

**SEPTEMBER
2017
NEWSLETTER**

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**SOUTHERN MAINE
LANDLORD ASSOCIATION**

**DON'T JUST SAY "NO" TO
RENT CONTROL,
SAY "NO" TO
"EVICION CONTROL"**

As we all know, on November 7, 2017, the City of Portland voters will be voting as to whether to pass or reject a controversial peoples' initiated proposed Ordinance adopting rent control in the City of Portland. Clearly, the SMLA, similar organizations, property owners, property management and landlords are undoubtedly universally opposed to the concept of rent control in any fashion or form whatsoever. However, within the proposed Ordinance is a section that provides for what I call "Eviction Control".

Under the proposed Ordinance, to evict a tenant who is subject to a rental agreement, the landlord must serve the tenant with 60 days' notice, except when the eviction is due to failure to pay rent, in which case the statutory requirement in 14 MRSA § 6002 applies which means you still can serve the tenant with a 7 day nonpayment notice after the tenant is 7 days or more in arrears. However, all other for cause evictions incredibly require a 60 day notice and the Ordinance specifically restricts, limits and lists specific grounds for eviction. The rental **agreement cannot state any other grounds for termination**, nor can a tenancy be terminated **for any reason other than the following**: (1.) Failure to pay rent, (2.) Substantial breach of a material term of the rental agreement, followed

by a failure to cure the breach within 30 days (requiring a prior notice and opportunity to cure of 30 days and then a 60 day notice if the tenant does not cure the breach or breaches for a total of 90 days' notice), (3) Nuisance, waste or illegal conduct caused by tenant and/or guests - 5 or more complaints substantiated by the police in a 60 period shall be evidence of such conduct, (4) Opening the unit for a qualified family member - spouse, parent, grandparent, brother, sister, child or grandchild, (5) Withdrawal from rental market for 18 months or more, (6) To remedy a code violation, (7) To make capital improvements (must offer tenant option to return to unit).

Excuse me for being too colloquial, but "ARE YOU KIDDING ME!!!!!!" Absent and barren from the restricted list of the only grounds and reasons for termination of the tenancy and rental agreement is termination at the expiration of lease. In other words, the proposed Ordinance creates an endless tenancy for the tenant for as long as the tenant wishes to remain in the premises and does not allow the landlord to terminate for no cause at the end of the term of the lease.

The wording of the proposed Ordinance leaves open to question whether a landlord can terminate a tenancy at will with a no cause 30 day notice. From my reading, it does not. On top of the 30 day opportunity to cure and 60 day notice for termination due to a substantial breach of

the lease (over 90 days total) and a 60 day notice of termination after 5 or more police substantiated calls in a 60 day period (120 days total) due to nuisance, waste or illegal conduct and the ensuing Forcible Entry & Detainer eviction hearing in District Court, unbelievably, a tenant can appeal an eviction to the Rent Board which consists of 7 members (of which 1 member will be a landlord and 4 members will be tenants).

This proposed Ordinance creates a City in which the tenants are in control of your property and allows tenants to not be evicted for 120 to 150 days given the notice requirements and the practical realities of the eviction court process for nuisance, substantial breaches, waste and criminal behavior.

Excuse me again for being too colloquial, but ...

"ARE YOU KIDDING ME!!!!!!"

Join me in getting the word out far and wide to the citizenry of the City of Portland to get out the vote and to **SAY "NO" TO "EVICION CONTROL"**.



**David P. Chamberlain, Esq., represents only landlords and can be reached at:
70 India Street,
Portland, ME 04112-0066
Tel.# (207) 775-0060, cell 650-5640
dchamberlain@dpclawoffice.com**

Decks Are Slippery When Wet

For those of you who follow this column you know that my mantra has been for landlords and property owners to make regular inspections of their property to insure that dangerous conditions are identified and repaired before disaster strikes. Regular inspections are not only good for the safety of your tenants and their guests but make good business sense.

In June, I defended a property owner in Lewiston who had been sued by a former tenant who had slipped on a deck. The deck was likely constructed in the 1990s. It was made of a synthetic material Trex which provides more traction when wet than standard lumber. Several pieces of the deck had been replaced over the years with pressure treated lumber which provided less traction. The Trex was also more resistant to mildew. Some of the pressure treated lumber were discolored and the tenant argued were slippery particularly when wet.

Common sense dictates that boards are slippery when wet and folks must use caution. But for photographs, the claim would have withered and never reached the courtroom.

Unfortunately, photos of the deck and surrounding areas depicted the house in disrepair. Much of the exterior paint had peeled and a gutter system surrounding the deck appeared to leak in one area causing water to accumulate on a section of the deck near stairs leading to the yard. Tenant testified that he went

outside in a misty rain to collect his dog which was in the backyard. As he approached the stairs he slipped and sustained a bad fracture to his tibia. The break required two surgeries to repair. Tenant's medical bills were in excess of \$60,000. Tenant also testified that he had complained to the Owner that the deck was mildewed in spots. The photographs provided ammunition for the Tenant to argue that the Owner did not maintain the property and should have done more to prevent the accident.

Luckily, Tenant did not make a good impression and the jury likely concluded he was motivated by less than good intentions. Despite the photographs, the jury quickly rendered a verdict in favor of Owner and the Tenant was awarded \$0.00. However, things could have turned out differently. The law does not require perfection but it does require a property owner to make a reasonable effort to keep tenants and their guests safe. Make sure gutters do not leak. Make sure there is adequate lighting. Mildew is a fact of life in New England but if it grows to dangerous levels, eradicate it. Ask yourself how your property will look in photographs analyzed by a jury viewing them sometimes years down the road. If you do those things chances are a jury will conclude that accidents sometimes happen and no one was at fault.

If you have any questions, call Ken. He has extensive experience in all aspects of landlord/tenant law.

Ken D. Pierce Esq.
Monaghan Leahy, LLP
Tel.# (207) 774-3906

THE SOPO ANGLE "SUMMARY OF THE NEW ORDINANCE"

If a landlord is engaged with a Tenant in the form of a "Written lease", the new ordinance affects the landlord in the follow manner. THE LANDLORD MUST NOW:

1. Provide a tenant with a new "tenant at will" disclosure as part of the lease.
2. The notice of any rent increase now moves from 45 days to 75 days.
3. Landlords must have a signature from the Tenant that they have received the increase notice OR have proof of mailing that a notice was sent.
4. Landlord must keep these records of notice for 6 years.

If a landlord engages in a "Tenant at will" agreement with a Tenant THE LANDLORD MUST NOW:

1. Provide to the Tenant the list of disclosures that soon will be on smlmaine.com.

The following is a list of FAQs that I have started. Any additions to this list will be very helpful as this list, in its final form, will be posted on the city's website.

1. Can the City of South Portland enforce the anti discrimination laws mentioned in the ordinance?

A. No, any complaints by either party will be directed to the Maine Human Rights Commission.

2. Who decides the outcome of any dispute between a landlord and tenant?

A. South Portland code enforcement

3. Can the accused party appeal this decision?

A. Yes, South Portland has an appeals process in place for this.

4. What is the fine schedule for any infractions?

A. 1st offense (warning), 2nd (\$500), 3rd (\$1,000) increased by \$500 for each subsequent violation.

The final version of the ordinance (effective October 1, 2017), the disclosure and an updated summary, is now on the city of South Portland's website.

Stay informed and get involved!



Contact: Mike Duvernay
233-5949



**YOU CHILL OUT.
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Renting in a hot market may seem like a no brainer, but the truth is it's not. Finding and screening qualified tenants with a trusted rental history, that meet your requirements, takes time and care.

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INFO@DOMAINE-REALESTATE.COM

DOMAINE-REALESTATE.COM



CHRIS LAVOIE
 LEAD AGENT/FOUNDER



ETHAN MORTON
 BUYER/RENTAL AGENT

**SEPTEMBER
2017
NEWSLETTER**

**SMLA'S NEXT
MEETING:**

**MONDAY
SEPTEMBER 18th**

**At: The Italian
Heritage Center
40 Westland Ave.
(Behind Shaw's,
Outer Congress St.)
Portland, Maine**

Free Parking

**Social Hour
5:30 - 6:30 p.m.**

**Per IHC please do not
arrive before 5:30 p.m.**

Cash Bar

Buffet Menu

Garden Salad
Carved Ham
Broiled Haddock
Chicken Cordon Bleu
Rice Pilaf
Sautéed Vegetables
Bread Assortment
Dessert Tray
Coffee/Tea

Cost: \$30/pp, please register by 5 p.m., Friday September 15.

\$5 fee waived!

Southern Maine Landlord Association

CLARK INSURANCE TIP

It is hard to overstate the importance of being sure that any contractor that works on your properties (roofer, plumber, electrician, snow remover, etc) be insured and that you be named as an additional insured on his liability policy. Why should you, or more likely, your insurance company pay for an injury or property damage that was the fault of the contractor? This is called risk transfer in the insurance world. I like to think of it more as people taking responsibility for their own mistakes.

The way to do this is to require that the contractor give you a Certificate of Liability Insurance that shows coverage currently being in force and stating that you (or the entity that owns the property) is an additional insured on that policy. It is also really important that the certificate state that coverage for you as the additional insured applies not only while the work is being done, but also after the work is finished (for "completed operations"). The forms that the insurance company can use to accomplish this are CG 20 10 and CG 20 37.

I understand that this "additional insured" stuff can be a little overwhelming, but at the very least, get a certificate from the contractor that proves he is adequately insured. This at least gives your insurance company the hope to collect from the contractor's insurer in the event he damages your property or injures a tenant. You can find me, Bill Exley, at wexley@clarkinsurance.com or 523-2263 for more info.



Bill Exley
207-523-2263
wexley@clarkinsurance.com

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KENNETH D. PIERCE
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(207) 799-8485

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— Property owner, Portland

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To find one of our 16 banking locations:
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TIME TO SELL YOUR MULTI-FAMILY? THE MARKET IS STRONG! HERE ARE A FEW OF OUR RECENT SALES:



Oakdale 2-Unit

Sold: \$410,000



North Deering 2-Unit

Sold: \$375,000



Maine Medical Center 3-Unit

Sold: \$557,500



Deering 4-Unit

Sold: \$520,000



Back Cove 2-Unit

List: 395,000



Woodfords Corner 2-Unit

List: \$425,000

“Vital Ideas” “Say No to Rent Control”

It appears certain that the rent control referendum will be on the ballot in Portland this November. This ordinance would be devastating to property owners and managers, tradesmen and tradeswomen, and apartment communities. It would cause immediate and lasting problems for the entire City, ultimately resulting in less safe housing, and a decline in neighborhoods, while shifting the property tax burden toward individual homeowners.

- *No lease terminations and impossible working conditions*
- *Sharp decrease in your property's value.* Rents will freeze as of Nov 1, 2017. Even if a tenant moves out *the rent stays with the apartment, no rent increase upon vacating.*
- *No incentive for more improvements, with a hard cap of 10% rent increase with appeal to Rental Board.*
- *60 day evictions*

In response to immediate public outcry over the highly controversial measure, a diverse group of concerned Portland citizens, named *Say No To Rent Control*, has formed to defeat this referendum. We are in the formative stages of organizing a multi-faceted campaign to educate voters about the real consequences of this proposal.

We need your help to stop this reckless and extreme referendum. Here are a few ways you can get involved immediately:

Make a donation

It will take all the resources we can muster to ensure the truth about this proposal is accurately explained to voters. Already we are seeing signs that this will be a dirty campaign: the proponents have made outright false statements on their website, and we need to make sure voters aren't deceived.

To donate, go to:

www.saynotorentcontrol.com

Make checks payable to

Say No to Rent Control
306 Congress Street
Portland, Maine 04101

Note: Recommended donation amount: \$50 - \$100 per unit.

Join the effort

In the coming days and weeks we will let you know all the ways you can volunteer and help expand our campaign. We only have a short amount of time. Please join us now so this ill-advised proposal doesn't harm the quality of housing we have worked hard to create, and the citizens of Portland deserve.



Brit Vitalius
President SMLA
541-3755
brit@vitalius.com

MAOMA UPDATE

Maine Landlords: Individual landlords solve day to day problems using our own experiences, calling on other landlords, or occasionally the help of a lawyer. Some challenges can only be successfully addressed thru efforts of an organized group. Your landlord association, working on local issues, is the most visible. A small portion of dues paid to your local association support MAOMA. An important function MAOMA performs is representing your interest in Augusta, and is not so visible. We collaborate with other landlord groups and a hired lobbyist to introduce new legislation helpful to our interests. We also monitor legislation introduced by organizations which would make our work more difficult.

Our efforts in 2017 produced positive results on bills we supported and opposed. None of these bills individually were high profile. But our efforts this year combined with work during the last several years have shown steady improvement in our successful outcomes. When an issue for or against

landlord's interest is heard in Augusta; we are well represented and legislators respectfully listen to our position.

Our legislative committee meetings begin this September. Legislation in Augusta has a two year cycle, one busy one less so. This is the off year. Our committee will review bills we may wish to introduce, monitor bills others introduce and work on ways to improve how we perform our duties.

Donna Hodges has written an excellent summary of last year's landlord related legislation, the full version can be found on smlmaine.com, short version is below.



Peter Flaherty
MAOMA President
841-2756

flahertypeter@comcast.net

LEAD \$

For all cities except Portland:
Right now restrictions have been lifted, so as long as the tenants' income qualifies, then the building will!

For more information contact:
Kevin Leonard, Community Concepts,
333-6443

FED DATES

Portland: All at 9 a.m. in Court Room# 2
September 7 & 21, October 5
November 2 & 9, December 7 & 21

*(The above is subject to change.
To verify dates, 822-4200, #3)*

Biddeford: All at 8:30 a.m..
September 22

*(The above is subject to change.
To verify dates, 283-1147, #5)*

LEGISLATION UPDATE

A portion of your dues pays for representation!

The following are excerpts taken from Donna Hodges' August 15, 2017 letter to Landlords. Full version is on smlmaine.com.

Here is a list of bills we followed, attended, testified on and their updates:

LD 136 - Which was our bill: "An Act Regarding the Eviction Process"- Landlords be able to serve a 7-day notice (instead of 30 days!) to people who had committed or threatened to commit violence against a Landlord, other resident or guests; as well, we can serve a 7 day-notice on unauthorized occupants. Becomes law effective 11-1-17.

LD 198 - "An Act To Protect Landlords from Lawsuits for Damage or Harm

Caused by Assistance Animals. Provides that a Landlord is not liable in a civil action for personal injury, death, property damage or other damages caused by an assistance animal on the Landlord's property, except in cases of gross negligence on the part of the Landlord or if the assistance animal is owned by the Landlord. Becomes law effective 11-1-17.

LD 441- "An Act To Require Certification under the US EPA's Lead Renovation, Repair and Painting Rule" - this bill would substantially affect Landlords. We successfully fought it to be amended to mirror the Federal law for RRP already in effect.

LD 1239 - "An Act To Increase Efficiency in Enforcement of the Maine Human Rights Act" - was attempting to provide judicial an subpoena power to the MHRC as well as more money for positions. Fortunately this bill was amended to remove any increase in powers, but ought to pass for more money. We do not know whether this bill as

amended will be enacted as it has a fiscal note. Not passed due to House and Senate disagreed.

LD 1514 - "An Act To Provide Maine Landlords Advance Notice of Water Disconnection Postings (Governor's Bill), would require a water utility, if a Landlord is billed for water usage, to give the Landlord at least 3 business day's notice prior to posting any disconnection notices at the rental property. Bill came out of the committee vote divided and will go to full legislature for vote. Not passed due to House and Senate disagreed.

LD 1459 - "An Act To Protect the Public from Dangerous Buildings" - this bill sought to provide a period of notification and response for repair plan for a building found to be a nuisance or dangerous and to eliminate seizure or condemning buildings without proper notice and due process. Becomes law effective 11-1-17.

**Southern Maine
Landlord Association
(SMLA)**

306 Congress St.
Portland, ME 04101
1-207-541-3755

To Join: smlamaine.com

\$60/yr - emailed newsletter
or
\$80/yr - mailed hardcopy

**Maine Apartment Owners
and Managers Association
(MAOMA)**

P.O. Box 282
Bath, ME 04530

1-800-204-4311
maoma.org

**MAOMA
Representatives**

Carleton Winslow
878-0901
Priscilla Dunn & Mat Leighton

smlamaine.com

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1/4 page \$ 55/m

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get a 10th month free.
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month & ads are pre-paid.

Call 883-8016 for more
information.



SMLA

Upcoming SMLA Meetings

**Next meeting is September 18, 2017,
Which is a MONDAY NOT TUESDAY!**

REMINDER to please RENEW your membership before the meeting! Thank you!

September 18, 2017 - The Maine Landlord Class – The Essentials and the Expert Tips
Plus: An important update on the Portland rent control referendum

Register now for this 2 part seminar: The first part is a trimmed down revival of our “Back to Basics” class, covering all the MUST KNOW aspects of residential rentals, including all required Maine forms, fair housing issues, and an update on new local ordinances. The second half features a panel of top local landlords who share their tips and best practices. Attendees will receive a packet of all required state and local forms.

Also on hand: Smoke Free Maine, Eco Maine and Mardens.

The above is subject to change.

SERVICE DISCOUNTS

Carpet Cleaning

Eastern Carpet Cleaning, Free Estimates, \$.40/sq. ft., then 15% off, Min. \$90, 885-1499

Servpro of Portland, Holly Merrill, 772-5032, 15% off carpet cleaning

Electric

Alan Eger Electric Inc., Alan Eger, 415-6094, 10% off jobs over \$200. Lights at cost if paid by customer at pick up

Campbell Electric, Tom Campbell, 252-2411, 10% off any electrical service.

Hardware

Dupuis Hardware - 2 Spruce Street, Biddeford, 284-8702, offering 5% off

Landscaping

C.K.C. Landscaping, Kenny Roberts, 615-3152, 20% off a full year contract

AC Yard Service, Justin Hayden, 712-5554, 15% discount on service

Pest Control

Ants Plus Inc. - Jim Carter, Bedbug Treatment \$150, for 1st initial treatment, 319-8324, for card holding members only

Radon

Tom Caron, 415-2345, 5% basic discount, 10% discount for over ten tests

Maine Radon Solutions, Chris Cole, 318-3536, Radon testing, 10% off for mitigation. Also tests water systems.

Roofing

Dobson Roofing - Dan Dobson, 772-7710, call the office for an estimate and discount.

Miscellaneous

Grandview Window Cleaning, Doug Johnson, 772-7813, 10% on specialty cleaning services.

Marden's, Ken Clark, at the Scarborough Store, 5% off flooring, furniture and appliances. You must show your updated membership card.

The UPS Store, Dennis Abbott, Southern Maine, 883-9087, 15% off eligible products and services

Southern Maine Chimney and Firewood Service, Nicholas DiMastrantonio, 233-8429, 10% on cleanings, chimney liners & free chimney inspection with cleaning

Sebago Metal Fabrication, Frank Walker, 653-3766, 10% off new purchase of handicapped access ramps, fire escapes, stairs, and more...

S&C Satellite, Stephen Bailey, 620-1032, Free property assessment for centralized video and internet systems.

Please show your current paid membership card to obtain the discounts. These vendors have kindly offered discounts to our active card-holding members only. Buyers should carefully check ID's, references and insurance as well as issuing 1099's when required. No endorsement of any kind is made by SMLA, nor should be implied.

****New discounts or corrections, call 883-8016****



P.O. Box 3115, Portland, Maine 04104
Return Service Requested

PLEASE NOTE DATE CHANGE TO MONDAY NIGHT SEPTEMBER 18!!



Next Meeting:

SEPTEMBER 2017

18

MONDAY

**Meeting will be held at: The Italian Heritage Center, 40 Westland Ave., Portland.
Located behind Shaw's, 1364 Congress St., Portland. See page 3 for more information.**

Please invite other landlords to join our organization and meetings! If you're not already a member, please consider joining SMLA online at www.smlamaine.com. We need your support!

Not only do we host educational events, produce a monthly landlord newsletter and get great local discounts, we also advocate strongly for landlords at the state and local level. Our volunteers are following the Portland/South Portland discussions on rent control and "housing crisis" proposals.

A %'d of your membership dues goes to Maine Apartment Owners & Managers Association (MAOMA) for lobbying efforts in the Maine State Legislature, to keep landlord-tenant laws fair and balanced.

Land lording is a business; don't treat it any other way and you'll survive!

Know the law and know what is going on inside your rental units.

IGNORANCE OF THE FEDERAL LEAD LAW IS NO EXCUSE!