



March 24, 2008

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WARNING:

NEW INTERPRETATION OF POST AND MAIL STATUTE APPLIES IF FRONT DOOR OF ON-SITE OFFICE IS LOCATED INSIDE A BUILDING

After 10 years, some tenant attorneys are pushing a new interpretation of the post and mail statute which may make such service invalid at certain communities. If your on-site office is located inside a building, such that the door to the office is not accessible at all hours, then you should cease posting and mailing notices until you put into place the Addendum to Rental Agreement that is attached. This is because Oregon's landlord/tenant law only allows post and mail service to the tenant if the location where the tenant can post and mail to the landlord is "reasonably located in relation to the tenant, and is available at all hours." ORS 90.155 (1)(c)(B). The MMHA Rental Agreement provides that the front door of the office is where posting can occur from the tenant. If this door is inside a building that is locked during certain hours, then it is not "available at all hours" and post and mail service may not be allowed.

MMHA has just updated its rental agreement with language that addresses this issue. However, existing tenants do not have the correct language. The attached amendment includes the new language and solves the problem.

If your complex is affected and you use only month to month tenancies, you can simply provide written notice to your tenants of the amendment and set an effective date at least 35 days later (after mailing).

If your complex is affected and has leases you cannot simply provide notice of the change. We suggest that you immediately deliver the amendment to each unit and ask that it be signed and returned. We understand this can be a large undertaking, but this is the only approach we think will work. Simply sending notice of the change may run afoul of the statutory prohibition against unilateral changes to the terms of a lease.

If your complex is affected and is a subsidized property, you will need to get HUD/RD approval prior to making the change.

You can still serve notices by personal service or mailing alone (add 3 extra days if mailed).

If you have questions, please feel free to call Andy Hahs of Bittner & Hahs at (503) 445-4302.

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