

# BARRING NON-RESIDENTS

## *A Very POWERFUL Tool*

On October 27<sup>th</sup>, 1994, the Illinois Supreme Court ruled that privately-owned rentals – including those receiving federal subsidies (Section 8) – can bar undesirable non-residents, including tenants' friends and family.

This decision came as a result of a lawsuit filed in 1992 by three men in Champaign, IL (Williams vs. Nagel) who were charged with trespassing after being barred from an apartment complex.

Until this ruling, if you disapproved of your tenants' non-resident guests, you had no other option but to terminate the tenancy.

**NO MORE!** Under this Illinois Supreme Court ruling – private property managers – if they rewrite their leases to include the required language – are now able to bar disruptive visitors from their buildings. (This decision *does not* apply to public housing.)

## THE “BARRING” CLAUSE

To use this powerful tool, landlords **must** do two things:

1. **Make sure your rental agreement has the required language** or rewrite your rental agreement (or add an addendum) to include this necessary phraseology. (Most “standard leases” *do not* contain this provision; If you are rewriting the lease or adding an addendum, **you must** have your tenants sign this new contract)

**Under the ruling, the rental agreement must state that the management, not the tenant, has the right to decide which guests are allowed onto the property.**

*“Tenant acknowledges that Management has the right to require any of Tenant’s guests to leave the premises or be barred from the premises if these non-resident guests are deemed by the Management to be disruptive in any way or violating any condition of this Agreement. Tenants must inform their guests of all rules and regulations stipulated by this rental agreement. If rules and regulations are broken by tenants’ guests, they may be barred and/or arrested for criminal trespassing.”*

When tenants are first moving in, be sure to go over the entire rental agreement with every person who will be signing the agreement (everyone 18 and older), and explain that this clause is there for their benefit as well as yours.

2. **Draft a set of rules and regulations for tenants and their guests to follow.** This can be as obvious as stating drug or any illegal activity is not allowed. Or it can be as picky as requirements that tenants or guests cannot smoke, disturb other tenants, or wear ripped jeans.

Almost any restriction can be created by the landlord, *as long as the tenants agree* to them and the restrictions do not discriminate by anyone of the seven protected classes (age, religion, sex, disability, race, family status, or national origin). If the tenant does not agree, there is no lease.

- 3. Once the lease/rental agreement and/or addendum is signed and the rules are in place, the landlord is the sole judge of what constitutes a violation.**

## **USING THE BARRING NOTICE**

Guests who have broken the rules must be given one warning to get off the property and are then subject to arrest for trespassing. The current penalty for trespassing, a class B Misdemeanor, is a fine up to \$1,500 and up to six (6) months in jail.

When you have a disruptive guest or one you suspect is dealing in some type of illegal activity, or just causing neighbors to feel insecure, serve them with a Barring Notice. You should then also serve each tenant in the building **and the Police** with the same notice, so all parties know that this person is no longer a welcome guest on the property.

The Supreme Court decision on the case of Williams vs. Nagel upheld the right of landlords to compile a “No Trespassing” list of people the landlord believes have broken building rules in the past or engaged in criminal activity. You may want to post such a list in a common area of the building.

Because of the way our current laws are written, it is *very* difficult for the Police to deal with people they suspect are doing illegal activity but have no hard and fast evidence. With this ruling, drug dealers cannot claim immunity from a trespass arrest by saying they are an invited friend of someone in the building.

## **REMEMBER...**

**You don't want to wait until you have a problem on your property to put this tool into action. Make sure that you always use this clause and make it *VERY* clear to your tenants that YOU have the right to control who may or may not be on your property at all times.**

**TRESPASS NOTICE**  
*VIOLATION MAY RESULT IN ARREST*

TO: \_\_\_\_\_

YOU ARE HEREBY BARRED FROM entering any part of the property at \_\_\_\_\_, in the County of Winnebago and the City of \_\_\_\_\_, including all of the land and any structures. You are barred for a period of five years effective the date indicated below.

If you violate this notice you will be prosecuted to the fullest extent allowed by law. You can be arrested and charged with Criminal Trespass. If you are convicted you can be punished by up to one year in jail, if you are 17 or older, or the Illinois the Illinois Department of Corrections if you are younger than 17.

\_\_\_\_\_  
Signature of Landlord or Agent

\_\_\_\_\_  
Printed Name of Landlord or Agent

\_\_\_\_\_  
Date

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**AFFIDAVIT of SERVICE**

I, \_\_\_\_\_, being duly sworn, on oath depose and say that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served this Trespass Notice on the Barred Person named therein by:

- Personally delivering it to the Barred Person
- Leaving a copy at the Barred Person's usual place of abode, with some person of the family or person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons AND sending a copy in a sealed envelope with postage fully prepaid, addressed to the Barred person at his or her usual place of abode.
- Sending a copy to the Barred Person by certified or registered mail with a return receipt from the addressee.

\_\_\_\_\_  
(Signature of Person delivering notice)

**SUBSCRIBED and SWORN to before me**  
This \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_

(Notary Public)

## LEASE ADDENDUM

1. Tenant acknowledges that management has the right to require any of tenant's guests to leave the premises or be barred from the premises if these non-resident guests are deemed by the management to be disruptive in any way or violate any condition of the lease. Tenants must inform their guests of all rules and regulations stipulated by this rental agreement. If rules and regulations are broken by tenants' guests, they may be barred and/or arrested for criminal trespassing.
2. No person not identified on the application may live in the premises or be present unaccompanied by the lessee without prior written consent of the landlord.

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Tenant

# BARRING NOTICE

\_\_\_\_\_ IS HEREBY BARRED FROM ENTERING  
ANY PART OF THIS BUILDING OR PROPERTY LOCATED AT:

\_\_\_\_\_  
AS OF THIS DATE \_\_\_\_\_ EFFECTIVE IMMEDIATELY.

In accordance with Illinois Supreme Court Decision rendered in Lawrence A. Williams, et al Vs. Karl Nagel et al, Docket No. 76442, you are hereby notified that effective immediately you are barred from entering any part of this building or property, whether inside or outside of this property. Any tenant or guest of tenant allowing this barred person onto this property and/or into their apartment/house, whether invited or uninvited, will be subject to legal action by this building's management. If the barred person named above is found in this building or property, they will be subject to immediate arrest in accordance with the herein stated court decision.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Owner / Manager (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

**COPIES OF THIS BARRING NOTICE HAVE BEEN DELIVERED TO  
ALL TENANTS OF THE ABOVE DESCRIBED BUILDING**

**Public Act 096-1188**

HB5523 Enrolled

LRB096 18361 AJO 35596 b

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Code of Civil Procedure is amended by adding Section 9-106.2 as follows:

(735 ILCS 5/9-106.2 new)

**Sec. 9-106.2. Affirmative defense for violence; barring persons from property.**

(a) It shall be an affirmative defense to an action maintained under this Article IX if the court makes one of the following findings that the demand for possession is:

(1) based solely on the tenant's, lessee's, or household member's status as a victim of domestic violence or sexual violence as those terms are defined in Section 10 of the Safe Homes Act, stalking as that term is defined in the Criminal Code of 1961, or dating violence;

(2) based solely upon an incident of actual or threatened domestic violence, dating violence, stalking, or sexual violence against a tenant, lessee, or household member;

(3) based solely upon criminal activity directly relating to domestic violence, dating violence, stalking, or sexual violence engaged in by a member of a tenant's or

lessee's household or any guest or other person under the tenant's, lessee's, or household member's control, and against the tenant, lessee, or household member; or

(4) based upon a demand for possession pursuant to subsection (f) where the tenant, lessee, or household member who was the victim of domestic violence, sexual violence, stalking, or dating violence did not knowingly consent to the barred person entering the premises or a valid court order permitted the barred person's entry onto the premises.

(b) When asserting the affirmative defense, at least one

form of the following types of evidence shall be provided to support the affirmative defense: medical, court, or police records documenting the violence or a statement from an employee of a victim service organization or from a medical professional from whom the tenant, lessee, or household member has sought services.

(c) Nothing in subsection (a) shall prevent the landlord from seeking possession solely against a tenant, household member, or lessee of the premises who perpetrated the violence referred to in subsection (a).

(d) Nothing in subsection (a) shall prevent the landlord from seeking possession against the entire household, including the tenant, lessee, or household member who is a victim of domestic violence, dating violence, stalking, or sexual violence if the tenant, lessee, or household member's

continued tenancy would pose an actual and imminent threat to other tenants, lessees, household members, the landlord or their agents at the property.

(e) Nothing in subsection (a) shall prevent the landlord from seeking possession against the tenant, lessee, or household member who is a victim of domestic violence, dating violence, stalking, or sexual violence if that tenant, lessee, or household member has committed the criminal activity on which the demand for possession is based.

(f) A landlord shall have the power to bar the presence of a person from the premises owned by the landlord who is not a tenant or lessee or who is not a member of the tenant's or lessee's household. A landlord bars a person from the premises by providing written notice to the tenant or lessee that the person is no longer allowed on the premises. That notice shall state that if the tenant invites the barred person onto any portion of the premises, then the landlord may treat this as a breach of the lease, whether or not this provision is contained in the lease. Subject to paragraph (4) of subsection (a), the landlord may evict the tenant.

(g) Further, a landlord may give notice to a person that the person is barred from the premises owned by the landlord. A person has received notice from the landlord within the meaning of this subsection if he has been notified personally, either orally or in writing including a valid court order as defined by subsection (7) of Section 112A-3 of the Code of Criminal

Procedure of 1963 granting remedy (2) of subsection (b) of

Section 112A-14 of that Code, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof. Any person entering the landlord's premises after such notice has been given shall be guilty of criminal trespass to real property as set forth in Section 21-3 of the Criminal Code of 1961. After notice has been given, an invitation to the person to enter the premises shall be void if made by a tenant, lessee, or member of the tenant's or lessee's household and shall not constitute a valid invitation to come upon the premises or a defense to a criminal trespass to real property.

Section 99. Effective date. This Act takes effect upon becoming law.

**Effective Date:** 7/22/2010