Module 6: CONTEMPORARY ISSUES IN MULTIFAMILY HOUSING

Instructor Guide

November 2017
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Acknowledgments

SUBJECT MATTER EXPERTS

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The National Apartment Association Education Institute acknowledges the contributions of countless volunteers who made this program possible. We extend our thanks to all and pledge to maintain the CAPS credential as the premier standard apartment industry training program for all apartment portfolio supervisors.
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Instructor Guide Introduction

The National Apartment Association thanks you for your time, talent, and expertise in training and developing the next generation of Certified Apartment Portfolio Supervisors.

Whether you’re a subject matter expert or lay person...a seasoned instructor or a new teacher...this guide will help you become an even more engaging and effective trainer.
Fast Facts: Contemporary Issues in Multifamily Housing

COURSE TYPE

• Instructor-led classroom training
• Uses presentations to teach the course material

COURSE MATERIALS

• This instructor guide
• The Contemporary Issues Participant Guide
• The Contemporary Issues PowerPoint Slides

COURSE LENGTH

Approximately two to three hours

WHERE THIS COURSE FITS IN THE CAPS TRAINING CURRICULUM

Contemporary Issues in Multifamily Housing is the sixth course in the CAPS training series. Here’s how the entire series lays out:

1. Client Services and Stakeholder Relations
2. Investment Management
3. Improving Asset Performance
4. Asset Evaluation and Preservation
5. Talent Development
6. Contemporary Issues in Multifamily Housing
Instructor Guide Features

PARTICIPATION PROMPTS

Within the text of this instructor guide, you will find a few optional participation prompts. These prompts are merely suggestions, and are there to help facilitate conversation and engagement in the classroom.

These participation prompts will look like this:

Participation Prompt

These prompts will contain questions to prod the participants into thinking about the issues you’re covering.
Message to Apartment Portfolio Supervisors

Residents depend upon the CAPS and the onsite teams to provide safe, accessible homes in a way that is compliant with the law. In order to do this, there are a lot of things that have to go smoothly behind the scenes, and this is not always a straightforward task. There are many laws, regulations, and standards that lack clarity, are difficult to follow, or are inadequate to accomplish their stated goals. In addition, there are new challenges, like cybersecurity, that can seem intimidating to those without the specialized knowledge to understand them at an expert level.

The Certified Apartment Portfolio Supervisor (CAPS) training program is designed to prepare CAPS to navigate some of the thornier contemporary issues facing multifamily housing providers as they strive to meet the needs of their residents.

Contemporary Issues in Multifamily Housing is one module in the CAPS credential program.

The complete set of CAPS modules is:

1. Client Services and Stakeholder Relations
2. Investment Management
3. Improving Asset Performance
4. Asset Evaluation and Preservation
5. Talent Development
6. Contemporary Issues in Multifamily Housing

For more information about this program or any of NAAEI’s education programs, ask your instructor, contact your local apartment association, or contact NAAEI at (703) 518-6141 or education@naahq.org.
Module Structure and Timing

This module will run for approximately two hours. This time estimate does not include breaks, which you may add at your discretion (add 60-90 minutes to total time if including breaks and lunch). Each module will include a mix of activities, discussions, watching videos, and slides. Your instructor will lead the discussions and walk you through the course.

The time structure of the course will be:

<table>
<thead>
<tr>
<th>Section</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1: Your Residents</td>
<td>60 minutes</td>
</tr>
<tr>
<td>Section 2: Your Business</td>
<td>40 minutes</td>
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</tbody>
</table>
Introductions

Welcome to the Contemporary Issues in Multifamily Housing module, part of the National Apartment Association Education Institute’s Certified Apartment Portfolio Supervisor (CAPS) credential program!

Your instructor will ask you to participate in the following activity:

Introduce yourself to the group and answer the following questions:

- Have you (or anyone you worked with) ever had difficulty knowing how to respond to a resident’s request for special accommodation?
- How comfortable do you feel with your level of knowledge about issues like cybersecurity or music licensing?

[if the class is large, then participants may do this activity in smaller groups]

Learning Goals

At the end of this module, you will be able to:

- Be familiar with contemporary issues affecting multifamily housing property management.
Section 1 - Your Residents

Residents depend upon you and your team to provide safe, accessible in ways that are compliant with the law. Unfortunately, this is not always a straightforward task. There are many laws, regulations, and standards that lack clarity and are difficult to follow or inadequate to accomplish their stated goals.

In this section, you will learn how to navigate through some of the contemporary issues facing multifamily housing providers as they balance the needs of their residents with regulatory and legal compliance.

Topics Covered:

- Fair Housing: Keating Memorandum.
- Fair Housing: Assistance Animals.
- Fair Housing: Hoarding.
- Fair Housing: Criminal Background Checks.
- ADA-related Lawsuits.
- Non-refundable Administrative Fees.

FAIR HOUSING: KEATING MEMORANDUM ¹

Discrimination based on familial status violates the Fair Housing Act, so it is a violation to refuse housing to a prospective tenant solely because the tenant has children. Your community managers will need to make reasonable decisions about occupancy limitations, however, so at times there may be tension between the desire to maintain a safe living environment and the need to comply with the law.

The Keating Memo

In March of 1991, HUD released the Keating Memorandum that attempted to clarify HUD’s position on Fair Housing violations relating to occupancy restrictions. The Keating Memo clarified that HUD and the Department of Justice, as a general rule, considered an occupancy policy of two persons per bedroom to be reasonable, but that reasonableness is rebuttable and is not a bright line rule.

The Keating Memo also illustrates hypothetical examples of when the two person per room rule may not be reasonable. Factors relevant in the memo’s analysis include:

¹ Adapted from “Fair Housing: Familial Status and Occupancy”. (Skojec, Michael W., Esq. and Michael P. Cianfichi National Multifamily Housing Council and National Apartment Association. Arlington, Virginia, 2016)
• Size of the bedroom and overall unit.
• Age of any children occupants.
• Configuration of the unit.
• State and local laws.
• Other physical limitations of the building.

The Keating Memo, later incorporated into the Federal Register by Congress, is still valid HUD policy, and the Keating factors serve as a reminder that it is ultimately a totality test and there is not a bright line rule on occupancy restrictions.

**Case Law**

Two examples from case law are illustrative of this nuanced view of Keating Memo occupancy guidelines.

• In “Rhode Island Comm’n for Human Rights v. Graul” to “Rhode Island Comm’n for Human Rights v. Graul (2015)”, the defendant forced the married plaintiffs to move out of their one-bedroom apartment after they had a child, which had led to three persons living in that one bedroom apartment. The defendant based this action on its two persons per bedroom policy. The plaintiffs brought a disparate impact action, which the defendant defended by asserting that it was merely following the guidance of the Keating Memo.

  The court, however, held that neither the Keating Memo itself, nor the defendant’s attempt to “comply” with the memo constituted legitimate business interests that justified their policy action of forcing the plaintiffs to move out. The court noted that the Keating Memo is mere internal guidance, is not enforceable as a liability rule, and cannot be used as protection from a policy that discriminates on the basis of familial status. The Graul case demonstrates that the FHA trumps the Keating Memo when the Memo’s guidance would be unreasonable, which, here, was because the third occupant was a baby infant.

• In “Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc.” to “Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc. (2011)”, the defendant forced the married plaintiffs to move out of their one-bedroom apartment after the wife gave birth to a baby, raising the level of occupants in their one bedroom apartment to three. The defendants similarly invoked a policy that limited occupants to two persons per bedroom.

  In ruling for the plaintiffs, the court pointed out that the Keating Memo states that compliance is a totality test and is not solely determined based on the number of people permitted in each bedroom. The court quoted the Keating Memo in that “owners and managers may develop... reasonable occupancy
requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit”. The court criticized the defendant’s policy because it strictly limited the number of occupants per room at two persons, without any regard to these other factors such as size of the rooms or age of the occupants.

**Best Practices**

Avoid rigid, blanket occupancy restrictions. Courts want to see informed deliberation based on the unique factors of each situation, so consider:

- The size and configuration of each apartment. If your community has some units with significantly larger bedrooms than others, your occupancy policy should reflect those differences.
- The age of occupants.
- The physical limitations of the building (e.g., sewer capacity).
- State and local laws. Compliance with applicable state and local laws tends to indicate that the policy is reasonable.

Avoid using the word “children” in your written occupancy policies and in your language as you speak about occupancy issues. As the Keating Memo itself states, “An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit”.

Remember, under the Fair Housing Act, rules and policies cannot discriminate against the protected class of familial status. The takeaway from the Keating Memo is that, although HUD suggests a two person per bedroom policy is “reasonable” as a “general rule” under the FHA, it is rebuttable, and courts will take a totality of the circumstances into consideration when determining whether familial status discrimination has occurred.
Emotional Support Animals and Service Animals

The onsite teams at your portfolio communities are undoubtedly familiar with the idea of service animals. These are animals who are typically trained to work, provide assistance, or perform tasks for the benefit of a disabled person. What they may be less familiar with, however, are emotional support animals.

Emotional support animals – also known as companion animals – are a type of assistance animal, and provide emotional support to alleviate symptoms of a person’s disability. Emotional support animals and service animals are both defined as assistance animals. For a disabled person who requires an emotional support animal, the simple presence of the animal provides a benefit.

Apartment communities have seen a significant increase in reasonable accommodation requests for emotional support animals in recent years. As a CAPS, you will be responsible for ensuring that your community manager and onsite staff understand how to handle these requests in a way that does not risk violating Fair Housing laws.

Assistance Animals and the Fair Housing Act

According to the federal Fair Housing Act, disabled persons who require an assistance animal may request a reasonable accommodation for the animal from their rental housing provider. If a resident is eligible for the request, the property owner is required to permit the disabled person to live with and use an assistance animal in all areas where the resident is normally allowed to go. Any conditions and restrictions that housing providers apply to pets, including pet deposits or fees, may not be applied to assistance animals. Local animal-related ordinances (e.g., vaccinations, leash, and waste pick-up laws) do apply, however, unless the disabled individual is physically incapable of complying with them. Under the Act, refusal to make reasonable accommodations in rules, policies, practices or services to provide a disabled individual with equal opportunity to use and enjoy a dwelling is a prohibited form of discrimination.

The Documentation Challenge

It’s important to remember that asking for documentation of the resident’s need for an assistance animal is not the same thing as asking for documentation of the suitability of a particular animal for that need. Some states have laws that prohibit asking for documentation of the animal, and in other cases, the law is often unclear.

on that point. To ensure legal compliance, it's best to assume that you may be able to verify the resident’s need (in some cases), but not the animal’s suitability.

In cases where a property owner may request documentation on the resident’s need for an emotional support animal, federal regulations allow for a broad range of individuals to provide the verification. These individuals include a physician, psychiatrist, social worker or other mental health professional. A lack of clarity in the regulations opens the door for abuse and imposes an unfair burden on property owners, undermining the intent of the Act to help those truly in need of an emotional support animal.

Among the concerns, the individual certifying the resident’s need for an emotional support animal is not required to have an actual treatment relationship with the resident. In some cases, residents supply reasonable accommodation request documentation to property owners in the form of a letter purchased online for a fee. This documentation may be provided with little or no contact with a mental health professional, other than a brief consultation, and not as the result of an actual treatment relationship.

**The Path Forward**

Persons with disabilities have a right to make reasonable accommodation requests so they may have equal opportunity to use and enjoy a dwelling. However, a lack of clarity in the law governing emotional support animals allows for abuse and imposes an unfair burden on property owners. This undermines the intent of the Fair Housing Act to help those truly in need of an emotional support animal. Revision of current regulations are needed to mitigate these potential abuses. The goal is to help ensure that the benefit of a reasonable accommodation applies only to those who are legitimately in need.

**Practical Tips**

You can find a list of frequently asked questions, as well as helpful scripts for dealing with residents’ questions, in the appendix to this module.

During this difficult time, it is the CAPS’ job to help ensure that the site team stays functional, and that the property stays operational in the most cost-efficient way possible.
FAIR HOUSING: HOARDING

Under the terms of their lease, residents have an obligation to maintain a healthy, safe, and sanitary environment. It doesn’t have to be perfect, of course, but it is reasonable to expect residents to avoid significant health and safety code violations, such as:

- Poor sanitation.
- Excessive volume of belongings.
- Blockage of ingress and egress, particularly the ability to get in and out during an emergency.
- Mold growth.
- Fuel/fire danger.

Unfortunately, some residents find this more challenging than others. Hoarding is a debilitating mental illness that results in the obsessive collection of items and the inability to get rid of them. Because hoarding is considered a mental illness, residents who suffer from this condition have the right to request reasonable accommodation under Fair Housing laws. In practical terms, this usually means giving them extra time to clean their apartment.

The Hazards of Hoarding

Hoarding is a safety issue for both the hoarder and other residents in nearby apartments. The hoarding resident risks illness, injury, or death from the accumulation of possessions in their living space. In some extreme cases, perished hoarders have been discovered buried under their possessions.

Fire is one of the most obvious hazards presented by hoarding. An apartment full of possessions is like an apartment full of kindling, and to make matters worse, it’s often very difficult to get in and out of hoarded apartments. Emergency services may be prevented from rescuing the resident and putting out the fire in time to prevent additional property damage and loss of life. This means that other residents who live near the hoarding resident are put in increased danger, as well.

Pest infestations are another way in which the hazards of hoarding spread from apartment to apartment. Infestations in the hoarded apartment can be particularly hard to treat because the excess of belongings provides sheltered habitat that can be hard to reach. Those infestations can quickly get out of control and spread to neighboring apartments.
Recognizing a Hoarding Situation

One of the best ways to address the problem is to catch it early. There are red flags you can look for and ways you can remain observant, but it’s critical to remember that you can’t spot a hoarder just by looking at them. In fact, because they want to avoid drawing attention to themselves, hoarders are often very discreet about their activities, and they may present as very polished in their appearance.

Your best bet for spotting (or even heading off) a hoarding situation is to be diligent about scheduling inspections and routine maintenance. While you can’t just enter residents’ apartments to check on them, your onsite staff can keep a sharp eye out while they inspect and repair things like smoke and carbon monoxide detectors. They should avoid inspecting the resident’s personal belongings, but they can take note of what’s visible in the normal course of their inspection or maintenance call.

Make sure your team knows to watch for these red flags, as well:

- Residents who refuse entry for maintenance, or constantly reschedule visits and make excuses for why they won’t let staff in.
- Residents who are observed bringing things in from dumpsters.
- Complaints from other residents:
  - Foul odors.
  - Sudden unexplained pest infestation. Pest control contractors can be very helpful in spotting problems.

Communication Considerations

Dealing with a hoarding situation may be very frustrating for you and your team, but it’s important to remember that communication with the resident must be handled with sensitivity. You can make it much harder for them to address the problem when you don’t. Be patient and avoid upsetting them as much as possible.

Remember that they’re protected by privacy laws, as well. Be careful about who you talk to about the situation and what you say to them. You may be tempted to call the resident’s friends and family to tell them what’s going on, for example, but that would be a violation of the resident’s privacy. Instead, consider suggesting to the resident that they ask their loved ones for help themselves.

Relapse Prevention

If the resident is able to get the situation under control and clean up their apartment, make sure you work with them to put a permanent plan in place to prevent future
hoarding problems. Put a written agreement in places that arranges for regularly
scheduled inspections, and be very specific about your expectations.

Bear in mind, however, that hoarding is difficult to overcome, and that treatment
is generally necessary to avoid relapse. If they are unable or unwilling to get that
treatment, there is a good chance they'll hoard again.

**FAIR HOUSING: CRIMINAL BACKGROUND CHECKS**

You, your community managers, and your onsite team all want to do whatever
you can to keep your residents safe. To that end, you may decide that criminal
background checks of prospective residents are an appropriate measure. While there
is nothing inherently wrong with performing these checks, you do need to be careful
how you go about it. Inconsistent and poorly-conceived policies in this area can
violate Fair Housing laws through disparate impact.

Disparate impact theory has long been used in other contexts, like employment law,
to attack practices or policies that are not overtly discriminatory, but instead are
seemingly race-neutral, yet actually have disproportionate discriminatory effects on
particular protected classes, like a certain race. Disparate impact theory is grounded
in the idea that although policies are no longer explicitly discriminatory, statistical
disparities between different races can nevertheless show that a policy has a negative
discriminatory effect—even if unintended.

**HUD Guidance on Criminal Screening Policies**

In June 2015, the Supreme Court officially recognized disparate impact theory as a
method for bringing a lawsuit under the Fair Housing Act (FHA). In April of 2016, the
Department of Housing and Urban Development (HUD) issued Guidance discussing
how a criminal conviction screening policy could violate the FHA under disparate
impact theory.

The HUD Guidance notes that racial disparities in incarcerations rates will result in
certain races, like African Americans, being denied housing more often than other
races because of criminal screening policies. The HUD Guidance requires housing
providers to support their uses of background tests with “substantial, legitimate,
nondiscriminatory interests” such as the safety of residents, employees, and property.

For housing providers that already consistently implement a criminal screening policy
which fairly weights and reflects legitimate concerns posed by particular types of

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3. Adapted from “Criminal Conviction Screening Policies: Best Practices to Avoid Disparate Impact Liability”.
offenses, the new HUD Guidance does not change a lot. In fact, the HUD Guidance is just that—guidance. It does not carry the force of law like formal agency rules, and a court is not bound to accept its conclusions.

This HUD Guidance should, however, be taken seriously and change the policies of housing providers that currently automatically exclude any applicants with any prior conviction, or that have policies that are unwritten, inconsistently applied, or not thoughtfully developed and justified.

**Best Practices for Criminal Screening Policies**

The best recommended practice is to carefully consider what types of offenses pose the greatest threat to the interests of a housing provider; for example, convictions for violent offenses against people or property, or sex offenses.

The justifications in support of these types of concerning convictions should be written down within the policy. In conducting the background test, the most concerning types of convictions should be given greater weight and should be looked at further back in the applicant’s record than offenses that pose a lesser concern to a housing provider (for example, convictions for public intoxication, minor marijuana possession, trespassing, or tax fraud). The greater the concern for a particular type of offense, the greater the weight it should be given in the screening process.

You can find a brief list of Do's and Don'ts for implementing fair and justifiable screening policies below.

<table>
<thead>
<tr>
<th>DO</th>
<th>DON’T</th>
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<tbody>
<tr>
<td>Have a written and thoughtfully developed criminal screening policy.</td>
<td>Inconsistently apply the screening policy or allow subjective considerations to be part of the decision.</td>
</tr>
<tr>
<td>Narrowly tailor the screening policy to reflect legitimate concerns over convictions that directly relate to the legitimate interests of a housing provider.</td>
<td>Ignore mitigating information and fail to review on a case-by-case basis accounting for the time passed since the conviction, the nature and severity of the conviction, and the efforts to rehabilitate.</td>
</tr>
</tbody>
</table>
Pay Attention to Evolving Law

This area of the law is still evolving, and there are areas of tension between HUD mandates, HUD Guidance, and the Supreme Court’s opinion. You will want to pay attention to formal agency rules or case law precedent in the coming years for clarification of the standards. For the time being, however, you should make sure your portfolio communities are following the minimum requirements of the HUD Guidance on screening policies.
The Americans with Disabilities Act

As a CAPS, you’ll be responsible for ensuring that the apartment communities in your portfolio are accessible to people with disabilities, including residents, prospects, guests, employees, and the public in public areas of the property. In the service of that goal, you’ll need to make sure your communities are compliant with the regulations set out in the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101).

The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and government. The law is enforced by five federal entities, each focusing on a particular aspect of the law:

- The Department of Labor – Employment.
- The Department of Transportation – Transit.
- The Department of Justice – Public accommodations, state and local government services.

In the multifamily housing industry, compliance with the ADA is primarily a public accommodations issue. Getting and staying in compliance means implementing certain design features on your properties and in your buildings that allow persons with disabilities greater access to those spaces.

One Size Does Not Fit All

While the stated objective of the ADA is a worthy one, the implementation of the law has been challenging. The complex and sometimes conflicting nature of guidance, building codes, and statutory language have led to varying interpretations of design and construction compliance.

Apartment firms are further challenged by the failure of enforcement officials to recognize that existing standards and safe harbors represent just one way to make a property accessible. Research supports the use of alternative design and construction practices that promote usability and access for those with disabilities. These include the use of reasonable construction tolerances related to pathway site slopes, reach ranges in kitchens and bathrooms and site measurements.

An acknowledgement of alternative approaches to compliance provides apartment owners and developers with the necessary flexibility to improve accessibility across the spectrum of unique apartment properties.

**An Open Invitation for Lawsuits**

Conditions under which apartment firms currently operate can lead to allegations of non-compliance that result in litigation, significant unanticipated costs, operational barriers and other challenges. From 2013 to 2014, the number of ADA public accommodation/access lawsuits surged by more than 63 percent. Businesses across the real estate sector are the targets of these lawsuits, many of which are motivated by monetary goals—often, complaints are lodged, and then settlement money is demanded in lieu of filing a lawsuit. In the end, a significant number of these complaints and lawsuits do nothing to improve access for the disabled.

**The Path Forward**

Legislation is needed to:

- Stem the growing trend of ADA “drive by” lawsuits.
- Fix inadequate and unnecessarily rigid design requirements.
- Give business owners what they need to ensure maximum access to persons with disabilities:
  - Proper notice of alleged compliance problems.
  - The opportunity to cure alleged deficiencies prior to the initiation of a lawsuit.

These changes would eliminate the incentive for complaints motivated purely by financial gain, as well as place the focus where it belongs—increasing access for people with disabilities.

As of January, 2017, such a bill has been introduced in the United States House of Representatives (H.R.620).

**NON-REFUNDABLE ADMINISTRATIVE FEES**

Fees can be a valuable tool for recouping certain expenses, as well as an added revenue stream for providing special amenities and services, but they are not a catch-all solution to be applied everywhere and in all situations. The widespread practice of charging multiple move-in fees has left some communities on the wrong side of state and local laws.
The laws in each state differ on the question of reasonable fees (and you should consult with legal counsel when in doubt), but in general, it’s important to remember that while administrative fees can help you recover the cost of some activities, they are not meant to recoup the everyday cost of doing business.

For example, if you were to charge both a lease application fee and an administrative fee, that administrative fee can’t be intended to cover things like typing up the lease, putting the file together, and making keys. Those activities all fall under the general cost of doing business in the multifamily housing industry.

Fees must be fair and reasonable. It’s not a bad idea to look at what your competition is charging, but don’t let that be your only guide. Ultimately, if someone challenges you in court, your competition’s practices won’t save you. You’ll need to defend those fees on their own merits.

See the Appendix to this module for a list of applicable state laws on application fees, late fees, and nonrefundable fees.

RATIO UTILITY BILLING SYSTEMS (RUBS)

Billing for Actual Water Usage

Billing residents directly for their actual water usage—as opposed to including estimated use costs as part of residents’ rent—is becoming an increasingly common practice in apartment communities. In addition to relieving owners of the financial and administrative burdens associated with anticipating residents’ water usage, multiple studies have shown that directly billing residents for actual water usage results in conservation of the resource.

The most prominent per-unit billing methods are submetering and ratio utility billing systems, or RUBS. With submetering, individual meters are installed in each rental unit, and residents are billed according to their actual water usage. RUBS, on the other hand, is a formula-based methodology that owners use to calculate residents’ monthly water bills.

The Regulatory Landscape

One of the challenges apartment communities face when implementing a per-unit billing system is the fact that state and local governments may view the practice as selling (or reselling) the resource. In particular, regulators often take issue with fees related to such billing programs, implying that property owners and third party billing companies are unfairly profiting from the billing process. Viewed from that
perspective, some regulators have argued that apartment owners must cease the practice or register as a public utility.

Few states address the issue of directly billing apartment residents for actual water usage statutorily; however, states and localities are increasingly moving to address the issue in the courts or legislatively. For example:

- Virginia and Texas have both enacted laws permitting apartment owners to bill residents directly for actual water usage through submetering technologies and RUBS. Both states permit apartment owners to charge modest administrative fees for providing this service, and both explicitly exempt apartment owners from utility regulations.

- In California, laws requiring the inclusion and use of water submeters in newly constructed multifamily properties were enacted in 2017.

The Path Forward

Water conservation is a stated goal at all levels of government. Common sense dictates that a person will use less of something for which they are financially liable.

Charging residents based on their actual usage of the resource creates an incentive to conserve that resource.

In fact, this pattern has been observed with other utilities, like electricity and gas. Direct billing for these utilities has been standard industry practice for years, and submetering services have observed that consumption drops by as much as 25 percent once these systems are in place. In fact, during the energy crisis of the 1970s, an Executive Order from the White House prompted apartment communities to bill residents separately for electricity usage, resulting in double-digit drops in consumption.

In order for the apartment industry to make financially sound choices as well as support critical water conservation efforts, the regulatory landscape needs to recognize several things:

- Apartment communities must be able to bill for water in a way that reflects residents’ actual use.

- They (and any third-party billing company they contract) must retain the ability to recover modest administrative costs of providing the service.

- The billing method should be dictated by property economics and physical configuration rather than dictated by policy.
• The choice to administer billing in-house or through a third-party company should be left to property owners.

• Apartment communities (and any third-party billing companies they contract) must not be viewed as or regulated as utilities.

Fortunately, states and localities dealing with frequent drought conditions are leading the way by mandating that apartment residents be directly billed for actual water usage. In addition, recent changes to model code overlays (e.g., the International Green Construction Code, or IgCC) have been advocating for increased usage of submetering. While this is welcome news, states and localities considering adopting new codes that require or encourage practices like submetering will still need to ensure that property owners are not hamstrung by any limitations within existing utility regulations.
Section 2 - Your Business

In order to meet the needs of your residents, there are a lot of things that have to go smoothly behind the scenes. Smart, legally-compliant practices in your business ensure that you and your team are able to focus on your residents’ needs when they arise. Contemporary issues like cybersecurity and music licensing can be intimidating, but it’s important to have a firm grounding in the fundamentals of these issues because failure to address them can be costly and damaging to the business.

Topics Covered:

- Cybersecurity.
- Music Licensing.
- Green Buildings.
- Licensing Requirements for Lease Signers.
- Advocacy 365.

CYBERSECURITY

The Threat to the Multifamily Housing Industry

The cyber risk to the apartment industry is often erroneously overlooked and underestimated. While financial and healthcare sectors are obvious targets, bad actors have for some time now focused on other less obvious data-rich targets. Apartment companies and their suppliers often collect, use, and maintain vast amounts of sensitive financial and personal data about residents, prospective residents, and employees.

While breaches involving retail companies, financial institutions, and healthcare entities frequently dominate the headlines, the apartment industry is no less vulnerable to these risks. The industry is rich with valuable information that bad actors want. In fact, the risk to the apartment industry is arguably greater due to the fact that companies’ information security programs are relatively immature compared to other, more heavily regulated sectors, such as financial and healthcare, which have had regulators supervising compliance for years.

Moreover, the apartment industry is heavily reliant upon third-party suppliers, which can increase an organization’s cyber risk significantly. Cyber criminals will often follow the path of least resistance, and an industry that fails to devote the attention and focus needed on cybersecurity measures makes for a prime target, especially in an industry that has information about millions of families.

Cybersecurity is a Risk Management Issue

A few years ago, cybersecurity was frequently viewed as just an “IT” problem. Today, that is no longer the case. Cybersecurity is increasingly viewed as a company-wide risk management process, requiring accountability and oversight at senior levels.

Recent years have seen a dramatic increase in high-profile breaches. Analysts have determined that in 93 percent of cases, it took attackers minutes or less to compromise systems, while 83 percent of victims did not realize they had been breached for weeks or more. Unauthorized intruders can be in a company’s network hundreds of days before being discovered.

There are numerous ways cyber criminals gain access to sensitive data, but social engineering in particular remains incredibly effective. This tactic essentially tricks someone into doing something they ordinarily would not do, often by impersonating a known source and requesting sensitive information. In other words, the bad guys simply ask for the information, and the unwitting recipient of the request provides it.

The frequency and efficiency of these attacks underscore the reality that any company, in any industry, is susceptible to a cyber-attack—data breach victims are not limited to a particular industry. The current threat landscape is such that, in essence, if a business touches the internet in any way, it is a potential target for cyber-attack.

The Regulatory Landscape

While there is no unified federal law that regulates data security generally, there are several avenues of regulation and enforcement at the state and federal level, as well as a well-developed body of voluntary standards. As the cyber threat continues to gain traction, ever more regulators are asserting authority in the field.

In the absence of a unified federal standard, regulatory enforcement actions and court decisions are, in effect, creating a standard of care with respect to reasonable cybersecurity practices. It is important that apartment firms stay apprised of these decisions and understand the various ways in which legal and/or regulatory requirements may apply to their businesses.

Federal Trade Commission (FTC)

The most active regulator for data security and privacy issues. While the FTC does not have explicit authority to regulate entities’ cybersecurity practices, the Commission has assumed this authority under its consumer protection power to enforce against unfair and deceptive trade practices (often referred to as its
“section 5 authority”). All multifamily companies and their suppliers likely fall within the scope of the FTC’s section 5 jurisdiction and could be subject to an FTC enforcement action.

While the FTC does not yet have rulemaking authority or the ability to levy fines for section 5 violations, companies subject to FTC data security investigations almost inevitably end up in a 20-year consent decree, which is both cumbersome and expensive. These consent decrees commonly mandate that the company implement and maintain a comprehensive, written information security program and conduct third-party risk assessments and/or audits. In addition, to the extent a consent decree is violated, the FTC does then have the power to hand down monetary fines.

The Commission is also actively lobbying Congress to grant rulemaking authority. The key takeaway is that the FTC’s focus and enforcement of companies’ cybersecurity practices will likely proliferate in the near future.

**Securities and Exchange Commission (SEC)**

The Securities and Exchange Commission (SEC) has taken an increasing interest in cybersecurity matters as of late, including emphasizing the role of executive management in overseeing entities’ cybersecurity programs.

The Commission has also strengthened its enforcement in the space through Regulation S-P, which requires registered broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. Moreover, cyber risks should be reported in company filings, and cyber incidents may arguably require publicly-held multifamily firms to file an 8-K report with the SEC as a material event or corporate change that could be of importance to the shareholders.

**Financial Sector Requirements**

The financial sector is one of the most heavily regulated industries in terms of cybersecurity requirements, but the standards can vary in their applicability depending on the type of organization and its activities.

For example, the Gramm-Leach-Bliley Act (GLBA) regulates financial institutions’ management of nonpublic personal information, but the definition of a financial institution under the statute is quite broad and includes businesses that are “significantly engaged” in providing financial products or services. In addition, apartment companies or suppliers who perform credit checks on consumers generally must comply with the requirements of the Fair Credit Reporting Act (FCRA).
The Consumer Financial Protection Bureau (CFPB), has recently delved into the cybersecurity field, issuing its first data security-related consent order just this year. This consent order self-defines its authority to enforce against Unfair, Deceptive or Abusive Acts and Practices (UDAAP) as encompassing data security matters.

**State Laws**

In the absence of unified federal cybersecurity laws, there exists a patchwork of state laws, making compliance both nuanced and complex. The applicability of state data breach laws is governed by the state of residence of affected individuals. Thus, an apartment firm that operates in more than one state can be subject to the laws of multiple state jurisdictions.

Requirements can vary drastically across jurisdictions, including how personal information is defined by statute. In addition, certain states do not require breach notification if the company makes a determination that the risk of harm is low, while others require notification regardless of the likelihood of harm. Notification timelines for both regulators and consumers vary significantly.

**Industry Security Standards**

Several prominent industry standards exist to guide cybersecurity prevention and response activities. While these are distinct standards, they share common themes with respect to security best practices.

- Payment Card Industry Data Security Standards (PCI DSS) - Self-regulatory standards that create technical and operational requirements to protect cardholder data. These requirements apply to all entities that store, process, or transmit cardholder data, and are enforced by the payment card brands.
- National Institute of Standards and Technology (NIST) Cybersecurity Framework - Intended to provide guidance on managing cybersecurity risk.
- International Organization for Standardization (ISO) 27000 series - A set of standards and best practice guidelines for information security management, risks, and controls.
- Control Objectives for Information and Related Technology (COBIT) - A governance framework focused on regulatory compliance risk management.
- Information Technology Infrastructure Library (ITIL) - Focuses on how IT services should be used to underpin business goals and objectives.
Key Risks

The risks from breaches are numerous, and the legal, financial, and reputational significance of them underscores the need to take the threat seriously.

- **Lawsuits:** Numerous government investigations and actions as well as a variety of lawsuits have been brought as a result of companies’ data breaches. Once news of a data breach becomes public, the subject company (if the breach is of any notable size or involves certain facts) can expect lawsuits, inquiries, and investigations to commence almost instantaneously. In addition to investigations and actions by the federal and state governments, companies must also be prepared for actions by private parties. Once news of a major security incident hits the public sphere, plaintiffs’ attorneys begin filing lawsuits, which frequently turn into class actions.

- **Regulatory non-compliance:** Regulators will want to know about prior incidents (whether lessons have been learned), whether an incident response plan is in place and being followed, and what level of maturity the company has reached. Regulators do not care that a company is busy handling an incident; they demand prompt answers—to very detailed questions—and expect the company to handle the incident at the same time. In addition to inquiries, a company may also find themselves answering to Congress, the press, concerned customers, and, of course, affected individuals.

- **Increased risk from third-party suppliers:** If a supplier is breached—even if the supplier is at fault—the company with whom the supplier contracted is often held responsible or is at a higher risk for brand impact since they maintain the consumer-facing relationship. Moreover, a company may be at the mercy of a supplier if there are not adequate contractual provisions addressing breach response obligations, cooperation, and responsibility.

- **Damaged brand and reputation:** Many companies have done more damage during their communications about the incident than the company’s actual response to the incident itself. Facts change quickly and frequently during the incident investigation, and it often takes time to ascertain a good understanding of what occurred. This often must be balanced with external pressures to provide an explanation of what occurred, especially where an incident has obtained media attention.

A company’s statements made before, during, and after the breach will be scrutinized by regulators and plaintiffs’ attorneys, including whether the statements were timely and accurate. Many companies make the mistake of trying to provide too much detail too early in the process before the investigation has concluded, or before the company has determined the scope
of the incident. Such statements can result in the appearance of the company either being misleading or poorly managing its response process. Alternatively, a company may try to downplay the incident, make embarrassingly wrong statements about the sophistication of the attack or, worse still, portray itself as the victim.

Even factually inaccurate news and media reports can have damaging brand impacts if the company does not manage its response and associated communications appropriately.

- **Operational and financial impacts**: Business interruption resulting from a security incident or data breach can cripple a company. Many businesses rely on proprietary data, such as trade secrets, technical specifications, customer lists, and the like. The theft, destruction, or impaired integrity of proprietary data can cause substantial economic losses and also impair future growth and/or return on investment. Further, there can be lasting damage to customer and business relationships.

- Economic losses associated with business interruption may or may not be covered by insurance depending on the nature of the loss. Costs to respond to an incident (e.g., third-party forensics investigations, public relations firms, legal fees, credit monitoring, mailing and call center services), as well as the costs to defend regulatory investigations or lawsuits, can be far greater than costs to invest in preventive and preparedness measures.

**Best Practices**

It is essential to recognize that cybersecurity is a process and not readily achieved overnight. Preparedness is key, and it is equally vital to devote resources to incident response as it is prevention. Likewise, it will always be necessary for organizations to periodically reassess applicable cyber risks and their security posture in order to adapt to and address the evolving threat landscape and to meet legal and regulatory expectations and obligations. Development and improvement of cybersecurity programs is an iterative and ongoing process.

Best practices for undertaking this process will address six core concerns: incident response; third-party relationships; oversight; training, awareness, and enforcement; insurance; and safeguards. (Recommendations for specific actions related to these core concerns can be found in the Appendix to this module).

**Incident Response**

While the CAPS may not be the one to develop and implement the incident response plan, you must ensure that all site teams understand and follow it.
When a cyber incident occurs, the organization’s written incident response plan is one of the first things regulators will ask to see. Having a written plan in place will help to organize and streamline the incident response process. Importantly, the time to develop an incident response plan is before your first cyber intrusion occurs.

One of the most central aspects of the incident response process, and one which frequently causes problems for organizations, is effective communications. The incident response plan must establish clear communications protocols, including triggers for cross-functional coordination and escalation. In addition, clear protocols for when to escalate issues to senior management are crucial.

The issue of late engagement frequently surfaces with respect to informing the legal department (or other appropriate internal personnel, such as risk management or operations). For example, if legal is not engaged early enough, the risk for non-compliance with federal or state laws (e.g., breach notification requirements) increases, which can result in (or detrimentally affect) government investigations or litigation.

Failure to adequately track incident response procedures can also create obstacles for complying with legal obligations, such as regulatory inquiries or breach notification requirements. Incident response activities will be scrutinized in the event of regulatory investigations and/or litigation, so it is imperative that the organization is able to quickly ascertain the chronology of facts known and steps taken during the incident. To ensure this ability, companies must be able to demonstrate all steps taken during the incident response process.

**Third-Party Relationships**

Third-party suppliers often have access to a multifamily firm’s sensitive data or systems. It is also important to note that suppliers typically have third-party suppliers of their own. If a supplier is breached—even if the supplier is at fault—the company with which the supplier is contracted is generally held responsible, at least in the public’s eye, and is at risk for monetary, brand, or reputational damage. This means that if a contractor you’ve hired suffers a data breach, and that company has access to your company’s sensitive data, you could pay a hefty financial and reputational price.

An organization is only as secure as its weakest link, so even if a company robustly secures its own system, if it fails to ensure that its third-party suppliers are doing the same, the risks for a cyber incident are much higher. Your vendor compliance process should be set up to guard against such situations, and it’s critical that you ensure your site teams aren’t short-cutting those processes.
Both parties often rely on boilerplate style contracts that fail to consider necessary liability protections in the event of a cyber incident. A contract should be drafted so that the responsible party retains liability for incidents where they are culpable. It is especially important that companies establish an internal review process to ensure that these protections are included in all supplier contracts that have the potential to deal with sensitive information.

**Oversight**

Cybersecurity is now widely viewed as a risk-management process at the company-wide level, which regulators expect senior executives to directly oversee. Executive management cannot effectively oversee their cybersecurity program if they are not adequately informed of the organization’s risks and processes. Senior management should have an active role with respect to the program and need to be versed enough to actively participate in making strategic decisions.

They should also ensure they are capable of making judgments as to the adequacy of the cybersecurity program, including whether appropriate organizational structure and resources are in place. A successful cybersecurity program is largely driven by cultural expectations, and executive management is in the best position to create this environment.

Cybersecurity is a continual process, which requires ongoing attention and improvements. Organizations must continually evaluate their procedures relative to the cyber threats that confront them, and adapt measures accordingly.

**Training, Awareness, and Enforcement**

Having a cybersecurity policy or plan alone is insufficient. While one of the first things a regulator will request during an investigation is a copy of the organization’s written incident response plan, the next thing they will ask is whether that plan was followed. Thus, key players must be trained on the incident response policy, and the plan should be tested for consistency, effectiveness, and operability.

Companies that test their incident response policies have a significant advantage—from both a practical as well as a liability standpoint—over those that first execute these procedures in response to a real-life crisis. Testing the incident response plan in a controlled environment allows the organization to identify and remediate gaps or deficiencies, and to use the experience to prevent making similar mistakes in the future. In addition, regulators expect companies to routinely test their data security programs, and doing so will help inform prosecutorial discretion should a real incident arise.
Insurance

Cyber liability insurance is complex, new to the marketplace, and evolving. Understanding what cyber risks are most relevant to the company is absolutely essential to the process of securing the best coverage possible. It is likewise crucial to understand your existing coverage (if it exists at all). Failure to negotiate coverage amounts, exclusions, specific dates of coverage, and legal recourse options upon a cyber incident may leave the company financially vulnerable. Once you have an understanding of your cyber risk transfer needs, it is important to find a liability policy that most closely aligns with those needs and protects your company from financial and operational harm.

Practical Tips for the CAPS

Many of the measures necessary to protect sensitive data take place outside of the CAPS’ immediate domain, but there are several ways in which you can take direct responsibility for safeguarding your residents’ personal information.

• Coach your site teams to destroy any documents containing residents’ personal information immediately. Don’t let it accumulate in a “to be shredded” pile.

• Enforce a policy of shutting down or locking computers when they are left unattended, even when they’re only going to be unattended for a short period of time.

• Coach site teams to avoid sharing login credentials and passwords. Sharing such information puts the associate at risk and eliminates your ability to track the user in breach situations.

• Ensure that files containing sensitive personal data are not left unsecured at the property at any time. Don’t let resident files sit in stacks on desks where visitors, residents, and vendors could gain access to them.

• Add compliance with these items to your inspection list. Don’t just look for them on routine visits.

• Make sure any suspicion of a data breach is reported to the appropriate company personnel immediately.
Most of the music we hear in our daily lives has been licensed by the copyright owner. This is true whether we’re listening to the radio, watching TV, walking through the grocery store, or riding on an elevator.

In the multifamily housing industry, background music is a common phenomenon. Lobbies, lounges, fitness centers, and other common areas often feature music. Special events held on apartment community properties may prominently feature music as well, whether played by a DJ or streamed from an online source or digital device.

Depending on a number of factors, you may need to acquire a performance license for all of these uses. The legal liability for unlicensed performances of copyrighted music generally falls to the owner of the business, not the person responsible for the unlicensed performance, and violations can result in large monetary penalties.

All of this means you could be putting your property owners in expensive legal jeopardy if your onsite teams play unlicensed music on their properties, so it’s important keep yourself and your teams informed of what’s allowable under the law.

Music Copyright Basics

In the simplest terms, unauthorized use of a song constitutes copyright infringement. Whether the use of a song is authorized or unauthorized is determined by a number of factors, including how and where the song is used, and for what audience. This is true whether the infringement was intentional or not.

For the purposes of copyright law, a song is not just the particular recorded version of it that you might hear on the radio (in fact, particular recordings of songs fall under different copyright and licensing rules). Rather, a song is a musical composition, the copyright for which covers the lyrics and musical notation of that song. Recorded cover versions, printed lyrics, and sheet music for that song would all be covered under the copyright for that song.

United States copyright law grants copyright holders a number of exclusive rights with regard to copyrighted songs:

• Copying and reproduction.
• Distribution.
• Preparation of derivative works (e.g., cover versions, translations, conversion to alternate media).
• Public performance (or public display of the notation or lyrics).

With limited exceptions, only the holder of the copyright on a song is permitted to do these things. If you wanted to do any of them, you would have to request that the copyright holder grant you a license.

As a matter of convenience, performance rights are usually granted by performance rights organizations (PROs). PROs manage the performance rights of copyrighted songs for a portfolio of publishers and artists. This gives rights holders and rights seekers a single point of contact for managing the licensing of vast libraries of songs. The non-exclusive, blanket licenses granted by PROs allow for unlimited performances of all songs in that PRO’s library. In practical terms, this means you don’t need to negotiate the performance rights of each individual song you wish to play on your property.

In the United States, there are three PROs you’ll work with to secure the rights to public performance of songs: ASCAP, BMI, and SESAC. Each of these organizations manages a different, non-overlapping library of songs. Generally, if you need to seek a performance license with one of them, you’ll want to get licensed with all three of them.

**Public Performance**

In the multifamily housing industry, music licenses are typically sought to secure the right to play recorded songs on community property. Subject to a set of rules (covered in brief below), this constitutes a public performance, so the licenses you’ll be seeking from PROs are those that grant you the right to public performances of the songs they manage.

One of the most important things to remember when it comes to music licensing is that public performance is not limited to just live performances in front of an audience. According to copyright law, music is performed whether a song is played live or on a device (e.g., MP3 or CD player, radio, television, computer).

Further, such performances are considered public if:

• They happen in a place that is open to or accessible to the public, or to a group larger than a single family and a small circle of friends; or
• They are transmitted or made available to many people, even if they do not all receive the performance at the same time or in the same place.

Even though semi-public spaces such as businesses, clubs, and schools, are only accessible to certain people, performances in these places are generally considered to be public, so long as they meet the definition of public performance in other respects. This means that songs played in common areas of apartment communities would likely be considered public performances, whereas songs played in an individual resident’s apartment would not.

These rules apply whether the song is performed for profit or not. Whether the music serves as background in a lobby or as entertainment at a paid event, the songs need to be licensed (subject to exceptions covered below).

Moreover, a public performance license may not cover other uses of the same songs. If you wanted to use copyrighted songs in training videos, streamed on your website, or even quoted as lyrics in printed materials, you may need separate licenses for those uses.

License Requirement Exemptions

There are a few situations in which your business may be exempt from the need for music performance licensing. In general, these exemptions are based on the size of the business, the way the music is played or transmitted, and the type of equipment used. There are also exemptions based on whether the song is in the “public domain,” and whether the performance constitutes “fair use” (though, the latter will almost never be the case in a commercial setting).

Exemptions for Businesses Smaller than 2,000 Gross Square Feet

You may not need a performance license for your business that is smaller than 2,000 gross square feet if:

• The music is transmitted only from television, radio, cable, and satellite sources, and...

• The business does not re-transmit the music beyond the premises or charge admission.
Exemptions for Businesses Larger than 2,000 Gross Square Feet

You may not need a performance license for your business that is larger than 2,000 gross square feet if:

- You’re using a radio transmission, and... have no more than six speakers in the establishment, with no more than four speakers in any single room.

- You’re using a TV transmission, and...
  - have no more than four TVs in the establishment, with no more than one TV in each room, and no TV having a diagonal screen size greater than 55 inches, and...
  - have no more than six speakers in the establishment, with no more than four speakers in any single room.

Note: This exemption only applies to radio and/or TV licensed by the Federal Communications Commission (FCC). It does not apply to live performances, or to music played from other sources and devices such as a CD or an MP3 player.

Exemptions for Music in the Public Domain

You do not need a performance license for your business if the songs you are playing are in the “public domain”. Public domain works are not protected by copyright.

It is important to remember that “public domain” is a legal term. Just because a work is freely obtainable by the public, that does not mean the work is considered public domain. Public domain works are works that were either published before copyright law existed; published long enough ago that the copyright has expired; were once copyrighted, but have since lost copyright protection; or were released into the public domain by the rights holder.

Some examples of songs in the public domain include Let Me Call You Sweetheart (1910); I’m Just Wild About Harry (1921); and My Wild Irish Rose (1899).

Exemptions for Fair Use of Music

You do not need a performance license if your performance of the music constitutes “fair use”. Fair use exemptions apply when you’re using only limited portions of copyrighted works for certain purposes, such as teaching, criticism, reporting, or parody.

The law does not clearly define the precise boundaries of fair use, and courts have offered different interpretations, but in general, you’re unlikely to be able to claim “fair use” in a commercial context. This is especially true when there exists a mechanism for licensing the works, as is the case with music.
**Music Services**

Paid “background music” services (e.g., Muzak or DMX) obtain music licensing as part of the service they offer. This can make them an attractive option, since their services are usually cheaper than building your own playlist and obtaining the licensing directly through PROs.

This built-in licensing only applies to use of the music as background (non-featured), however. This is music you might play as background in common spaces such as lobbies, elevators, and leasing offices. Other uses of the music may not be authorized.

**Digital Audio Performances of Sound Recordings**

When your performance of a song is digitally transmitted, it becomes important to distinguish between copyright that protects a musical composition (a “song”) and copyright that protects a particular audio recording of a song (a “sound recording”). Digital audio transmissions of music require licensing of the sound recordings.

In other words, playing the radio in your lobby only involves obtaining a license to perform songs. Playing music from an MP3 player, streaming music from your website, or transmitting music from your office area to your pool area all involve obtaining a license for the particular sound recordings you’re using.

Although the copyright holders of sound recordings (usually the music labels that recorded and distributed the recordings) have a right to require licensing for digital audio transmissions within the context of an apartment community, as a practical matter, they have not done so in the past.

**When in Doubt, Ask Legal**

What is provided here is just a broad outline of music copyright and music licensing, and should not be construed as comprehensive or as specific legal advice. If you are in any doubt about whether you should pursue licensing for your use of songs or sound recordings, consult with legal counsel.

There is also a list of Frequently Asked Questions in the online Appendix to this module.
MUSIC LICENSING AT A GLANCE

This chart is not intended to be legal advice. It is information to aid apartment owners and operators in evaluating music licensing needs.

1. How Many Do You Have?

<table>
<thead>
<tr>
<th>Number of</th>
<th>TVs</th>
<th>Audio Speakers</th>
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<tbody>
<tr>
<td>Leasing Office</td>
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<tr>
<td>Clubhouse</td>
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<td>Pool</td>
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<td>Gym</td>
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<tr>
<td>Media/Game Room</td>
<td></td>
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</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
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</tr>
</tbody>
</table>

2. Is the total number of TVs four or less?
   AND Is there one TV in each room?
   AND Are the TVs ALL 55" or less?
   NO

3. Is the total number of audio speakers six or less?
   AND Are there four or less in each room?
   YES

4. Are there any other music subscriptions in effect that include a license for public performance such as SiriusXM?
   NO

5. Do you play radio, MP3s, CDs or other forms of recorded music; or allow DJs, fitness instructors or residents to play their own music using the property’s equipment (at the pool, gym, game/theater room, etc.)?
   NO

*REMEMBER*

1. Always consult with legal counsel to confirm if performance licenses are needed.
2. Update information for your property annually and whenever your equipment set-up changes.
3. Document whether or not your property must be licensed and if so, what licenses you secure.

Licenses May Be REQUIRED

Your property may need to be licensed. Contact your legal counsel to confirm what licenses may or may not be required for your property.

You May Be EXEMPT From Licenses

You may be exempt from obtaining music licenses. Contact your legal counsel to confirm what music licenses may or may not be required for your property.
GREEN BUILDINGS

Property owners and governmental entities are increasingly leaning on “green” building standards to cut energy costs and reduce environmental impact. These standards vary significantly from location to location. It will be your job as a CAPS to be aware of any “green” standards or initiatives that apply to the properties in your portfolio, and to make sure that your onsite teams are doing everything necessary to comply with them.

Greening the Multifamily Housing Industry

Energy experts attribute 40 percent of all U.S. energy consumption and 70 percent of the nation’s electrical energy usage to buildings. Consequently, buildings are often a primary target of federal, state and local legislative proposals to curtail energy use and promote sustainability.

Many building owners have made the decision to go green, recognizing that energy-efficient upgrades can potentially reduce operating expenses. Moreover, increased demand among a growing number of renters for energy-efficient housing has spurred competition among apartment providers to appeal to this particular resident demographic by offering a range of “green” amenities.

Regulatory and Standards Landscape

“Green” issues continue to rank high among local lawmaker’s priorities – a reality likely to remain unchanged for years to come. Despite market incentives that encourage developers to go green voluntarily, lawmakers continue to advocate for mandates that require new and existing buildings to be equipped with energy-efficient technologies.

While the desire for energy efficiency is a positive one, the practical implementation of green codes is not without problems, especially at the state and local level. Some local governments mandate one specific code or standard at the explicit exclusion of other programs and systems. Limiting the options available to individual developers and owners only makes it more difficult for them to make their buildings more efficient. Additionally, the availability of new standards will potentially pose difficulties for property owners and developers as states and localities adopt different codes, creating a patchwork of regulatory and construction requirements.

The Path Forward

Future green standards and initiatives at all levels of government should be undertaken with the following in mind:
• Grants, loans, and tax deductions (at the local, state, and federal level) geared toward spurring green and sustainable building practices are effective incentives.

• Tools like benchmarking are a valuable way for building owners to track energy consumption and make changes as they see fit, so long as doing so is a decision that makes the best business sense for them.

• Mandates that prescribe “one-size-fits-all” remedies to achieve targeted energy performance levels fail to account for the diversity of climates, as well as technical and operational limitations, and such policies unjustifiably drive property expenses up and consequently reduce the stock of affordable apartment housing.

• Adopted legislation and regulation should consider other energy efficiency standards in addition to LEEDs and Energy Star. The inherent commercial and residential nature of the industry necessitates a realistic and innovative approach.

• Multifamily housing is inherently green. By housing more persons per acre than single-family developments, high-density multifamily buildings make more efficient use of land, thereby necessitating less road construction and conserving more energy and green space.

• Where localities are considering programs targeting energy efficiency in the built environment, multifamily owners must be included as active stakeholders in policy discussions, to ensure successful results that are suited to the unique operational demands and capabilities of multifamily housing.

LICENSING REQUIREMENTS FOR LEASE SIGNERS

Every state has its own set of licensing and credentialing requirements for operating a property management company, acting as a property manager, and signing lease agreements.

Staying informed of the law in the states where you manage properties is absolutely critical. Making sure lease signers are property credentialed ensures the legal validity of the leases, but just as importantly, it also protects the management company’s ability to conduct business at other properties. Such requirements aren’t enforced on a per-property basis. If the wrong person signs a lease at one property, your ability to operate at every property in that state could be in jeopardy. Moreover, if that state has reciprocity agreements with other states, you could lose your ability to do business in those states, as well.
As a CAPS, you will need to know the applicable laws in the states where you manage properties, stay on top of any changes to those laws, and ensure that your onsite team has the necessary credentials to operate within the law.

You can find a state-by-state breakdown of licensing requirements in the Appendix to this module. Laws change, however, and sometimes the existing regulations are unclear. Consult legal counsel when in doubt.

**ADVOCACY 365**

The need for consistent, authentic advocacy is critical at all levels of government. Personal stories paint unique pictures that illustrate the impact of the apartment housing industry on communities, regional economies, and the national housing system. Your first-hand knowledge of apartment communities and their vital role in our communities uniquely qualifies you to genuinely influence public policy and make a difference.

To that end, the National Apartment Association has developed the Advocacy 365 program. Advocacy 365 gives you the tools you need to be a strong advocate for the multifamily housing industry year-round. From descriptions of the issues affecting the industry to tools that make it easy for you to contact and set up meetings with your representatives, Advocacy 365 provides a valuable foundation for well-informed, effective advocacy every day of the year.

Ultimately, Advocacy 365 is individual citizens, like you, forming relationships with elected officials to communicate about issues. This kind of grassroots action is essential to the multifamily housing industry. When we unite and work together, we amplify the voice of many into the resounding voice of an industry. When that happens, legislators simply can’t ignore our message.

For more information, visit the Advocacy 365 Action Center.

https://www.naahq.org/advocacy/action-center/advocacy-365
Notes