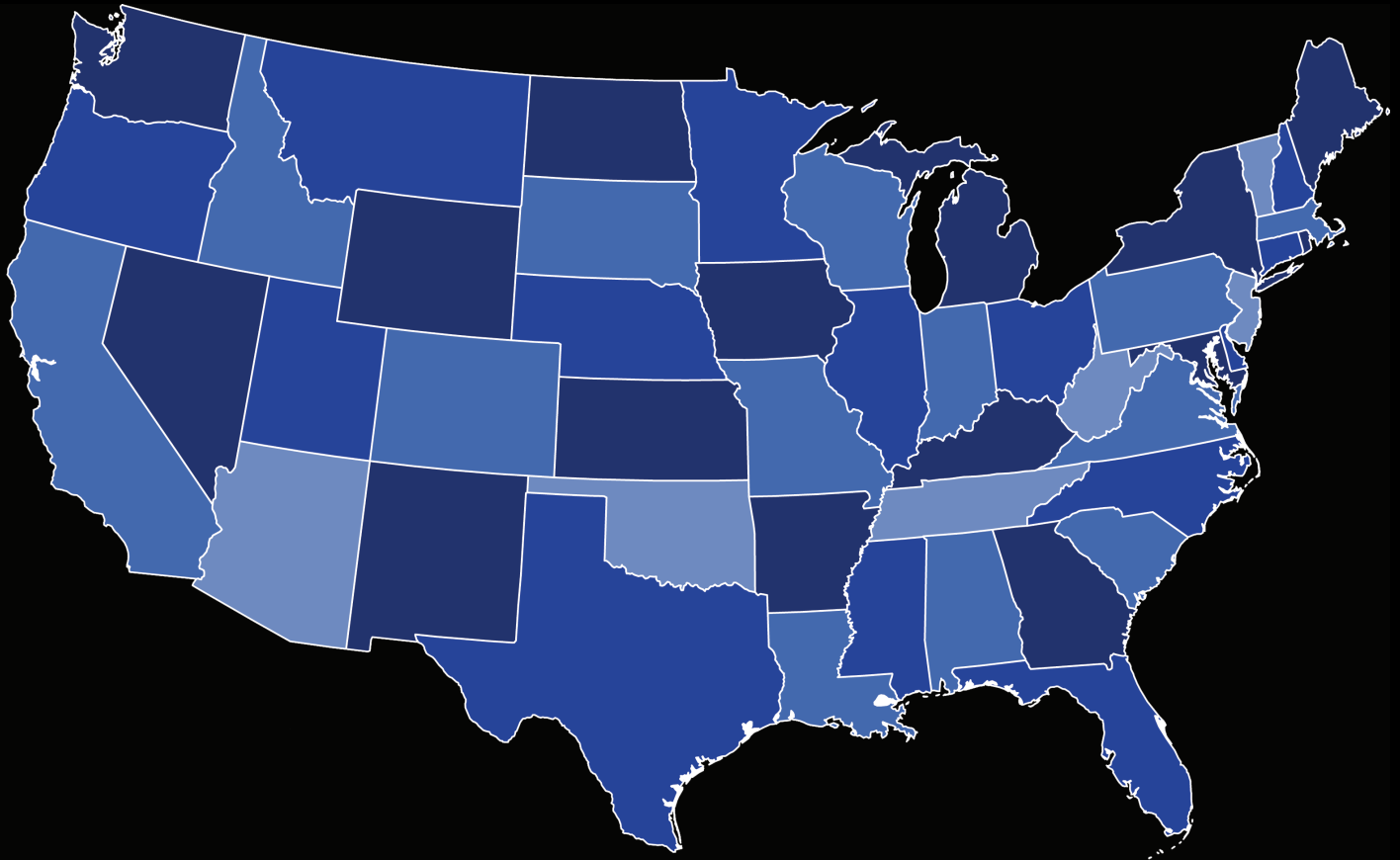


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State & Local Policy Outlook

NATIONAL APARTMENT ASSOCIATION

March 2014



The 2014 State and Local Policy Outlook is a publication of the National Apartment Association's Government Affairs Department.



2014 STATE AND LOCAL POLICY OUTLOOK

Outlook for 2016?

While it's merely the start of 2014, the mainstream media covering politics would have you believe that 2016 is already here. What do I mean by this? As an important gubernatorial election year for many states, political commentators are treating these races as place setters for the 2016 presidential campaign.

Though the media's attention is squarely at the national level, do not equate inattention for inactivity – the states will be very active. As policy often follows politics, populist initiatives designed to win constituencies are given equal footing to sound public policy discussions during election cycles. For the rental housing industry, this often translates into legislation and/or regulations packaged and sold under the guise of “maintaining access” to affordable housing. Despite the fact that many of these proposals have been proven to do the exact opposite – constrict supply and affordability – they are given new life in election years.

In this edition of the *State and Local Policy Outlook* is a summary of the sheer number of states in play for election upheaval 2014, and the policy issues that, by and large, have continued from the previous year. This year, 46 states and the District of Columbia will be “in” legislative sessions. Only the legislatures of Montana, Nevada, North Dakota and Texas will not meet this year. As always, it is important to note that this is not an exhaustive list of the issues that NAA affiliates are facing. Your affiliate may be facing new issues to the industry.

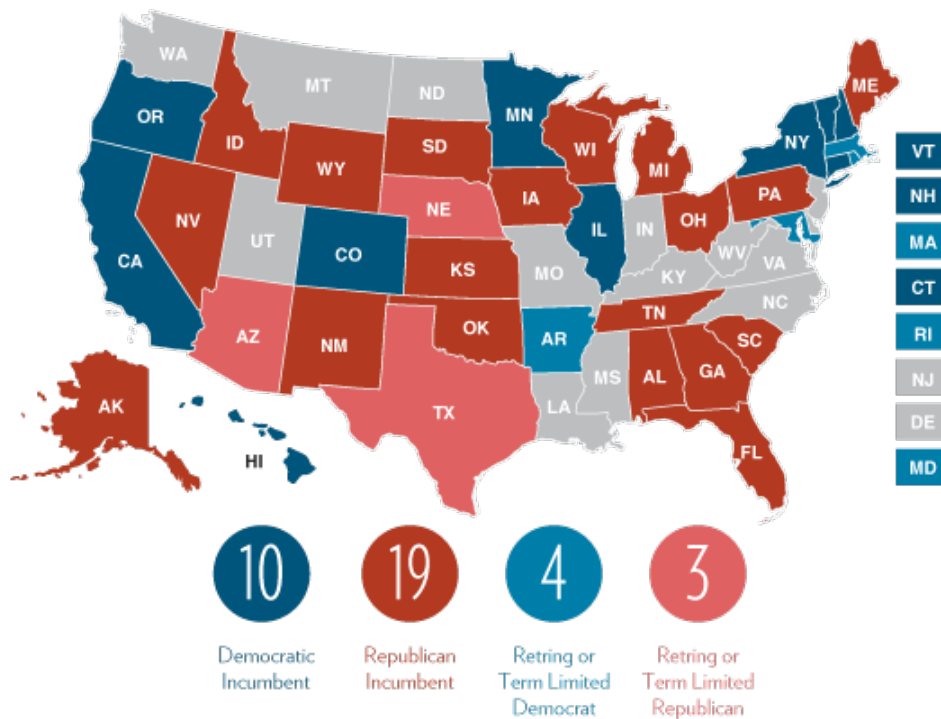
Elections

Thirty-six states will hold gubernatorial elections this year. That is up from two from 2013. The current partisan split of governors is 29 Republicans to 21 Democrats, respectively. Citizens in Arizona, Arkansas, Maryland and Nebraska will see new governors as their current governors are all term limited. Other new governors will be inaugurated in Massachusetts, Rhode Island and Texas. In Massachusetts, current Gov. Deval Patrick (D) will not seek a third term. Rhode Island's Gov. Lincoln Chaffee (D) also decided not to run again. Finally, after serving as Governor of Texas since 2000, Rick Perry (R) has opted not to seek reelection in 2014.

With states holding spring and summer primaries, the election picture will become clearer as the year progresses. Currently, many political analysts are predicting tight races in several states, including Arkansas, Connecticut, Florida, Illinois, Maine, Michigan and Pennsylvania.

ELECTIONS 2014

STATES WITH GUBERNATORIAL RACES



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State legislative seats will also be up for grabs as many states will hold state legislative elections as well. According to the National Conference of State Legislatures (NCSL), 26 state legislatures are under Republican control in both upper and lower chambers; 19 states are under Democratic control in both chambers, and there are four states that are split. Nebraska has a unicameral legislature.

Throw all of this activity on top of the congressional mid-terms and you have the makings of a year that can see a lot of change to the landscape that affects our industry. It goes without saying that our industry needs to play an active role in shaping these races by supporting candidates that understand the link between adverse legislation to our industry's ability to provide quality affordable housing.

While the politics is uncertain, what is certain is how the industry can stay informed of the latest legislative trends affecting the industry. This issue of the *State and Local Outlook* is the first in a series of publications that will continue with a mid-year report which will focus more in-depth on what affiliates have faced this year, and the end of the year review which will recap the industry's legislative efforts.

¹ Image used with permission from KSE Focus.

This document is made strong by your participation. This year, more than ever, requires your vigilance in sharing the issues you face with your colleagues. Please do not hesitate to communicate directly with me, or a member of the State and Local team.

Sincerely,
Fred Tayco



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Director of State and Local Government Affairs

Landlord / Tenant, Property Operations, Fair Housing

Housing Protections for Victims of Domestic Violence/Expansion of Protected Classes at the State and Local Level – Last year was a particularly active year for advocates of domestic violence victims. While Congress reauthorized the Violence Against Women Act (VAWA), several states considered and/or enacted bills specifically for victims of domestic violence in the housing context. Specifically, the state-level bills dealt with the following:



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Early Termination – This provision permits victims to end leases prior to the end of the term without penalty providing that certain documentation requirements are met.

Protected Class – This provision expands state-recognized protected classes to victims of domestic violence, sexual assault or stalking. Advocates have contended that victims of domestic violence are being denied housing solely based on the stigma of this status and therefore are in need of additional protection afforded to recognized classes. This issue is projected to be a hot topic for the rental housing industry in 2014. Along with domestic violence, source of income and sexual orientation are prospective classes that states are considering for protected class status. NAA anticipates that the issue of fair housing will continue to develop at the state and local level as Congress will not likely open up the federal Fair Housing Act in the near future.

Restrictions on Employee and Resident Screening – States and localities continue to consider proposals that place restrictions on the ability to screen potential employees and residents. Most recent examples include the following:

Report Portability – Washington State is considering a bill to place a limit on a property owner's ability to charge for resident screening. The bill states that if a "comprehensive tenant screening report" has already been prepared for the applicant within thirty days of the application date, a rental housing provider cannot charge a fee for costs incurred in obtaining another report. Essentially the bill would require an owner or manager to use a report generated for another property or absorb the cost of performing his or her own screening.

Ban the Box – This issue will continue to impact property owners and managers in 2014. At least 15 cities and counties and 10 states have enacted "ban the box" laws that prohibit private employers from asking an applicant about his or her criminal history on an initial job application. Most recently, San Francisco, Calif., expanded its "ban the box" law to include private employers, publicly funded housing providers and city contractors. San Francisco also joins a handful of localities that have enacted housing protections for individuals with arrest and conviction records.

Although most of the action at the state and local level on this issue has occurred on the employment side, several jurisdictions, including New Jersey, Seattle and Washington, D.C., may be hotspots in 2014 as they have explored housing protections for ex-offenders in past years.

Fair Housing Testing Targets Discrimination Against the Hearing Impaired – We anticipate that apartment owners and managers may see an increase in the fair housing testing with a focus on the hearing impaired. Foreshadowing possible, additional claims against the rental housing industry, the National Fair Housing Alliance (NFHA) has filed eight housing discrimination complaints with the U.S. Department of Housing and Urban Development against prominent owner and management companies for allegedly discriminating against the hearing impaired. NFHA conducted 304 tests of 117 apartment complexes in 25 states. Of those tested, one out of four reportedly treated deaf callers differently from hearing callers in a manner that appeared to violate the Fair Housing Act, the NFHA found.

Several affiliates have voiced concern and encountered this issue with members locally. The reported issues stem from calls by testers to apartment communities using an electronic system for the hearing impaired. The complainants allege that the representatives who took the calls at the properties hung up on callers using the service. However, anecdotal evidence from members suggest that the recordings sound similar to automated political or marketing "robocalls" and may be the root of misconnections, not the disability.

Uniform Residential Landlord Tenant Act – NAA is working with the Uniform Law Commission's (ULC) drafting committee to revise the Uniform Residential Landlord Tenant Act (URLTA). The URLTA, model landlord and tenant legislation, is codified in 21 states and has not been updated since 1972.

In 2013, NAA worked with a group of NAA affiliates, members and attorneys specializing in landlord tenant law to vet the proposed draft thoroughly and come up with recommendations. At the drafting committee's November meeting, NAA presented these recommendations; they were well received by the committee.

NAA staff is currently considering next steps for the URLTA drafting committee's spring meeting and beyond. NAA plans to work with the affiliates to reach out to ULC commissioners and educate them on the unintended consequences created by the current draft.

The Apartment Advocate is NAA's Government Affairs' flagship publication. The Apartment Advocate highlights key developments and viewpoints in industry public policy at all levels of government.

Inspections, Licensing, Development, Budget/Taxes/Fees

Rental Registration and Inspections - Rental registration and inspections ordinances at the local level and state legislation pertaining to those issues will continue to impact the apartment industry in 2014.

Maryland – Legislators have reintroduced bills requiring the periodic inspections of certain balconies on multifamily properties, while a similar bill was carried over in South Carolina.

Missouri – A bill that would authorize fourth class cities (cities with between 500 to 2,999 inhabitants) to regulate rental property has been introduced. The bill would allow for these fourth class cities to enact ordinances that could require rental registration and inspection programs.

Indiana – A bill that exempts certain rental properties from municipal inspection requirements and associated fees is moving in the legislature. The bill would exempt rental properties with more than five units that are managed by or part of a rental unit community that is managed by a professional real estate manager from municipal inspection requirements and associated fees, if they hire their own inspectors. The inspector may not be an employee of the owner.

New Hampshire – Legislation has been introduced that exempts buildings that are used exclusively as private residences and apartment houses of less than three family units from certain inspection requirements.

Problem Property Ordinance – Wilkes-Barre, PA – An ordinance was passed that allows the city to shut down a property for six months if the owner or occupant has “implied or actual knowledge” of drug activity or illegal activity with firearms occurring on the premises. A property owner can appeal to the Housing Appeals Board. The Pennsylvania General Assembly is considering HB 1796, which prohibits municipalities from penalizing residents or rental owners from summoning police or emergency assistance. This is in direct response to a lawsuit filed by the ACLU against the City of Norristown, Pa; with regard to a problem property ordinance that



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puts pressure on rental owners to evict tenants after they've been called to a property three times.

The Inspections section of NAA's website is the place to go for model legislation, talking points and more!

Taxes and Fees – Taxes are always a hot item for state legislatures and 2014 doesn't look to be any different. Last year, several states introduced legislation addressing the property tax rate structure and how multifamily properties are taxed. We anticipate that discussion to continue in several states. On a positive note, legislation has been introduced in one state at an affiliate's request that makes it more difficult for municipal corporations to impose discriminatory tax rates on multifamily rental and commercial property owners.

In an attempt to supplement state and federal revenue reductions, local governments have either enacted or extended "fees," often without voter approval. As the market continues to recover, look for these trends to continue into 2014. State legislation pertaining to application fees has already been introduced in at least two states. At the local level, rental registration and inspection fees as well as discussions on impact fees will continue to dominate local government agendas.

Building Codes, Fire/Life Safety Codes, Green Buildings, Sustainability/Environment, Submetering

Submetering and Utility Billing – This year has seen an increase in the number of states examining their laws concerning utility billing and allocation, especially as it relates to water. Some states are turning towards submetering – individual metering for real water use by unit – as a conservation method. Others are considering restricting the methodologies available to owners managing their resident's water bills.



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Ohio – A bill that would require submetering, and effectively ban ratio utility billing systems (RUBS), was introduced by a term-limited member of the minority party. The bill is not likely to pass, and several groups including the multifamily industry plan to support new legislation being developed that would provide some regulation of submetering companies without eliminating the option for RUBS.

Virginia – A submetering bill that is much more permissive and owner friendly has already passed from the House to the Senate and out of committee. The bill expressly allows both submetering and RUBS in apartments. In addition, owners would be allowed to collect reasonable fees including monthly billing fees, account set-up fees or move-out fees, to cover actual costs of administration expenses charged by a third-party provider.

New Jersey – The only state that outright banned submetering for decades has legislation under consideration that allows for multifamily submetering. The multifamily industry has fought for this ability for many years. This bill permits the sub-metering of water and sewerage service in multi-family dwellings and is intended to promote water conservation.

California – A new submetering bill would authorize the owner or operator of a building containing residential units to install equipment to determine or use an economic allocation methodology to approximate the quantity of water that is provided to the tenants and used in the common areas of that building. The bill would require all new multi-unit residential buildings permitted on or after Jan. 1, 2015, to be constructed in a manner to permit measurement by a county, municipal or other public water system or the owner or operator of water use by each unit and to have installed separate submeters for each unit.

Building Codes/Life Safety – Last year, the International Code Council (ICC) considered several major codes for the 2015 adoption cycle, including Fire, Green, Energy Conservation and Property Maintenance. The industry’s early involvement in the process reduced many inflexible “one-size-fits-all” mandates; however, there continues to be issues that could be problematic down the line.

As more and more localities consider the 2012 codes for adoption, there are more opportunities for incorrect interpretations and amendments. Once the ICC publishes the codes, states and localities have the ability to alter them (within reason) to fit the specific needs of their market’s geography and climate. Thus, the 2012 codes (and eventually the 2015 codes) receive a sort of “second act” at the local level. Several affiliates continue to address punitive code provisions with their local building officials and fire marshals, especially as it relates to fire safety measures like sprinklers and smoke detectors on the local level.

Carbon monoxide detector regulations are also enjoying increased time in the spotlight in 2014. New legislation in Pennsylvania was signed last December that requires owners of multi-family residential buildings to install carbon monoxide alarms in every unit of their properties by June 2015, making it nearly the 30th state to have some type of statute on carbon monoxide detectors. Since then, at least six more states have legislation either introducing new regulations for multifamily or modifying existing carbon monoxide statutes. Virginia’s legislation in particular is moving very quickly; it has already passed from the Senate to the House and out of committee. Bills in Nebraska, Utah, New York and Vermont are targeting everything from installation to maintenance of carbon monoxide detectors.

*Learn More about
[Building Codes on the
NAA website!](#)*

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