

Topic 10: Property and Asset Management

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Real estate held for income generation or other business purposes has to be managed. The goal of real estate management, as with the goal of managing a corporation, should be to maximize the value of the owner's investment. And just as with maximizing corporate owners' wealth with respect to their corporate investment, maximizing the value of a real estate investment involves a long-term focus and not just achieving the highest possible revenue or net income level for a short time interval. The general functions of managing real estate for its owner include acquisition (including the process of choosing the best location and other strategic questions), financing (including the lease vs. buy decision), operating management (overseeing the building or other real estate components to assure that tenant needs are served, maintenance is handled, and rents are collected), and disposition.

Real estate can be managed by the entity that owns it, or by an outside party that manages real estate professionally. [Major commercial property management and services firms include Coldwell Banker Richard Ellis (CBRE), Colliers International, Cushman & Wakefield, and Jones Lang LaSalle.] A third party manager is viewed legally as an agent of the owner, with a *fiduciary* obligation to the fee-holding individual or organization. Within a company, especially a larger firm with a lot of real estate exposure, these real estate management functions may be handled by an in-house corporate asset manager. Smaller firms or individual property owners may turn to property management companies or individual property managers. Property managers can run the spectrum from resident managers at small apartment buildings (training and pay both tend to be fairly low) to independent professionals or employees of major firms that manage shopping malls and skyscrapers (a technical profession that tends to be highly paid).

A. Why are property managers needed?

1. Owners (or in the case of corporate property, other executives) may lack the needed expertise, or time.
2. Owners may not reside near their investment properties.
3. Owners may simply choose to hire professionals to handle the task.

B. What are a property manager's functions?

1. *Leasing and marketing* function

- a. Advertise and show rental units. To be effective, the manager must constantly study the local market to determine optimal rents. In a multi-unit commercial property an important function is finding the *tenant mix* that maximizes value for the property owner (think of a shopping center with too many [or too few] shoe stores, or too few anchor tenants, or no place to buy coffee, especially if tenant sales revenue has an impact on rents the owner collects).
- b. Negotiate leases – the goal in negotiations should be, once again, to maximize the value of the owner's investment. Part of this process is the screening of tenants (checking prior landlord references, analyzing ability to pay and credit history). An important decision is the tradeoff between higher rent charged per unit and higher vacancy, or lower rent charged per unit and lower accompanying vacancy.

Because the mix of actively operating stores can affect the success of every store in a complex, it is not unusual for a lessee to have a lease provision that restricts competing stores' access to space in a shopping center (including through other tenants' assignment of leases). A state supreme court found that a coin laundry in a shopping center that also had a dry cleaner violated its lease when it offered a drop-off clothes washing and folding service.¹ Someone backed out of a drug store purchase because the store operated from rented space in a center where another tenant's lease prevented fellow lessees from selling food products, which the prospective buyer had wanted to start doing. The *Pantagraph* reported that when one-time St. Louis retailer Famous Barr (later Macy's, now closed) wanted to build an addition onto Eastland Mall to open a store, the site plan had to be changed to meet objections from Kohl's, whose lease gave it veto power over any expansion of the facility. A lease provision reduces Café Rio's rent at a Las Vegas shopping center by half if more than 10% of any other tenant's revenues come from selling "Mexican or Tex-Mex" food; Chop Stop contends that its salads (including the "Viva Mexico"), with ingredients like jalapenos, salsa, and tortilla strips, are not a violation. A Nevada court was to have determined what constitutes Mexica/Tex-Mex food,² but the case still seems to be pending (or perhaps has been settled out of court). Courts have trod this ground before; a Panera's lease prohibited competition selling "sandwiches," but a Qdoba was allowed to rent in the same mall when a judge held that Qdoba tacos and burritos did not meet the "two slices of bread with ... meat or cheese spread between them" dictionary definition of a sandwich.³ But a single ruling is not the final word; in 2024 a court held that tacos and burritos are "Mexican-style sandwiches." The issue was not a lease provision, but whether a *Famous Taco* outlet in a strip shopping center would violate a local zoning law that

prohibited “fast food” (with drive-through windows) while permitting “made-to-order sandwiches,” citing Subway as an allowed example. The judge stated that a sandwich does not have to be an American cuisine-style item.⁴

Lease terms might also allow a landlord/property manager to require tenant stores to be open during the center’s regular hours (the mall owner’s lender may require that mall management negotiate leases with such terms) [just as an oil lease might require the lessee to continue producing to keep from losing its lease rights].⁵ In one case a store closed due to low sales, but even though it kept paying rent the mall operator sued to force the store to re-open. In that instance the mall operator was unsuccessful, but courts have determined that *anchor* tenants were required to meet contract terms of remaining open through their lease terms and during the center’s specified hours, especially if the rents they paid were computed largely as a percentage of sales. Even a Pearle Vision Center was required to remain in operation, and not simply pay its rent while leaving its space empty.⁶ (A “covenant” clause might allow a smaller tenant in a mall to abandon its lease if the space for an anchor store, which the smaller store relies on to draw customers, remains vacant for 12 or maybe 18 months.) In multiple cases retail property owners have been successfully sued by brand-name product manufacturers when tenant stores sold counterfeit versions of the branded goods (lessors were held responsible for “contributory negligence” and for not sufficiently enforcing the standard commercial real estate lease provision that prohibits conducting illegal acts on the property).

An interesting feature sometimes found in office building leases is a requirement that the tenant move to a different office area within the building if the landlord needs the space the tenant currently occupies for a different user (perhaps a larger adjacent tenant that needs more contiguous floor area).

[In this discussion we must look at lease terms that may have been common, or at least not unusual, in the past. How terms may change in future leases for

- retail centers, amid increased vacancies and the need for repurposing brought on by Internet shopping, and
- office properties, as more workers seek to work from their homes after experiencing remote work during the Covid-19 period,

can only be speculated on. The early Covid shutdowns in spring 2020 brought fears of far less future demand for retail and office space. A late 2023 report showed that almost half of all office leases signed before Covid motivated more working from home have yet to expire, and when they are renegotiated tenants will opt for less space and rent revenues may plummet (though office real estate with the best locations and amenities may command premium rents from business tenants trying to lure their workers back on site).⁷ A September 2021 *Pantagraph* estimate showed a vacancy rate of almost 50% at Eastland Mall. Yet at that same time outdoor shopping centers were doing well, and WalMart was seeing higher in-store and lower on-line sales as the economy reopened (we like to shop in person, at least for some kinds of items), while a fall 2023 account noted that luxury product buyers generally prefer in-person shopping, so the highest end retailers keep seeking more space to rent.⁸ And on the office side, some firms have been setting dates for remote workers to return to their offices (RTW or “return to work),” since face-to-face work is perceived to enhance productivity.]

c. Provide for tenant needs – handle complaints, make alterations and repairs.

2. *Financial* function

- a. Collect rents.
- b. Pay operating expenses of the property.
- c. Perform income/expense analysis; keep records for the property owner.

3. *Maintenance* function

- a. Keep buildings clean; keep structures, mechanical systems, and landscaping in proper repair.
- b. Provide for security – locks, electronic systems, guards.
- c. Hire outside contractors to assist, when applicable.

4. *Advisory* function – advise the owner on such matters as renovating a property, or converting it to an alternative use, if the manager’s market analysis indicates that doing so would create positive net present value (NPV). But a New York property manager is skeptical about the proposed conversion of unused office space to apartments in large cities, saying that it will cost almost as much to convert as it would cost to build new residential buildings.⁹

These activities should combine to maximize the value of the owner’s investment (for example, finding the optimal vacancy and expense levels). As noted above, usually the manager owes a fiduciary duty as an agent of the owner.

C. Professional organizations of property managers, and some of the designations they confer

1. Institute of Real Estate Management (IREM) – a branch of the National Association of Realtors®
 - CPM – Certified Property Manager
 - ARM – Accredited Resident Manager
 - ACoM – Accredited Commercial Manager (small commercial properties)
2. Building Owners and Managers Association (BOMA) – an independent organization that provides education and awards certifications through the Building Owners and Managers Institute (BOMI), including
 - RPA – Real Property Administrator
 - FMA – Facilities Management Administrator
 - CMCP – Certified Manager of Commercial Properties

Members must meet specific education and experience requirements before being awarded either of these organizations' professional certifications.

IREM and BOMA both also publish *income and expense information* for various types of income-producing properties, based on results their members report in surveys. Property managers, appraisers, and investment analysts use this information as benchmarks in their analyses (for example, what percentage of revenues should grounds maintenance expenses constitute in a large or small apartment complex in various parts of the country?). Members of these groups and other property managers may also contribute data to the National Council of Real Estate Investment Fiduciaries (NCREIF, pronounced NAY-creef), which provides information on the risk and return features of income-producing real estate as an investment class. (In discussing property management we also should mention the American Society of Farm Managers and Rural Appraisers, the professional organization for those who manage farm businesses and appraise agricultural land and farm properties; ASFMRA awards the Accredited Farm Manager AFM and Accredited Rural Appraiser ARA professional designations.)

D. Who provides property management services?

1. Large firms that specialize in property management.
2. Property management divisions of real estate brokerage firms.
3. Individuals – may manage one building (or other type of property), or several.

Points to note:

- One source suggests that a property manager's compensation may be about 5 – 8% of gross collections; another states that the standard for rented single-family homes often is the first month's rent plus 10% of the rent in subsequent months. (But another source warns that compensating a manager with the full first month's rent on a new lease but only a small percentage of subsequent months' rents can misalign property owners' and managers' interests – a unit sitting vacant as the manager looks for a new tenant is very costly for the owner, whereas having frequent turnover actually increases the manager's earnings.)
- Under Illinois law a person typically must hold a real estate broker's license to manage property for outside parties. You can be a resident manager, or otherwise manage property, without a broker's license if you are an employee of the person/firm that owns the property or properties being managed.
- Some people try to manage real estate as a sideline. But property management can be demanding and requires specialized knowledge, so it is important to be sure that the client's needs are truly being met.

E. How are rent levels determined?

1. Age, location, and other features of the property, relative to those of competing properties (which reflect general local market and economic conditions)
2. Type of property:
 - a. Office – the benchmark, or unit of measure for rental purposes, usually is per square foot. Property managers often categorize office buildings into general groups A (newest and best in quality of improvements and location, with highly dependable "credit" tenants), B (in-between, often A properties that have gotten older), and C (lowest quality, least desirable locations, perhaps with tenants whose ability to pay rent consistently is less assured). In a period when employees at the 62% of firms that allow some remote work are in their offices just 2.5 days per week on average, properties that offer special amenities that are expected to lure workers back on-site (high-end gyms, upscale restaurants) sometimes are promoted as superior-to-A "five star" buildings. Property manager CBRE estimated rent for high quality U.S. office space averaging \$69 per square foot per year in late 2023,¹⁰

with a mid-2024 figure in struggling downtown Manhattan of \$57.08.¹¹

- b. Retail – the benchmark can be per square foot, per front foot (*i.e.*, length in feet of exposure to public access), or a **percentage of sales** (perhaps a flat fee plus a percentage of the sales that exceed a specified level, with the amount that exceeds the base once the percentage kicks in called the *landlord's overage* rent).¹² **Retail** properties also often are promoted as falling into the general, somewhat **fuzzy A, B, or C** categories that reflect quality of improvements and dependability of tenants. **In the past anchor tenants have tended to pay less rent per square foot than other tenants, sometimes very little rent, because anchor tenants attract customers that benefit the other stores in a retail facility.**¹³ Major real estate services firm Cushman & Wakefield estimated average rent for high quality U.S. retail space at \$23.70 per square foot per year, considerably above pre-Covid levels, in late 2023's world of in-person shopping and reduced retail vacancies.¹⁴ But then an early 2024 report showed the world's most expensive retail rents, on ultra luxury Upper Fifth Avenue in New York City, running at \$2,000 per square foot per year. **High rents have led some high-end stores to buy the buildings they have been renting, so they can stay at long-established locations without further rent hikes, and can make expensive improvements with the assurance that they have permanent control of their buildings.**¹⁵
- c. Industrial – manufacturing and warehouse properties **do not tend to be promoted with A/B/C classifications.** They tend to be relatively inexpensive to build (though popular cold storage warehouses are expensive to build), in fact an industrial facility that is not user-owned may be built for the use of a particular tenant, which then can be expected to stay in place for many years. **They also usually do not require fancy upgrades as time passes since functionality is more important to tenants than attractiveness.** Self-storage warehouses tend to rent by the month, so lease terms can be changed frequently with market conditions. As with office and retail, rent on industrial property often is quoted as a number of dollars per square foot per year. A spring 2024 article showed a \$9.73 average yearly rent per square foot for U.S. industrial space.¹⁶
- d. Residential – the benchmark usually is per room or per bedroom (“our one-bedroom units rent for \$850 per month and the two-bedroom units rent for \$1,100”). These also **sometimes are given A, B, and C classifications,** but apartment properties also might be described imprecisely as high-rise (often identified by fire prevention officials as having seven or more stories), low-rise (fewer than seven stories), and garden (three or fewer stories, and often with garden-like grounds and such amenities as pools and tennis courts). **Multi-family residential rental property also can be categorized as one-to-four unit (which can qualify for the favorable financing available to owner-occupied houses, if the owner lives in one of the units) and five-or-more unit buildings.** Developers have been building studio apartment units at smaller sizes, down from 499 to 454 square feet between 2014 and 2024; an accompanying trend is providing common facilities like gyms and community rooms to expand tenants' effective available space, and producers including IKEA have designed increasingly small studio furniture.¹⁷

Residential rent control: In a few jurisdictions, notably New York City and Washington, D.C. – and statewide in California and Oregon – rents for many apartments are controlled by local government. In theory, rent control protects poor tenants from greedy landlords. In practice, the controls often help wealthy tenants at the expense of small property owners; there have even been cases of affluent people moving out but keeping rent-controlled urban apartments as weekend getaway spots, since the rents are so low – and in the process they crowd out other potential renters who need to be in the city. Economists feel that tenants generally still end up spending as much as if they directly paid market-level rents, because the shortage of rental units that results from landlords' inability to charge market-level rents (such that investors are reluctant to build new units) means that prospective tenants must incur waiting costs, pay search costs, and sometimes even make bribe-like “key money” payments, to owners, agents, or current tenants¹⁸ – or building owners might pay tenants to move out if the units could then be rented at market levels, or sold as condos. And those who are able to find rental units may have to endure poor maintenance, as landlords with constrained revenues try to control costs. California law generally limits residential rent increases to 5% per year, although it does exempt rented condominium units and single-family houses from rent control, along with duplexes half-occupied by their owners and all rental units less than fifteen years old.¹⁹

A 1989 *Forbes* article stated that apartment buildings in rent-controlled Santa Monica, CA sold for lower prices than similar vacant lots, since those unfortunate enough to own residential rental properties were so heavily regulated. And when permit applications for constructing multifamily housing in St. Paul, MN dropped by 82% in 2022, the city council approved many exceptions to a rent control ordinance voters had passed in late 2021 that limited rent increases to 3% per year (2022 permit activity increased considerably in adjacent Minneapolis, with less rigid rent controls).²⁰ An early 2024 report said some New York City landlords let apartments sit empty because needed improvements would cost more than the controlled rents would justify.²¹ Problems are not limited to the U.S.; a

2016 report stated that newcomers had to rent temporarily from people traveling, for up to 20 years, before getting permanent leases in rent-controlled and thus supply-constrained Stockholm, Sweden.²²

Oregon law generally prohibits rent control on “dwelling units,” but in 2021 the state supreme court upheld a Portland law that requires a residential landlord to pay moving costs for any tenant who moves after rents are increased by more than 10%. The court reasoned that the ordinance does not restrict rents landlords can charge, but merely allows for consequences if a tenant does move after a sizable rent increase.²³ A law enacted in Seattle in 2021 requires a residential landlord to give a tenant at least six months of written notice, up from two months previously, of any amounts by which rents are going to be increased.²⁴ This requirement seems to impose serious risks on landlords in an era after Covid shutdowns showed us that costs and market conditions can change rapidly. Might a law like this actually harm tenants, by prompting landlords to err on the side of caution by proactively notifying tenants that there will be rent increases, in amounts high enough to include a safety margin?

The late, great economist Walter Williams opined that “short of aerial saturation bombing, rent control might be one of the most effective means of destroying a city.”²⁵

3. Negotiating strength of parties, and lease terms

a. Management may remodel premises, give prizes (free trips), or give a period of “free” rent to attract tenants in an overbuilt market. One report stated that operators of high-end New York City apartments were offering three to five months of “free” rent on new one-year leases during the Covid-19 shutdowns, after so many potential tenants had moved to the suburbs since remote work from home made living near the large office centers less important for young professionals.²⁶ (Retail businesses that had located near these upscale residential properties also suffered as their expected customers vacated the area.) One source stated in late 2021 that the market had rebounded, with tenants in New York and other U.S. locations seeing rents increase to pre-Covid levels.²⁷

But by early 2022 and continuing into 2024 major city commercial property markets, and office buildings in particular, suffered high vacancies as employees worked from home and future space needs remained uncertain; the office vacancy rate in Manhattan was approximately 18% in mid-2024.²⁸ A result was that the “net effective rent” figures for many buildings were much lower than the “face” or “headline” rents indicated, as landlords paid moving expenses, reimbursed higher tenant improvement costs, and offered multiple months of “free” rent as inducements for signing long-term leases.²⁹ Building owners that offer concessions to keep nominal reported rents high may be acting out of fear that the price a buyer would pay for, or the amount a lender would lend on, the building would decline if the reported rents fell. Or they may feel that when market conditions improve it will be easier to increase net effective rent by ending concessions than by raising face rents.

b. Tenants may have to agree to longer-term leases, and to escalation clauses (with rent rising on a pre-determined schedule), when renting in underbuilt markets.

c. Lower periodic rent may accompany a longer lease term, which allows the landlord to gain more benefit from the fixed cost of getting a new tenant in place – including the commissions to leasing brokers, which often are higher on new leases than on lease renewals.

d. The manager/owner may share risk (if compensated) with a new business – for example, accept a percentage of (initially low) sales as rent, with receipts to grow as a successful business matures.

Note: legal sources say the manager should demand payment of all rents on the due date. Failure to do so (*i.e.*, being “nice”) may ultimately result in a loss of the power to demand rent on the due date. (Textbooks sometimes suggest that allowing some flexibility creates tenant goodwill, and an ISU Finance graduate who owned many apartment properties reported using that same approach, but from a legal standpoint the idea can be problematic.)

F. How are expense levels determined?

1. Tradeoff between costs/benefits (managers/owners of residential properties typically do not repaint each year).
2. Manager should solicit bids from competing contractors when major repairs are needed.
3. Maintenance contracts are appropriate in some cases. These contracts can transfer some risks to outside parties, who then take responsibility for particular repairs, or activities like snow removal.

G. Some final interesting points to note:

1. Under both U.S. and Illinois law it generally is illegal to refuse to rent a residential unit to a family with children. But qualified retirement communities generally *are* able to exclude families with children.

2. In one New York case many years ago, a lessor was found to be within his rights in refusing to rent an apartment to a lawyer (occupation generally is not a protected class).³⁰

Humorous side note: in the late 1800s famous international banker Baron Maurice de Hirsch saw his application for membership turned down by the prestigious *Cercle de la Rue Royale* men's club in Paris. The ultra-wealthy Hirsch reacted by purchasing the building where the group met, and charging them substantially higher rent afterwards.³¹

3. In another New York case many years ago, a lessor was found in violation of the rent control law when he replaced a human-operated elevator with an automatic, self-service model. (The action was deemed by the court to be a reduction in services, perhaps a reduction in building security? – not allowed unless the rent is lowered.)

4. One news account told of a waterfront mansion in Maimi Beach with a “celebrity” tenant paying \$130,000 in monthly rent. One of the lease terms was that no one on site for property management purposes was permitted to speak to, or even look at, the tenant. But high-end lessees do want their lessors to work through professional property management organizations, which have the resources and staffing to provide services like buying food and hiring chefs, and can take action 24/7 when repairs or other needs arise.³² An early 2023 article reported an upscale New York City property renting for \$140,000 per month.³³ A related piece noted that Rihanna paid \$500,000 to rent a Phoenix area house for a week when she performed at the 2023 Super Bowl, and singers Lizzo and Billie Eilish both paid \$20,000 per night to rent “ultraluxury” homes near the Coachella arts festival in California. Mariah Carey paid \$125,000 per month to rent a house outside of New York City; \$90,000 to repair damage the singer's high heeled shoes did to the home's wooden floors was withheld from the security deposit.³⁴ In summer 2023 the owner of Walt Disney's former Los Angeles home was trying to rent it for \$40,000 per month.³⁵

And those who like privacy can rent an entire island, with a price for one night ranging from \$250 (small isle off the Norway coast, with features limited to a log cabin and fire pit) to \$40,000 (a British Virgin Islands location, fully staffed to accommodate up to 26 and with amenities that include a horse ranch).³⁶ But the world's most expensive rental market may be Monaco, the country less than a square mile in size on the Mediterranean between France and Italy, where a 1,200 square foot apartment with two bedrooms and one bathroom leases for \$30,000 per month. Rents are bid high by wealthy residents, who are attracted by Monaco's lack of income and capital gain taxes.³⁷

5. Some high-end rental houses are owned by businesses. But an individual who rents out her own residence for no more than two weeks per year, as many home owners in Augusta, GA do for big money each spring during the Masters golf tournament,³⁸ does not have to pay federal income tax on the rent revenue collected³⁹ (this tax-free rental provision, enacted in 1976 and actually called the “Augusta Rule” or “Masters Exemption,” was added to the tax laws specifically to address the issue of Augusta home rentals during the famous golf tournament each year). Someone who owns a primary residence and a vacation home can potentially rent each out for less than fifteen days in a year without the obligation to pay income tax on the rent received. A 2023 tax court ruling even held that a when a business owner rents her house to her business for holding meetings, the expense can be deducted in computing the business income tax and the rent is still tax-free to the home owning business owner, as long as the applicable rules are followed.⁴⁰ The ten-day Sturgis Motorcycle Rally in South Dakota, held in August each year, is another event that motivates local owners to lease rooms or their entire homes for exceptionally high nightly rents.⁴¹

The rented property must constitute a “dwelling unit” per wording in Internal Revenue Service Publication 527, which means it has toilet and cooking facilities along with a place to sleep. One expert source interprets the law to mean that money received for renting a bedroom for a few days, with *shared* access to the home's kitchen and bathroom, probably would not be tax-exempt – nor would charging people to park in your yard, which could not qualify as a dwelling unit, whereas renting out an entire basement or even a single room with self-contained toilet, cooking, and sleeping facilities would probably meet the tax-exempt “dwelling unit” test.⁴² But *Turbo Tax* says part of a house, or even just a couch, can be rented for up to fourteen days in a year with the rent received exempt from federal income tax.⁴³ And while most sources refer to “home owners” benefiting from the rule, others suggest that a lessee can rent out part or all of her apartment unit for less than fifteen days in a year without recognizing income to pay tax on⁴⁴ (although if doing so violated terms of the lease the revenue would likely be viewed as illegitimate, and the exclusion disallowed). We will watch for clarification on this issue, but for now can observe that it is not unusual to see different expert interpretations on some of the most interesting federal income tax questions.

6. A “ground lease” allows a developer to construct a building on land leased for, say, 50 or 99 years. It allows the developer to build without tying up a lot of money in land. Large commercial buildings often are built on leased land. (Commercial structures also sometimes are built in the air rights above land owned by another party; the Metropolitan Life (originally Pan American Airways or “Pan Am”) Building in New York City was built in the air space above a railroad’s track area.)⁴⁵

7. An incubator facility might provide space to a startup business in return for an ownership stake, rather than traditional rent payments.

8. A building owner or property manager generally is not deemed to be violating the implied covenant of quiet enjoyment by failing to intervene when a lessee has a problem with another tenant. But intervention is expected when the offending behavior takes place in common areas such as hallways or a clubhouse, or the offending tenant is creating a nuisance – defined in *Duhaime’s Law Dictionary* as “excessive or unlawful use of one’s property to the extent of unreasonable annoyance or inconvenience to a neighbor or to the public,” like music that would be thought excessively loud or odors that would be noxious to the average (not a specific, perhaps overly sensitive) person.

9. A building owner or property management firm generally is financially liable for injuries/damage caused by legal acts of an employee done within the scope of the employment (maintenance worker on ladder accidentally dropping a tool and hitting a tenant, for example). But the owner or management firm generally is not legally/financially liable for illegal acts an employee commits outside the scope of employment (like illegally taking a pass key and robbing an apartment unit).

However, the owner or management firm may be held liable if there was not a careful screening of potential employees for criminal histories, and a worker then engages in harmful behavior that reasonably could have been foreseen. In one case a resident who was raped in her apartment by a maintenance worker successfully sued the landlord; the worker was hired and given access to keys, despite having served prison time on a rape conviction. Yet a federal appellate ruling in California reversed a judgment for damages against a property management company when a commercial tenant was sexually assaulted in her building’s underground parking facility; the higher court said that recent robberies of a nearby bank did not make a parking garage assault foreseeable to the point of requiring added security (since bank robbers’ goal generally is to leave the area quickly).

Property managers must also consider that a landlord could be held responsible for physical harm suffered by tenants or visitors/other third parties, especially if caused by problems that constitute building code violations. But a court ruled that a visitor is deemed to know what the tenant knows about the premises, such that the landlord had no liability when a guest fell at night from a retaining wall that residents knew was not a safe, lighted place to walk.⁴⁶ In another case a property management company was found not to be liable for serious injuries to a man who fell on icy stairs on a March morning while visiting his daughter’s North Carolina apartment unit; as a “licensee” he was entitled only to protection against problems the landlord knew about (the on-site property manager had observed slush on the ground, but was not aware of ice on stairs). (An “invitee,” on the other hand, can more easily seek damages for a property owner’s negligence – a customer at a store is a good example; the property owner is held to a higher standard of care because the invitee enters onto the property for the owner’s benefit. A real estate owner’s duty to a “trespasser” usually is only to not engage in intentionally harmful acts.)⁴⁷

10. Should landlords pay for tenants’ bad behavior? In 2024 some owners of rental houses were billed, ultimately a thousand dollars or more, by south suburban Markham, IL for fines former tenants owned over parking violations near the rented homes. A landlord stated that he had no control of what tenants do outside the house, and that this type of penalty will drive investors away. But Markham’s mayor argued that the city can collect needed revenue, if tenants move away without paying, only by charging landlords, and that potential fines give landlords an incentive to screen tenants more carefully. News reporters could not find fines of this type in other area jurisdictions.⁴⁸

11. A news article provided some “do and don’t” tips for people considering becoming residential landlords. Among don’ts: 1) Underestimate time required for learning about the business and handling management tasks. 2) Enter the business with too little cash, or underestimate what expenses will be. 3) Bypass a formal screening process by getting tenant referrals from existing tenants, or worse yet socialize with tenants. 4) Fail to understand fair housing or other laws that can affect lessors. Among dos: 1) Get to know nearby home owners, who can alert you to problems with your tenants or the property. 2) Have a “team” with not just a plumber, but also an accountant, insurance agent, banker, and real estate attorney. 3) Increase rents in small increments with annual lease renewals,

rather than waiting until cost pressures force large increases that could be difficult for tenants. 4) Handle at least some yard or others maintenance work yourself, to be more aware of what is going on with the property. The article mentions the Illinois Rental Property Owners Association trade group.⁴⁹

12. Federal anti-discrimination laws apply to managers of residential and commercial real estate, just as they do to brokers selling residential properties. Under the *Fair Housing Act* [1968, 1988] (and also the Illinois Human Rights Act) a landlord or property manager can not discriminate, in selecting tenants or setting lease terms for a residential property, based on criteria that include religion, race, gender, national origin, age, physical disability, having children/being pregnant, or needing a support animal. (A property owner or manager can legally refuse to rent to a prospective tenant who has a poor credit history, or a negative reference from an earlier landlord.) The *Americans with Disabilities Act* (ADA) [1992] basically states that individuals with disabilities can not be denied access to public accommodations (hotels, restaurants, retail establishments, schools) or commercial facilities (factories, for example). New buildings must be built so as to accommodate wheelchairs, and otherwise should be accessible; older buildings are to be altered for accessibility if they can be changed without major expense.

These laws tend not to be as burdensome as some accounts suggest. For example, under the Fair Housing Act, disabled residential tenants must be permitted to make reasonable alterations, but that is at their own expense if the changes are made inside their units (changes to common areas are at landlords' expense, but must be reasonable in cost). The big problems that arise tend to relate to "disabilities" such as mental illness, or substance addiction under treatment (current drug users are not "disabled"). A landlord might find it legally difficult to evict a tenant with such a disability, even if that tenant is disruptive, or even worse threatens other tenants. Dealing with difficult tenants can also be physically dangerous, in fact deadly: in late August 2022 a property manager and local sheriff's deputy in Tucson, AZ were shot to death serving an eviction notice on an apartment tenant who had threatened other tenants with a gun; the problem tenant also killed another tenant and himself.⁵⁰ By early August there had been attacks in 2023 on sheriff's deputies attempting to evict tenants in California, Indiana, Oregon, and Washington; the Oregon deputy survived with severe, permanent injuries after being shot seven times.⁵¹

A landlord might also have to accept late rent payments if the cause of the late payment relates to the disability, or might have to allow a pet for a "disabled" tenant despite a "no pets" restriction in the building. (Most people seem to find it reasonable to encourage the acceptance of seeing or hearing companion animals, but in some cases landlords have been ordered by courts to permit pets simply because they were said to alleviate tenants' stress.)

13. According to Dr. Carson Varner, retired ISU Business Law professor and renowned world traveler, people in Germany seeking to rent apartments or houses often place ads in local newspapers, telling how dependable they are and showing their pictures, in an attempt to be selected as tenants. We might wonder if a U.S. landlord choosing a tenant on that basis could be accused of violating fair housing laws.⁵² •

¹ *Webster v. Star* (Georgia supreme court, 1978).

² *Dynamic Town Square v. Café Rio* (Nevada trial court, scheduled initially to be heard in summer of 2022). See Caldwell, Alicia A. "What Is Mexican Food? A Nevada Court Has the Tricky Job of Deciding." *The Wall Street Journal*, January 30, 2022.

³ *White City Shopping Center v. PR Restaurants* (Massachusetts trial court, 2006).

⁴ *Martin Quintana v. Fort Wayne Plan Commission* (Indiana trial court, 2024). See also Rao, Tejal. "Is a Taco a Sandwich? No. Yes. Well, It Depends on the Law." *The New York Times*, May 18, 2024.

⁵ See *Tres C, LLC v. Raker Resources, LLC* (Oklahoma supreme court, 2023).

⁶ *Slater v. Pearle Vision Center, Inc.* (Pennsylvania trial court, 1988).

⁷ Grant, Peter. "No Relief Seen for Troubled Office Market." *The Wall Street Journal*, December 20, 2023, B6.

⁸ King, Kate. "Gucci, Chanel, and Other Luxury Retailers Splurge on American Real Estate." *The Wall Street Journal*, October 2, 2023.

⁹ Howard, Hilary. "Environment Can Win When NYC Offices Become Homes." *Chicago Tribune*, December 31, 2023, 7-5.

¹⁰ Grant, Peter. "Real-Estate Turmoil Hits Office Towers." *The Wall Street Journal*, January 31, 2024, B6.

¹¹ Florsheim, Lane. "A Former Financial Tower Receives a Luxury Makeover." *The Wall Street Journal*, August 7, 2024, B6.

¹² King, Kate. "Retailers' Landlords Cut Rent Discounts." *The Wall Street Journal*, January 30, 2024, A2.

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¹⁶ Young, Liz. "Warehouse Rents Decline Amid Weaker Demand." *The Wall Street Journal*, April 15, 2024, B3.

¹⁷ Mehta, Neil. "U.S.'s Smallest Apartments Get Even Smaller." *The Wall Street Journal*, July 24, 2024, B6.

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¹⁹ California's Rent Control Law, Explained. *Bungalow*, February 1, 2022. <https://bungalow.com/articles/californias-rent-control-law-explained>.

²⁰ Editorial Board. "St. Paul's Rent-Control Backfire." *The Wall Street Journal*, July 11, 2022.

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²³ *Owen v. City of Portland* (Oregon supreme court, 2021).

²⁴ Britschgi, Christan. "Seattle City Council Passes Rent Control by Another Name. Is It Legal?" *Reason Magazine*, September 29, 2021.

²⁵ Mentioned in a book review by Williams in *Reason Magazine*, July 1987.

²⁶ Hughes, C.J. "New Buildings Lure Tenants With Free Rent." *The New York Times*, June 9, 2021.

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- ⁴³ <https://turbotax.intuit.com/tax-tips/rental-property/renting-out-a-room-on-airbnb-or-flipkey-how-much-you-owe-in-taxes/L5hWiLQIy>.
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