



FRAUDULENT ACTIVITY

Here are tips to help apartment owners and managers avoid fraudulent leasing activity and minimize loss.

THE FEDERAL TRADE Commission reported on its website that there were 2.68 million consumer complaints regarding fraud in 2017, which equals \$905 million dollars in losses. Imposter scams were the third most common consumer complaint (behind debt collection and identity theft). Consumers reported losing substantially more money to imposter scams – a total of 328 million – than any other type of fraud.

Unfortunately, many in the apartment industry fall victim to fraud and imposter scams in connection with leasing. Let's look at a few tips that may help you avoid certain fraudulent activity and minimize potential damages.

Review corporate housing policies.

Fraudulent activity often occurs when you engage in corporate housing without knowing exactly who you are leasing to. If an individual wants to avoid certain criminal, credit and rental background checks, they may request that a lease be put into a company name as opposed to their individual name. Without the right policies in place, they may be able to get away with leasing in the company's name, defaulting on the lease and leaving you with little or no recourse against an insolvent resident.

Here are some tips when checking out a corporate housing resident:

- **Know who you are dealing with.** Most companies that are organized entities need to file documents with the Texas Secretary of State office when they are organized. You can confirm whether a company is a corporation, limited liability company, limited partnership or other legally organized entity by checking the secretary of state's website at <http://www.sos.state.tx.us/corp/sosda/index.shtml>.

Companies that are properly organized (by filing documents with the Secretary of State office) that are doing business in something

other than its official legal name, will be required to file an assumed name certificate both in the secretary of state's records and the county in which they do business. You can also check out an entity's assumed name in the secretary of state's records.

If a company is not required to be organized by filing a document with the secretary of state, such as general partnerships or sole proprietorships, the company would only be required to file an assumed name certificate in the county in which it does business. This can be checked online by going to the applicable county clerk's website.

- **Have the lease signed by someone other than the principal occupant.** A red flag should go up if the occupant of the unit is the same person that signs the lease for the company-resident. Why is the person signing the lease on behalf of a company as opposed to signing it individually? If the company is an entity involved in some type of corporate housing program, chances are the person signing the lease on behalf of the entity would be an authorized representative who is involved in the corporate housing program for the company, not an individual who wants to live in a unit.

- **Know who is occupying your unit.** Every corporate housing lease agreement should outline a procedure for identifying, checking and approving all occupants residing in a unit. Adult occupants should undergo the same nonmonetary checks that residents undergo in your community. If the company-tenant is responsible for paying rent and all other charges under the lease, monetary checks (such as employment or income history) may not be necessary. However, if you take steps to confirm the background of other residents, you should do the same for

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all adult occupants in a corporate housing setting. This policy should extend to occupants that may move in during the term of the corporate housing lease.

Do not give keys out until the lease is fully signed.

Picture this: A husband and wife are residents listed under the lease. The wife shows up first and says that the husband is out of town on business, but she tells you she needs to move in with her two kids right away because they have nowhere else to stay. You believe her and give her the keys and she moves in.

About a month later, you still don't have the lease signed by both the husband and wife (only the wife signed), and although the residents paid their rent, they end up skipping out at the end of the second month.

You send a final account statement to both the husband and wife saying they are responsible for the reletting fee and accelerated rent because they skipped out. The husband's attorney calls and says you can't hold the husband responsible because he didn't sign the lease. You can only hold the wife responsible, but she has no income. You realize that it may be difficult to hold the husband responsible for breaching a lease that he did not sign.

A strict policy of requiring a lease be signed before keys are given out seems obvious; however, the problem still crops up every now and then. Don't take promises that the lease will be signed at a later date! In this day and age of electronically signed documents, there should be no reason why the

lease cannot be fully signed by all residents before any keys are distributed.

Be careful in checking and confirming identification.

Imposter scams have and will continue to be prevalent in our lives. It seems the more high-tech our society becomes, the more opportunity there is for bad actors to steal another person's identity. In the apartment industry, bad actors could take advantage of leasing an apartment unit and then either living in the unit or subleasing the unit for a period of time until the owner finds out and does something about it.

The standard TAA application requires the applicant to provide several pieces of personal identifying information including birth date, social security number and driver's license number. A red flag should go up if any of these do not match with the person that is applying. Further scrutiny is required. If these identifying factors don't match up, you should find out why. If there is no reasonable explanation, it is possible that the person is not who they say they are. This would warrant a rejection of their application. If they

somehow already leased, they can be evicted. Providing false information on the application is a violation of section 32.1 of the lease.

Consider avoiding free rent specials.

Whether and to what extent you want to provide concessions is up to you. However, it may be beneficial from a fraud protection standpoint to spread free rent specials throughout the lease term as opposed to providing months where the resident does not have to pay any rent. Otherwise you are an attractive target to someone wanting to sign a lease with little or no payments up front. We have issues where persons gain residency, either live in the unit or sublet the unit for the free rent period, and then skip out. By requiring payments each month (by prorating any discount over the life of the lease), you will be able to find out sooner if a resident is not able to meet rent obligations.

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Evict quickly if you find that fraud occurred.

No matter what steps you take to avoid fraudulent leasing activity, you may still have issues. Plan for it.

If you discover fraudulent activity, the quicker you take action, the less damages you will suffer. Remember, the eviction process is the same whether you are evicting a resident who engaged in an imposter scam or who was a run of the mill defaulting resident. Anticipate approximately three to four weeks for the eviction process to go through the Justice of the Peace Court and an additional three to four weeks if the case is appealed to the

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TO GET BACK AT CONE MAN, I'LL DO SOMETHING HE'D NEVER EXPECT!

HOLY LOW PRESSURE SYSTEM! WITH ALL THIS RAIN, PARKING LOTS ARE SURE TO HAVE PROBLEMS!

MEANWHILE...

HA HA! MY EVIL PLAN IS WORKING. HEAVY TRUCKS ARE PUTTING THE PRESSURE ON THE WEAKENED, SATURATED PAVEMENT, MAKING PLENTY OF POTHOLES!

HMMM... EVIL DR. POTHOLE IS UP TO SOMETHING. TIME TO MAKE A COUPLE PHONE CALLS!

HEY, THE RAIN STOPPED! LET'S GET TO WORK, TEAM! ... SO, WHAT HAPPENED TO DR. POTHOLE?

LET'S JUST SAY, HE'S NO MATCH FOR PAVEMENT SERVICES!

MY CREDIT CARD WAS DECLINED!

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county court. This time table could be longer or shorter depending on a number of factors, including whether the resident moves out before going to court, the court docket, the time of year and whether the resident employs any number of stall tactics to delay trial.

You can't control many of the causes that result in delays in the eviction process. So, your best strategy is to move as quickly as possible with respect to what you can control. The notice to vacate should go out quickly and the eviction petition should be filed as soon as possible after the resident has failed to timely vacate in accordance with your notice.

Be consistent on the resident's name during the eviction process.

Let's say you proceed with an eviction against a person who engaged in an imposter scam when signing the lease and the name of the person you are evicting is different than the name on the lease. This could be because the name on the lease is misspelled (an innocent mistake) or wrong because of an imposter scam. As the property manager, this raises questions. Who do you name in the notice to vacate? Who do you file the eviction against?

There should be consistency between the lease, the notice to vacate, the eviction petition, the eviction judgment and the writ of possession. You don't want to raise issues either at the eviction trial, in the judgment or when the writ is served with respect to the identity of who you are evicting.

In order to avoid problems, it is beneficial to name the person on the lease who is "also known as" the name you discover as being the correct name. You would then be able to use that person's false and true identity throughout the eviction process.

Fraudulent leasing activity appears to be a fact of life in our current business environment. Hopefully these tips are helpful in minimizing potential damages.

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