

# **2019 Landlords of Iowa Annual Convention**

**October 18, 2019**

**(1) Legislative and Case Law Update**

**(2) Avoiding & Overcoming Common Landlord Problems**

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# Davis Brown Attorney Jodie McDougal

**Jodie McDougal is a Construction Law and Real Estate attorney and serves as Chair of the Construction Department at Davis Brown Law Firm.**

Jodie represents apartment owners and other residential landlords, manufacturing housing communities, commercial landlords, real estate buyers and sellers, homeowner associations, and construction contractors and subcontractors.

Jodie's resident landlord-tenant work includes the following:

- **Contracts, Forms, & Policies**: Lease agreements, Rules and Regulations, pet policies, registration/application forms, and other forms and policies in residential leasing.
- **General Counsel and Advice**: Advising landlords on issues under Iowa Code Chs. 562A (Residential LL-TT Act), 562B (Mobile Home Parks), and other federal, state & local laws.
- **Resolving Landlord-Tenant Disputes**: Handling pre-litigation landlord-tenant disputes
- **Fair Housing**: Defending Fair Housing Act claims and housing discrimination complaints
- **Litigation / Appeals**: Small Claims, District Court, Appeals (breach cases, FEDs, etc.)
- **Industry Work**: Regularly speaking to industry groups & assisting in legislative efforts.

# Davis Brown Law Firm

The Davis Brown Law Firm is a full-service law firm with offices in Des Moines, West Des Moines, & Ames and represents clients through the state of Iowa. Our areas of our legal services include the following:

- Agribusiness and Cooperatives
- Business Organizations and Transactions, and Commercial Law
- Construction Law
- Employment Law and Labor
- Environmental Law
- Family Law (Dissolution, Child Custody)
- Governmental Relations and Lobbying
- Immigration
- Intellectual Property (patents, copyrights, trademarks, etc.)
- Landlord/Tenant Law
- Litigation
- Real Estate
- Tax
- Trusts, Wills, and Estates

# Agenda for Presentation

(1) 2019 Legislative and Case Law Update

(2) Avoiding & Overcoming Common Landlord Problems

# Before We Start In With Main Agenda – Ask What You Can Do For Your Industry!

## What Can Landlords Do Living in Current Pro-Tenant Legal Climate in IA?

- ✓ **Join your local and statewide associations like this.**
- ✓ **Go to legal training and presentations like this.**
- ✓ **Get involved in trying to change the law**
  - ✓ Be active in your association's lobbying efforts (and amicus brief efforts)
  - ✓ Reach out and speak to your local legislators
  - ✓ Collective action among landlords work!
- ✓ **Appeal Bad Small Claims Rulings and District Court Rulings**
  - To do that, you need to make your evidentiary recording at the hearing
- ✓ **Use attorneys on the front end, not the back end.**
  - Small legal fees on the front end = Less LARGER fees on the back end

# Legislative Update - 2019

## 1. CITY RENTAL PERMIT CAPS PROHIBITED: [Senate File 447](#)

- Law prohibits cities from adopting and enforcing any ordinance/reg. related to rental permit caps on single-family homes/duplexes.
- GREAT VICTORY.
- Iowa City Council Issue:
  - After passage of law, City Council, on May 21, 2019, passed a rental permit moratorium ordinance altogether halting any further rental permits in certain sections of the city until March of 2020.
  - Moratorium = De facto short-term enforcement of the City's former rental permit cap, which has now been made unlawful by the new state rental cap prohibition law.
  - Demand letter submitted by Landlords of Iowa. In response, council confirmed moratorium is short term.
  - More to come... Will reevaluate in March of 2020.

# Legislative Update - 2019

## 2. ASSISTANCE & SERVICE ANIMALS IN RENTALS: [Senate File 341](#) New Law Made Amendments to Chapter 216 – IA Civil Rights Act

(1) Much of law confirms existing federal law/guidance from HUD, including:

- Landlords must waive lease restrictions and payments normally required for pets for assistance and service animals.
  - This provision would still be subject to the lawful bases under federal law under which landlords can deny a request for reasonable accommodations and modifications.
- Tenants liable for damage to dwelling by assistance/service animal.
- Definitions of assistance/service animals under Iowa law now mirror federal law.

# Legislative Update - 2019

(cont'd) **ASSISTANCE & SERVICE ANIMALS IN RENTALS:** [Senate File 341](#)

## (2) Greater consistency and parameters RE: medical professionals

- Note: Law confirms medical professionals who can provide opinions: Dr.s, PAs, nurses, psychologists, social workers, therapists/counselors
- **First**, Medical professional must make *written* finding re: two points:
  - One, whether the patient has a disability, and
  - Two, if so, a separate written finding regarding whether the need for an assistance animal or service animal is related to the disability.
  - \*Remember: Do NOT ask for greater detail beyond the above
- **Second**, medical professional shall NOT find unless he/she has:
  - Met with the patient in person or by telemedicine;
  - Is sufficiently familiar with the patient and the disability; and
  - Is legally and professionally qualified to make the finding.



# Legislative Update - 2019

(cont'd) **ASSISTANCE & SERVICE ANIMALS IN RENTALS:** [Senate File 341](#)

- **Third**, law directed ICRC to adopt new form, which it has now done.
  - There was no standardized federal or state form prior to this.
  - Link to [New Standardized Iowa Form](#) and see next slide
- New law will help perceived tenant abuses in the area
  - So-called “certification” from paying fee to non-medical website
  - Certification without actually meeting with a medical professional either in person or by telemedicine.
- New law/form may make medical professionals think twice RE: opinions
- Law expressly provides LLs may deny AA request if tenant/applicant, who does not have a readily apparent disability, or a disability known to LL, fails to provide the verification form.

**Request for Assistance Animal as a Reasonable Accommodation in Housing: Health Care Professional Form**

Requester's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

I, \_\_\_\_\_, intend to request that \_\_\_\_\_

permit me to keep an assistance animal as a reasonable accommodation in housing for my disability. In connection with that application, I am requesting that you complete this form regarding my disability.

\_\_\_\_\_  
Requester's Signature

\_\_\_\_\_  
Date

**REQUIREMENTS FOR HEALTH CARE PROFESSIONAL**

A health care professional shall only make the findings listed in the next section if all of the following conditions apply:

- (1) The health care professional has met with the patient or client in person or by telemedicine,
- (2) The health care professional is familiar with the patient or client and the disability, and
- (3) The health care professional is legally and professionally qualified to make the finding.

**TO BE COMPLETED BY HEALTH CARE PROFESSIONAL**

- (1) Does the individual identified above have a disability?  
 Yes  No
- (2) If yes, is the need for an assistance animal related to that disability? For example, does or would an assistance animal alleviate one or more of the symptoms or effects of the disability?  
 Yes  No

Health Care Provider's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

References: Iowa Code sections 216.8B and 216.8C

Resources: <https://icrc.iowa.gov/>, 515-281-4121, 1-800-457-4416

# Legislative Update - 2019

(cont'd) **ASSISTANCE & SERVICE ANIMALS IN RENTALS:** [Senate File 341](#)

- **Fourth**, law criminalizes certain misconduct on both sides of the law:
  - “A person who intentionally misrepresents an animal as a service animal or a service-animal-in-training is, upon conviction, guilty of a simple misdemeanor, assuming certain elements (as set forth in the law) are established.”
  - **A landlord who does not comply with the law, upon conviction, is guilty of a simple misdemeanor.**

# Legislative Update - 2019

## 3. NON-CONFORMING USE LAW FOR MOBILE HOME PARKS: [HF 701](#):

- Law expressly mandates continuance of lawful preexisting nonconforming uses RE: replacement of manuf./mobile homes in certain circumstances
- Passed in response to parks being prevented by cities/counties in replacing homes where cities/counties claimed replacement amounts to an unlawful expansion or change of the preexisting use.
- Law resolves many problems by codifying standard, BUT More to Come...
- Summary of law on next slide.

# Legislative Update - 2019

(cont'd) **NON-CONFORMING USE LAW FOR MOBILE HOME PARKS:** [HF 701](#):

- Summary:
- When there is a replacement of a preexisting manufactured/mobile home (or site-built home) with another manufactured/mobile home, cities and states shall not adopt or enforce any ordinance or restriction that would prevent the continuance of the property owner's lawful nonconforming use that had existed relating to the preexisting home unless one of the following apply:
  - (1) A discontinuance is necessary for the safety of life or property.
  - (2) Use has been discontinued for period of time no less than one year.
  - (3) Replacement results in overall nature and character of present use being substantially or entirely different from lawful preexisting use.
  - (4) Replacement results in obstruction to shared driveway/sidewalk providing vehicular or pedestrian access, which is not extinguished.

# Legislative Update - 2019

[House File 638](#) did **not** pass.

\*This bill originally started as a pro-landlord bill:

- an increase in maximum late fees;
- a better-defined procedure for handling abandoned mobile homes where the homeowner is deceased, and heirs cannot be found;
- an expansion of the use of actions for abandoned mobile homes under Chapter 555B where a lien exists; and
- a tweak of the eviction statute (under Chapter 648) to resolve the problem of magistrates claiming they have no jurisdiction in certain situations where continuances of the FED hearing is needed.

\*However, in final days of session, major pro-tenant amendments were made to this bill focused on the manufactured housing community industry, including the following:

- 180-day mandatory notice period prior to rent increases in mobile home parks
- Removal of 60-day no cause non-renewal provision for mobile home parks

\*Ultimately, bill was **not** passed by both houses, with landlords losing out on the potential benefits but also avoiding disadvantageous final amendments to the bill.

# Case Law Update - 2019

Thus far, Iowa Supreme Court and Court of Appeals have entered rulings on eight landlord-tenant matters in 2019:

- Retirement housing facility case
  - Holding: Entrance fees under statute are NOT rental deposits
- Several commercial lessor-lessee cases (mech liens, set. agt., corp. issues)
- Residential Landlord-Tenant Case: Vogt v. Ogden:
  - Lower Court: Tenant's suit against Landlord dismissed as certain individuals, but not the corporate entity who actually owned the rental property, were named as only defendant. Appealed.
  - Court of Appeals: Affirmed, because Tenant failed to preserve error-failed to file proper motion in lower court
  - *Takeaways*: Technicalities matter. Get counsel.

# Case Law Update - 2019

- Resid'l Landlord-Tenant / Fair Housing Case: Seeberger v. Davenport CRC:
  - Lower Court: (Prenatal Pills Case). Clear case of discriminatory conduct based upon familiar status/pregnancy. Large Damages Against Landlord despite Tenant having no actual damages: \$17,500 (originally over \$30K) for emotional distress of tenant, \$10,000 civil penalty, & \$23,000 of fees.
  - Court of Appeals heard case in 2018
  - Supreme Court heard case in 2019 on fees issue:
    - Reversed \$23K in attorney fees: (1) municipal ordinance did not allow for award of fee and (2) Davenport CRC could not award fees under federal Fair Housing, but only under Iowa Civil Rights Act.
    - Remainder of award upheld: \$17,500 damages & \$10,000 penalties
  - *Takeaways*:
    - Fair housing / civil rights matters are expensive.
    - Proceed with caution & consult counsel whenever you have doubt.



# Common Landlord Problems

## ➤ Notice Issue: 4-Day Mailing Rule:

- RULE: Remember 4-day mailing rule, which means 7 days for a 3-day Notice to Quit and 7 days to allow for service of Petition/ON 3 days prior to FED hearing
- PROBLEM: Some magistrates are not counting first and not counting last day
  - *Practical Pointer*: Allow for 8 days
- PROBLEM: 3-Day Notice references date of “notice,” not date of “service”
  - *Practical Pointer*: Review notices.

## ➤ Service Rules:

- PROBLEM: Some magistrates (Johnson County) have stated they have questions about lawfulness of 2 failed personal attempts within a few minutes.
  - *Practical Pointer*: Tell server to come back later in day for second attempt or be more vague in Proof of Service
- REMEMBER: 2017 Amdt to 648.5 (RE: Service of FED Petition prior to hearing)
  - “Notice requirements of this section shall be deemed to have been satisfied if the defendant or the defendant's attorney appears at the hearing.”
  - Also: If hearing will be held fewer than 3 days after service of original notice or if notice is deemed satisfied, then court shall inform defendant of right to continuance.

# Common Landlord Problems

- **Notice Reminder: Mail-&-Post Method**
  - = 3 Actions
  - Mail via US Mail, Mail via Cert. Mail, AND Post
- **Notice Issue: Different Service Method for Different Notices:**
  - Breach Notice: Serve by Mail-&-Post **VS**
  - FED Orig. Notice/Petition: *Serve by 2 Pers. Serv. Attempts Then Mail-&-Post*
- **Content of 3-Day Notice of Non-Payment of Rent:**
  - Despite the law, it is always best to use the following practices:
    - Rent – How many months? *1 month*
    - Include Late Fees? *No*
    - Include Utilities? *No*
    - Include total amount owed separate from monthly rent? *Only if in sep. notice.*

# Common Landlord Problems

## 30 Day Peaceable Possession:

- =30 days peaceable poss. by TT (w/ LL's knowl.) after accrual of CoA is bar to FED
- **What does rule mean for a typical non-payment of rent FED?**
  - Effect on 3-Day Non-Payment of Rent Notice
- **But Remember...**
  - **First, remember that the basis for the eviction is significant when dealing with the 30-day peaceable possession defense.**
  - **Second, remember that there may be more than one basis for an eviction:**

Iowa Code § 648.1 (Grounds for Eviction): A forcible entry and detainer is allowable:

    1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.
    - 2. Where the lessee holds over after the termination of the lease.**
    3. Where the lessee holds contrary to the terms of the lease.
    4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution . . .
    - 5. For the nonpayment of rent, when due.**
    6. When the defendant remain in possession after the issuance of a valid tax deed.

# Common Landlord Problems

## (Cont'd) 30 Day Peaceable Possession:

- Utilizing correct eviction basis may avoid a 30-day peaceable possession problem
- Cases on point are linked below. Have these ready for the magistrate.
  - [Des Moines RHF Housing v. Spencer](#) case and [AHEPA 192-1 v. Smith](#) case
  - Holdings: Relevant date is when cause of action/basis for FED starts, so use holdover tenant over non-payment basis when necessary.
- Example:
  - January 1: Rent due but not paid
  - Jan. 20: 3-Day Non-payment Notice (assume personal service). Remember Notice says rent to be paid in 3 days or otherwise lease terminates
  - Jan. 1 =Cause of action for unpaid rent accrues: Must file action by Jan. 30
  - Jan. 23 =COA for holdover tenant after termination accrues: **File by Feb. 23.**
- **Practice Pointer:** Evict tenant because tenant has held over after termination of lease, instead of evicting tenant for non-payment of rent.
  - **Notation in Petition:**

“The basis for this eviction is Iowa Code section 648.1(2), as the tenant has held over after the lease was terminated on [DATE].”

# Common Landlord Problems

## ➤ Common Problems: ANYTHING RELATED TO FAIR HOUSING

- **Reasonable Accommodations**
  - Incorrect disability and need verifications/questions
  - Too Quick to Approve
  - Too Quick to Deny
  - Assistance Animals
- **Reasonable Modifications**
- **Unintentional Discrimination in Application Decisions**
- **REMEMBER IOWA CIVIL RIGHTS COMMISSION TESTERS**
- ***Practice Pointers:***
  - (1) Get Fair Housing **Training**
  - (2) **Have** a Written Reasonable Accommodation / Modification **Policy**
  - (3) **Follow** the **Policy**
  - (4) When it Doubt, **Seek Counsel**

# Common Landlord Problems

## ➤ Unlawful Provisions in Leases

- *Practice Pointer: Know Law and Follow It*
- Law: LL liable for damages & fees b/c mere (knowing) inclusion of unlawful provisions, even without enforcement of those provisions.
- **What Categories of Lease Provisions Categorically Prohibited?**
  - 1) A waiver of TT's rights or remedies otherwise established under the Act
  - 2) Exculpation, limitation, or indemnification of LL's duty/liability under law. EXs:
    - Duty to keep premises in habitable condtn & repair/maintain facilit./appliances
    - Can only deduct amounts from deposit for damages to premises if LL proves such damages are "beyond normal wear and tear" resulting from a deliberate or negligent act of a tenant, or tenant knowingly permitting it.
    - Duty of reasonable care to protect against reasonably foreseeable harm.
  - 3) An agreement by a tenant to pay the landlord's attorney fees (or confess JG)
  - 4) An unconscionable provision, or unenforceable penalty, under Iowa law.

## ➤ **ADVICE: APPEAL INCORRECT MAGISTRATE RULINGS AND FIGHT BACK**

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# Questions?

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