special procedures through which a tenant can be required to pay money into the court registry in order to prevent the immediate issuance of a writ of restitution. The new law takes effect June 12.

In an action of forcible entry, detainer, or unlawful detainer based upon nonpayment of rent, the defendant is required to do one of two things: (1) the defendant must pay into the court registry the amount alleged due in the notice and continue to pay the monthly rent into the court registry while the action is pending; or (2) submit to the court a written and sworn under penalty of perjury statement that sets forth the reasons why the rent alleged due in the notice is not owed. The reasons may include that the rent alleged due is not owed based upon a legal or equitable defense or set-off arising out of the tenancy. The defendant must comply with one of the options on or before the deadline date in the notice. That date may not be prior to the deadline for responding to the eviction summons and complaint for unlawful detainer. If the defendant fails to comply with either of the two options, a writ of restitution without further notice may be obtained.

If a plaintiff intends to make use of the writ of restitution procedures, the plaintiff must first file the summon and complaint for unlawful detainer with the superior court of the appropriate county, and deliver notice to the defendant of the payment requirements or sworn statement requirements. The form for the notice is specified in the act.

If a writ of restitution is issued, the defendant may seek a hearing and an immediate stay of the writ. The court may set a show cause hearing no later than seven days from the date the stay is sought or the date the defendant requests the show cause hearing. If the court, at the show cause hearing, determines that the writ of restitution should not have been issued, it must be quashed and the defendant restored to possession.

Real Estate Licensing Changes

After several years of working with stakeholders to modernize Washington State's archaic real estate licensing laws, the Washington Realtors celebrated success with the passage of Substitute House Bill 2778, prime sponsored by Rep. Steve Conway (D-Tacoma). The 40-page bill makes many designation changes and clarifications.

Starting July 1, 2010 licensees will consist of real estate brokers, managing brokers, designated brokers, and real estate firms, replacing the Department of Licensing's (DOL) licensing structure of real estate salespersons, associate brokers, and brokers.

Of particular interest to WMFHA members is the exemption of site managers from having to obtain a real estate brokers license. There are also no conditions relating to where managers reside (currently one has to live "on site" to be exempt from the license law), or how many properties they are in charge of.

Specifically exempt from the licensing is: any person employed or retained by, for, or on behalf of the owner or on behalf of a designated or managing broker if the person is limited in property management to any of the following activities: delivering a lease application, a lease, or any amendment thereof to any person; receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment for delivery to and made payable to the real estate firm or owner; showing a rental unit to any person, or executing leases or rental agreements, and the employee or retaine is acting under the direct instruction of the owner or designated or managing broker; providing information about a rental unit, a lease, an application for lease, or a security deposit and rental amounts to any prospective tenant; or assisting in the performance of property management functions by carrying out administrative, clerical, financial, or maintenance tasks.

Offender Re-Entry Clarification

The 2007 Legislature passed legislation which addressed provisions that affected offenders leaving confinement. The legislation established that a landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant if the landlord discloses to residents of the property that he or she rents or has a policy of renting to offenders; and takes steps to report or halt criminal activity if the landlord has actual knowledge of criminal activity on the landlord's premises. Upon review of this law, landlord groups agreed the attempt to provide landlords with immunity actually had the possibility to cause increased liability.

Engrossed Senate Bill 5959, prime sponsored by Senator Jim Hargrove (D-Hoquiam) puts in state statute the Transitional Housing Operating and Rent (THOR) program which assists homeless individuals and families secure and retain housing. Senator Hargrove also included in the bill a section repealing the 2007 abovementioned law to avoid any additional liability for landlords.

Coalition Prevents Measure Requiring Landlords to Accept Section 8

Two bills that would have made "lawful source of income" an additional protected class under the state's laws against discrimination have been defeated thanks to the efforts of WMFHA and the Washington Rental Housing Industry Coalition (WRHIC).

"Lawful Source of Income" is defined as verifiable, legal income including income derived from any of the following sources: employment, social security, other retirement programs, child support, alimony, and any federal, state, or local government or non-profit administered benefit or

subsidy program. A landlord found in violation of this provision would face a civil penalty of: up to \$2,500 for a first violation; up to \$7,500 if the violator committed an unfair practice within the past five years; or up to \$10,000 if the violator has committed two or more violations within the past seven years.

Although these bills have failed to pass this year, they will undoubtedly be back again next year.