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Circulated Monthly To Thousands Of Apartment Owners, Property Managers, On-Site & Maintenance Personnel



Ceiling Fans: Are They Worth it in Your Rental?

KEEFE

Are ceiling fans worth the cost in your rental property? Do they help save energy for the landlord or tenants?

Yes, they can save energy. If you have air conditioning in your rental property, then you probably know that it is responsible for about 25 percent of all energy consumption.

If you have ceiling fans and air conditioning operating, you can turn your thermostat up by four degrees without losing comfort. By using this method, landlords and tenants can lower energy bills.

CAN CEILING FANS REPLACE AIR CONDITIONING?

No. Fans don’t actually cool a room, they create a wind-chill effect that makes it feel cooler without lowering the temperature of a room.

If the room is already extremely hot, ceiling fans will be pushing hot air

See ‘Are’ on Page 8

Can a Landlord’s Lease Specify ‘No Guns Allowed in Apartments’?

By JOHN TRIPLETT

State laws vary on the issue of what landlords can mandate regarding saying, “no guns in my apartments,” and on gun possession in general by tenants in privately owned rental properties.

Landlords and property managers need to be aware of whether their state and/or local governments have specific laws, Dobbins said in an interview with Rental Housing Journal.

- Only four states have specific laws regarding landlords and guns at rental properties:
- **Minnesota:** A landlord cannot restrict the lawful carry or possession of firearms by tenants or their guests. Minnesota Statute 624.714
 - **Tennessee:** A private landlord can prohibit tenants, including those who hold handgun carry permits, from possessing firearms within a leased premises. Such a prohibition may be imposed through a clause in the lease. Tennessee Statute §



- 39-17-1307(b).
- **Virginia:** Public housing prohibits landlords from restrictions on gun possession for tenants – Virginia Rental Housing Act 1974 Tennessee 55-248.9.6.
 - **Wisconsin:** This state has a complicated maze of where a weapon can or cannot be possessed. Wis. Stat. § 175.60(21)(b).
- All other states are generally silent on the issue, Dobbins said, meaning that private housing providers can choose what they want to do on the issue. California, Arizona, Colorado, Oregon, Utah, and Washington are six of the states that are silent.
- For instance, Virginia law says public
- See ‘Can’ on Page 10*

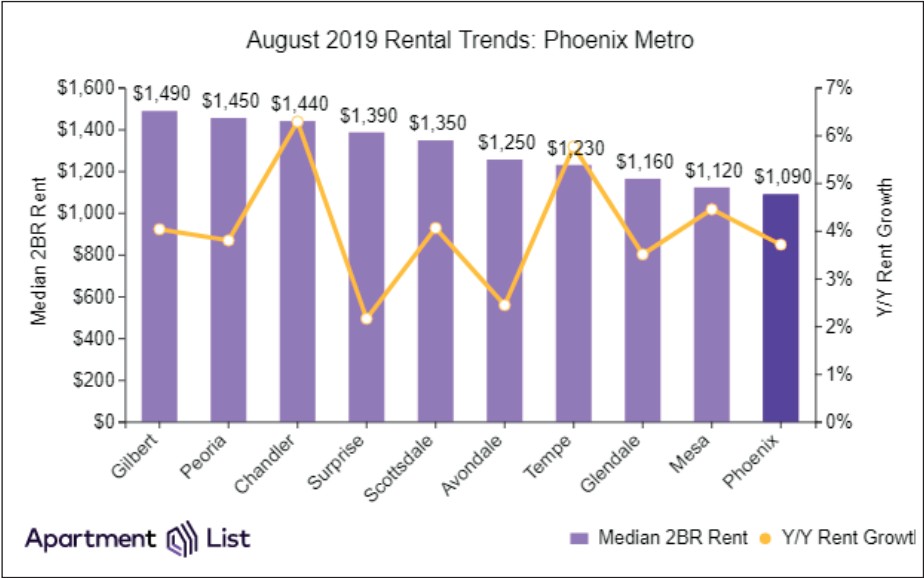
Phoenix Rents Up for 21st Month

APARTMENT LIST

Phoenix rents have been increasing for 21 straight months – the last time rents declined was in November 2017, according to the most recent report from Apartment List.

Phoenix rents have increased 0.3 percent over the past month, and have increased moderately by 3.7 percent in comparison to the same time last year. Currently, median rents in Phoenix stand at \$874 for a one-bedroom apartment and \$1,089 for a two-bedroom.

Phoenix’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.



EAST VALLEY REPORT

CHANDLER RENTS FLAT

Chandler has seen the fastest rent growth in the Phoenix metro.

Chandler rents have remained flat over the past month, however, they are up sharply by 6.3 percent year-over-year.

Currently, median rents in Chandler stand at \$1,155 for a one-bedroom apartment and \$1,439 for a two-bedroom. Chandler’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

See ‘Phoenix’ on Page 8

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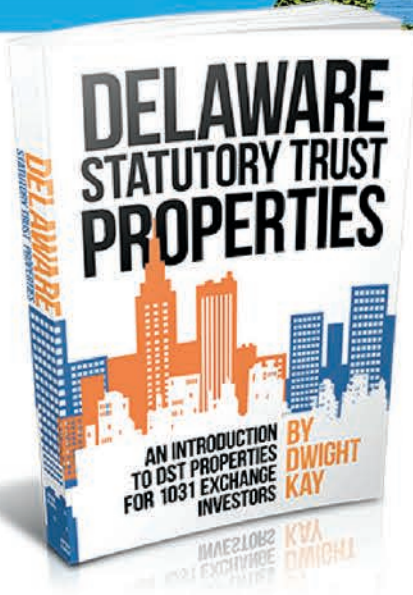
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Questions to Ask When Investing in DSTs

By STEVE HASKELL
Vice President, Kay Properties and Investments

Investors often approach Kay Properties and Investments to expand their investment research into Delaware Statutory Trusts (DSTs) after speaking with a friend, registered rep, or advisor about the opportunity. Unfortunately, we continue to discover that whoever is advising the client has been providing incorrect or incomplete information. DSTs are sophisticated investment vehicles that require a niche expertise. We have developed a series of questions for investors to ask their DST provider to help prevent making ill-advised investment decisions potentially detrimental to their family’s financial security.

HOW MANY INVESTMENTS HAS THE ADVISOR MADE INTO DSTs?

Not all experience is created equal when a DST provider says they have years of experience, they often mean that they have completed a small number of DST investments over many years if investment related experience. We do not consider this to be acceptable when investing in DSTs. A Kay Properties licensed team member is often involved in more DST exchanges in a single year than many DST providers do in their entire career. It is critical for a DST provider to see various types of deals and DSTs in order to gain an understanding of the potential risks to avoid and help the client capture potential opportunities. Oftentimes, the DST provider just lacks the experience necessary to advise the client on DSTs.

HOW MANY SPONSORS DO YOU CARRY ON YOUR PLATFORM?

Many DST providers do not have the time and resources to research the DST sponsor companies in the industry. Therefore, they rely on the few large companies in the industry with resources to spend on marketing, fancy lunches, and a suave financial advisor wholesaler network (the DST sponsor company sales people that meet with financial advisors and pitch them their companies DST products and in turn the financial advisor then pitches the DSTs to his or her clients). As a result, the client may miss out on other DST investments potentially more suitable for the client. We often find that clients over concentrate by placing large exchanges in just 1-3 DSTs, when the client would be more suited diversifying into 5-10 DSTs. The lack of DST

1031 options on the DST provider’s platform is often misrepresented by the DST provider. They claim, “these are the only properties that passed their due diligence” when in actuality their lack of options is the result of lack of business volume necessary to put the time, effort and resources into analyzing and visiting the many different DST properties for sale by the many DST sponsors in the space.

WHY DID YOU SELECT TO REPRESENT THOSE SPONSORS ON YOUR PLATFORM?

We often hear from clients that their DST provider told them to go with a specific sponsor due to their track record and time in the industry. However, the DST provider’s due diligence is often limited to the marketing material and sales pitches of those few DST sponsor companies. Often, the reason DST providers carry a certain sponsor on their platform has more to do with the sponsor’s marketing budget than it does with the quality of the DST. Kay Properties due diligence and analysis team conducts due diligence on every DST it carries on its platform. This includes asset class rejection of risky assets such as hotels and senior care facilities (Kay Properties will not offer these asset classes to our clients), mystery shopping each property, 3rd party reports and market analysis, sensitivity analysis and stress test on cash flow assumptions, and lease audits. Many financial advisors selling DSTs are only one or two man/woman shops that do not have the resources to internally do this level of analysis and underwriting which in turn may leave their investors to pay the price for lack of diligence.

HAS THE SPONSOR EVER MISSED PROJECTIONS OR SOLD A PROPERTY FOR LESS THAN WHAT THEY PURCHASED THE PROPERTY?

When inquiring about Sponsors track record, many advisors will only provide general and often ambiguous statistics that require unpacking to understand. The client should ask her advisor how many times the sponsor sold a property for less than they purchased the property. It is also important to find out how many of the Sponsor’s DSTs have missed their cash flow projections. For example, we often see a Sponsor display a positive Annual Rates of Return (ARR), which includes both cashflow as well as property appreciation averaged over the lifetime of the DST. However, they often refrain from informing their clients that that the asset was actually sold at a lower

price than it was originally purchased.


SHOULD I DIVERSIFY MORE?

It would be suspicious if an advisor encouraged her client to invest all his money into one stock no matter how exciting the projections. This same wisdom applies to DSTs. Kay Properties and Investments encourages our clients to diversify by asset type, asset class, geography, and sponsor. Additionally, investing in one DST with multiple properties does not equate to a well-diversified portfolio as we have seen portfolio DSTs whereby one bad property dragged down the returns of the entire portfolio. We have also seen some very credible sponsors choose bad properties that end up performing poorly for investors. Therefore, it is always prudent to diversify across multiple sponsors and offerings. Real estate is risky, an investor can lose their entire investment. Diversification is critical to mitigating risk, especially in DSTs. Diversification does not guarantee profits or protect against losses.

MY MORTGAGE IS PAID OFF... SHOULD I REALLY BE LEVERAGING INTO DSTS WITH DEBT AT MY AGE? WHAT HAPPENS IF I WANT TO BE DEBT FREE LATER?

Most DST properties in the market are leveraged at approximately 50-60% Loan to Value. This is fine for investors needing to replace debt due to the 1031 exchange guidelines, however for those investors that are selling their properties debt free we would advise a cautious approach. If the debt free investor exchanges into leveraged DSTs, then they now have the risk of foreclosure and a much higher risk of complete loss of their invested principal. Additionally, when the DST property sells in the future, they will then have to purchase equal or greater value if they choose to do another 1031 exchange. They now no longer have the luxury of staying debt free. Many investors want to reduce their risk potential, unfortunately we see many financial advisors forcing their clients into DSTs with high leverage. This is often because the financial advisor does not have any debt free DST products available. If you already paid off your property you would be well advised to stay debt free and only purchase all-cash debt free DSTs.

For free consultation with a licensed professional at Kay Properties and Investments, email steve@kpi1031.com or call 760.533.7820.



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Kay Properties and Investments, LLC is a national Delaware Statutory Trust (DST) investment firm with offices in Los Angeles, San Diego, San Francisco, Seattle, New York City and Washington, D.C. Kay Properties team members collectively have over 114 years of real estate experience, are licensed in all 50 states, and have participated in over \$7 billion of DST real estate. Our clients have the ability to participate in private, exclusively available, DST properties as well as those presented to the wider DST marketplace, with the exception of those that fail our due-diligence process. To learn more about Kay Properties please visit www.kpi1031.com.

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Arizona Rethinking Short-Term Rental Laws

RENTAL HOUSING JOURNAL

Arizona Governor Doug Ducey says lawmakers may have to reconsider current short-term rental laws in the upcoming legislative session after multiple complaints from some neighborhoods and smaller communities, including Sedona.

“I’ve heard the most feedback from Sedona and this idea of ‘party houses,’” Ducey told reporters. “So, I do think there are things that we can address in terms of public policy at the legislative level. We’re going to revisit that in this upcoming session.”

Sedona Assistant City Manager Karen Osburn in July presented a graphic showing hundreds of short-term rentals that have sprung up in Sedona, according to the Red Rock News.

“What we are experiencing is really a colossal change in character of the community,” Osburn told a meeting in July. “When you have this kind of saturation and homes are converted to short-term rentals and residents are replaced with visitors, when you leave your home and go for a walk in your neighborhood, you don’t recognize people anymore.”

According to the Red Rock News, Osburn also pointed out the domino effect vacation rentals are having on Sedona. Many long-term renters are having to move out because the owners are converting the homes into short-term rentals. The result is a lack of long-term rentals in the area, and those few that are available are often too costly for those in the workforce. Because of that, businesses are finding it difficult to find employees willing to commute to town

Arizona, with Ducey backing, passed a law in 2016 barring local communities from prohibiting short-term vacation rentals. New legislation taking effect in August, House Bill 2672, lets municipalities limit special events, like weddings, at vacation rentals.

Rep. John Kavanagh, R-Fountain Hills, sponsor of HB 2672, told the Arizona Republic that lawmakers should take up the issue again next year with an eye



toward the concentration of short-term rentals in some communities where longtime residents face a difficult time finding affordable housing.

“We have a real crisis in Sedona and Jerome,” he told the newspaper.

Kavanagh said lawmakers also should consider reining in projects to convert entire apartment buildings into vacation rentals to lease on websites like Airbnb. Those developers create de facto hotels while removing long-term housing from the market.

Some other legislators were not happy with HB 2672.

“What originally was sold as a way for empty-nesters and other owner-occupants to make extra money by renting a spare bedroom to a foreign tourist has become a multi-billion dollar industry that heavily caters to large groups and special events where entire homes are rented out and treated like bars and concert halls,” said Rep. Isela Blanc, D-Tempe, in an interview with the Arizona Capitol Times.

Blanc said the bill doesn’t go far enough. She suggested that cities be permitted to limit these rentals to houses where the owner is a resident or the house is a second home.

“However, if you are just a capital investor coming in and changing the neighborhood completely by buying up as many homes as possible so you can continue to profit by calling yourself an Airbnb business, then you should be treated as a hotel,” Blanc told the Arizona Capitol Times.

“It’s really digging in to where the specifics are and how we fix it without wholesale change in terms of what citizens can do if they want to legitimately rent out their home during the Phoenix Open or some other event during spring training,” Ducey said.

When it comes to investors buying multiple homes to turn into vacation rentals, the governor added: “If someone wants to buy multiple homes, that’s something I want to dig into deeper and find out where the problem lies.”

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Investment Trust Buys Chandler Complex

RENTAL HOUSING JOURNAL

JLL Income Property Trust has acquired the Summit at San Marcos, a newly-developed 273-unit award-winning urban garden-style Class A apartment community in Chandler, according to a release.

“The city of Chandler, and more broadly Phoenix’s strong market fundamentals, favorable business environment and attractive demographics coupled with Summit at San Marcos’s location in an outstanding school district make this acquisition an excellent fit with JLL Income Property Trust’s suburban apartment strategy,” Allan Swaringen,

President and CEO of JLL Income Property Trust, said in the release.

“This investment brings our aggregate apartment allocation to nearly \$900 million, with 3,400 total units representing 32 percent of the value of the JLL Income Property Trust portfolio.”

Chandler is within the area of Phoenix dubbed “The Silicon Desert” which has seen an influx of technology and financial companies benefitting from a lower cost of doing business, a more affordable higher quality of life and a strong and growing talent pool. The city hosts an Intel corporate campus, multiple semiconductor and electronic component manufacturing firms while the broader Phoenix market continues to expand with over 300,000 jobs in a 10-mile radius,

according to the release.

Summit at San Marcos is located at the intersection of several of Arizona’s most prominent thoroughfares providing access to the Greater Phoenix area with centers of employment including the Price Corridor (Intel, Wells Fargo, BofA, Paypal), ASU Research Park (JPMorgan Chase, GoDaddy), and the West Chandler Corridor (Intel, Verizon, ADP).

The property is also located in the highly desirable Chandler Unified School District which has attained LaSalle’s Silver Level ranking, and is rated #1 in the Phoenix area and #2 in all of Arizona by Niche, according to the release.

Completed in 2018, Summit at San Marcos features premium interior finishes and luxury amenity packages


with walkable access to the live-work-play experience of Downtown Chandler and direct proximity to the San Marcos Golf Course.

The apartment community’s common area amenities include a swimming pool and spa, private cabanas, fire pits, barbecue grills and a putting green. The clubhouse features a demonstration kitchen, a fitness center and a tech café.

JLL Income Property Trust is an institutionally managed, daily NAV REIT that gives investors access to a growing portfolio of commercial real estate investments selected by an institutional investment management team and sponsored by one of the world’s leading real estate services firms.

AZREIA Meeting Set for Sept. 9

The September monthly meeting of the Arizona Real Estate Investors Association will be from 5:15 to 9 p.m. Sept. 9, 2019, at the Celebrity Theatre at 440 N. 32nd Street in Phoenix.



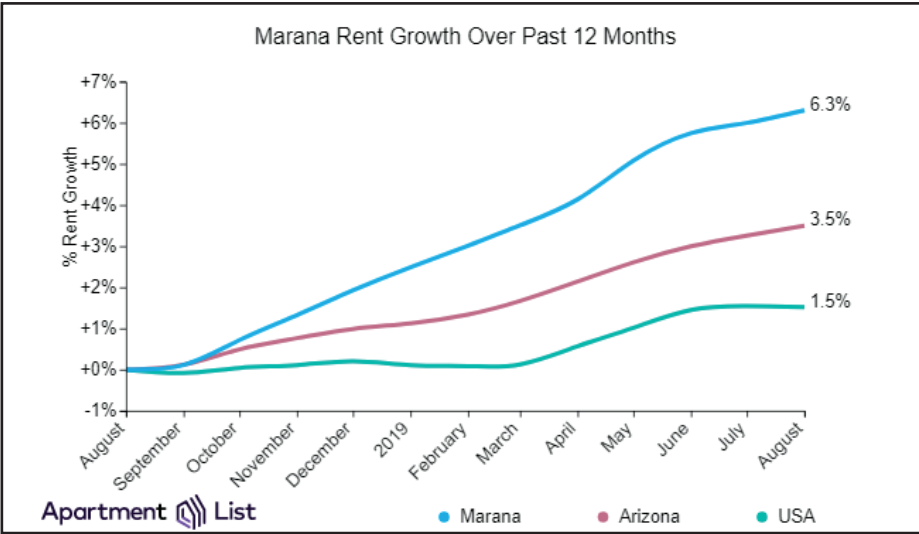
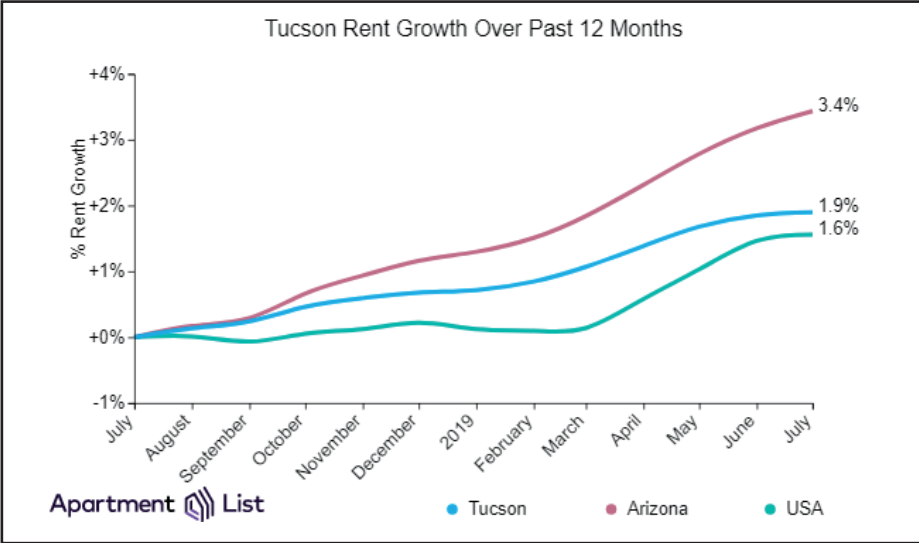
AZREIA
ARIZONA REAL ESTATE INVESTORS ASSOCIATION

The focus will be about understanding who is renting your income property, finding more deals and unique ways to expand your deal structuring and negotiation strategy.

David Pickron will share the results of an in-depth study on the characteristics and makeup of renters in Arizona to help landlords understand their tenants.

Chris McClatchey will discuss ways to target different sources of supply and how to negotiate unique and creative ways so that investors get the deal. This is sure to be yet another timely and information-filled meeting for Arizona real estate investors.

Tucson Rents Steady While Marana Rents Grow



APARTMENT LIST

Tucson rents have remained flat over the past month, however, they are up slightly by 1.9 percent year-over-year, according to the latest report from Apartment List.

Currently, median rents in Tucson stand at \$711 for a one-bedroom apartment and \$944 for a two-bedroom.

Tucson’s year-over-year rent growth lags the state average of 3.5 percent but exceeds the national average of 1.5 percent.

Marana rents have increased 0.3 percent over the past month, and are up sharply by 6.3 percent in comparison to the same time last year.

Currently, median rents in Marana stand at \$1,170 for a one-bedroom apartment and \$1,502 for a two-bedroom.

The city’s rents have been increasing for 15 straight months; the last time rents declined was in May of last year.

Marana’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

MORE RENTAL TRENDS ON PAGES 8-9



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Rental Housing Journal is a monthly publication of Rental Housing Journal, LLC.

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www.RentalHousingJournal.com

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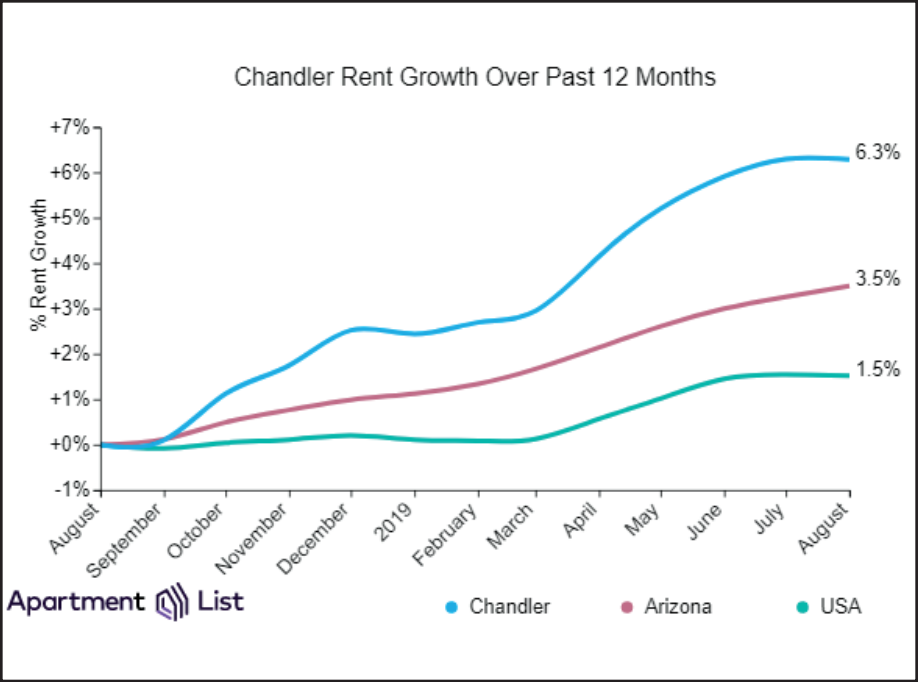
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Phoenix Leads in Year-Over-Year Rent Growth



Continued from Page 1

GILBERT RENTS DECLINE

Gilbert rents have declined 0.8 percent over the past month, but have increased significantly by 4.0 percent in comparison to the same time last year.

Currently, median rents in Gilbert stand at \$1,194 for a one-bedroom apartment and \$1,488 for a two-bedroom.

This is the second straight month that the city has seen rent decreases after an increase in June. Gilbert’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

MESA RENTS UP MODERATELY

Mesa rents have increased 0.3 percent over the past month, and are up

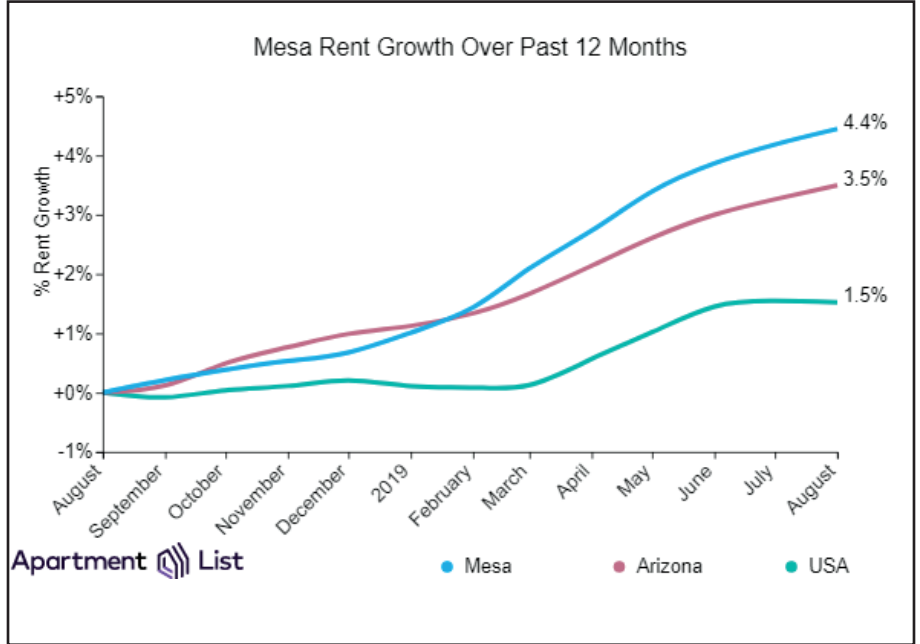
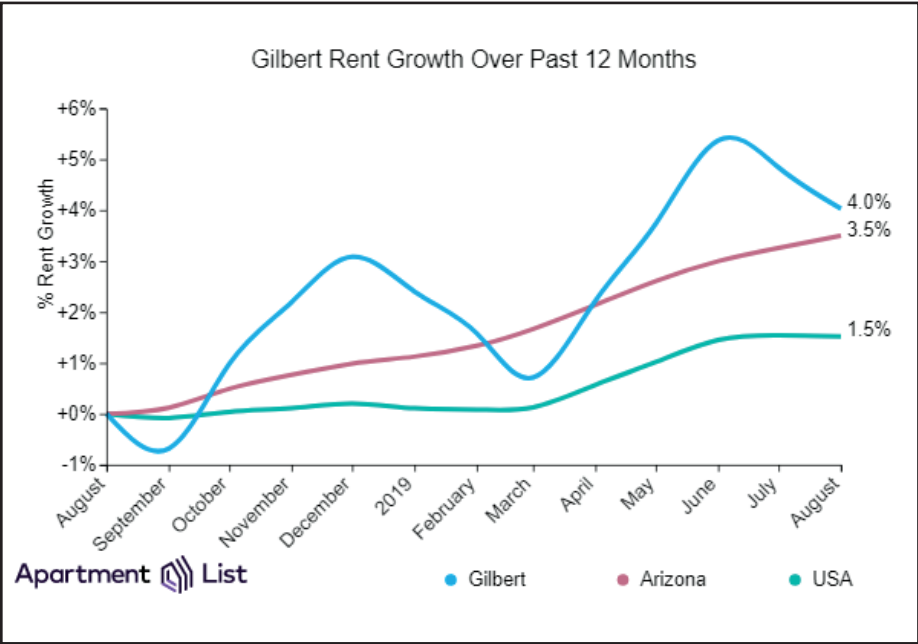
significantly by 4.4 percent in comparison to the same time last year.

Currently, median rents in Mesa stand at \$900 for a one-bedroom apartment and \$1,122 for a two-bedroom. The city’s rents have been increasing for 21 straight months; the last time rents declined was in November 2017. Mesa’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

SCOTTSDALE RENTS UP SIGNIFICANTLY

Scottsdale rents have increased 0.4 percent over the past month, and have increased significantly by 4.1 percent in comparison to the same time last year.

Currently, median rents in Scottsdale *See ‘Rent’ on Page 9*



Are Ceiling Fans Worth it in Your Rental Properties?

Continued from Page 1

around the room, not making anything cooler (though it may feel cooler because of the air moving across your skin).

ARE THERE ANY NEGATIVES TO CEILING FANS IN RENTAL PROPERTY?

Ceiling fans need routine maintenance in your rental property, so be aware of these things:

- **Inspecting** – This should happen at least once a year to ensure everything is working correctly. An inspection of the ceiling fan is fairly easy using a ladder.
- **Cleaning** - While inspecting the fan, you will probably notice a layer of dust. Dust accumulation can reduce airflow, make the fan work less efficiently, and have a negative impact on your health or the health of your tenants. When cleaning the blades, make sure not to use a product that will take away the finish.
- **Lubrication** - Check with the guide that came with your ceiling fan before adding any lubrication.

Typically, you make sure the fan is turned off before adding 4-6 drops of lubrication oil to the small hole located near the motor. Some models are maintenance-free and don’t require lubrication, so make sure to check which kind of model you have.

WHAT CAN GO WRONG AND NEED MAINTENANCE?

- **Wobbling** - Over time, ceiling fans can start to wobble. There are balancing kits made to fix this specific issue.
- **Noise** - When ceiling fans are making excessive noise, it is usually due to a loose part, or a sign that it needs lubrication. Try tightening up any fixtures or lubricating the motor.

So, ARE CEILING FANS WORTH IT IN YOUR RENTAL PROPERTY?

When looking at the positives and negatives of ceiling fans, the cost of a fan and the small amount of routine maintenance seems worth it if you are able to save money on energy costs.

Keep in mind that landlords or tenants are only able to save energy by coupling ceiling fans with air conditioning and raising the thermostat four degrees higher.

EXTRA TIPS FOR CEILING FANS

- Don’t leave the fan running 24/7. Turn it off when no one is in the room.
- Make sure the ceiling height is at least eight feet.
- Ceiling fans can also to warm rooms in the winter by flipping the switch that reverses the direction of the rotation. This makes the air move up toward the ceiling, forcing warm air down into the room.

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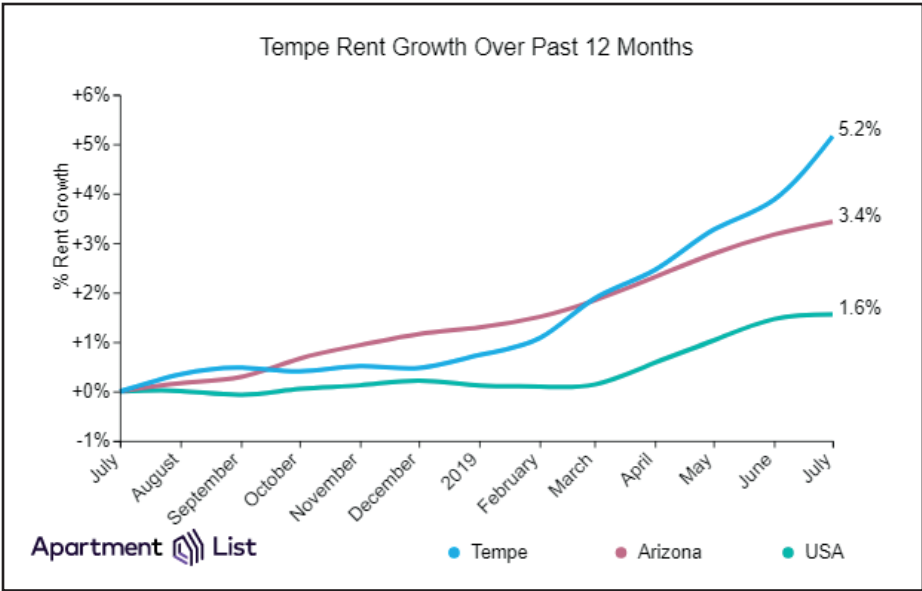
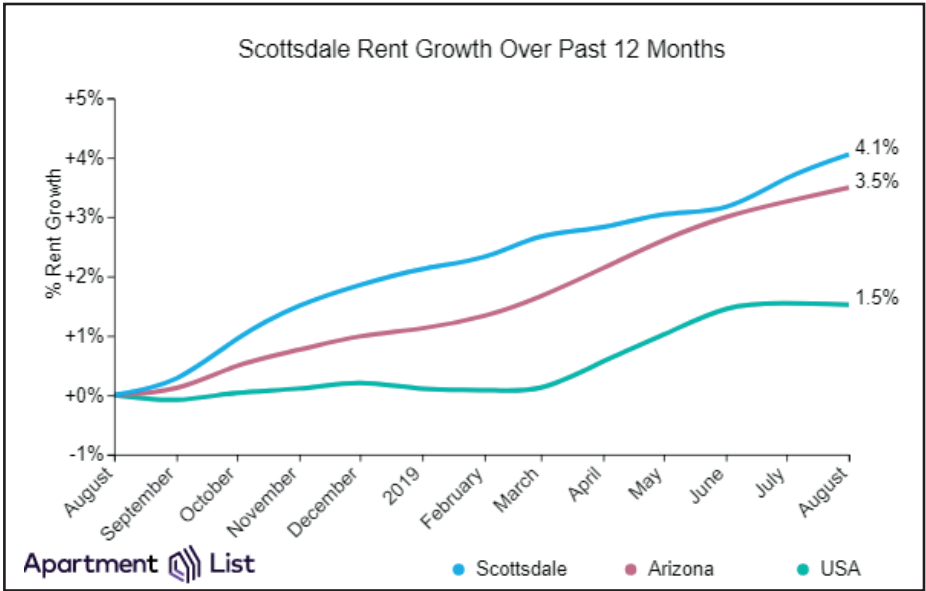
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Rent Growth in West Valley Mostly Trending Upward

Continued from Page 8

stand at \$1,081 for a one-bedroom apartment and \$1,347 for a two-bedroom.

Much like Phoenix, Scottsdale rents have been increasing for 21 straight months; the last time rents declined was in November 2017. Scottsdale’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

TEMPE RENTS UP 1.2 PERCENT

Tempe rents increased 1.2 percent over the past month, and are up significantly by 5.2 percent in comparison to the same time last year.

Currently, median rents in Tempe stand at \$977 for a one-bedroom apartment and \$1,218 for a two-bedroom. This is the seventh straight month that the city has seen rent increases after a decline in December of last year.

Tempe’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

WEST VALLEY REPORT

PEORIA RENTS INCREASE

Peoria rents have increased 0.8 percent over the past month, and have increased moderately by 3.8 percent in comparison to the same time last year.

Currently, median rents in Peoria stand at \$1,167 for a one-bedroom apartment and \$1,454 for a two-bedroom. The city’s rents have been increasing for 21 straight months; the last time rents declined was in November 2017.

Peoria’s year-over-year rent growth leads the state average of 3.5 percent as well as the national average of 1.5 percent.

GLENDALE RENTS UP SIGNIFICANTLY

Glendale rents have increased 0.5 percent over the past month, and are up moderately by 3.5 percent in comparison to the same time last year.

Currently, median rents in Glendale stand at \$934 for a one-bedroom apartment and \$1,163 for a two-bedroom. This is the eighth straight month that the city has seen rent increases after a decline in December of last year.

Glendale’s year-over-year rent growth is on par with the state average of 3.5 percent but exceeds the national average of 1.5 percent.

GOODYEAR RENT TRENDS FLAT

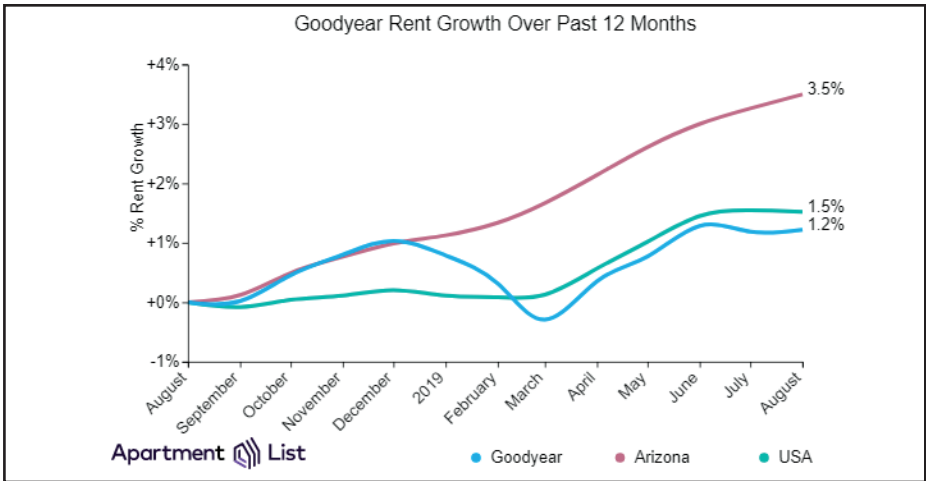
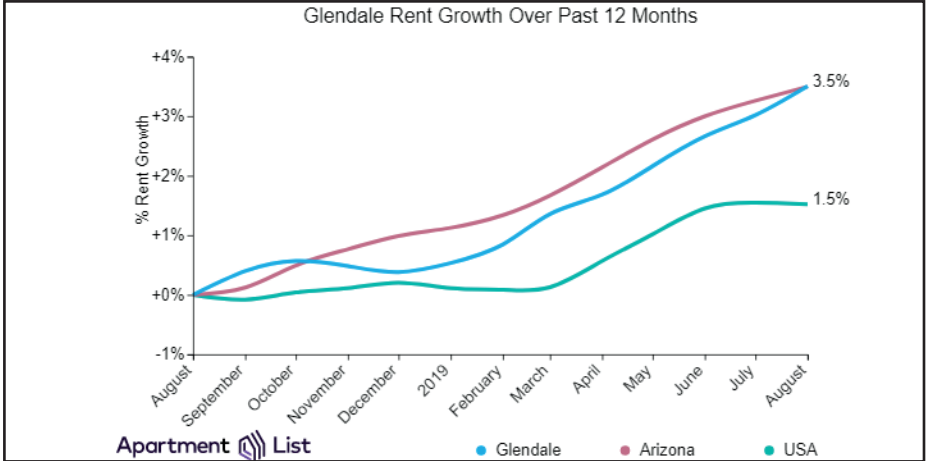
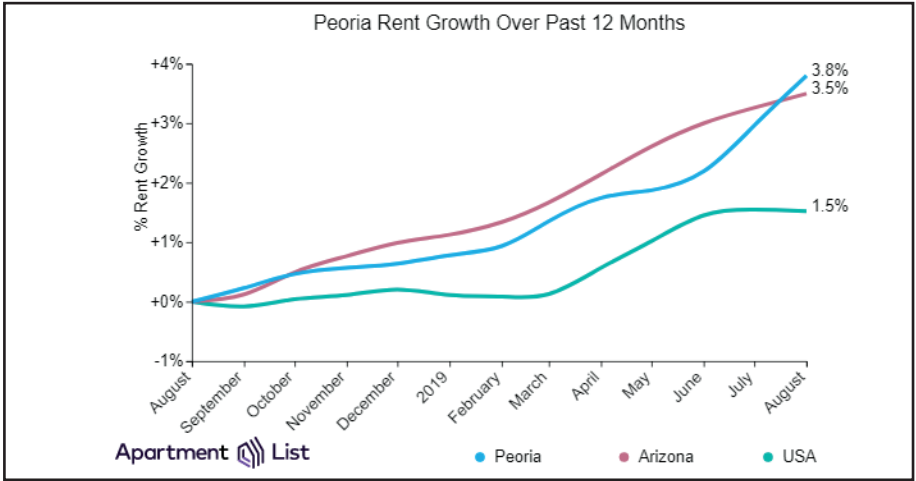
Goodyear rents have remained flat over the past month, however, they have increased slightly by 1.2 percent

year-over-year. Currently, median rents in Goodyear stand at \$1,143 for a one-bedroom apartment and \$1,424 for a two-bedroom. Goodyear’s year-over-year rent growth lags the state average of 3.5 percent as well as the national average of 1.5 percent.

SURPRISE RENTS INCREASE SHARPLY

Surprise rents have increased 1.2 percent over the past month, and are up moderately by 2.2 percent in comparison to the same time last year.

Currently, median rents in Surprise stand at \$1,112 for a one-bedroom apartment and \$1,385 for a two-bedroom. This is the second straight month that the city has seen rent increases after a decline in June. Surprise’s year-over-year rent growth lags the state average of 3.5 percent but exceeds the national average of 1.5 percent.



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Can You Put ‘No Guns in Apartments’ in Lease?

Continued from Page 1

landlords cannot use a prohibition clause in their lease, and it does not require that a gun-free zone sign be applied or present on the property.

“Now in Minnesota, they have a different law. Generally, private landlords may not restrict the lawful carry of firearms by tenants,” Dobbins said. “All the other states are silent on whether private landlords can prohibit tenants from carrying weapons or possessing weapons on the property.”

Unless your landlord is a government entity, like a city or state agency or public housing, or receives state or federal funding for rental assistance on the property, the Second Amendment is unlikely to apply. However, private housing providers prohibiting tenants from possessing firearms in a residential rental unit raises other constitutional and insurance issues.

CAN A LANDLORD IMPLEMENT A 'NO-FIREARMS' PROVISION IN A LEASE AGREEMENT?

“Generally, the answer is yes. But, I think we need to take the most practical approaches we can for all the issues surrounding the question,” Dobbins said.

“I would simply say to private housing landlords that you have more issues to be concerned about than just whether or not you can implement such a “no firearm” policy. Look, the real issue that you want to protect against is tenants having guns willy-nilly, or just being carried around and shown off on the property common area

“You can stop that kind of behavior cold in the common areas altogether, so go ahead and put something in your lease to stop it in the common areas. Prohibiting the display of weapons in the common area, or even in the unit where handling or showing of a weapon that can be seen on the inside from the outside, will help protect against liability issues and insurance/liability issues and help avoid possible Second Amendment challenges.”

WHAT ABOUT PROHIBITING TENANTS FROM HAVING FIREARMS IN THEIR APARTMENT UNITS?

“Generally, a private landlord can do that too, but there are a wide variety of issues to think about when you do so,” Dobbins said.

“Most states have not made a decision whether or not to attempt to prohibit the constitutional rights of a citizen who wants to have a weapon in their rental unit for their own protection. What that means is that leaves it up to the private landlord to make a decision about their own property,” he said.

“Yes, a private landlord can say, ‘We prohibit all tenants from possessing a weapon anywhere on the property.’ The private landlord can make that decision because there hasn’t been a case yet that draws the Second Amendment into the private-landlord decision-making process on the issue, as has happened with Fair Housing issues like race, color, national origin, familial status, religion, gender, age, military status and Americans with disabilities.” Therefore, government

assisted housing must respect a tenant's constitutional right to bear a firearm. However, the housing authority can still prohibit firearms in common areas.

But non-governmental landlords, with no applicable state or local laws, have the right to do what they want on their own property regarding firearms. “So, a private landlord can say, ‘No guns in my apartments’ or any weapon possession in the rented apartment unit’. But a non-government tenant can also say, ‘Well, I have a constitutional right to a weapon to protect myself.’ However, that case has not been heard yet,” Dobbins said. He believes the issue will eventually be heard because “someone is going to finally get that case to the Supreme Court.”

The predicament for any landlord on this issue is this: "If I allow firearms and someone on the property gets hurt, am I liable?" The answer is "Mmaybe." And, "If I prohibit a tenant from having a firearm on the property and that tenant or his family, occupant or invitee is hurt; and had that tenant had a firearm, they may not have been hurt, am I liable?" Again, the answer is "maybe." Every situation is fact-specific.

“From a practical point of view on the liability issue, let’s say a landlord says, ‘No weapons possession in the rented apartment unit.’ The tenant moves in and he wants to possess a weapon in the rented apartment unit but he decides to live there without possessing a weapon. Now somebody breaks into his home and kills his wife and his kids and he didn’t have a weapon to protect himself and his family. I don’t want to be that landlord who says ‘No guns in my apartments’ because I don’t want to get sued because I took that personal constitutional right away,” Dobbins said.

“The landlord is going to say, ‘He agreed to it and he moved in.’ Of course, the person who had their family killed is going to say, ‘Yeah, but I still had a right and you made me not have a gun and took away my Second Amendment constitutional rights to protect my family.’

“I don’t want to be that landlord,” Dobbins said. On the other side, if weapons are allowed on the property and someone gets killed or injured by a tenant intentionally, or even negligently, from a discharge of a weapon on the property, even while inside their own apartment unit, you know the attorney for the injured person is going to go after the deep pockets of the landlord, manager and their insurance money. By the way, you better check your insurance policy and find out what is and is not covered regarding this issue.

"It is an ugly Catch 22," Dobbins said.

“It is possible that if a landlord has a no-weapons policy in the lease that the landlord will immediately become a target by a victim of a tenant shooting injury claiming the landlord should have known about the tenant’s possession of the weapon and should have taken steps to remedy the possession, although not at all practical. If there is no prohibition for tenants having weapons, then all tenants know of the ‘no-prohibition’ standard, and in my opinion, the risk to the landlord diminishes not just for injuries to others, but for constitutional claims.”

ISSUES ON HOW 'NO GUNS IN MY APARTMENTS' WOULD BE APPLIED

“You run into a few issues in terms of how the prohibition can be applied in actual practice. For instance, where

you have a law that says ‘landlords can prohibit gun possession in an apartment unit in a lease,’ well, how are you possibly going to enforce that? You don’t know what a tenant brings into the property,” Dobbins said.

“You don’t know what a tenant is going to have in their home. You don’t know if they have weapons in their apartment unit. You can’t really go in and inspect for weapons. If they have a safe, you can’t go look in the safe to see if they have weapons. Even if a state has a rule that says you can prohibit weapons, there’s no practical way to enforce that prohibition.

“The second issue then becomes really important: ‘Do you really want to be the case of first impression?’ Meaning, do you really want to be the landlord who takes on some attorney and a Second Amendments rights issue because the landlord says you can’t have a gun in your own apartment unit to protect yourself? We have all seen lately that mentally ill people, criminals, and terrorists can get guns. Look at Chicago, which arguably has the toughest gun laws in the U.S. Simply put, bad guys still get guns and cause havoc,” Dobbins said. No one is going to stop a mental ill person, or an evil person from bringing a gun anywhere.

“So, why should a private landlord have a such a prohibition where concerned tenants cannot possess a gun in their rented apartment unit? A private landlord does not want to become that trial case for a tenant who says, ‘Wait a second. I have a Second Amendment right to carry and to have weapons to protect myself and my family.’

“The landlord says, ‘Well, having a weapon on a private property is not a protected class like the protected classes listed above. Having a right to possess a weapon in one’s apartment unit is not a current enumerated protected class,’” Dobbins said.

“But, I tend to disagree with those people who say it’s not a protected class, because it is clear that there is a constitutional “personal right” to bear arms – period. The protected classes in the housing arena listed above are all federal mandates. Well, an enumerated constitutional right in my mind is the same thing. A court case will determine that issue in a landlord-tenant relationship at some point.”

LET'S BACK UP AND LOOK AT THE ISSUE

Dobbins suggested looking at two Second Amendment cases that he thinks make the tenant's right to a weapon in the tenant's apartment unit a personal right, and thus, a protected class.

“Here’s what we know. The federal government can impose some restrictions on gun possession. There have been a lot of debates over time as to what the Second Amendment means because it has a phrase in it regarding militias and it also talks about ‘the people’s right’ as opposed to a ‘person’s right.’ There’s been this idea that the ability or the right to bear arms is not a personal right. Rather, that it is a right of the people for a prepared militia.

“This issue came up in a case in the U.S. Supreme Court in 2008. It’s called the Heller Case. It dealt with individual rights to possess weapons. The Heller case made it very clear that there is an “individual right” to possess weapons as opposed to just a right of the people for the purposes of maintaining a militia,” Dobbins said.

See 'Guns' on Page 11

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Guns or No Guns Debate Continues

Continued from Page 10

“Heller goes on to say that the government can impose some possession restriction such as when dealing felons and the mentally ill. Such people have no personal rights because those rights are stripped for the mentally ill and felons. There still remained a question after Heller. The question after Heller was, ‘Well, that’s great, but what about the states? How does the federal law impact state laws on the subject?’”

“In 2010, the McDonald case went before the Supreme Court and that dealt with the 14th Amendment, which forbids states from passing rules to the contrary of federal law. There were basically four elements in McDonald that they dealt with: whether there could be a state prohibition against handgun ownership, whether a state could force an annual gun registration and impose a fee for annual registration, whether it could be required that guns be registered prior to acquisition, and whether a gun could be forever unable to be registered if the registration lapsed. Those state laws were struck down in the McDonald case. Basically the opinion stated that the 14th Amendment applies as to the individual right to possess guns and that states cannot pass laws that infringe upon that federal constitutional right.

“So it seems to me that private landlords forbidding tenants from possessing firearms in their apartment unit could be successfully challenged based on the Second Amendment and Fourteenth Amendment, I think, because Heller and McDonald make possession of a weapon a personal right, which I think makes it a protected class,” Dobbins said.

“I guess the simple answer is in those six states that we mentioned ... private landlords in those states can choose what they want to do, but when a private landlord chooses to ban tenants’ ability to possess a firearm in their apartment unit they face the ugly music of liability issues and constitutional infringement issues,” he said.

Dobbins said he would propose the following lease clauses for landlords:

1. “This is a landlord-tenant relationship and the landlord has no control over your unit or the home. Tenant has sole control of the dwelling unit.

In a sad 2006 Kansas City case where a landlord rented a single-family home the lease agreement expressly gave the tenant the right to sole possession of the premises, prohibited any member of the household from engaging in any illegal activity on or near the premises, and prohibited the unlawful discharge or unauthorized possession of firearms, the tenant minor child accidentally discharged a loaded gun, killing a visitor. The tenant and the landlord were sued for damages. The court indicated that because there was a landlord-tenant relationship where the landlord had no control over the property, the landlord was found NOT liable. Thompson v. Tuggle, 183 S.W.3d 611 (Mo. App., 2006).

However, in a multifamily setting, when the landlord is aware of, or should be aware, that tenant has a weapon, and the tenant acts erratically, then the landlord must analyze the landlord’s duty to the tenants for reasonable safety and make a determination with its legal counsel if the



tenant’s action make it foreseeable that the tenant may cause harm to another person on the property. If so, then the landlord must take reasonable steps to remedy the situation. Lozano v. Awi Mgmt. Corp. (Cal. App., 2016). When weapons are allowed on the premises, it is imperative that the landlord always monitor the property to see that the weapons are not misused, brandished, or unnecessarily displayed. Rosales v. Stewart, 169 Cal. Rptr. 660, 113 Cal.App.3d 130 (Cal. App., 1980).

2. “If you have any firearms, you must keep your weapons inside your unit at all times and out of view of open windows and doors, absent legitimate self-defense or the defense of others.”

3. “If you openly bring a firearm onto the common areas you will be evicted. You must keep your weapon to yourself, safely tucked away in the private confines of your apartment unit or home and not visible to other tenants, neighbors or staff.”

4. “As a landlord, I say, ‘No weapons in the common area.’ This is something that I put in my leases and in my client leases. It provides reason, accountability and protections for the landlord, the tenants and staff. It’s a section called ‘Weapons’ for the lease and this is what it says:

“Weapons of any kind, including, but not limited to, dart guns, air guns, BB guns, slingshots, handguns, rifles, or any mechanism that could be used to propel an object that could cause harm to person or property, are not allowed in the common areas, are not allowed in the office, are not allowed anywhere on the premises outside of the actual unit, and are not allowed to be displayed, shown, exposed, demonstrated, or exhibited anywhere in the community premises, except in case of self-defense or the need for imminent and immediate protection of residents’ life or property, or for self-defense or immediate and imminent protection of resident, resident’s occupants, guests or invitees’ life, or property. If a resident desires to possess a legal weapon in resident’s unit, in that case the resident must safely and inconspicuously carry said legal weapon to and from the resident’s unit in a manner that resident ensures other residents and staff do not see said weapon. Illegal weapons are never allowed visibly on the property outside of the unit. If resident or resident’s occupants do possess a legal weapon in the unit, resident shall be responsible for the proper and safe possession, handling and storage of said weapon. Landlord is not and shall not be responsible in any way to resident, occupants, guests, or invitees for any accidental, negligent, or intentional act involving any weapon or discharge thereof on, near, or off the property.”

“That’s my clause,” Dobbins said. “It covers a lot of ground because I don’t want to take away tenants’ right under after the

Heller and McDonald cases, yet we need to make sure that tenants understand, in the common areas especially, if they brandish or show a weapon they will be evicted. However, I do not think it is a good idea to take away a tenant’s right to possession in their own apartment unit or home. That is just how I personally look at it. Each private landlord has to make a decision on this subject based on an analysis of all the factors set forth in this article. I suggest you talk to your attorney and your insurance broker to make your own decision on the subject is sound,” Dobbins said.

WHAT ABOUT RESTRICTIONS ON AMMUNITION IN APARTMENTS?

Can the private sector and private landlords say you can only have so much ammunition? Or no ammunition at all?

“Yeah, private landlords can if they want to, but the same factors are at issue as for gun possession in a tenant-rented unit,” Dobbins said.

“Here’s another issue to think about. Let’s say a private landlord prohibits the possession of firearms and the private landlord calls their property now a ‘gun-free zone’ or a ‘weapon-free zone.’ In my mind, they’ve done exactly what the schools have done when you call a school a gun-free zone. You’ve just opened it up to the crazy people and you’ve said, ‘Hey, nobody here has weapons. Come over here and break in. Come over here and cause havoc to our property because no one is allowed to have weapons here and cannot defend themselves. Come in and steal from them, rob them, do whatever you want to do with them.’

“I think that sets a very bad precedent and as a premises-liability expert, I would say that by doing that you’ve now opened yourself up to say you called yourself a gun-free zone, when it is just not true. You’ve invited bad guys to your property and you intentionally, unknowingly maybe, but still intentionally put your residents at risk of harm. That’s how I look at it.

“Once you invade someone’s privacy in their home for their own protection and their own desires regarding the Second Amendment, now you’re creating some issues that you don’t really need to create. Even if a landlord has a prohibition for tenants regarding guns or ammo, it’s not going to stop someone from having weapons if they want them in their apartment unit. So why have the rule at all? Why take on extra liability and extra problems when we know that possessing a weapon in one’s apartment unit or home is practically unenforceable? A tenant should be able to possess a firearm if they want one, but if the tenant goes around bragging about it, or showing it off, that tenant needs to go.

“Now if a management company maintenance employee goes in and he sees a stockpile of ammunition or weapons, I would immediately contact the authorities and let them deal with it as they will,” Dobbins said.

Two property managers in Portland were shot by a tenant following an eviction. Should property managers have guns?

“Well, I think we’re getting into that debate a little bit with one of the remedies that’s been brought up about possibly arming teachers. For many years no in Israel the government trains and allows trained teachers to be armed. Israel has no problem with gun violence in schools because everyone knows the teachers are not only armed, but they’re trained.

“Now that’s something for management companies to decide because they’re put

in bad situation, for example: ‘Okay, if my managers and staff have a weapon and they use it, am I going to be sued? If they don’t have a weapon and can’t use it, am I going to be sued?’ If they have a weapon and don’t use it, am I going to get sued? They’re in a real pickle because if they do allow staff to carry they need to make sure those staff members are very well-trained, use the weapon when they need to and don’t misuse that weapon. I do not know of any management company that wants to tackle that giant.”

“For me as a property owner I would not mandate my staff to possess weapons. However, I would not take my staff’s constitutional right to protection away either. If the staff lawfully carries a concealed weapon, that is their choice. However, I would not want them to carry openly. Again, you have to decide as a landlord how to handle this issue after consultation with your attorney and your insurance carrier.”

SUMMARY

“There’s something to the deterrent factor, whether you have a liberal slant on guns or a conservative slant on guns. The facts are the facts,” Dobbins said.

“We just have to deal with them in a practical way. There are no easy answers to what private landlords should do about whether or not they allow their tenants to possess a legal firearm in their own apartment unit or home in the face of constitutional rights, liability issues, insurance coverage and individual feelings about weapon possession. But, it is an issue that needs deep thought and consultation with professionals.

“I think we need to take the most practical approaches we can for all of these issues, having something in our lease that says, ‘keep your weapons inside’ and ‘if you bring a weapon in the common area we’re going to evict you.’ Or, ‘no weapon possession allowed period’ and ‘if we learn you possess a weapon on the property, we are going to evict you.’ Whatever your choice, make sure that it is in writing and cannot be misunderstood. Have something in your lease on the subject and make it crystal clear.”

About Denny Dobbins: J.D. “Denny” Dobbins, Jr. is CrimShield’s and Rent Perfect’s general legal counsel. He brings 30 years of experience and a passion for protecting landlords, tenants, businesses, and communities to his work. Dobbins works with company attorneys, managers, landlords and businesses to develop pertinent criteria to assess risk factors regarding their duties to their tenants, invitees, and customers. He also testifies as an expert on negligence, negligent hiring and negligent retention. His job is to help CrimShield and Rent Perfect investigators understand the laws of every state, as each state has different statutes and legal terminology. About CrimShield and Rent Perfect: CrimShield and Rent Perfect are companies devoted to protecting companies from negligent hiring and negligent retention as well as providing tools to stop management headaches, reduce customer complaints and eliminate lawsuits. This unique preventative approach to reducing criminal activity transforms the way companies hire and monitor employees, contractors, vendors and volunteers. CrimShield and Rent Perfect help companies assess potential risk and implement easy-to-use solutions for businesses who have close interactions in the homes or offices of their customers, and for landlords of every type in landlord-tenant relationships.



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