

MAHC MESSENGER

VOLUME II ISSUE 4

August/September 2012

SPECIAL POINTS OF INTEREST:

- Lawnsclaping
- William Magee
- Legal Updates

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EDITOR-IN-CHIEF

Randall Pentiuk, Esq.

Avoiding Liability When Selecting Tenants

RANDALL PENTIUK, ESQ.

The federal government recently amplified its pledge to reduce discriminatory practices that limit opportunities for minority groups. The U.S. Department of Housing and Urban Development issued a new rule on March 5, 2012 that prohibits discrimination based on sexual orientation in HUD assisted programs.

In addition, the Consumer Financial Protection Bureau issued a bulletin reinforcing prior commitments to strict enforcement and compliance with equal credit opportunity laws. HUD's proposed rule reiterates its promise to forbid housing business practices that have an unequal impact on protected classifications. Title VIII of the Civil Rights Act, as amended prohibits the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin. HUD has long interpreted the Fair Housing Act to prohibit housing practices with a discriminatory effect, even where there has been no intent to discriminate.

Landlords, private lenders, and others should assess "credit" and "housing" application practices, approval criteria, and discretionary pricing policies for unequal impact based on race, color, religion, national origin, sex, marital status, age, sexual orientation, or handicap. Businesses should also appraise practices for prejudiced impact based on classifications that the state and local units of government guard. For example:

- The Elliott-Larsen Civil Rights Act prohibits discrimination based on religion, race, color, national origin, age, sex, height, weight, familial or marital status.
- The Ann Arbor and Detroit Municipal Codes prohibit discrimination based on sexual orientation, gender identity, HIV/AIDS status, or expression of a person's friends, cohabitants, or associates.
- The Lansing Municipal Code prohibits discrimination based on student status, veteran status, political affiliation or belief, sexual orientation, gender identity or expression, or mental or physical limitation.

Practices designed to achieve a genuine business function, but that have a discriminatory outcome based on a protected classification, should be replaced if a different practice achieves the same purpose, but has less of a discriminatory impact.



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The views expressed and the accuracy of the facts presented in the MAHC Messenger are those of the authors and are not necessarily endorsed by the Editorial Committee and Directors of MAHC.

Acceptance of advertising in the MAHC Messenger does not constitute an endorsement of the products or services by MAHC. MAHC encourages the submission of news and articles, subject to space and editing. Please email all submissions to RPentiuik@pck-law.com.

HELP MAHC KEEP RECORDS UP-TO-DATE

Many housing cooperatives hold their annual meetings throughout the year, but fail to report these board changes to MAHC. This results in newsletters not reaching the proper individuals. In addition, management companies may be changed and MAHC is not advised of the change.

Please help us to keep our records current by forwarding any board changes as they occur (a letter or fax will suffice). You need not wait for your membership renewal.

We want the MAHC Messenger to reach the current housing cooperative leadership. Also, we want renewal and other notices to reach current officers in order to avoid interruptions in your cooperative's membership. Thank you.

Lawnscalping

RANDALL PENTIUK, ESQ.



With summer upon us and warm temperatures abounding, one of the main concerns of housing cooperatives is how to maintain attractive and affordable lawns. It's time to weed, fertilize, remove moss, and reseed to create "curb appeal".

For housing cooperatives, this means that the landscape contractor has also been busy readying the irrigation system, doing drainage corrections, removing and replacing dead plants, sweeping, blowing, and mowing. There is a lot to know about how to properly landscape cooperative grounds, and it is important to recognize the difference between "mow and blow artists" aka "lawnscalpers" and true landscape contract professionals.

The lawnscalper is basically a guy with nominal tools and practice. He typically does an acceptable lawnmowing job but lacks the training or understanding on integrated landscape management of one of a housing cooperative's most precious resources.

A true landscape expert has an artist's eye, a horticulturist's training and a manager's organization to make certain that your landscaping thrives through good weather and bad. Regardless of the adverse weather conditions, the landscape professional has refined ways to keep it looking its best.

Cont'd on pg 4



There is a lot to know about how to properly landscape cooperative grounds, and it is important to recognize the difference between "mow and blow artists" aka "lawnscalpers" and true landscape contract professionals.

CONT'D: Lawnsclaping

Share the work. Some housing cooperatives have members that like to do certain aspects to reduce carrying costs. Discuss with your board what options you may have.

Here are some helpful tips to keep in mind when interviewing landscape contractors:

Determine capabilities. Besides the regular services, some landscape contractors install hardscapes like retaining walls, drainage and irrigation systems which are integral to the overall job.

Check credentials. Potential vendors should have either an education in Ornamental Horticulture or several years of job experience. Look for membership in national or state landscape associations, which indicates a desire for excellence and constant improvement. Ask for a list of references and professional affiliations. Look for licensing, certification and insurance. If state law mandates, the company should be licensed or certified. Licensing offers higher accountability and guarantees the level of aptitude required by state requirements.

Level of maintenance. Do you have a low maintenance landscape or a high impact design with seasonal plants, intricate pruning and shaping, and pest control requirements?

Check insurance. Proof of insurance for workers' compensation, liability and vehicles should be available to you. Remember to check for limits and policy expiration.

Review the contract. Your landscape maintenance contract should have a detailed yearly timetable to handle every aspect of the job.

Share the work. Some housing cooperatives have members that like to do certain aspects to reduce carrying costs. Discuss with your board what options you may have.



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PROFILE: Harold Rider of Realty Mortgage Company

Harold Rider sits down with us to share his secrets of running a successful, family owned business.
RANDALL PENTIUK



Harold Rider, Co-President of Realty & Mortgage Company, is no stranger to the Midwest. Mr. Rider grew up in the Chicago suburbs, and then headed east to attend Colby College, where he graduated in 1988. From there he moved to Wilmington, Delaware where he worked for JMB properties, which was the largest real estate company in the world at that time. Mr. Rider went through JMB's training program and worked in their office group for a few years

before he moved back to Chicago and started working at Realty Mortgage Company.

Realty Mortgage Company was founded in 1906, and is a family run business. Mr. Rider's grandfather got involved in the 1920s when he purchased the company and ran it until the late 1960s, when Mr. Rider's father took over the firm's operations. Mr. Rider started working with the firm in 1991. Since then two more of Mr. Rider's brothers have also joined the company. Unsurprisingly, Mr. Rider cites his parents as the biggest influence in his life. They taught him to work hard, be honest, and make sure you put your best effort in. As for Mr. Rider, when asked what his biggest success in life was, he responded with "My kids." He has three children, and they love to spend time together going skiing, watching his kid's sports games, music and dance recitals.

Mr. Rider first got involved in housing cooperatives through Realty Mortgage Company. Since they manage pretty much every residential building there is, they became interested in working with housing cooperatives to round out their management portfolio.



Realty Mortgage Company was founded in 1906, and is a family run business. Mr. Rider's grandfather got involved in the 1920s when he purchased the company and ran it until the late 1960s

CONT'D: Harold Rider

Managing housing cooperatives became a natural extension of their business, and allows them to offer efficiencies created by their firm to Cooperatives throughout the City of Chicago and entire Midwest Region.

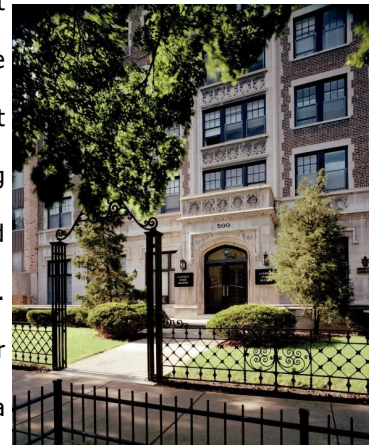


Harold D. Rider

When asked what some of the goals for Realty Mortgage were, Mr. Rider responded that they hope to grow their management business throughout the region in all sectors of the business. Right now the company manages buildings in the Midwest area, including Illinois, Indiana, and Wisconsin. They intend to achieve their growth goals by working hard to meet their customer's objectives, whether it is

an institution, a private owner, or a cooperative.

Having done business in Chicago since the days of dirt roads, Realty & Mortgage Co. is deeply invested in Chicago and the Midwest. Their business survived the Great Depression, the Great Recession, and many ups and downs in between. The firm's guiding principles of working hard, remaining fiscally conservative, and providing depth of operations to its customers has served them well. Additionally, being a mid-sized firm with 6,000 units under management, Realty Mortgage Co. can offer the resources of a larger firm with the accessibility offered by a boutique firm, thereby increasing overall customer satisfaction.



We really always look at ourselves as being a partner as opposed to a vendor. We want our customers to be successful. If they're successful, we're going to be successful.

When asked what he would like to say to the members of MAHC, Mr. Rider stated "Anyone who is a future or current customer of ours, first and foremost our game plan is to take everybody's goals in mind and let them articulate them and present them to us. Then we incorporate them into the management plan that best fits their corporation. We work hard with coops and ownership entities to implement those plans. We really always look at ourselves as being a partner as opposed to a vendor. We want our customers to be successful. If they're successful, we're going to be successful."

A Message from the President of MAHC, William Magee



Thank you to all the people that made donations in San Diego to the education fund. This fund helps so many people and members of MAHC, and truly makes our organization one of a kind.

I would be remiss as President of MAHC if I did not take the time to thank all the wonderful people that donated money to the educational fund to make it possible so that we can educate fellow cooperatives.

This education is badly needed in this country. Here at MAHC we stand ready to go wherever we are needed because you make that possible.

The outpouring of generosity proves that if you have and really love MAHC, then you are really there when you are needed.

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Sincerely,

William Magee

President, MAHC



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Are You Liable for the Actions of Your Volunteers?

RANDALL PENTIUK, Esq.



If your housing cooperative employs the help from any volunteers, you may be liable for their actions. In California a volunteer was supervising an after school group on a non-profit's property. One boy was getting a little rough during a game, and was admonished several times by the volunteer. The boy did not listen to the volunteer and made a dangerous gesture toward the volunteer, who lightly tapped the boy upside the head and told him to "knock it off and settle down."

The boy's parents learned of the incident when they picked him up, and the boy told them the volunteer slapped him across the face. This was contradicted by several witnesses who were there when the incident happened. The Police responded the next day to the non-profit's property.

The volunteer may face criminal charges for his actions depending on the statements made to police and the discretion exercised by the reviewing prosecutor. The volunteer is liable for any tort he committed, and the non-profit may be liable for negligence and may be vicariously liable for the volunteer's actions.

A non-profit can be liable for the conduct of a volunteer if the volunteer's "tort" was directly related to his responsibilities and authority, or if the volunteer had a prior criminal history that the non-profit did not check which would have indicated that he was likely to do it again, or if he had not been properly trained or supervised.

A non-profit is not normally liable if the volunteer acted outside the scope of his authority, or if he had no known history of such behavior.

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RECAP: MAHC at the Indiana Black Expo

MAHC visits Indiana at the Annual Indiana Black Expo

Jennifer Rhodes

The world of cooperative housing was a hit at the Indiana Black Expo, and the MAHC booth was a success. The concept was well received by attendants who had no knowledge regarding housing cooperatives. We had the opportunity to network with Senator Carson, other politicians, judges, attorneys, insurance companies, seniors, social workers, health workers, and visitors from Alabama, Ohio, Mississippi, Texas, and Illinois.



We had the opportunity to network with Senator Carson, other politicians, judges, attorneys, insurance companies, seniors, social workers, health workers, and visitors from Alabama, Ohio, Mississippi, Texas, and Illinois.

We all know networking does not show a response over night, however, MAHC's booth was seen by over 100,000 people - now that's I consider a success!

I want to thank Bloomfield Townhomes and Troy Manor for their great participation—you were well represented.

Humbly submitted,

Jennifer Rhodes

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Legal Updates: Your Cooperative May be Affected



RANDALL PENTIUK, Esq.

Unless Congress miraculously acts in a bi-partisan manner, the federal government will be forced to have automatic 8.4% across the board spending cuts beginning January 1, 2013.

Our member cooperatives should start to plan for the likely event that those cuts become a reality. What HUD will do and how HUD will handle the cuts is not known at the moment. If the cooperative has a project based Section 8 contract, there is a possibility that individual members' participation to rent (carrying charges) will rise from 30% to 35%. This possibility and the possible short funding, which we experienced a few years ago, would require Boards with a HUD subsidized or a HUD insured cooperative, to make difficult decisions. It is important for these Boards to begin to plan NOW.

The 8.4% cut equals 1/12 or one month of annual subsidies. What will your cooperative do if it loses one month's worth of subsidies?

Please note that the 8.4% cut equals 1/12 or one month of annual subsidies. What will your cooperative do if it loses one month's worth of subsidies? MAHC urges members to start planning now for the worst case scenario and hope not to have to use it.

Some ideas you may want to consider are:

- Draft an alternative budget;
- Start assessing your members now to cover the difference and build a nest egg fund;
- Look for non-essential services that may be reduced or eliminated;
- Research alternative funding possibilities;
- Or a combination of the above.

Please note that the above are a few key suggestions. MAHC strongly recommends that you work with your cooperatives professionals and legal counsel to draft your own plan.

You should also reach out to your Senators and Representatives (especially since this is an election year!). Tell them what traumatic harm these cuts will have on your cooperative. To find out who represents you, please use the link to "Contacting the Congress"

<http://www.contactingthecongress.org>

Please quickly e-mail your Senators and Representatives and tell them to protect HUD from severe budget cuts to the specific programs that currently help your cooperative (e.g., Project based Section 8, 236, 202, etc).

HUD Announces Publication Changes

HUD has issued page changes to the Section 8 Renewal Policy Guide Book.

HUD explained that the renewal guide changes:

- A. Discontinue the use of Attachment 20 which allowed the Renewal Contract to which it was attached to be extended. The revised text now permits early termination and renewal of the Section 8 contract upon approval by the Hub Director or Designee.
- B. Eliminate Note 1 following Section 3-2 D which required rents for an Option One ZBZ renewal to be restricted to use restricted levels.
- C. Require the use of current debt service in an Owner's budget-based rent increase request for Option Four. (Section 6-2 A 2. and 6-3 B.)
- D. Permit the rent adjustments in a multiyear contract using a budget basis only if the proposed rents do not exceed comparable market rents for Option Four. (Section 6-3B)
- E. Provide for new procedures when rents in a Rent Comparability Study are above 110 percent of the Fair Market Rent or Small Areas Fair Market Rent for metropolitan areas. This change is effective 90 days from the date of these page changes. (Section 9-23 and 9-24).
- F. Remove language in Chapter 16 "Other Issues" that requires original debt service to be used in budget-based rent increase requests in Option Four to make it consistent with the language in Chapter 6.

Permit the rent adjustments in a multiyear contract using a budget basis only if the proposed rents do not exceed comparable market rents for Option Four



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Six Month Continuing Resolution Deal Reached

The House and Senate leaders announced that they reached a deal on a continuing resolution (CR). The CR would fund all government programs at FY 2012 levels for the first half of FY 2013, unless otherwise specified. The fiscal year begins on October 1. The CR would last through the end of March 2013.

This means that all federal affordable housing programs would be funded at FY 2012 levels, including project-based Section 8. While NAHMA continues to strongly support providing fully funding project-based Section 8 at \$9.8 billion as provided by the Senate's FY 2013 T-HUD Appropriations bill (S. 2322), the FY 2012 appropriations levels are still preferable to the HUD and House proposals. The FY 2013 HUD Budget Request and H.R. 5972, the House's FY 2013 T-HUD Appropriations Act, propose cutting funding for project-based Section 8 by \$611 million below FY 2012 levels.

Senate Finance Committee Passes Tax Extenders Act

The Senate Finance Committee also passed the Family and Business Tax Cut Certainty Act of 2012 with strong bipartisan support. The bill would extend a number of expiring tax cuts including:

- The Alternative Minimum Tax (AMT) exemption for middle class families through 2013;
- The exclusion of the military basic housing allowance from income determinations for LIHTC properties through 2014, originally provided by the Housing and Economic Recovery Act (HERA) of 2008;
- Foreclosure and mortgage debt cancellation exemptions from taxable income through 2013;
- Mortgage insurance premium deductions for qualified residences through 2013;
- The New Markets Tax Credit through 2014; and
- The energy efficiency appliance credit through 2013.

NAHMA strongly supports extending the flat credit rate for LIHTCs through 2013. In fact, we have been working with industry colleagues to move legislation forward that would permanently extend the flat 9 percent credit rate for new construction and substantial rehabilitation LIHTCs, as well as create a flat 4 percent credit rate for property acquisition LIHTCs. Sens. Cantwell and Snowe have introduced this legislation in the Senate as S. 1989. Rep. Pat Tiberi (R-OH) has also introduced companion legislation, H.R. 3661, in the House. However, these bills have not been moved forward in their respective Committees.

Sen. Tom Coburn (R-OK) also offered an amendment to the bill, which would prohibit any recipient of a New Markets Tax Credit from also receiving other federal tax benefits, federal grants, or federal loans for the same purpose or project. This amendment would have essentially eliminated one of the financing tools developers and affordable housing providers use to help revitalize communities. Fortunately, the Committee opposed the adoption of this amendment in a roll call vote.

For more information about the Family and Business Tax Cut Certainty Act, please visit: <http://www.finance.senate.gov/newsroom/chairman/release/?id=e3290a69-8fa4-4a6d-8c3a-756ea03a4224>

The bill will now go to the Senate floor for consideration.

MAHC LAS VEGAS 2013



***Dates for the
2013 MAHC
Annual
Conference
in LAS
VEGAS will
be an-
nounced
soon!! Keep
your
calendars
open!***

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Taking Pictures of your Residents? Think Twice.

RANDALL PENTIUK

Children cannot consent on their own behalf. When using the name or likeness of a minor, you should seek consent from the minor's parent. People can revoke consent anytime before the use of name/photograph takes place.

If you are thinking about using pictures of your cooperative residents in a photography contest or any sort of fundraiser, think twice. While it is unlikely that a court would allow a suit alleging misappropriation of a resident's name and likeness in order to promote products or services, or make money from the commercial use of their identity, your cooperative could be subject to a lawsuit. Michigan is the only Sixth Circuit State without a "right of publicity" statute, and the only one that does not provide post-mortem right of publicity protection. In most states, you can be sued for using someone else's name, likeness or other personal attributes without permission for an exploitive purpose. *As a general rule, you should never use someone's name or photograph in advertising or promotion of your website or blog without permission.*

There are two kinds of claims. The first involves an invasion of privacy through misappropriation of name or likeness, and the second involves the violation of the right of publicity (the right of a person to control and make money from the commercial use of his or her identity).

Elements of Misappropriation & Violation of the Right of Publicity:

1. Use of a protected attribute
 - a. "Likeness" refers to a visual image of the Plaintiff, whether in a photograph, drawing, caricature, or other visual presentation.
 - b. For an exploitative purpose
 - c. Misappropriation: P must show D used name/likeness in advertising or promoting products or services. Can also be held liable for non-commercial use if D exploits the P's identity for D's benefit.
 - d. Right of publicity: right of a person to control and make money from the commercial use of his or her identity. Plaintiff must show Defendant used their name/likeness for **a commercial purpose** such as **advertising, promoting goods or services, placing name/likeness on/in products/services you sell to the public.**
 - e. No consent
 - f. Consent is a complete defense to legal claim for misappropriation or violation of the right of publicity.

Children cannot consent on their own behalf. When using the name or likeness of a minor, you should seek consent from the minor's parent. People can revoke consent anytime before the use of name/photograph takes place.

Exceptions

1. News and Commentary
 - a. Generally cannot be held liable for using someone's name, likeness, or other personal attributes in connection with reporting or commenting on matters of public interest. (Courts generally take broad view of "news" and "commentary", which encompasses both print and online sources such as **internet bulletin boards, unauthorized biographies, magazine/TV reports, fundraising letter, magazine article, and books**)

Limitation: Use of P's name/likeness **must bear a reasonable relationship** to content of news/commentary presented, or may be liable for creating an "advertisement in disguise".

CONT'D: Pictures

Michigan Case Law History:

Carson v. Here's Johnny Portable Toilets, Inc., 698 F.2d 831, 835 (Mich. Ct. App. 1983).

The right of publicity has developed to protect the commercial interest of celebrities in their identities. The theory of the right is that a celebrity's identity can be valuable in the promotion of products, and the celebrity has an interest that may be protected from the unauthorized commercial exploitation of that identity.

Janda v. Riley-Meggs Industries, Inc., 764 F. Supp. 1223 (1991).

Where an orthopedic surgeon gained a significant reputation because of his research on prevention of softball injuries by use of a detachable base; and subsequently his research was cited by a softball base manufacturer and brought suit. The Court held in favor of the surgeon and extended the right of publicity by using those research results to increase sales of the softball bases.

Ruffin-Steinback v. dePasse, 267 F.3d 457 (2001)

Miniseries depicted the lives of the Temptations' original members, and none of the plaintiffs were compensated or consented to the use of their likeness. This case also addressed the question of whether depicting a story where some of the events are fictionalized constituted a violation of the right of publicity. The court held for the Defendant; and said that the right of publicity does not prohibit depictions of a person's life story.

Parks v. LaFace Records, 329 F.3d 437 (2001).

Rosa Parks brought suit against hip hop group "Outkast" for using her name as the title of a song. Court used balancing test to analyze publicity appropriation v. free expression. The district court held that "a title that uses a celebrity's name will be protected by the First Amendment unless the title is 'wholly unrelated' to the content or was 'simply a disguised advertisement'". The court of appeals found that the evidence presented a question of fact, that "upon consideration of all the evidence, a reasonable finder of fact could find the title to be a disguised commercial advertisement".

The common law of most states creates an exception to liability for news reporting and commentary on matters of public interest, and many state statutes explicitly exempt news reporting and other expressive activities from liability. If your cooperative has a newsletter that you use pictures in, then you may be exempt from liability. In addition, hosting advertisements on your cooperative's website does not deprive you of the news and commentary exception. Courts recognize that for-profit news organizations that sell advertising space are entitled to protection.

If you have taken pictures of your housing cooperative members and are planning on using them for any purpose, the safest route is to have any subjects sign a disclosure and release form allowing you to use their likeness for any housing cooperative purpose. Protect your housing cooperative through preventative measures, and always make sure to discuss these policies with your housing cooperative's legal counsel.

***If your cooperative
has a newsletter that
you use pictures in,
then you may be
exempt from liability.***

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