

IMPACT OF THE MANSION TAX, cont'd. where the purchase price exceeded \$1,000,000. However, when the final version of the bill was passed into law, the language provided that the Buyer was obligated to pay an RTF based upon 1% of the purchase price if such purchase price exceeded \$1,000,000 and the property was zoned for residential use – not if the property was used for a residential purpose. As such, any property that was located in an area that was zoned for residential use – even if it was actually used an apartment building, office building, commercial/retail property or industrial building – was subject to the 1% RTF payable by the Buyer if the purchase price exceeded \$1,000,000. For example, the purchase of a \$5,000,000 apartment building or office building located in an area zoned for residential use would result in the Buyer paying an RTF of \$50,000; the Buyer had never before been required by law to

pay such an RTF in New Jersey. Through the lobbying efforts of the New Jersey Apartment Association, this defect in the law was corrected. On December 13, 2004 the New Jersey State Senate and Assembly each passed (without a single negative vote) the “Fix It Bill” (the “FIB”), and Governor Codey signed the FIB into law on January 19, 2005; the effective date of the law was February 1, 2005. In its corrected form, the 1% RTF payable by the Buyer now applies only to real property upon which there is a building or structure intended or suited for residential use where the purchase price exceeds \$1,000,000, and the Mansion Tax is no longer imposed upon the purchaser of vacant land. The FIB modified the Mansion Tax so that its imposition on the Buyer for a purchase in excess of \$1,000,000 became dependent upon the property classification of the property purchased, not its zoning classification. By virtue of the FIB, the purchaser of a multifamily property of 5 or more units, a commercial/ retail/office property, or an industrial property purchased for more than \$1,000,000 is no longer responsible to pay the 1% Mansion Tax. As a result of the FIB, the 1% Mansion Tax payable by the Buyer applies only to a property that is pur-

chased for more than \$1,000,000 if that property is classified by the New Jersey Administrative Code as (i) Class 2 residential property, which is any residential property consisting of 1-4 units, (ii) Class 3A farm proper-

Sale Price	Old RTF	New RTF	Increase
\$ 500,000	\$ 3,275	\$ 4,175	27.48%
\$ 1,000,000	\$ 7,175	\$ 9,575	33.45%
\$ 2,000,000	\$ 14,975	\$ 21,675	44.74%
\$ 4,000,000	\$ 30,575	\$ 45,875	50.04%
\$ 5,000,000	\$ 38,375	\$ 57,975	51.07%
\$ 10,000,000	\$ 77,565	\$ 118,475	51.45%

Impact of the increase of the realty transfer fee on seller

ty, provided that such sale includes a building or structure intended or suited for residential use, or (iii) a cooperative unit.

In addition, in the event that any Buyer paid the Mansion Tax for a purchase that closed between August 1, 2004 and January 31, 2005 and such purchase is now exempt from the Mansion Tax as of February 1, 2005, the FIB provided a procedure for such Buyer to obtain a refund of the Mansion Tax that was paid. In order to obtain the refund, by May 1, 2005, the Buyer was required to file with the New Jersey Division of Taxation, Realty Transfer Fee Section a form known as RTF-3, along with a copy of the deed and notarized Affidavit of Consideration for Use by Buyer (Form RTF-1EE) that was submitted at the time that the Mansion Tax was paid. Any eligible Buyer that did not file the refund request by May 1, 2005 is unable to obtain the refund.

Copyright ©2005 Feinstein, Raiss, Kelin & Booker, L.L.C. All rights reserved. Any copying of materials herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission may be sent to: Tracey Goldstein, Esquire, Feinstein, Raiss, Kelin & Booker, L.L.C., 100 Executive Drive, Suite 360, West Orange, New Jersey 07052, (973) 324-5400 Ext. 115.

This newsletter is intended for general information purposes and does not constitute legal advice. You should consult with legal counsel to determine how the law may apply to your specific situation.



Feinstein•Raiss•Kelin&Booker L.L.C.
100 Executive Drive, Suite 360, West Orange, New Jersey 07052
Tel (973) 324-5400 • www.frkblaw.com

FRK News

Vol. No. 6, Spring 2005

p.1

Consumer Fraud Act Applies To Unauthorized Rent Increases

p.2

Court Modifies Law For Habitual Late Rent Payments

p.3

Evicting A Tenant Because Of An Odor

The Impact Of The Mansion Tax On Owners

N.J. Supreme Court Addresses Relocation Assistance For Illegal Apartments

CONSUMER FRAUD ACT APPLIES TO UNAUTHORIZED RENT INCREASES

In *Wozniak v. Pennela* 373 N.J. Super. 445 (App. Div. 2004), the Appellate Division ruled that the imposition of a rent increase in excess of the limit set by a municipal rent control ordinance violated the Consumer Fraud Act. If a landlord violates the Consumer Fraud Act, a tenant is entitled to an award of treble damages (three times the actual amount of damages), interest and attorney’s fees, which was awarded to the tenant in this case.

This case involved a landlord that charged rents beyond that which was permitted by Clifton’s rent control ordinance. Under the Clifton Ordinance, a formula is used in establishing the amount of a rent increase. Also, the Ordinance mandates that the tenant must receive 30 days notice of the increase and the notice must be sent by certified mail. The notice must include the mathematical calculations used in formulating the increase. The tenants first filed a Complaint with the Clifton Rent Control Board claiming they were overcharged. The Board determined that the rent increase

exceeded the maximum legal amount. The Board also found that since the landlord’s notice did not contain the required calculations setting forth how the increase was formulated, the landlord’s notice was insufficient and as a result, the landlord was not entitled to the rent increases that the landlord had imposed.

Since a rent control board cannot award a monetary judgment, the tenant filed a Complaint in the Superior Court of New Jersey to obtain a refund of the rent overcharges plus treble damages and attorney’s fees under the Consumer Fraud Act. The tenant was awarded these damages on its motion for summary judgment.

Therefore, if an owner charges more than that which is permitted under a rent control ordinance, the owner is subject to the Consumer Fraud Act. Owners should be familiar with the rent control ordinance which governs each of their properties.

if an owner charges more than that which is permitted under a rent control ordinance, the owner is subject to triple damages pursuant to the Consumer Fraud Act.

Feinstein, Raiss, Kelin & Booker, L.L.C.
100 Executive Drive, Suite 360
West Orange, New Jersey 07052
tel (973) 324-5400
fax (973) 731-4669
fax (973) 731-4348
www.frkblaw.com

COURT MODIFIES LAW FOR HABITUAL LATE RENT PAYMENTS

The law regarding evicting a tenant for habitual late payments has been changed by Court decision. A tenant can be evicted if the tenant habitually pays rent late. Once a tenant establishes a pattern of paying late, a Notice to Cease is typically sent advising the tenant to “cease” the behavior. If the tenant makes at least two late payments after service of that Notice, the law permits an owner to serve a Notice to Quit terminating the tenancy. Until recently, the law permitted an owner to accept the two or more late payments after the Notice to Cease, without any special notification to the tenants, without waiving its rights to evict the tenant for habitual late payment of rent.

In a recent decision by the Appellate Division, the Court con-

cluded that an owner could still accept late rent payments after service of a Notice to Cease. However, prior to accepting each of the late payments, an owner is required to notify the tenant that the late payment will be accepted but is made in breach of the lease and could lead to the tenant’s eviction. This Notice must be sent for each payment that is accepted after service of the Notice to Cease for habitual late payments.

If the owner fails to send such a letter, the owner would be barred from evicting the tenant based upon the previously issued Notice to Cease. The Court could construe the owner’s acceptance of late rent payments after service of a Notice to Cease as a waiver of the Notice to Cease. Continued acceptance of late

payments by the owner could also be construed as the accepted course of dealing between the owner and the tenant.

It is anticipated that the Courts will extend the principles of this case to those situations where an owner receives, but does not deposit, rent after the termination date set forth in a Notice to Quit. In that instance, the owner should now either return the payment to the tenant or alternatively, notify the tenant that the rent payment has been received but will not be deposited. This notice is especially critical in those cases where the rent payment is made by money order, since the tenant cannot easily ascertain whether the rent payment was deposited by the owner.

Therefore, in order to avoid an adverse ruling, an owner must send tenants this mandated notice: (1) prior to accepting each late payment after service of a Notice to Cease for habitual late payment of rent; and (2) when an owner receives a rent payment after the termination date in a Notice to Quit but does not deposit the payment.

effective on August 1, 2004, the RTF was divided into 3 separate fees: a “basic fee”, an “additional fee” and a “supplemental fee”. The new legislation imposed upon the Seller yet another component of the RTF – a “general purpose fee” – in the event that the consideration as specified in the deed exceeded \$350,000.

As a result of the imposition of the general purpose fee, the amount of the RTF paid by the Seller has increased dramatically (see chart on back page).

It should be noted that in addition to the RTF being imposed on and payable by the Seller upon the sale of a property, the RTF is also imposed on and payable by a landlord in the event of the execution of a leasehold interest in a property for 99 years or more, or upon the transfer of a proprietary lease of a cooper-

ative unit.

Prior to the effective date of the “Mansion Tax”, New Jersey did not impose an RTF on a Buyer. It was thought that the Mansion Tax was originally intended to assess a 1% fee upon the buyer of a residential home *cont’d on back*

... an owner could still accept late rent payments after service of a Notice to Cease. However, prior to accepting each of the late payments, an owner is required to notify the tenant that the late payment will be accepted but is made in breach of the lease and could lead to the tenant’s eviction.

THE IMPACT OF THE MANSION TAX ON OWNERS

On August 1, 2004, a statute was enacted that substantially increased the Realty Transfer Fee paid by a Seller on the sale of real estate and instituted a new Realty Transfer Fee to be paid by the Buyer. Previously, the Realty Transfer Fee was payable only by the Seller. The new Realty Transfer Fee (“RTF”) required the Buyer to pay a fee equal to 1% of the purchase price on any property in excess of \$1,000,000 if the property was located in an area zoned as residential, regardless of whether the property itself was a residential property, office/commercial/retail property or industrial property. This new RTF fee paid by the Buyer is referred to as the “Mansion Tax”

Any eligible Buyer that did not file the refund request by May 1, 2005 is unable to obtain the refund.

Prior to the passage of the new legislation that became

EVICTING A TENANT BECAUSE OF AN ODOR

In *Ivy Hill Park Section III v. Smirnova*, 362 N.J. Super. 421 (Law Div. 2003), the Honorable Mahlon Fast held that under certain circumstances, a tenant can be evicted as a result of an odor emanating from that tenant’s apartment.

In this case, a landlord brought an eviction action against a tenant because the tenant fell asleep while he was boiling his urine on the stove and the plastic handle of the pot in which it was being boiled melted. The melting of the pot handle created an odor that was smelled by the tenant that lived upstairs on the floor above.

The landlord pursued the tenant’s eviction on the theo-

ry that the tenant willfully and/or with gross negligence caused damage to the premises. The noxious odor was alleged to be the “damage” to the premises. The Court dismissed the Complaint, holding that such damage must be to tangible property only and that an “adverse affect to the human senses” did not constitute the type of damage contemplated by the Legislature when it enacted this provision of the Anti-Eviction Act. However, Judge Fast did conclude that a tenant may be subject to eviction for creating a noxious odor if such conduct constitutes a substantial breach of the lease or the rules and regulations (provided such behavior is prohibited in those documents) or for disorderly conduct. Notably, the Court stated, “I find that putting something on a cooking range, or in an oven, or the like, when one is so tired as to fall asleep (as defendant did) constitutes gross negligence.”

FRKB Congratulates Rosalie C. Scheckel on her appointment by the Supreme Court Committee as the Chairwoman of the Landlord/Tenant Committee of the Special Civil Part Practice Committee. The Committee consists of judges, private attorneys and attorneys from legal services.

The Honorable Mahlon Fast J.S.C. served as the previous chairperson.

Larry Raiss was selected to serve on the NJAA Board of Directors as of 2005. Pictured below is Larry with David Legow, NJAA President.



UPCOMING EVENTS

Tracey Goldstein will be presenting a seminar at the NJAA Convention in Atlantic City, NJ on May 25, 2005 at 10:45 a.m.

Rosalie C. Scheckel will be serving as a panelist at a seminar at the Spring Management event sponsored by the New Jersey Affordable Housing Management Association (NJAHMA) and the New Jersey Housing and Mortgage Finance Agency. The event is at the Seaview Marriott Resort in Absecon, NJ on June 14th and 15th.

Tracey Goldstein and Richard Kelin will be speaking at the seminar “The Real Estate Closing from Hell” which is presented by the New Jersey Institute of Continuing Legal Education on September 20, 2005.

N.J. SUPREME COURT ADDRESSES RELOCATION ASSISTANCE FOR ILLEGAL APARTMENTS

On May 11, 2004, the New Jersey Supreme Court dealt a severe blow to property owners who rent illegal apartments. The case arose in Paterson from a landlord’s eviction of a tenant from an attic apartment after the municipality determined that the apartment violated a local zoning ordinance.

Under N.J.S.A. 2A:18.61.1h, if a residential tenant is displaced because of an illegal occupancy, the displaced tenant is entitled to reimbursement for relocation expenses in an amount equal to six times the monthly rent paid by the displaced person. That payment shall be made by the owner five days prior to the removal of the displaced tenant.

In an unanimous decision, the New Jersey Supreme Court held that despite the actual expenses incurred by the tenant for relocation, the landlord is responsible to pay to the tenant six times the monthly rental five days prior to the removal of the displaced tenant. Further, the landlord is not entitled to set-off unpaid rent against the relocation amount. The Court recognized that a tenant may be receiving more money than its actual expenses for relocating, but concluded that the policies underlying this provision of the law warranted such an extreme remedy against the landlord. As stated in one section of the opinion, “It is reasonable to conclude that the Legislature intended the section to have penal overtones.”