

Florida Apartment Association

IMPACT

Vol. 18, Number 6

2001



Meet Your Legislators!

***Join us for FAA's
Annual Legislative Day!***

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IMPACT

Volume 16, Number 6
2001

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PRESIDENT'S MESSAGE

by LuAnne Acton, JMG Realty

Hi, everyone! I am very excited to serve the Florida Apartment Industry as President of FAA in 2002, and I look forward to meeting members around the state throughout my term. Fortunately, we have a strong Board and hundreds of members with ideas to contribute, so please feel free to contact me about issues and problems you have in your community.

I want to thank our outgoing President, Gary Cherry, for his untiring service to the apartment industry during the past year. He visited every local and worked extremely hard on our legislative efforts during the year. His calm leadership and good cheer made Board meetings almost a pleasure. I expect to call on his wise counsel during the coming year.

I thought I could ease into the presidency, but legislators in Tallahassee wouldn't allow me to do that! The Legislative Session next year begins early, in January, and the FAA Board has decided to send a delegation once again this year. We plan to meet in Tallahassee on February 26-27 and I'd like to invite all of our members to show up in force. The proposed Trovillion Bill (dis-

cussed by Jodi Chase below), potential increased regulatory fees from the Division of Business and Professional Regulation, State Government budget issues, and much else will be discussed in the 2002 Legislative Session. The FAA also needs to keep the momentum going from our successful Legislative Days of past years, so please make arrangements to join us in February. It's an education in the political process you won't want to miss.

I'm very excited to say that the FAA Web site is up and running. It provides a lot of good information and can be found at www.fl-apartments.org. We will update its information quarterly and will work to make it a valuable reference resource for you.

Planning has also begun for the 2002 FAA Education Conference, and I can't wait to welcome you all to my neck of the woods. We'll finally get to see the newly refurbished Diplomat Hotel in Hollywood and once again we'll put on a dynamite educational program. If you have ideas for topics you want discussed or want to volunteer your services, please contact Conference Committee chair Teri Allen.

LEGISLATIVE UPDATE:

BY JODI CHASE, THE CHASE GROUP

It is hard to believe but the 2002 Session of the Florida Legislature is fast approaching. Every ten years the Legislature must redraw each legislative and congressional seat in accordance with the latest census data. In order to accomplish this cumbersome task, the Legislature must convene in January, instead of March, to complete their work in a timely manner before the 2002 election season is underway in the fall. Therefore, the 2002 Session begins January 22, 2002 and is currently scheduled to end in late March. All interim legislative work, including Committee hearings, budget planning, etc. also began earlier so as to be completed by January 22.

With that as the backdrop, FAA's primary task is vigilant defense in order to keep from losing the gains enacted during the 2001 Session. As always, FAA must be ready to prevent passage of harmful legislation which always tends to pop up, such as Repair and Deduct.

One of the earliest concerns to surface is problematic language contained in HB 155 by Representative Trovillion of Winter Park. This legislation is being supported and pushed by the Department of Business and Professional Regulation and calls for a \$150 increase in re-inspection fees when DBPR has to return to a property to assess if a previously noted violation has been corrected. There are a number of things wrong with the way this legislation is currently drafted. First, this is certainly not the time to be hitting public lodging facilities, apartments included, with higher government fees

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Web Service
b/w
p/u last issue

"Be a Redwood of Freedom"

BY MR. PER

Redwood trees are the tallest of all trees, growing to almost 400' in height. Instead of the incredibly deep roots that you might expect of such huge trees, redwoods actually have an extremely shallow root system, which at times extends to only 12' deep. The root system of the redwoods grows extremely wide, and yet, as wide as the roots are, they still should not be able to support a 400' tree. Redwoods reach their incredible heights by growing close together. This means that each tree's root system intertwines with the roots of the other trees. By growing close together they become part of a huge root system that is able to support each tree's amazing height. Redwoods reach an incredible height because they grow in a redwood forest! Their individual strengths are increased because of the strength of their community.

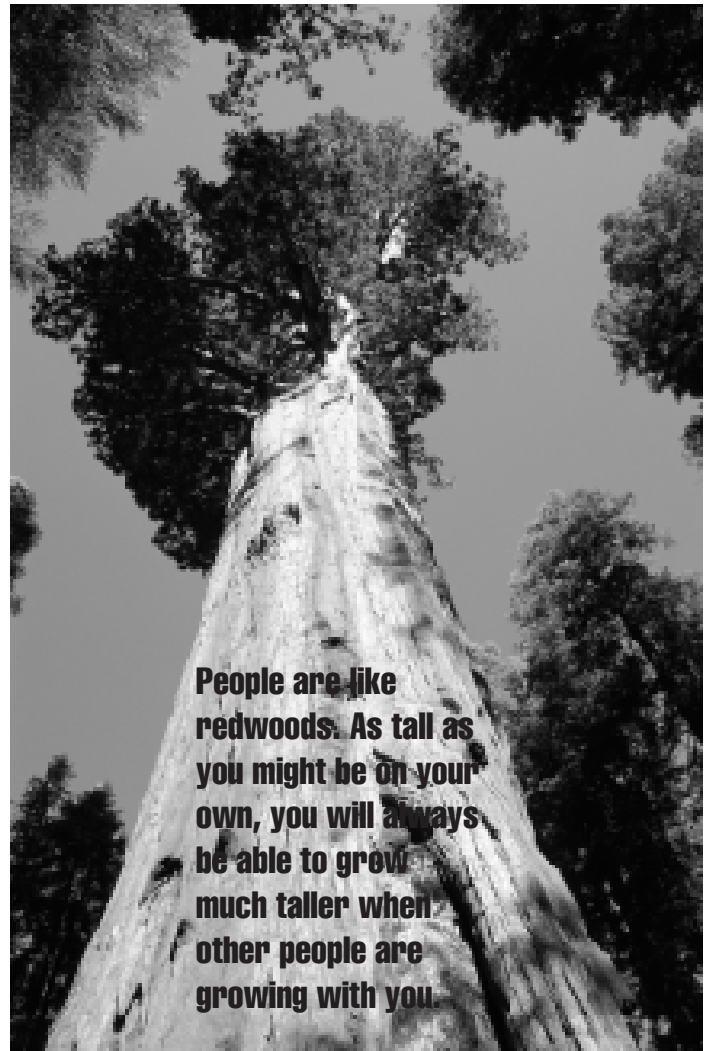
People are like redwoods. As tall as you might be on your own, you will always be able to grow much taller when other people are growing with you. The more "redwoods" you surround yourself with, the greater your success will be. You may have reached 100' last year, however by adding new people around you this year you may reach 200'. The stronger the people in your forest, the stronger you will be. You have reached your current height partly because of the "trees" around you. As you add more "redwoods" to your personal forest, you will grow even taller.

When a redwood tree dies, its roots continue to add strength to the forest's root system, even as its own seeds are used to grow another tree. When the new tree is small, it taps into the root system already in place. As it grows, it goes from using its current roots for strength to adding its own strength to the root system. Do redwoods use the support that the forest offers every day? Not only do they not use it every day, they rarely use the support at all. It is only on the rarest of days that the wind blows so hard that their "mutual support system" is used to its maximum. The trees spend years investing incredible amounts of energy building a root system that they will almost never use. However, when the day comes that they do use it, their investment is paid back in full.

In much the same way as the trees band together to support each other, your community, like the forest, becomes a source of strength. Much of the support that your community has to offer you will not be used on a regular basis. It is only in extraordinary times that the amazing support offered by the community becomes obvious and able to be relied upon. Just as the trees must all stand together to brace themselves against the wind, now is the time that you and I must stand together, as one, to weather our current storm. The majestic redwoods have weathered the Pacific storms for thousands of years. Our "system" of freedom will weather this storm as well.

Today, be the greatest redwood of freedom you can be.

For more inspirational messages, visit Mr. Per's Web site at www.iztek.com <<http://www.iztek.com>



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and expenses. It is very important that legislators know, that as currently drafted, HB 155 includes apartment communities, not just hotels, motels, and restaurants. Many are not aware of this fact. Also, while DBPR may say they intend to target only very serious violators, there are no definitions provided in this bill and it leaves way too much to bureaucratic interpretation. There is already remedy in the law for chronic and habitual violators. The Trovillion bill appears to be a way of inviting greater government intrusion and raising additional revenue on the backs of apartment communities and their residents. DBPR is funded entirely through the fees they collect from the industries and professional groups they license and regulate. Arming inspectors with additional revenue collecting mechanisms would seem to invite potential abuse.

Thanks for being involved at the grassroots level. It is extremely helpful and imperative for FAA's continued success.

MARKET REPORT

Apartment Moves

Jacksonville Central Florida

The **Apartment Group**, a Cushman & Wakefield company, negotiated the sale of the 120-unit **Kingston Village Apts.** in Altamonte Springs by **Archstone Communities** to **Del Development Corp.** of Atlanta for \$7.5 million, or \$62,500 per unit. Kingston Village opened in 1972.

ECD-Martin's Landing Ltd. Partnership sold the 419-unit **Martin's Landing Apts.**, built in 1984 in the Rosemont section of Orlando, to an unidentified Texas limited partnership for \$13.9 million, or \$33,174 per unit. Gerald Smith of Smith Equities brokered the sale.

Realvest Partners, Inc., of Maitland recently negotiated the \$1.8 million sale of a 20-acre parcel on the southwest corner of Woodbury Rd. and the East-West Expy. in east Orlando. Realvest president **Michael Heidrich** negotiated the transaction representing the seller, **Anna LaBianca**, Trustee for the **Maria Goetz Land Trust**. The buyer, **LCA Land Acquisition, Inc.** of Orlando, plans to develop multi-family housing on the site.

Mirasol Apts. in Disney's Celebration, has begun accepting applications for units that will be ready next year. Apartments will average 1700 sq. ft. and feature unique amenities such as Roman tubs and eat-in kitchens under glass. **GDC Communities** of Hawthorne, NY is the developer.

Bay Area

Colliers Arnold Commercial Real Estate Services, Inc. recently closed on the sale of **Preserve at Temple Terrace**, a 392-unit upscale apartment community near Tampa Palms built in 1999. Colliers Arnold investment specialist John W. Stone, CCIM, acting as Buyers Agent, assisted Cleveland-based **Zaremba Management Co.** in locating the property.

Stone and associate Jason T. Stanton reviewed five properties, arranged inspections on two before the buyer came to focus on the Preserve. "The upscale apartment property, which was still in lease-up, was a perfect match for the Buyer who chose the property so as to complete a Section 1031 Tax Deferred Exchange" Stone said. The sale price: \$26.75 million, or \$68,420 per unit, was a cash transaction to seller.

Founded in Tampa Bay in 1974, Colliers Arnold is a full service commercial management, corporate services, valuation and consulting services firm. With offices in Orlando, Tampa, Clearwater and Fort Myers and Colliers International partners in Jacksonville, Miami and Fort Lauderdale, Colliers Arnold offers real estate services in virtually every Florida market.

Colliers Arnold also recently negotiated the acquisition of the **East Lake Club Apts.** in Oldsmar by the **Pinellas County Housing Authority**. Colliers Arnold investment specialist John W. Stone, CCIM, and associate Jason T. Stanton were retained as Buyers Agent by the Housing Authority.

The Housing Authority was interested in acquiring a market rate property for conversion to an affordable housing commu-

nity subject to tax-exempt bond financing regulations. Bond requirements set aside a minimum of 20% of available units for affordable housing and the remaining units are leased at market rates.

Colliers Arnold contacted a total of 98 potential properties and reviewed nine of them on behalf of the Housing Authority and also performed the initial underwriting. The company has offices in Clearwater, Tampa, Orlando and Fort Myers.

Essex Builders Group of Winter Park has finished construction of the first building of **Aston Gardens at Tampa Bay Apts.**, located on Linebaugh Ave. near I-275 near Carrollwood. An upscale retirement community, Aston Gardens includes 48 villa homes and 24 duplex buildings that will be built in four phases over the next four months. The entire project is estimated to cost \$4 million for construction.

Essex Builders Group of Winter Park has also contracted to build Phase One of **Aston Gardens at Pelican Pointe Apts.** in Venice, also an independent living facility. It is a 37-acre development off S. Pinebrook Rd., near Venice Commons shopping center, that will include 264 independent rental units, 83 assisted-living apartments, and 24 luxury villas for purchase. The owner for both communities is **Aston Care Systems**. **William J. Norton** is director of sales and marketing.

The **Apartment Group** negotiated the sale of a 444-unit apartment community at 601 Rosery Rd. in Largo. **Equity Residential Properties Trust** sold the property for \$19.5 million (\$43,919 per unit) to an unidentified Houston-based partnership.

The newly constructed, 180-unit **Centre Court Apts.** in Bradenton have been named national 2001 Affordable Project of the Year by *Multifamily Executive Magazine*. **Roger Kennedy Construction** in Winter Park built the project.

Roger Kennedy Construction has also begun work on **Park Crest at Innisbrook II Apts.**, a 396-unit community on Old Post Rd. in Palm Harbor. **Forum Architecture & Interior Design** of Altamonte Springs designed the project. **CKT Asset Management** developed and manages Park Crest.

Southeast Florida

GDC Properties of Hawthorne, NY has begun construction of **Avenel Bay Apts.**, a 193-unit luxury waterfront apartment community of U.S. 1 on NE 185th Street in Aventura. Rents will range from \$1000-\$2000 monthly for units averaging 1350 sq. ft. of living space.

Atlantic Realty Partners announces the sale of the 440-unit **Doral Pointe Apartments** to New York-based **TIAA-CREF**. Atlantic Realty Partners was exclusively retained by **RREEF** to arrange the sale of the multifamily property located in Miami, Florida. A luxury community built in 1990, Doral Pointe was purchased for \$45 million or \$102,273 per unit. Occupancy at the time of sale was approximately 95%. **Brad Capas**, Senior Vice President and **Richard Donnellan**, Managing Director led Atlantic's marketing team.

This transaction brings ARP's total sales for the year, as of November, to \$435 million. In addition to two portfolio sales in South Florida, a six-property transaction on behalf of United Dominion Realty Trust and a four-property sale on behalf of General Investment & Development/CalPERS, the company has completed statewide sales this year in Boca Raton, Deerfield



In the News

People

FAA and AAGO Past President **Nan Cavarretta** has left the property management field to become publisher of *The Apartment Finder Blue Book* in Orlando. This will also provide her a chance to teach apartment courses in Florida and other parts of the U.S.

FAA Past President **Marie Bevis** has left **Archon Management Svcs.** in Miami to join **Charles E. Smith Realty Services**, based in Arlington, VA. Marie will live and work in Ft. Lauderdale.

The **Bob Bader Company** of Indianapolis, IN announced that **Andy Rubin** has joined the firm as National Accounts Manager in the Multifamily Division. His responsibilities include sales and customer development on a nationwide level.

Companies

Esite Integrates with Rinetwork.Com

Houston, TX-based AMSI, a division of Geac Computer Corporation, announced plans to integrate Rinetwork.com's Renters Insurance Program into its eSite application, an on-site leasing and management solution. Integration will make offering renters insurance a basic part of the leasing process.

The eSite integration will allow leasing agents to offer Renters Insurance coverage at point-of-lease without having to be licensed insurance agents. eSite will transmit necessary informa-

Market Report

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Beach, Plantation, Margate, Coral Springs, Tampa, Jacksonville, Orlando, Miami, Fort Lauderdale, West Palm Beach, as well as the Twin Cities, Minnesota.

On September 26, the Fourth District Court of Appeals in West Palm Beach unanimously ordered Wisconsin developer **Thomas J. Thompson** to demolish or move five eight-unit apartment buildings in Jensen Beach because they are inconsistent with Martin County's Master Plan. The developer is appealing to the Florida Supreme Court, but the developer stands to lose the \$3.3 million in construction costs, \$150,000 in demolition and dumping costs, and fees for attorneys, architects, and surveyors.

The apartments were built in spite of and during a lawsuit lodged by homeowner Karen Shidel beginning in 1996. She proved loss of value in the amount of \$26,000 to her home, but above all sought to make the developer accountable to the city's comprehensive plan.

tion for coverage electronically to Rinetwork.com and residents will be insured immediately. Coverage is guaranteed to all interested residents.

Those owners or management companies wishing to collect premium with rent will be able to do so through eSite. Those not wanting to collect premium will be able to offer residents a choice of paying premium by credit card or through automatic monthly checking account debits. Pay-with-rent insurance programs have higher participation and persistency (retention) than other forms of payment.

Rinetwork.com is Bob Bader Company's limited-access Web site designed to facilitate the offer of Renters Insurance, purchase of coverage, and collection of premium for multifamily housing operators. AMSI is a division of Geac Computer Corporation Limited, one of the largest software companies in the world. AMSI products and services manage more than 13,000 properties throughout the United States.

RentGrow Integrates Renters Insurance Into Screening Service

Bob Bader Company and RentGrow, Inc. have agreed to make a Renters Insurance program available to RentGrow users as part of the screening process. The planned service release date will be January 1, 2002.

When an acceptable credit score is returned to the leasing agent, residents wishing to be insured will provide their effective (move-in) date and either credit card or checking account information. The RentGrow system will transmit information electronically to Bob Bader Company's secure Internet site (www.rinetwork.com). Coverage for participating residents begins when they move into their apartment. Insurance regulators in all States permit licensed agents to offer approved coverage electronically and apartment personnel are not required to have an insurance license. Coverage, written through the Assurant Group, a \$24 billion "A" rated company, is available in all States except Alaska and Hawaii.

Bob Bader Company, based in Indianapolis, IN, is the nation's leading provider of point-of-lease insurance products to the multi-family housing and self-storage industries. The company provides insured resident policy services (answering insurance questions, quoting additional coverage and/or limits, and issuing policies), collects premium, and settles claims.

RentGrow, based in Waltham, MA, has been a leading provider of technology solutions to the Multifamily Industry for more than ten years, providing Web-based screening systems for on-site property staff, as well as, informative web-based management reporting for middle and senior level executives.

Advertising in a Down Market

BY BOBBY DAVIS, EDITOR

With the American economy undeniably in a recession, we asked FAA's Product/Service Council members who provide advertising and marketing services to apartment communities how a tighter market has affected them. Are apartment owners and managers more or less willing to expend funds on advertising? Why is advertising vital at a time of financial contraction?

"We were just discussing this yesterday and we feel people are running a little scared right now, especially in Orlando, which has so much new construction," said **Lisa Dailey**, who recently moved over from Tampa to become the new sale manager for **For Rent Magazine** in Orlando. "New communities will always buy a lot of ads themselves, but they affect the occupancy rates for everyone else. And we have found that occupancy is the key to whether apartment managers are buying advertising right now. Communities that are in the low 80s to about 91% occupancy are the hottest market, because they see this as their big chance to make a difference in their bottom line. Everyone is setting next year's budgets so it's a good time of year for us. But communities that are at 80% occupancy or below are in a panic state, because they are struggling to pay the major bills like debt service, utilities, etc.

"It is definitely a down market, but I have seen no reluctance to buy advertising, fortunately," said **Nan Cavarretta**, the newly installed publisher of **The Apartment Finder Blue Book** in Orlando. "We have sold the back cover, five front covers, and 40 pages in the past two weeks. But we are also new in the market and an oversized book. We also provide a link to the City Search/TicketMaster national Web site, which also helps bring in traffic."

One new PSC member, **Specialized Marketing Concepts** in Sarasota, is making its first inroads into the apartment industry at a seemingly inauspicious time. The company provides presentation folders containing information about the community and its services, plus ads from local vendors of interest to residents. They began in the single-family real-estate industry but have branched out into multifamily. According to Sales Manager **Tom Overmeyer**, "We are hearing the objection that money's tight, not so much from big companies but from the smaller vendors who normally advertise in our presentation folders. But this is when it's most important to keep your name out there, or people may forget about you altogether."

"In Jacksonville we are seeing some belt-tightening, and some are trying to save money on advertising, but in the long run it hurts them. What you don't want to do is play catch-up football," said **Darla Erdelyi** of The Greater Jacksonville Apart-

ment Guide. All advertising takes time to gain momentum and even being behind a few months can be very costly. We had six properties drop their advertising, but three of them have come back in again; it's not a service you can do without in the long run. On the other hand, because we have such longevity and competitive pricing in this market (The Apartment Guide has been in Jacksonville for 27 years) new communities will see the value and often call us. We actually see more communities reevaluate their advertising needs when occupancies are high."

"We have had some clients pull back because of tight finances, but others are spending more," said **Jan Milbrath** of HPC Publications in Orlando. A lot of communities are trying hard to retain current residents, because the growing unemployment is hurting the apartment industry at all levels."

Why is it important to advertise even in a difficult time? Costs must be cut and, in the short run at least, other expenses may seem to have a higher priority.

"I don't think you can look at ads as an expense; it's really a capital investment in your future, Darla said. "You don't take the gas out of the gas tank, or you'll lose momentum. I find that our clients generally understand that."

"We believe you have to advertise no matter what," Lisa said. "When times are great, or when times are bad, you always keep your name out there. It's like Coca Cola; they always advertise. Even when New Coke was a fiasco, they advertised and they dealt with the problem. It's a consistency issue in the market."

To Nan, it's a matter of apartment managers having to "look at your branding and what works for you. Upper management has to focus on what's happening on-site and where your traffic is coming from, and make adjustments in where you advertise and how you present your product. When the market is up again, you continue to brand your product—who you are, what you stand for, what you can do for your residents. And we as advertisers always need to find ways to provide customer service."

"Most of our clients know the market downturn is temporary; it's happened before, and it will happen again," Jan said. "They've been through it before in many cases, and they realize that people don't stop reading ads, so they don't pull back. They also realize that it will be tougher to bring prospective residents in if they pull back. Since the management companies and individual owners can't advertise in every book—other than startups, which typically spend a lot of money on advertising—they need to figure out which books and other advertising sources work for them. Are the books distributed in the right spots for your demographic?"

Is Toxic Mold Really a Health Problem? Should Builders, Landlords, and Owners Really Be Responsible? The State of the Law: A Neutral Analysis

BY RICHARD RYDSTROM

The building, insurance, and real property industries are effectively at odds with consumers, homeowners, and tenants over the issue of toxic mold. Why are they fighting? Is one side right and the other wrong? Is there a real problem between property owners and their tenants? Is one side or the other simply greedy and extremist? What does each side want?

Property owners would say that they are running a business and simply can't afford to "insure" any and every health problem that junk science experts have conjured up. Tenants would say that they are not trying to hit the lawsuit lottery, but simply seeking repairs of uninhabitable property and reconciliation from health injuries caused by toxic mold (lead, asbestos, etc.) or "sick" buildings.

The courts are in fact experiencing an onslaught of consumer (homeowners and tenants) lawsuits claiming health injuries and property damages caused by construction and/or toxic mold. Plaintiffs say they are seeking new laws to help them get repairs made before the manifestation of "property damage" and "personal injury." Building industry representatives say that they are seeking new legislation to offer new and better building standards, a new 10-year warranty, and, in effect, to restrict the wide-open lawsuit environment.

Recently, consumers in California won some victories¹ by defeating building industry-sponsored bills (AB2112 CBA, AB 600 Dutra) and passing SB 732, the Toxic Mold Protections Act

continued on next page

Record Retention Guidelines

For those who wonder which and how long certain records must be retained, the schedule below provides a ready reference. These recommendations come from the Internal Revenue Service and American Institute of Certified Public Accountants.

Accounting	
A/Payable Ledger	7 years
A/R Ledger	7 years
Audit Reports	7 years
Check Register	7 years
Depreciation Schedules	Permanently
Expense Reports	3 years
Financial Statements	Permanently
Fixed Asset Purchases	Permanently
General Ledgers	Permanently
Invoices:	
Loan Schedules	7 years
Petty Cash Schedules	7 years
Sales Records	3 years
Tax Returns	Permanently
Bank Records	
Bank Statements	7 years
Cancelled Checks	7 years
Deposit Slips	3 years

Corporate Records

Must be kept permanently, including but not limited to: board minutes, incorporation documents, bylaws, licenses, contracts, leases, mortgages, trademarks, patents, shareholder records, stock and bond transactions, partnership agreements, legal documents and correspondence, and computer backup of all business records.

Insurance Records	
Policies	3 years
Claims	Permanently
Safety Reports (Fire & OSHA)	7 years

Personnel Records

Benefit, pension, profit-sharing, 401K plans	Permanently
Payroll records	7 years
Employee contracts and records, including performance reviews and attendance	7 years
Employment applications, resumes, salary rates and changes	3 years

Real Property Records

All purchases, deeds, bills of sale, construction, appraisals, improvements, and blueprint plans must be kept permanently. Reprinted from *The Apartment Owner*, via *Bayline*.

Toxic Mold

from page 9

of 2001. Until October 5, 2001, when Governor Gray Davis signed SB732, there was no effective legislation governing mold standards and related obligations in the United States. Of course, we still have a few governmental agency and industry pronouncements on mold that suggest certain methods of assessment and remediation.²

What Harm Can Toxic Mold Cause?

According to the Web site of Senator Deborah Ortiz of California, author of California's SB 732, The Toxic Mold Protections Act of 2001, "Toxic mold is usually said to be caused by water intrusion. Inhalation of mold can cause human toxic effects, exacerbates immunologic reactions, and can cause infections." How widespread is its effect? "... (T)he number of individuals made ill by molds... certainly exceeds 10,000 people. A smaller percentage of the population develops chronic allergic diseases like allergic bronchopulmonary mycotoxins, which are natural organic compounds that initiate a toxic response in humans and cause some of the most serious adverse health effects in humans. Exposure to mycotoxins can suppress or alter the immune system, inflame the lungs and result in toxic pneumonitis, cause irritation of the eyes, nose and throat, headaches, diarrhea, and increase the susceptibility of the exposed person to infectious disease and cancer." In addition, "Alatoxins, which are produced by two species of *Aspergillus* can be carcinogenic, are acutely toxic to liver, brain, kidneys, and heart.

What is The Toxic Mold Protections Act of 2001?

The Toxic Mold Protections Act of 2001 directs the California Department of Health Services (DHS) to develop and adopt standards for mold exposure limits for indoor mold exposure environments by July 1, 2003 (Section 26105(d)). Will this new law make it easier to sue landlords successfully or make it more difficult? Since the law has several seemingly uncertain provisions, language contradictions, and unanswered questions, one could expect both plaintiffs and defendants to exploit these new opportunities (or burdens). Does the law create a higher negligence per se duty on the owner and/or the landlord who gets a citation from an unauthorized "enforcement" officer? Will that create a presumption at law of breach or uninhabitability? What is meant by "standards" and "guidelines" and are they misused in the Act? Will or did the law adopt the DHS standards of the California OSHA (i.e., the PEL, or permanent exposure limits)? Is bacteria covered under the Act? Although the law still has many questions of interpretation, as most new laws do, the judiciary will be forced to answer them in upcoming lawsuits. Remember, historically new laws mean new lawsuits.

The California law will require landlords and owners of both commercial and residential property to disclose to prospective buyers and tenants the presence of toxic mold that exceeds the new law's exposure limits. Disclosure will not be required at least six months after the DHS adopts the new standards. The

law does not require landlords sample, inspect, or test for levels of such toxins. It does not attempt to shield liability, either! Nevertheless, case law has held landlords (and builders, contractors, and others) liable, and may continue to do so even if they don't sample, inspect, or test! For example, a nationally instructive case held landlords liable for lead paint-based injuries even with no knowledge of the hazard. The judge in *Benik v. Hatcher* (Maryland Court of Appeals, 2000) held that:

Just as a motorist is presumed to know the laws regulating motor vehicles, so a landlord is presumed to know the requirements of the local housing code pertaining to the habitability of leased premises. Landlords need not inspect the premises before leasing, but because of the implied representation of habitability that accompanies the making of the lease, they fail to do so at their peril.

Is this the inevitable standard with respect to knowledge?

Lawsuits Across the USA

Many lawsuits in California, New York, Florida, Illinois, and especially Texas offer insight into what might lay in the road ahead. The following are a few cases against the building industry and related defendants that have held liability or illustrate the claims of liability. Although there are some plaintiffs' cases which lost in this area (e.g., class certification denied in *Zinserv. Accufix Res. Institute* in 2001 due to failure of common issues between members, and the *Tarp v. E&W* case in which causation was not proven due to prior injuries and dates of injury analysis), the number and severity of the winners and pending actions are worth illustrating to paint the true national picture.

*A \$14 million verdict was upheld in the appellate court against the construction manager for mold growth due to dampness and excessive humidity in the county courthouse (from faulty HVAC and mechanical systems, leaking windows, curtain walls, EFIS, and other defects from wet and damp building materials which fed the growth of mold and mildew, and other organisms). The water-damaged building becomes the covered property damage for coverage under the CGL insurance claim. (*Centex-Rooney Construction Co., Inc. v. Martin County, Florida*, 1998).

*An operating engineer at an office building for 21 years was diagnosed with mesothelioma from exposure to asbestos fire proofing material sprayed inside. Plaintiff and his wife sued the building owner and other operating engineers and settled for \$5 million. (*Hoskins v. Business Mens Assurance Co. of America, Mo.* Jackson County Circuit Court, 2001). They also won \$10 million from the manufacturer (*Hoskins v. Federal Mogul Corp.*, 2001).

*It cost some 40 builders, developers, owners, and pipe manufacturers approximately \$41 million for leaking, rusty, corroded, or clogged galvanized Korean pipes (plumbing) in an approved class-action settlement in Los Angeles County Superior Court. The suit covered more than 3552 single-family homes and 1124 condos in 15 new-home communities in Santa

Clara Valley built from 1986 to 1994. (*Newhall Land & Farming Co., American Beauty Homes, Dale Poe Developers, Presley Homes, Pacific Bay, Paragon Homes, Monteverde Development, Dong Du Steel, Ltd, et al., LASC.*)

There are many other cases pending that should caution apartment and building owners and developers. Plaintiffs are seeking \$180 million from apartment owner Glenwood Mgmt. Corp. in New York for personal property and structural damage from water leakage and mold. Also in New York, 125 lawsuits are seeking more than \$8 billion against apartment owners for personal injury damages (not to mention a separate wrongful death suit) incurred by exposure to mold and fungi contamination. Other suits around the country have won huge amounts from insurance companies that were found to have denied coverage in mold-related cases, such as the \$32 million judgment against Farmer's in Texas.

It appears that in future mold lawsuits it may be easier to overcome the causal connection when the consumer (plaintiff) is a person who has special sensitivity to mold exposure health risks (i.e., seniors, asthmatics, people with suppressed immune systems, cancer patients, HIV patients, Epstein Barre patients, etc.), since "Exposure to mycotoxins can suppress or alter the immune system," and it is more likely to result in "...infections affecting the skin, eyes, lungs, or other organs and systems."

State of the Law

California has recently enacted new pre-litigation resolution procedures for homeowners associations to seek redress against builders and related parties, effective July 1, 2002. The rules generally allow for a longer period of time (six months) to exchange pertinent information and invoke penalties for subcontractors who fail to participate. It appears that both the plaintiff's bar and California's building industry favor this new law.

Despite the numerous lawsuits, it is not all doomed for the building industry, as evidenced by a recent major win in the California Supreme Court against consumers (homeowners and tenants) concerning construction defects and, potentially, mold. In *Aas v. Superior Court*, 2000, the court held that homeowners and associations (i.e., consumers) could not bring a negligence construction defect lawsuit against a developer and a general contractor (i.e., builder) until they experienced actual property damage. Speculative, future, or the threat of harm is simply not sufficient to bring such a suit. Apparently, this case may mean that a plaintiff would not be able to bring a case for negligence for code violations until it causes actual property damage, personal injury, or death.

Moreover, will insurance companies be held responsible? Is more legislation required? Or is it time for the insurance companies to stand up and announce that they are not financially able to ensure redress for every (now common) contingency? On November 10, 2001, Farmer's Insurance Co. announced that it would not renew most homeowners insurance policies in the state of Texas, presumably because of recent mold and/or construction defect lawsuits and judgments. We do not know

the extent of intended non-renewals at this time. Are there more bad-faith lawsuits to come?

The majority and the dissenting Chief Justice Ron George in the *Aas* case opined that Legislature is the proper arena in which to change the law, as the law of negligence may be inconsistent with social policy. Justice George said that "the obligation falls upon the Legislature to correct this court's unfortunate misstep in the development of the law, and to provide the protection that California residents deserve." To overcome the anti-consumer aspects of this case, Sen. Martha Escutia introduced SB 355 and Assembly Representative Darrell Steinberg introduced AB 267. The change they propose would not require evidence of death, bodily injury, or existing property damage. Existing law should recognize the cost of repair as a recoverable damage to sustain a lawsuit.

The consumer may get a leg up before the end of 2001, but additional or amended legislation is expected from both sides. It appears there is a real fight coming to a legislature and a court near you. Stay tuned!

Richard Rydstrom, Esq, is an attorney, account, and nationally published author based in Southern California. For more information he can be contacted at 877-946-4968 or rydstromlaw@yahoo.com. Some helpful mold information Web sites are the Center for Disease Control and Prevention, www.cdc.gov/ncchd/asthma/factsheets/molds/default.htm; the national Association of Homebuilder's Research Center, www.nahbrc.org; and the Environmental Protection Agency, www.epa.gov/iaq/pubs/moldresources.html.

1 In addition to SB 732, California Governor Davis signed AB 284 to direct the California Research Bureau to study and report by January 1, 2003 the effects of toxic mold on health. While the DHS works on SB 351 (the Erin Brockovich chromium 6 pollution standard due by January 1, 2004), Governor Davis signed HB 463 requiring a revised and updated standard of permissible levels of arsenic in our drinking water by June 30, 2004. (National Academy of Sciences Report 1999.)

2 New York City Department of Health: "Guidelines on Assessment and Remediation of Fungi in Indoor Environments"; Canada Federal-Provincial Advisory Committee on Environment and Occupational Health, Canada Health Department: "CDC—Mold; California Department of Health Services (DHS).

Conservation Billing

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