

SPECIAL ALERT



RENTAL HOUSING ASSOCIATION OF SACRAMENTO VALLEY

January 15, 2008

Court Rulings Provide Relief to Industry on Tenant Screening Process

CAA helps persuade court on unlawful detainer information

On December 3, 2007, the Fourth District Appellate Court held in the cases of *Ortiz v. Lyon Management Group* and *Trujillo v. First American Registry* that California's law, the Investigative Consumer Reporting Agencies Act (ICRAA), is unconstitutionally vague. The California Apartment Association (CAA) contracted with attorneys Stephen Pahl and Karen McCay of Pahl & McCay, who filed a legal brief with the court. As a result, the plaintiffs (tenants) who brought this case against rental property owners and tenant screening companies were told by the court that their claims were without merit, saving members millions of dollars in fines that could have been assessed had the court ruled otherwise.

Background

A number of members were involved in the litigation. The case was about whether unlawful detainer reports are "investigative consumer reports" governed by the state's investigative consumer reporting law (ICRAA) or whether they were regular "consumer reports" governed by the state's consumer reporting law (CCRAA). Both laws have different disclosure requirements and different penalties for a rental owner's failure to follow the law. Before agreeing to rent to a prospective tenant, a rental owner or property manager generally pulls a credit report that shows the prospective tenant's payment history and any eviction proceedings. Standard practice has been to treat unlawful detainer records as consumer reports, defined under CCRAA. Plaintiffs argued, however, that unlawful detainer records fall under the broad definition of "investigative consumer reports" under ICRAA, and, as a result, owners were required to give prospective tenants additional notices. Violations of the ICRAA law authorized fines of \$10,000 per violation dating back four years.

In the end, however, the court disagreed with the plaintiffs. The court reasoned that unlawful detainer reports do not fit cleanly into one of the two existing classifications. The CCRAA governs reports containing information on a person's creditworthiness, while the ICRAA governs reports containing information on a person's character. The court found that unlawful detainer information speaks both to creditworthiness and character. The court could not write a new statute. Therefore, the court ruled that the definition of "investigative consumer reports" was unconstitutionally vague as applied to unlawful detainer reports.

Recommendation

For rental owners, property managers and credit reporting companies, this means they can continue to follow the procedures under CCRAA, which has been the historical practice. The additional disclosure notice and copy of the unlawful detainer report to the tenant is no longer needed.

As a result of this ruling, CAA will discontinue Form 3.6 (Notice of Requested Reports and Certification to Consumer Reporting Agency) which CAA created to help members comply with the more stringent ICRAA requirements during the litigation.

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