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December 20, 2010

## **Proceed Cautiously in Entering the Leasing Market - Part II**

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If you have not already read Part I in the series "Proceed Cautiously in Entering the Leasing Market", please read that article first at [www.mnrealtor.com/eresource/LeaseCautionI](http://www.mnrealtor.com/eresource/LeaseCautionI). Assuming you have read it already, many REALTORS® who are assisting tenants and landlords in the residential leasing marketplace are encountering nuanced issues that go beyond some of the preliminary concerns addressed in Part I. Part II will address several more broad issues, and a forthcoming Part III will address a few new issues that MNAR members have recently identified.

### **1. Avoid providing legal advice on issues where the REALTOR® is seen as the client's sole resource.**

In representing a landlord, many real estate agents find that the landlord will look to his or her agent as the primary go-to for all issues related to that rental property, including looking for advice on tenant screening, what happens in the event of payment default, and what can or can't be done at the conclusion of a lease. It is important for agents to realize that not only should they not provide legal advice, they are prohibited from doing so, unless the agent happens to be a licensed attorney as well.

Although some issues raised by landlords are difficult to define as "general real estate information" or "legal advice", a common issue that brings this into focus is what rights and remedies a landlord has when a tenant stops paying, vacates early, or defaults on certain lease terms. When a landlord asks a REALTOR® to help identify how to resolve these issues, the first thing the REALTOR® should do is suggest the landlord speak with an attorney.

### **2. Stay familiar with current trends and legal issues to be a more informed agent.**

Even though a REALTOR® shouldn't provide legal advice, they should certainly try to stay in touch with marketplace issues and legal trends. The vast array of legal issues a landlord might encounter with a defaulting tenant, one who vacates early or won't leave at lease end are addressed in part in Minnesota Statutes Chapter 504B, the landlord-tenant law in Minnesota. While you should refrain from providing legal advice, having a working knowledge of some of the general legal principles might help you identify issues for your client, that they can then explore on their own or with their attorney.

Since the law is evolutionary, a savvy REALTOR® will be sure to follow legislative changes if they want to stay current in this arena. For example, last year the legislature reduced the amount of time that a tenant's personal property must be stored by a landlord after the tenant vacates or is forcibly evicted from 60 days (the old law) to 28 days (the new law).

### **3. Agents operate under the authority of their broker.**

Since Minnesota law requires agents to operate under the supervision of a broker, the two-way street that applies to residential purchase and sale transactions also applies to leasing transactions. Brokers may either permit agents to be engaged in leasing transactions, or they may prohibit or restrict such activity. At the same time, any leasing activity the real estate agent engages in for another and for a fee, must be done on behalf of his or her broker or brokerage company. Any agent who believes that a leasing transaction or property management can be done independent of his or her work as a licensed real estate agent, or that the transaction does not need to be managed through the broker or the fee does not need to flow through the broker, ought to review these issues with his or her broker.

### **4. Understand laws and issues applicable to real estate agents.**

As a real estate agent involved in residential leasing, there are certain issues you will want to stay alert to, in order to fully understand your own responsibilities under the licensing law. Not only does Chapter 82 of the Minnesota Statutes (the statutes specific to real estate licensees) require that a licensee work under the authority of a broker, it also imposes other requirements that should be familiar from purchase/sale transactions, many of which are equally applicable to leasing transactions. For example: all compensation or fees earned must not be accepted from any person except the real estate broker to whom the licensee was licensed at the time of the transaction (MN Statute 82.70), all parties to a transaction must be provided a copy of any document pertaining to their interests by the licensee (MN Statute 82.72), and a licensee shall properly identify himself or herself in any advertising for the lease of a property, whether the property is the agent's own or the property of another (MN Statute 82.69).

### **5. Be clear on the distinction between property management and assisting a landlord in procuring a tenant.**

While MNAR has released forms that assist REALTORS® in representing landlords and tenants in leasing transactions, MNAR has not released a property management agreement, nor does the List of Lease form create a contractual obligation for the listing broker to serve as a property manager. Some homeowners will simply want their broker or agent to market and advertise the property for rent, and help in procuring a tenant who will enter a lease agreement. From that point forward, the owner becomes his or her own property manager. Other homeowners will wish to engage a property manager to assist with the ongoing issues associated with collecting rent and managing the property. While REALTORS® are free to enter such contracts, an agent or broker who plans to be a property manager would be well advised to engage an attorney to assist in drafting and preparing an appropriate management contract for their specific circumstances and intended use.

If you have read both Part I and Part II of this series, you are likely growing more familiar with the unique issues REALTORS® face in the leasing market. If you are already working in

this arena, hopefully these articles serve as good reminders. If you are considering entering this area of the marketplace, you may wish to carefully consider the issues raised in these articles, and stay tuned for Part III of this series.