



JALA NEWS

Jackson Area Landlords Association



Volume 17/Number 6

June, 2011

HOW ARE WE DOING?

By Robert F. Tulloch

Time heals all wounds, and we sure had some big/deep wounds to heal at JALA!

In addition to supporting our professional manager members with low-cost credit reporting, keeping them informed of possible regulatory issues effecting them, and advocating on their behalf on legislative issues, we have returned to our roots and actively provide support for our smaller members. Some of these support activities were discontinued previously, and we felt it important to restore them. These include advice on what forms to file and explanations on how to fill out the correct forms. We also provide a sympathetic ear to our members when they are confronted with the innumerable variations in tenant evasion tactics, and suggest ways to deal with these situations.

Our smaller members do not have the luxury of calling their attorney every time something comes up so we provide advice to our members to assist them in their court appearances, while not stepping over the line regarding “practice of law”. When we see a situation where there is a real need for an attorney’s advice or representation, we refer them to our on-call attorney, Adam Howard.

Financially, we are in MUCH better shape than we have been for quite some time, years, in fact. We are consistently maintaining a reasonable reserve in our operating account, which allows us more flexibility in operating the office. Thanks to convincing input from our JALA Treasurer Bill Ellison, we changed the way we calculated our office manager’s hours/pay rate resulting in simplified bookkeeping and a small increase in her monthly salary.

The office is running smoothly in the able hands of Charyl and is requiring little to no oversight. Those of you who interface with her know that she knows her job and does it well!

We are always striving to make our services more valuable to our members and we would greatly appreciate any input from you (the members) on how we can improve our service and/or delivery of it. Simply call Charyl and let her know if you have any suggestions!

IMPORTANT REMINDER:

Please pay your membership and credit reporting dues in a timely manner. JALA depends on your dues to pay its monthly expenses, so please pay on time, just as you would expect your tenants to do!

We look forward to receiving former members back!!

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ATTENTION!!!

THE NEXT JALA GENERAL MEETING WILL BE HELD ON MONDAY, SEPTEMBER 26, 2011.

THE MEETINGS ARE HELD AT STEAK’S EATERY AND BEGIN AT 5:15 P.M. FOR DINNER; THE SPEAKER WILL BEGIN AT APPROXIMATELY 6:30 P.M.

PRESIDENT'S MESSAGE

Robert Tulloch

Finally, here we are at June. There are no general meetings until September, 2011 when our speaker will be the Mayor of Jackson. Attendance at meetings during the summer was very low in previous years due to vacations and other activities. So, this gives us a break from trying to get the newsletter out before the meeting. Life goes on though, and hopefully the apparent slow recovery of the economy will bring jobs to Michigan and our area. This, in turn, has the potential to help increase the pool of acceptable tenants that want to rent apartments and of course that is our bread and butter!

It has been more than six months since the new board took over and all is quiet. As I promised, we did away with all the committees, restricted meetings of the BOD to issues of monumental importance (of which there have been none) and conduct what business needs to be done by email. I was going to call a meeting in June to review the budget, but I think that is not necessary, as we are doing very well with the new management team! I had also predicted that if left alone to do her job, Charyl would perform admirably. That too has come to pass with nothing but praise from our members regarding her efforts. We have freed her from some of the prior restraints imposed on her so she can be more supportive of member's needs, and that has been much appreciated by the membership.

See the article on Page 1 for more details.

ANNOUNCEMENTS!

JALA Web Site:

www.jala-mi.org

Credit Reports are available through the JALA Office or directly using software for the members that have met the current criteria set forth by TransUnion, LLC and JALA.

A credit report is your first line of defense! Arm yourself wisely!!

JALA OFFICE HOURS

Monday
9:00 a.m. to 5:00 p.m.

Wednesday
9:00 a.m. to 2:00 p.m.

Friday
9:00 a.m. to 2:00 p.m.

Welcome New Members:

*Donque Ellis
Margaret York-Ickes
Carol Krzeczkowski*

If you have questions about landlording, you may call/email JALA Attorney, Adam Howard (788-9055/ aeh@aehlaw.com) for assistance.

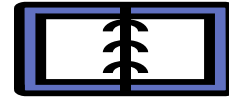
You may also contact JALA President Robert Tulloch (596-2592/ contact@jala-mi.org) for answers to your questions.

FOR YOUR INFORMATION:

Editorials and/or articles in this newsletter are the opinion of the author and do not necessarily reflect the policies or positions of JALA.



Equal Housing Opportunity



CALENDAR OF EVENTS

THERE ARE NO JALA GENERAL MEETINGS FOR THE MONTHS OF JUNE, JULY, OR AUGUST. THE MEETINGS WILL RESUME ONCE AGAIN IN SEPTEMBER, 2011.

JALA BOARD OF DIRECTORS/2011

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State Rep. Earl Poleski (64th Dist.)
(517) 787-0064
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State Rep. Mike Shirkey (65th Dist.)
517-780-4265

Senator Mike Nofs (19th Dist.)
(517) 373-2426
PO Box 30036
Lansing, MI 48909

Sen. Randy Richardville (17th Dist.)
P.O. Box 1631
Monroe, MI 48161
1-800-477-8238

MEMBER SUPPORT

If you need advice regarding any of your rental properties, please feel free to contact Robert Tulloch (JALA Board President). Bob is generally available to answer your questions in a quick manner (517-596-2592) or you may email him at the following address: contact@jala-mi.org.

Also, Property Mgr. Kyle Bamm (Rent-Me-Properties) has offered to be available to our members to answer questions too: (517-784-7368)!

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JALA Q AND A:

Q: While making a presentation to an out-of-county group, a question was raised on the actual physical eviction process. It seemed the process used by some sheriff's deputies in outlying areas was vastly different than what we are used to in the City of Jackson, where evictions are carried out by court officers. This question was posed to Jeff Kirkpatrick of Court Services Group in Jackson and a member of JALA. Jeff is also the head of the Court Officer's Association of Michigan and may be contacted at the following:

*Jeff Kirkpatrick, Court Officer
Judicial Services Group
(517) 788-8898*

A: At our last Court Officer's Association meeting this very issue was discussed. It is my opinion that the Court Officer or Deputy Sheriff is responsible to stand by to make sure the defendant's property is not removed wantonly, maliciously, carelessly or negligently removed, so as to damage it. In fact, the Court Officer or Deputy Sheriff could be held liable for those acts if they allowed this to happen. In addition, it is the Court Officer or Deputy Sheriff's responsibility to make sure that the defendant's property that is removed and placed out to the public area is not stolen during the move-out. Once the Court Officer or Deputy Sheriff completes the eviction, they are no longer responsible for safeguarding the property. The restoring of the property to the plaintiff is another issue where there is confusion. MCL 600.5774 (1), the applicable statute in this matter states: Subject to the time restrictions

of this section, the court entering a judgment for possession shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to cause the Plaintiff to be restored and put in full possession of the premises. A review of the actual language of the statute itself clearly states that "the Plaintiff [is] to be restored and put in full possession of the premises." In order to do so, it is logical that the actual personal belongings of the Defendant/tenant must be physically removed (not only from the apartment or home which the Defendant/tenant is occupying), but in fact removed from any property owned by the Plaintiff/landlord which would constitute any part of the "premises."

There is very little written in statute or court rule that addresses the actual move out. Court Rule 4.201(O) addresses the various things that a Court Officer or Deputy Sheriff can charge for and in many counties the Court Officer or Deputy Sheriff has their own crew to carry out the eviction. MCL 600.2559 also addresses this, "(1) For an order of eviction or a writ for the restitution of premises, for each defendant, \$35 plus mileage, plus the actual and reasonable expense for the physical removal of property from the premises. If the court believed that the Court Officer or Deputy Sheriff was not supposed to physically move the property out, they would not have set forth the list of permissible expenses.

- (1) The time of travel to the premises
- (2) The time necessary to execute the order

- (3) The amount and weight of the personal property removed from the premises
- (4) Who removed the personal property from the premises
- (5) The distance that the personal property was moved from the premises, and
- (6) The actual expenses incurred in executing the order of eviction.

The last comment I have is that until the property is properly restored to the Plaintiff, no one has the authority to enter into the premises except the Court Officer or the Deputy Sheriff. Anyone who does so, commits the crime of trespass. Only the Court Officer or Deputy Sheriff can enter, and only acting under the authority of the court. I can tell you that the following is the typical eviction process across the state of Michigan:

Model Eviction Procedure:

Orders of Eviction are required to be served by a Court Officer appointed for that purpose or Deputy Sheriff. The Court Officer or Deputy will, in most cases, allow the defendant(s) 48 hours to remove their possessions from the premises and restore peaceful possession to the Plaintiff. Once the 48 hour period has expired and provided the Defendant has not turned over the keys to the premises or otherwise surrendered possession, the Court Officer or Deputy Sheriff is required to stand by while the physical eviction takes place. This must be scheduled with the Court



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JALA Q and A.....Continued From Page 3

Officer or Deputy Sheriff in advance. The personal effects of the Defendant shall be removed from the residence and placed at the curbside, or other publicly accessible place, should the curbside be inaccessible or otherwise inappropriate. The Court Officer or Deputy Sheriff will not participate in the physical removal of the possessions from the premises. The Plaintiff is responsible to provide the staff to remove the possessions from the premises or to contract with a company to provide these services. The Plaintiff is strongly urged to **NOT** personally participate in the removal of the Defendant(s) possessions. The Court Officer or Deputy Sheriff will supervise the removal of the Defendant's personal effects. At the Officer's discretion, he may stop the eviction process or dismiss the services of anyone he/she feels may be negligent in the handling of the Defendant's possessions. Once the Defendant's possessions are removed from the premises, the locks may be changed and the Court Officer or Deputy Sheriff will sign and complete the return of service on the Order of Eviction certifying that peaceful possession of the premises was restored to the Plaintiff. The cost to Plaintiff to serve an Order of Eviction, either personally or by posting, is \$35 plus mileage for EACH Defendant.

The Court Officer or Deputy Sheriff will bill the Plaintiff \$65 per hour, billed in 15 minute increments, for the time spent standing by while the defendant's possessions are removed or for any other time expended on the writ. Upon request by the Plaintiff, the Court Officer or Deputy Sheriff will attempt to engage the services of a company that provides contract labor. The Plaintiff is responsible for payment of all costs for any services rendered by said

company. The cost for the contract labor is billed at the rate of \$35 per person per hour. A minimum of \$250 will be charged to the Plaintiff regardless of the time spent on the removal of the Defendant's possessions.

The Court Officer or Deputy may require the Plaintiff to post a deposit in an amount equal to the estimated costs related to the eviction as determined by the Court Officer or Deputy Sheriff.

Q: Due to a garnishment order, my bank froze my bank account and paid money from the account to my creditor, including my Social Security benefit. May the bank do this?

A: Yes. Usually there is a process for you to challenge the garnishment order before your bank pays money in your account to your creditor. You can challenge the garnishment by claiming that some or all of the money in your bank account is exempt from garnishment. However, in many cases, state law or the court may require a bank to freeze your account during these proceedings, even if the account has money from exempt federal benefits. Banks and others that receive court orders generally must follow the directions of the order that is issued. If that happens, you may not be able to take money out of the account until the court or your creditor makes sure that the money is exempt. In some limited situations, Social Security and other federal benefit funds may be garnished, such as to pay a child support or alimony obligation. Also, if your bank account had both federal benefit payments and other deposits that are not exempt, the other money in the account may be garnished.

Q: What can I do if my bank account is frozen and it includes Social Security or other federal benefit payments?

A: You should review any notice or other information that you received about the garnishment. You should follow the instructions provided in the notice, including any deadlines. Generally, state law requires that you must be told when a court issues a garnishment order for money in your bank account. The notice usually will give you information about potential exemptions and tell you what to do if you think money in your bank account is exempt from garnishment. Remember, the court and your creditor may not know if money in your bank account is exempt unless you tell them, because information about your bank account is private. You can also call or write your creditor and tell them that you bank account has money that you believe is exempt from garnishment. In addition, if your account contains only exempt funds, you can ask your bank to lift the freeze as soon as is permitted by law. If you did not get a notice about the garnishment of your account, ask your bank for a copy of the garnishment order that was received by them. If you are a customer of a national bank and your bank does not provide you with a copy of the order, or other documentation it has about garnishment, you can call or write to the Office of the Comptroller of the Currency, Customer Assistance Group, at 1-800-613-6743. If you keep having difficulty resolving the problem, you may wish to have an attorney help you. Sometimes you can find an attorney to help you at no cost through a local legal aid or legal services organization.

Q: After my bank froze my account, some of my checks were returned unpaid. May the bank impose an insufficient funds or "NSF" fee for these returned checks? What about a fee to freeze the account?

A: Generally, if permitted by your deposit agreement, the bank may charge these fees. However, if your account includes only exempt federal benefits payments, as a matter of good business practices some banks waive these fees or will refund them when the court order allows the freeze to be lifted. Be sure to ask your bank if it will refund, or not charge fees, in connection with a freeze on an account containing only exempt funds.

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JALA MEMBER PASSES AWAY

JALA has lost a special member; Jean Soltis passed away on May 31, 2011 unexpectedly. Jean served on the JALA Board of Directors for a few years and always was full of ideas. I also had a great friendship with her and we spent a lot of time chatting, along with working with her. We offer our sympathy to her husband Ed and her family. She will be sorely missed.

Submitted by Charyl Wozniak, JALA Office Mgr.

JALA Q AND A:

Q: Does my bank have to tell the court or my creditors if my deposit account contains Social Security, Veteran's, or other federal benefits that may not be garnished? Is my bank required to freeze my account?

A: *Currently, banks are not required to look at your deposits and withdrawals to determine whether the money in your account is exempt from garnishment. Also, state law or a court may require the bank to freeze your account even if the account has money from exempt federal benefits. If that happens, you may not be able to take money out of the account until the court or your creditor determines that the money is exempt. However, as a matter of good business practices, some banks will try to find out, if possible, whether your account contains only exempt funds. For example, some banks look at the recent deposits into your account before the garnishment order to see if they are only direct deposits into your account before the garnishment order to see if they are only direct deposits of exempt money like Social Security payments. These banks also will notify the debt collector and the court when they determine that the account contains only exempt money, so that the garnishment can be stopped.*

THE BOY UNDER THE TREE
(Author Unknown)

I was invited to be an instructor at a high-school leadership camp in Michigan. About an hour into the first day of camp, amid the frenzy of icebreakers and forced interactions, I first noticed the boy under the tree. He was small and skinny, and his obvious discomfort and shyness made him appear frail and fragile. Only 50 feet away, 200 eager campers were bumping bodies, playing, joking and meeting each other, but the boy under the tree seemed to want to be anywhere other than where he was. The desperate loneliness he radiated almost stopped me from approaching him, but I remembered the instructions from the senior staff to stay alert for campers who might feel left out. As I walked toward him, I said, "Hi, my name is Kevin and I'm one of the counselors; it's nice to meet you. How are you?" In a shaky, sheepish voice he reluctantly answered, "Okay, I guess". I then calmly asked him if he wanted to join the activities and meet some new people. He quietly replied, "No, this is not really my thing." I could sense that he was in a new world, that this whole experience was foreign to him. But I somehow knew it wouldn't be right to push him, either. He didn't need a pep talk, he needed a friend. After several silent moments, my first interaction with the boy under the tree was over.

At lunch the next day, I found myself leading camp songs at the top of my lungs for 200 of my new friends. The campers eagerly participated. My gaze wandered over the mass of noise and movement and was caught by the image of the boy from under the tree, sitting alone, staring out the window. I nearly forgot the words to the song I was supposed to be leading. At my first opportunity, I tried again, with the same questions as before: "How are you doing; are you okay?" To which he again replied, "Yeah, I'm alright. I just don't really get into this stuff." I realized this was going to take more time and effort than I had thought, if it was even possible to get through to him at all. That evening at our nightly staff meeting, I made my concerns about him known. I explained to my fellow staff members my impression of him and asked them to pay special attention and spend time with him when they could.

The Boy.....Continued On Page 7

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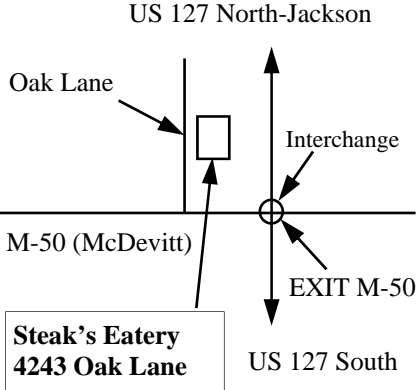
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The next general meeting will be in September, 2011. No meetings during the summer months.



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The Boy.....Continued From Page 6

Before I knew it, mid-week had dissolved into the final night of camp and I was chaperoning the "last dance." The students were doing all they could to savor every last moment with their new "best friends"; friends they would probably never see again. As I watched the campers share their parting moments, I suddenly saw what would be one of the most vivid memories of my life. The boy from under the tree, who stared blankly out the kitchen window before, was now a shirtless dancing wonder! He owned the dance floor as he and two girls proceeded to "cut the rug"! I watched as he shared meaningful, intimate time with people at whom he couldn't even look at just days earlier. I couldn't believe it was him!

In October of my sophomore year, a late-night phone call pulled me from my chemistry book. A soft-spoken, unfamiliar voice asked politely, "Is Kevin there?" "This is Kevin", I said. "This is Tom Johnson's mom. Do you remember Tommy from leadership camp?" The boy under the tree! How could I not remember? "Yes, I do," I said. "He's a very nice young man. How is he?"

An abnormally long pause followed, then Mrs. Johnson said, "My Tommy was walking home from school this week when he was hit by a car and killed." Shocked, I offered my condolences. "I just wanted to call you," she said, "because Tommy mentioned you so many times. I wanted you to know that he went back to school this fall with confidence. He made many new friends. His grades went up., and he even went out on a few dates. I just wanted to thank you for making a difference for Tom. The last few months were the best few months of his life."

In that instant, I realized how easy it is to give a bit of yourself every day. You may never know how much EACH gesture may mean to someone else.

I tell this story as often as I can, and when I do, I urge others to look out for their own "boy under the tree."

Gladly Submitted By Charyl Wozniak,
JALA Office Mgr.



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HOUSING CODE ENFORCEMENT INSPECTIONS AND THE U. S. CONSTITUTION

By Robert Tulloch

Most folks are in- reality very non-political, but there are certain things that seem to ruffle the feathers of Americans whomever they may be. When we see people being treated differently because of some "characteristic", we know this is "wrong". In the case of code enforcement inspections, we see a disparity in the treatment of owner-occupiers of housing vs renters. There are two areas where this disparity manifests itself. The **Fourth Amendment (Amendment IV)** to the United States Constitution is the part of the Bill of Rights which guards against unreasonable searches and seizures along with requiring any warrant to be judicially sanctioned and supported by probable cause. In the case of rental housing inspections, if a tenant refuses entry to an inspector, the inspection agency can obtain a warrant to enter the premises by force. Resistance can result in arrest of the tenant and/or the landlord. In United States criminal law, **probable cause** is the standard by which an officer or agent of the law has the grounds to make an arrest, to conduct a personal or property search, or to obtain a warrant for arrest, etc., when criminal charges are being considered. A legal definition of probable cause is "information sufficient to warrant a prudent person's belief that the wanted individual had committed a crime (for an arrest warrant) or **that evidence of a crime or contraband would be found in a search (for a search warrant)**". The "crime" in this case would be "housing code violations". The 14th Amendment to the U. S. Constitution is called the Equal Protection Clause and provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws". So how is it that an owner-occupant of a private residence can rest assured that they are secure in their home from an unwanted intrusion by housing code enforcement inspectors, yet a renter has no such guarantee? A person residing within the city in a private residence is protected, but if that same resident moves to a rental unit they forfeit that protection? This is a blatant act of discrimination based on property ownership status and a violation of the equal protection clause. I had suggested a way around this to the mayor of Jackson based on a similar situation faced by a municipality in Oregon. A summary follows with appropriate references: A City of Pasco city ordinance requires landlords to get a certificate of inspection of rental property, and the certificate is obtained from private inspectors, not governmental agents. The Washington Supreme Court held that the ordinance did not implicate the Fourth Amendment or the privacy provision of the State Constitution: *City of Pasco v. Shaw*, 161 Wn. 2d 450 (2007) (concurrence; dissent); The Pasco ordinance requires a landlord to submit a certificate of inspection, but it does not authorize the city itself to search for housing violations.

Hsg. Code Enforcement.....Continued On Page 9

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a person do not bestow any civil rights protections. Even a mental impairment, which would lead to hoarding of trash or collecting of animals does not seem to be protected by the civil rights legislation. You have a right to protect your property and to not incur additional work in accommodating this tenant if you do not wish to.

Q: I had a tenant tell me tonight that he got his Medical Marijuana Card. I told him I have in my lease no Medical Marijuana allowed. He is a month-to-month holdover from three years ago and in his lease there is a no medical marijuana exclusion, but there is the standard drug wording prohibiting controlled substances. He says he will smoke it outside since I don't let folks smoke in the building. Sounds like a bad idea to me. I can just see neighbors calling the police about my tenant "taking up" in public. He always pays his rent and is a good tenant. He does have medical problems and takes pain pills and I can understand his situation. Once I open the door on this and allow him to stay, could I be accused of discrimination if I refuse to rent to others who are Medical Marijuana users? I know Medical Marijuana users are not a protected class. Can you please give me some insight into this issue? R. T.

A: I don't think you are opening yourself up to any real discrimination liability if you choose to allow this tenant to stay and smoke his Medical Marijuana. You don't have to let every tenant do it, so long as you are not using it as a way to discriminate based on a protected class, like race, religion, or marital status. I would ask the tenant to be discreet, though, to avoid problems with the neighbors. It may be a good idea to get this tenant to sign a new lease (even month-to-month if that is how you and he want to arrange it) that specifically says that he is allowed to use Medical Marijuana in certain ways and that you will bear no responsibility for any trouble he has with the neighbors or the police. That would clear up whether you are allowing him to do something that is prohibited by the lease. You could also just do a simple written agreement that amends the existing lease. I think the bottom line here, whether you decide to allow this tenant to smoke Medical Marijuana or not, is that you are making the decision based on the lease and this tenant's rental history. Those are definitely allowable grounds for such a decision. If you later decide not to let some other tenant have Medical Marijuana in your premises, you may encounter some attitude from the denied tenant ("I heard from a friend's cousin's roommate that you let Joe have Medical Marijuana, why not me?"), but I think that you are on solid legal ground either way.

Answered by JALA Attorney Adam Howard

Hsg. Code Enforcement.....Cont'd From Page 8

The petitioners point to Kuehn v. Renton School District No. 403, 103 Wn.2d 594, 600, 694 P.2d 1078 (1985), in which we held that parent chaperones of a high school student trip acted with enforcement authority of school officials when they searched student bags. However, under the Pasco ordinance a landlord can engage private inspectors in order to further the private objective of obtaining a certification needed to maintain a business license.

Significantly, if a private inspector finds code violations, the ordinance does not require the inspector to turn his or her findings over to the city. Thus, a landlord can remedy any violations found by an independent inspector, submit to another inspection, and obtain a license based on the new inspection, without the city ever being notified of the original violations. The city insists only upon the certificate that an inspection has been successfully completed.

Landlords first and foremost further their own ends when they engage in the inspections contemplated by the ordinance. In summary, the petitioners have not met their burden of showing that landlords and their privately engaged inspectors are state actors. Absent state action, neither the Fourth Amendment, nor article I, section 7 was violated.

By eliminating the need for code enforcement inspectors and their support staff we could free

up valuable resources which could then be devoted to keeping police and fire department staffing at a more acceptable level.

I have not heard back from the mayor beyond thanking me for the suggestion and submitting it for consideration. Perhaps some members of JALA could join a city task force charged with bringing this change about?

The mayor is our scheduled speaker for the September, 2011 general meeting, and we would welcome the mayor's thoughts on this suggestion.

JALA Q AND A:

Q: I have a tenant who is basically a slob and maintains a very dirty apartment. I have a nice apartment that opened up in the same building and this existing tenant wants to move to the newly cleaned unit. Can I tell this person that I don't want them moving there because they will just turn the new place into a slovenly mess? Is that discrimination? R.T.

A: No, it is not discrimination. The Elliott – Larson Civil Rights Act has a very limited definition of what constitutes discrimination. These areas are: Religion, race, color, national origin, age, sex, height, weight, familial status, or marital status. The personal hygiene habits of

JALA Newsletter/www.jala-mi.org

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June, 2011

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ADDRESS SERVICE REQUESTED

OFFICE HOURS

Monday: 9:00 a.m. to 5:00 p.m.

Wednesday: 9:00 a.m. to 2:00 p.m.

Friday: 9:00 a.m. to 2:00 p.m.



MEETING LOCATION

The next general meeting will be held
Monday, September 26, 2011
Time: 5:30 menu/6:30 speaker
Steak's Eatery

*The tentative speaker for the September general meeting will be
the City of Jackson Mayor.*

**IN ORDER TO EXPEDITE THE MEETING, NO DINNER
ORDERS WILL BE TAKEN AFTER 5:30 PM. THIS WILL
ENHANCE THE EXPERIENCE FOR EVERYONE INVOLVED!**

50/50
Winner:

No meeting

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