



JALA NEWS

Jackson Area Landlords Association



Volume 17/Number 10

October, 2011

USE CAUTION WITH SECTION 8

By Robert F. Tulloch, JALA President

One of our members had an interesting experience recently with a Section 8 tenant and the Section 8 provider, MSHDA. The contract with MSHDA for 100% of the rental payments was good through September 30th, 2011, which according to MSHDA documentation should have also been the end of the "lease period". The lease was terminated by MSHDA on July 19th, 2011 for unknown reasons at which time MSHDA stopped any further rent payments to our member. MSHDA also informed the landlord of the termination with a 60-day notice. The JALA member immediately filed for eviction against the tenant, and they were represented by the resident Legal Aid attorney (about whom we previously warned you represented the tenant in this action). Our member was also represented by an attorney. The legal aid attorney alleged that the tenant could not be evicted until after September 30, 2011, due to some unknown provision in Section 8 requirements even though MSHDA refused to pay the rent for the period remaining under the contract. The landlord had to return to court to get the possession judgment, but the money amount granted was only for the October rent since Section 8 was responsible for the rent prior to that date, not the tenant.

We will be investigating this case more thoroughly in the future, and if we can determine how this travesty unfolded, we will let you know. The key element here is how this tenant was allowed to stay in the unit when rent was not being paid for 2 1/2 months. The court will have to answer that. In the meanwhile, be very careful when dealing with Section 8, particularly MSHDA. In the above described situation, the filing should have been a Termination of Tenancy/Non-Payment of Rent using the "Seven (7) day provision" in the statutes and filed against both the tenant and Section 8/MSHDA. A money judgment should be paid for and if the landlord was forced to allow the tenant to stay in the unit, at least there would be a judgment against MSHDA/Section 8 to try to collect on.

As a side note, I had an experience with MSHDA in a similar vein. My tenant had informed MSHDA that they wanted to move to a different place halfway through the lease. Playing the game, the tenant did not inform me that they wanted to move and get my agreement, so MSHDA terminated the lease, sent me a notice and refused to pay any more rent. I filed to evict the tenant and of course it took one and 1/2 months to get her out. Being naïve at the time, I did not file against MSHDA. I lost the rent and had to spend a small fortune cleaning the place out.

Guess what?! Jackson Housing Commission rented her a new place under Section 8, even though she had been terminated by MSHDA for violating her contract. On top of that, FIA replaced all her clothing and furniture which she had abandoned, and I had to take it all to the dump and pay for the disposal of it. Makes me ill to even think about it. The bottom line is that you should not think because you are dealing with some "big taxpayer funded agency" that they won't try to rip you off like so many tenants do. Use caution, particularly with MSHDA. Oh, and watch out for the resident legal aid attorney who our stimulus funds placed in the courtroom to help the "poor folks" and defraud us!

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, OCTOBER 24, 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

Wonderful luck! We are still seeing good weather and perhaps Indian Summer is still in the forecast. The seasons are what make Michigan a great place to be. I was raised in California, a place basically without seasonal change. It was so neat to come here and enjoy the fall and winter. You get a very different perspective on life when you go through the yearly cycle decline and rebirth.

The political season is fast approaching and it will be interesting to see if all the recall efforts are successful. We know that Gov. Snyder will still be around and probably the conservative majorities in the state house and senate. It will also be interesting to see how all these changes brought about by the election of conservatives in 2010 will play out. Hopefully, this will all turn out for the better for Michigan.

Representative Mike Shirkey will be the speaker at the next meeting and hopefully he can give us some insight into the agenda going forward in the house.

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:

Jeannine Maher
David Holiday

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

JALA General Meeting
Steak's Eatery
Monday, October 24, 2011
5:00 PM (Dinner)
6:30 PM (Speaker)

JALA General Meeting
Steak's Eatery
Monday, November 28, 2011
5:00 PM (Dinner)
6:30 PM (Speaker)

JALA General Meeting
Steak's Eatery
Monday, January 23, 2012
5:00 PM (Dinner)
6:30 PM (Speaker)

JALA BOARD OF DIRECTORS/2011

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STATE LEGISLATORS:

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(517) 787-0064
PO Box 30014
Lansing, MI 48909

State Rep. Mike Shirkey (65th Dist.)
517-373-1775

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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THE ART OF RELATING

Here are some excellent tips for relating to people, and becoming a success in your personal AND professional life from the Dale Carnegie training program:

- "Don't criticize, condemn or complain." Most people don't respond very well to condemnation or complaint. Positive reinforcement works better.
- "Give honest and sincere appreciation.
- "Arouse in the other person an eager desire"
- "Become genuinely interested in other people . You'll be welcome anywhere!"
- "Smile! It's a simple way to make a good first impression!"
- "Remember that a person's name is to that person, the sweetest sound in any language."
- "Be a good listener. Encourage others to talk about themselves."
- "Talk in terms of the other person's interests."
- "Make the other person feel important and do it sincerely."
- "The only way to get the best of an argument is to avoid it."
- "Show respect for the other person's opinions."
- "If you are wrong, admit it quickly and emphatically."
- "Begin in a friendly way."
- "Get the other person saying 'yes, yes' immediately."
- "Let the other person do a great deal of the talking."
- "Let the other person feel that the idea is his or hers."
- "Try honestly to see things from the other person's point of view."
- "Be sympathetic with the other person's ideas and desires."
- "Appeal to the nobler motives."
- "Dramatize your ideas."
- "Throw down a challenge."
- "Begin with praise and honest appreciation."
- "Call attention to people's mistakes indirectly."
- "Talk about your own mistakes before criticizing the other person."
- "Ask questions instead of giving direct orders."
- "Let the other person save face."
- "Praise the slightest improvement. Abilities wither under criticism; they blossom under encouragement."
- "Give the other person a fine reputation to live up to."
- "Use encouragement. Make the fault seem easy to correct."
- "Make the other person happy about doing the thing you suggest."

The principal message is simply this:

Live the Golden Rule: "Do unto others as you would have them do unto you." How do you do this? Through empathy. Take an interest in other people.

Understand their concerns and motives. Give them praise, encouragement and appreciation.

Understand that one of the greatest human needs is to feel important and appreciated!

Submitted by Charyl Wozniak,
JALA Office Mgr.



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NO FAULT INSURANCE

On October 11, 2010 Mike Shirkey and Earl Poleski sponsored a town hall meeting in Jackson to discuss the proposed legislation which would change the Michigan no-fault insurance laws. I went to the meeting, insurance bill in-hand showing a total of \$853 for three vehicles for six months of which \$550 plus was for catastrophic claims. I should pay over a thousand dollars a year for unlimited lifetime care for some drunk that smashed his car into a tree and who will NEVER produce anything for the next 50 years other than huge bills we each pay along with the family tragedy he/she caused.

After listening to the presentation, I guess I will continue to support the law as it is, at least partially. I had forgotten the purpose was to assure funds were available rapidly to treat severely injured folks and almost as important, to deny trial lawyers a vast reservoir of funds they would use to support their favorite political candidates.

This brings to mind the 1974 (?) case in which a quadriplegic (drunk driver) started receiving care under this program for life. His father was his caregiver. The settlement included an inflation escalator based on the then inflation rates. By 2009, the father was receiving \$80 per hour 24/7. This was taken to the supreme court which ruled against the father and restored sanity to the process and our MCCA contributions dramatically decreased from this one case. The next election cycle brought a liberal majority to the court and the claim was refilled, and this court restored the outrageous payments. My MCCA bill went up by \$84 per car, per six month period because of this ruling.

The audience was heavily populated with health care types who clapped loudly whenever the opposition to the bill spoke and childishly sat silent and grimaced whenever the insurance industry representative spoke. Here's the reason that all the nurses and health care providers are about and why they turned out and clapped so rudely: Unlimited payments to line their pockets.

I say, keep the fund as it is, but put a cap on how much can be paid out in reasonable costs. That is what the legislation should address and do so retroactively.

The bill offers different tiers of coverage starting at \$50,000 and maxing out at \$5 million. A suggested savings of 15% for the proposed maximum benefit of \$5 million is not worth it. As for encouraging uninsured drivers (20% in Michigan) to become insured with a cost saving of up to 40% for the lowest coverage, don't believe it. Given the choice, most folks will opt for the lowest cost option and leave the taxpayers in general to foot the bill. Personally, I hate laws like this as it wrecks of socialist nanny state oversight. However, I guess there are some things we need to do collectively through government. To carry it to the extreme, we could allow home owners to purchase insurance with a liability limit of \$100,000 and require all the purchasers of insurance to contribute to a fund which would cover the cost of any loss above \$100,000. Or, we could just have the state cover any loss above \$100 with taxpayer funds. Sick isn't it?!

Let your legislators know how you feel about this legislation. Their contact information is on page 2 of this newsletter. Their email addresses can be found on-line.

Written by Robert F. Tulloch

SEPTEMBER GENERAL MEETING

The speakers at the September meeting were Mayor Dunigan and Pat Burtch, the new director of Community Development. Also in attendance was the new city manager, Larry Schaffer. I generally have a rather dim view of the City of Jackson, having watched year-after-year the stories of closing companies, attempts to attract new businesses, actions to drive out old businesses (the race track), the mismanagement and broken promises of Armory Arts, silly things like the cell tower masked as a clock to attract folks to Jackson, the expenditure of funds trying to decorate the city (Partnership Park), Cool-City signs, the rape of Jackson by Consumer's Energy and the endless demolishing of homes on the South side resulting in a postage stamp array of overgrown lots and trash. So, it was with great relief that the powers that be in the city came to present at least a rudimentary outline of a new effort to set the city on a course toward recovery.

The most pressing problem for the city is revenue, the falling property values, and properties taken off the tax rolls. To help address this issue, the city has identified 482 homes which are in their sights for demolition. It was indicated that emphasis will be placed on clearing contiguous areas so as not to produce another hodgepodge (as was done in the 80's and 90's). The city is short on revenue because of reduced property values and taxes not being paid on homes which have been neglected by their owners. The interspersal of run down properties among maintained properties depresses values and stalls the markets resulting in lower revenues. Clearing out these eyesores may indeed clear the stigma from these neighborhoods and not only provide a better environment for the residents, but increase sorely needed revenues.

The city looked at rehabbing these properties and the cost was on the order of \$75 million. It was pointed out that many (if not most) of these homes are functionally obsolete in today's market. I live in a 100 year-old farm house, which by today's standards is functionally obsolete. The problem is that the kinds of folks who don't mind buying a "functionally obsolete" home live in Ann Arbor, or out in the country and would have no inclination to move to the South side of Jackson.

September Meeting.....Continued on Page 6

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TARIFFS

I sent the following message to Representative Tim Walberg to let him know how important I feel it is to impose tariffs. I encourage anyone else who thinks we need to impose tariffs on goods from China and other low wage countries to do the same. I will be sending the same message to Senators Levin and Stabenow.

“We need to do something drastic! We will never recover from this "depression" without bringing decent paying jobs back to the United States and Michigan. We need to restore import tariffs (like we used to have) to level the playing field. The monies generated could be used to pay down the deficit until the jobs come back and revenues increase. So, let us see some analysis of the effects of imposing tariffs. Are you a supporter of tariffs?”

Submitted by Robert F. Tulloch, JALA Board President

September Meeting.....Continued From Page 4

Tearing the homes down would cost \$3 million and if done properly could result in tracts of land which might attract a developer. It is very encouraging to hear this team of folks who run the city with some real ideas about positive change. The question is, where will the money come from to affect this or any other change?!

Submitted By Robert Tulloch, JALA President

**SMOKE FREE HOUSING:
LEGAL AND EASIER THAN
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Michigan has become a national leader in the adoption of "smoke-free" multi-tenant housing policies. Landlord experience, legal documents, assistance and free promotion are all available to you by visiting the following website:

<http://www.mismokefreeapartment.org/>

This website is very easy to utilize and navigate. When we promote "smoke-free" housing, we are saying that it is legal and advisable for apartment owners to establish smoke-free policies for the buildings that they own, which includes individual apartments and common areas.

Reprinted from the SLA NL, MI, September, 2011

**HEATING TIPS FROM
CONSUMER'S ENERGY**

- Adding fiberglass insulation in your attic is one of the most cost-effective savings measures and it's one that you can do yourself (which of course, saves you money!)
- Add extra insulation to floors by covering them with a pad and a rug.
- Check your home's insulation. Insulation is judged by its "R-value". The higher the R-value, the better the material keeps heat in during cold weather. Older homes should have an insulating value of R-11 in the outside walls and floors over unheated areas, and an R-19 value in the ceiling or attic.

Reprinted from the SLA NL, MI, September, 2011



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The next general meeting will be held Monday, October 24, 2011. The speaker for the Oct. meeting is State of Michigan Representative, Mike Shirkey. Here's a great opportunity for you to voice your concerns and ask questions of Rep. Shirkey!

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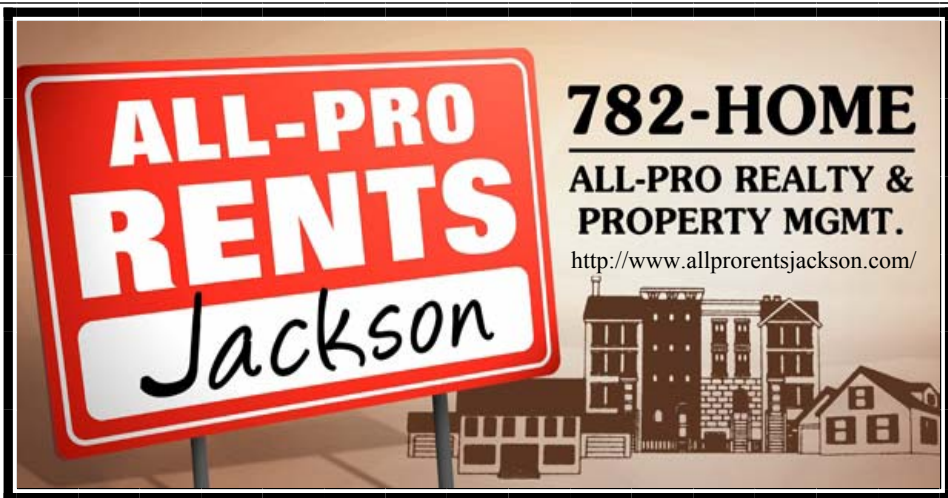
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Evenings and weekends by Appt.

**STATE REP. MIKE SHIRKEY
TO BE THE SPEAKER FOR THE
OCT. GENERAL MEETING**
By Robert F. Tulloch

State of Michigan Rep. Mike Shirkey (District 65/Michigan House) will be the speaker at the October JALA General Meeting. Mike has been very supportive of legislation to help landlords/managers as evidenced by his introducing House Bill 5052 below. We appreciate his taking this action on behalf of landlords and managers in Jackson as well as throughout Michigan. Mike will give us an overview of what the new administration and legislature has been doing, and is planning to do to help Michigan recover from 10 years in the doldrums. We hope you all turn out and give Mike a warm welcome from the JALA Membership! We also hope that other associations within Michigan will jump on the bandwagon and support this bill. Here is the info: HOUSE BILL 5052: October 11, 2011, Introduced by Reps. Shirkey, Cotter, Somerville, Haugh and Olson and referred to the Committee on Judiciary. A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9947) by adding section 916a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT SEC. 916A. IT IS NOT A VIOLATION OF SECTION 916 FOR AN INDIVIDUAL TO BRING AN ACTION OR APPEAR IN COURT ON BEHALF OF A LANDLORD IN AN ACTION UNDER SECTION 5714 IF THE INDIVIDUAL HAS DIRECT PERSONAL KNOWLEDGE OF THE FACTS IN DISPUTE AND IS ONE OF THE FOLLOWING:

- (A) IF THE LANDLORD IS A LEGAL ENTITY OTHER THAN A SOLE PROPRIETORSHIP, A PARTNER IN OR OFFICER OR MEMBER OF THE LANDLORD.
- (B) A RENTAL PROPERTY MANAGER SERVING UNDER A WRITTEN AGREEMENT WITH THE LANDLORD.
- (C) AN EMPLOYEE OR RELATIVE OF THE LANDLORD.



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SLIP AND FALL ACCIDENTS

Two common types of injury claims are “Slip and Fall” and “Trip and Fall” cases. In legal terms, these are Premises Liability legal actions.

A victim who is hurt due to the negligence or carelessness of someone else can file a Michigan slip and fall liability case. Unfortunately, thousands of Michigan slip and fall accident victims are eligible to make these claims every year, after suffering injuries caused by property owners who failed to use reasonable care to warn of hazards or remove dangerous conditions from their property.

The following are some of the dangerous conditions that can cause injury and may be the basis for a premises liability claim:

- Standard puddles of water
- Snow that’s not cleared
- Clear ice
- Black ice
- Inadequate lighting
- Defective flooring
- Improperly secured mats
- Stairways and steps that violate building safety codes
- Hidden drop-offs
- Concealed holes

It is doubtful that any area of Michigan personal injury law has undergone more change than premises liability. Unfortunately, recent Michigan Supreme Court decisions have placed stricter limits on the ability of an injured party to bring a claim.

Elements of a Michigan slip and fall accident claim injury: To succeed in a Michigan slip and fall/trip and fall claim, it is necessary to demonstrate damages. The accident victim must have evidence of a real injury, usually one that a physician confirms.

Causation or proximate cause: The victim must also prove that a dangerous condition on the property directly caused the fall resulting injury. This legal requirement, known as causation or proximate cause, is based on simple logic. For example, if a property owner failed to remove ice from his parking lot, but there is no proof that ice caused an individual to fall, then the property owners can argue that he or she is not responsible for the injury. **(Landlords, please note: if there is a question about conditions on your property causing an accident or an injury, contact your attorney and make sure that he/she thoroughly investigates the accident site, obtains witness testimony, medical records and other evidence. If this has not been a negligent action or omission on your part, your lawyer would need to prove that there is no direct connection to the tenant’s injury.)**

Negligence Notice: Proving negligence under Michigan law may require evidence that...

- The property owner actually knew, or reasonably should have known, about the dangerous condition(s) and
- The property owner had the ability and opportunity to correct the problem or warn of its existence, and
- The property owner negligently failed to do so. This concept is known as notice or constructive notice. Even so, a property owner is not required to fix a hazard immediately. Instead, the law permits a reasonable amount of time to correct a dangerous condition. These standards are further complicated by legal distinctions. Based on the type of property where an injury occurred, and the reason for the victim’s presence on the property, as a licensee, invitee, or trespasser.

The Michigan Open and Obvious Doctrine: Even if a Michigan property owner had “notice” of a dangerous condition, he may try to use a legal defense call the “open and obvious doctrine” to escape responsibility. Years ago, the doctrine prevented slip and fall claims by individuals whose injuries resulted from their own carelessness. (This is not necessarily a valid defense anymore).

Purpose on the Property: The reason that the injured person was on the property is an important factor in a premise liability case. The landlord must use a high level of care to protect a tenant, warn him of dangers, inspect the property for hazards, and take reasonably prompt steps to repair them. A property owner owes a lesser duty to someone who may be a social guest or is allowed on the property, but not a tenant. Trespassers are owed very limited duties of care from a property owner. However, the landlord may have some obligations when the trespasser is a child, when the owner or possessor of the land knows or reasonably should know of the child’s presence. Additionally, the owner cannot set a trap to try to cause injury to a trespasser (Source: The Bernstein Law Firm).

These are points to ponder landlords. Remember, to be diligent about maintaining your property. Prevention is less hassle, expense and grief!

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the dump, of replacing carpets, cleaning/painting, the endless trips trying to collect the rent, and ALL the other things associated with a bad tenant experience. It is a workable collection solution.

JALA Q AND A:

Q: When I make repairs to damage(s) in a rental myself, can I charge the tenant for my labor, just as if I hired someone to do the work? **B. T.**

A: Yes. You can charge labor as part of the cost of restoring the rental unit:

MCL 600.5739

2) If the court awards damages for physical injury to the premises under subsection (1) by making an award for or based on the cost of repairs, **the court shall award damages for labor expended by a landlord or property manager in repairing the premises in the same manner as it would if the repairs were performed by a third party.** A landlord's or property manager's labor under this subsection shall be compensated at a rate the court determines to be reasonable based on usual and customary charges for the repairs.

You need to keep a record of the hours spent on each task, documenting materials and labor. This should be included in the move-out charges against the security deposit mailed to the tenant. If the work has not been done, you are still entitled to recover the estimated cost of materials and labor. I typically charge \$25 per hour for everything including repairs, clean-out, hauling to the dump and return from the dump. The tenant should have to pay for every cost attributable to their breach of the lease.

The long form lease on the JALA website includes a section called "Chargeable Costs For Abnormal Wear and Tear" and requires the tenant's sign off. This section lists charges for specific items as well as invoking the \$25 per hour labor charge.

TAX GARNISHMENT SEASON IS APPROACHING FAST

By Robert Tulloch

I wanted to personally thank all who attended the last general membership meeting on September 26th. The turnout was quite good and the presentation was informative. It seems that the city leadership is getting it together on finding solutions to the housing problems in Jackson. I was very encouraged!

It is getting close to the time to file income tax garnishments with the State of Michigan, so start thinking about that. Also, don't forget to look at your judgments to make sure they are not going to expire. Small Claims judgments are good for seven (7) years, and regular civil judgments (including landlord/tenant cases) are good for ten (10) years.

It is a simple matter to renew judgments, but of course there is a fee, and in this case it's \$20. The correct form to use is a local court form D12CIV-4. This form is available at the court clerk window or on-line at our website (www.jala-mi.org) under Court Forms. The form on the website is a

"type in/print" form which can be saved on your computer for future use. When reviewing your judgments, it is also a good time to file a Request and Order To Seize Property. This too is available on-line at our site, and at the court clerk window. The filing fee for this form is \$15.

As outlined in our newsletter and discussed at general meetings, the Request and Order to Seize Property is assigned to a court officer who will determine readily available assets (such as a car or boat) which can then be seized and sold to satisfy your judgment. If the judgment debtor allows the court officer into their home, their personal property can be seized and sold. One of our JALA members, Jeff Kirkpatrick, is a court officer and handles these seizures. Seizing the property of one of your ex-tenants to pay your judgment can seem pretty "heartless", and that is something you need to decide on and do what's "right" for you personally.

When I fill out and file one of these forms, it is important to think back and remember not only the lost rent, but the cost of evicting, the cost of clearing out the apartment/house and transporting items to

Answered by Robert F. Tulloch
JALA Board President

JALA Newsletter/www.jala-mi.org

Jackson Area Landlords Association
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Jackson, Michigan 49201

(517) 782-4384/E-Mail: jala@jala-mi.org

October, 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, October 24, 2011
Time: 5:30 menu/6:30 speaker
Steak's Eatery

The speaker for the October general meeting will be Michigan State Representative, Mike Shirkey. Representative Shirkey will be giving a short presentation then will take questions from the audience.

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:

Donna Bryant
(\$43)



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