Mind Your Business

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Selecting a Property Manager

Ongoing statewide changes combined with the passage of localized restrictions continues to impact the rental property business in Oregon. Many housing providers are thinking of getting out entirely, but others are considering hiring a professional property manager because the rules have just gotten so complicated. I believe with the help of ROA and our sister organizations, you can continue to self-manage, but if you're just done, let's go over some criteria for evaluating management services and selecting a property manager.

Property Management Licensing & Training

The first thing to know is that (almost) everyone in Oregon who manages property for compensation <u>must be licensed</u>. There are a few exceptions outlined in ORS 696.020 that you can read about, but they are <u>very</u> limited. Property management licensing in Oregon is regulated by the Oregon Real Estate Agency (OREA). Their rules dictate the ethics, responsibilities and requirements of taking on the fiduciary duties of managing rental properties.

To obtain a license, an individual must complete 60 hours of classroom education with a certified instructor, obtain instructor approval to take the state licensing exam, pass the exam with a minimum score, be fingerprinted and pass a background check, and pay the required fees. Upon renewal of a property management license every two years, licensees must prove that they have completed a minimum of 30 hours of Continuing Education provided by certified instructors in topics related to the field, as well as a required OREA Rule and Law Course and new requirements for Fair Housing training. A property manager operating under a license granted by the OREA must prominently display their license in their place of business.

I held a management license for many years, but since I don't manage for others anymore have let it lapse. What surprised me about the education I received and the exam I passed was that it didn't teach me anything about boots-on-the-ground property management. That takes more education, mentoring and experience. Property managers have a lot to keep track of and in order to be successful they need to cultivate a broad base of specialized knowledge, including management processes and procedures, maintenance for the types of properties they manage, trust accounting, Fair Housing, landlord-tenant law, and even contract law. They must also abide by OREA regulations, which specify the affirmative duties a property manager owes to their clients:

Duties of real estate property managers - ORS 696.890

(4) A real estate property manager owes the property owner the following affirmative duties:

- (a) To deal honestly and in good faith;
- (b) To disclose material facts known by the property manager and not apparent or readily ascertainable to the owner;
- (c) To exercise reasonable care and diligence;
- (d) To account in a timely manner for all funds received from or on behalf of the owner;
- (e) To act in a fiduciary manner in all matters relating to trust funds;
- (f) To be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest;
- (g) To disclose in a timely manner to the owner any existing or contemplated conflict of interest;
- (h) To advise the owner to seek expert advice on matters that are beyond the property manager's expertise; and
- (i) To maintain as confidential all information from or about the owner, except under subpoena or court order, even after the agency relationship ends.

(5) The affirmative duties listed in subsection (4) of this section may not be waived.

(6) Nothing in this section implies a duty beyond or in addition to those activities that are reasonably within the scope of the management of rental real estate. [2011 c.158 §1; 2013 c.145 §2]

Evaluating management companies

So how do you evaluate a property management company? What kinds of questions should you be asking? What should you consider?

- ✓ Step one is to look up the business on the OREA website: https://www.oregon.gov/rea/Pages/index.aspx. You'll want to check and see if any complaints have been filed against them. That can be a bad sign or could just indicate a one-time problem that has been resolved through education and better practices.
- ✓ How long have they been in business? If only a short time, that company poses a higher risk than a longtime management company with a proven record of success.
- ✓ You should be concerned about the reputation of the company and its principal broker, including the broker's track record, base of knowledge and industry involvement. Reputable managers generally seek to better their industry through membership in local, regional, state and national groups that promote excellence in their respective fields. What is your prospective manager doing to better their own industry?
- ✓ How big is the company? A smaller company may operate with only one or two people, and may offer you a more customized experience, but is that sufficient to ensure timely advertising, showing, screening, placement, management of existing tenancies, and maintenance? In a larger company, you and your property can get lost in the competing needs of thousands of owner-clients, communication can be more challenging, and they may have their way of doing things and require that you fit in their box, so to speak.
- ✓ What is the company structure? Who is in charge and what is the delegated authority to those under them? Who in the company is licensed and has direct oversight of management duties? Who will be your point of contact and that of your tenants? What are the qualifications of the staff in regards to their duties?
- ✓ What is their financial oversight process? Money issues are the source of most complaints to the OREA about licensed managers. Companies with strict financial controls are less likely to have funds go missing, so you should ask about how funds of tenants and clients are handled. What are their procedures for reducing the risk of misappropriation of client funds? The OREA requires that management companies perform a triple-check reconciliation of company funds once per month, noting any irregularities. Is your prospective manager meeting regulation?
- ✓ What does the company do to safeguard your personal information, and who has access? Clients and residents provide very sensitive information to their managers and the information can be an ID thief's dream hit. So, how will your information be protected? Do they have a security system to guard against break-ins? Do they limit access to employees on a need-to-know basis? If so, how do they do that?
- ✓ Are they willing to provide references from other clients? While you will be referred to happy clients, you can always dig deeper with them and ask about specific things you have concerns about like frequency of inspections, how they have dealt with tenants who are violating the rules, how maintenance is handled, etc.
- ✓ What management software does the company use? Renters' demographics indicate that the two largest groups of renters are Boomers and Millennials. Each group wants to be served differently. Boomers tend to be more comfortable with pen and paper, but Millennials demand a tech-friendly experience with the ability to apply, request maintenance and pay online or with their phones. Is your company prepared to meet that demand? Do you want your prospective manager to use high tech software that can accommodate Millennials, while also providing a more traditional experience to older residents? I would. Cloud-based software can also relieve concerns about real-life tragedies that can strike at any time like the management office burning down. With cloud-based systems, the information remains intact and the company can still operate from a computer anywhere. Antiquated paper-only systems can result in a total loss of information. Technology and cloud-based software can make a big difference for an owner's experience too. The ability to log in to an owner portal where you can make contributions, view statements and invoices and retrieve tax documents at your convenience is fantastic.
- ✓ What is the office climate like when you visit? Property management is a customer-oriented business and tenants are your customers. You should be concerned about the experience your tenants will have with the company you hire. Will they be greeted with a smile and offers to assist, or ignored and treated like an annoyance?
- ✓ Does your company know how to effectively deal with tenant non-compliance? And, will they? It takes time to address issues with residents, and many companies turn a blind eye because it requires time and effort, or because they really don't know how to do it correctly and follow through to eviction when needed.

- ✓ Does the company solely manage real estate, or are they also realtors? This isn't necessarily a bad thing, but you want to make sure that just because their real estate license allows them to perform property management in addition to property sales, that they are proficient in both areas, and have staff dedicated to the management side of the business.

What should you expect to pay for management services?
Most management companies charge a percentage of monthly rents, varying from 4-10%, and some charge a flat monthly fee. Some will collect fees only when the property is rented, others will collect whether the property is rented or not. Some companies charge set-up fees and unit turn fees, and most charge some sort of early termination fee should you not keep your property with them for a minimum length of time, but some don't. Usually, you will get some sort of break on the per-unit cost if you bring multiple properties to the company. It's important to keep in mind that management fees are tax deductible as allowed by law.

With property maintenance, some companies charge a flat fee for each maintenance call, others mark-up repair bills by a percentage, and still others consider it part of the base management fee. Most companies retain late fees, non-compliance fees and NSF fees collected from the tenants, but what about lease-break fees? It seems reasonable to expect that you should receive at least part of that for the lost rent. Clarify these things before you sign, and know what you're agreeing to.

The property management contract
There are standard parts of a property management contract – the term, the fees, the reporting dates, authority for costs, insurance requirements, owner reserve requirements, etc. Ask to see the contract in advance and review it carefully, and have your attorney review it as well. Perhaps the most impactful part of the contract is termination. It should specify when and how the contract may be terminated, the termination fee, if any, when services are no longer wanted or needed, and ideally should provide a speedy escape for either party in the event that either one undertakes an action that puts the other at risk. Property managers and their clients can pose liability to each other. Bringing reputations into disrepute, imposing liability for improper acts or behavior, even illegal actions can occur and put the other party in jeopardy of government fines or legal action.

I've seen it happen both ways. Property managers or their employees who without their client's knowledge rented substandard or unsafe dwelling units, failed to install the required smoke and CO alarms, failed to provide lead based paint warning information and get a signed agreement, failed to require the tenant to transfer utilities out of the owner's name and then failed to take corrective action, sexually harassed tenants, or stole their personal property, including once, an expensive purebred puppy. And owners who entered unlawfully, performed substandard repairs, used their right of entry to harass or threaten the tenants, made agreements with tenants and didn't consult with or even inform their manager. Because of that experience, whichever side of the relationship I was on, I would want an escape clause in the event the other party does something that puts me at risk of damage to my reputation, a lawsuit, or an enforcement action by governmental authorities.

Risks of hiring a property manager
Many readers may recall the devastating impact of what I call the "Shockley Debacle." Several years ago, Eugene property manager, Terry Shockley, owned a company called Property Management Concepts (PMC), which many believed was a highly reputable, successful company. When the company was audited by the OREA, it was discovered that he had misappropriated owner and tenant funds for his own benefit. We'll probably never know why, but not only did he destroy his career and end up in prison, the theft had devastating impacts on many owners' finances. He was estimated to have stolen in excess of three million dollars.

How did this happen? Clients were lured by low percentages - they were penny-wise and pound-foolish; based their selection of a manager on charisma instead of research; trusted too easily, sometimes because they went to the same church; didn't ask tough questions; failed to verifying things like tax payments, maintenance and contracts; completely abdicated the responsibilities of rental ownership; and lacked understanding of the services they were entitled to receive.

The company I worked for at the time took over several properties from panicked owners when PMC was placed into receivership by the state, and I was shocked that these owners hadn't confirmed that maintenance work had actually been completed or that their property taxes had actually been paid. If they had, their losses would have been far less. And, there were numerous red flags such as calls and emails not returned – ever; late payments; late or nonexistent reports; ridiculously simple reports – just numbers on a page; no copies of paid invoices with reports; monies paid in but not accounted for or paid to the contractor; and vacant properties not advertised – no ads, no yard signs, extended vacancies with no explanation or communication.

Once the truth came out, some owners were hit twice. I performed eviction services for one victim and not only did he lose three months' rent and have to replenish the tenants' security deposit (yes, owners remain liable for tenant deposits even if the management company collected and held them), he had to double-pay his property taxes. Turns out that although Shockley claimed he had been paying the taxes, and had charged him for it, he hadn't and the owner ended up liable to Lane County for three years' worth of taxes at a cost of more than $100,000, plus penalties. Another owner paid twice for a very expensive roof.

So, don't abdicate responsibility for your property. For the victims of Terry Shockley, their only recourse was to sue him civilly and try to attach his assets. I'm not sure how successful they were. Shockley only ended up in jail because he committed wire fraud during the OREA investigation by sending falsified financial records through an out-of-state internet server. That was a criminal act, but stealing everyone's money was not – it's considered a civil matter under the law. Your manager is your business associate, not your friend. Don't hesitate to ask the tough questions and hold them accountable.

Red flags

Humans (fallible all) are managing your property. Be assured at some point a mistake will be made. The most important thing to see when a mistake is made is the manager's response. They should promptly admit their mistake, apologize and make it right, but there are predictable signs that your management company may be in trouble.

- ✓ Repeated lack of timely reporting.
- ✓ Failure to provide copies of paid invoices with monthly statements.
- ✓ Repeated failure to distribute funds on time. When I worked in private management, our company was transitioning to a new system for owner draws and the first month, some owner distributions did not get made when we promised. We immediately reached out to those owners to let them know about the problem and got the distributions done the next day. That's what a reputable manager does. They don't try to hide their mistakes, but inform their clients right away when something goes awry, letting them know that a problem happened and how it will be resolved.
- ✓ Failure to respond to inquiries within a reasonable time.
- ✓ Failure to respond to maintenance requests by tenants.
- ✓ Failure to perform inspections.
- ✓ Failure to promptly advertise vacancies.

If your manager is exhibiting one or more of these behaviors you should…

- ✓ Put your concerns in writing with specific expectations for improvement
- ✓ Transfer your properties elsewhere for management
- ✓ File a formal complaint with the Oregon Real Estate Agency – 530 Center St. NE, Suite 100, Salem, OR 97301 – 503-378-4170 - https://www.oregon.gov/rea/Pages/index.aspx.
- ✓ All of the above, in sequence

With all the risks, why should you consider professional management?

Good property managers ease the stress in their clients' lives by taking direct responsibility for the day-to-day management of their investment real estate. Acting as a fiduciary, your management company is charged with maximizing revenue and minimizing risks and expenses. This means charging market rate rents, screening prospective tenants regarding credit & criminal history, prior rental history, and ability to pay, responding in a timely fashion to maintenance requests, and finding the least expensive solutions to problems within their area of expertise. It also means reducing risks and liabilities associated with the ownership of rental property by reporting any habitability or safety issues with the property, and recommending remediation of any problems. They advertise and show the property, screen applications and fill vacancies. They collect rents, hold and distribute security deposits, pay bills on the owner's behalf, account for and distribute owner funds, send annual tax statements and monthly financial statements, and they do it all properly, legally and on schedule.

Professional managers enforce the terms of the rental agreement by serving notice upon the tenant immediately upon breach of contract. They inspect your property on at least an annual basis or on bad reports from neighbors or drive by inspections. They may also handle eviction and small claims cases and usually know a good attorney if you need one. When it works, it's a great, mutually beneficial relationship.

Ways to protect yourself

- ✓ When you and your property are set up with the company, you need to make sure that certain things are clear and in writing, and disclose certain things to your manager. Things like: Is your property located in the 100-year floodplain? Are there any services that the tenant will be obligated to pay for that benefits the landlord or other tenants? Do you have preferred vendors? Do you want the manager to require renter's insurance? (The correct answer is, yes.) How will yard care be handled (be VERY specific)? Make sure everyone is clear on who's taking care of things like underground sprinklers and backflow testing, fire alarm/extinguisher testing, roof/gutter cleaning. Will you allow tenants to smoke outside only or nowhere on the property? Will you allow pets, and if so, under what restrictions? There's a lot more, just remember that good, clear, written communication helps prevent problems and can ensure that you get off to a good start.
- ✓ Trust but verify - Don't abdicate ultimate responsibility for your own asset. Confirm that bills have been paid, get copies of all signed tenant docs (but don't expect copies of applications, credit reporting companies require that those not leave the manager's office for obvious reasons), pay your own mortgage, taxes and insurance so you know it's done. If you have no other choice, verify that the payments have been made each month.
- ✓ Review your monthly reports. There were a few times when I caught a company error and informed the client about what had happened and what we were doing to correct the error. It always surprised me when the client hadn't even noticed; obviously, they were not looking over their reports.
- ✓ Inspect your properties yourself once a year. It shows you care and are paying attention. You'll build relationships with your representatives and get better service overall.
- ✓ Document contacts and conversations with your manager just as you would with your tenants.

Behaviors that drive property managers crazy and will eventually get you fired

- ✓ Clients who act like they're the only customer by taking too much staff time. Property management is a high-speed, high-stress endeavor with a lot of balls in the air at any given time. If you make a pest of yourself, you can expect to be shown the door.
- ✓ Clients who make out-of-line demands such as monthly inspections. Not only is this an unreasonable request timewise, but also possibly a violation of landlord-tenant law.
- ✓ Clients who won't pay for needed repairs or argue about every bill. If you want maintenance done your way, then take charge of handling it. Also understand that professional managers can't hire your cheap unlicensed handyman for $25 an hour. They are required to hire licensed contractors or use in-house employees and that costs more like $45-$85 an hour for general repairs and much more for electricians and plumbers.
- ✓ Clients who violate landlord-tenant law by peeking in windows or undertaking other illegal actions. I once had an owner who lived in one side of a duplex and had us manage the other side. She took care of yard maintenance, so didn't have to give notice to go into the yard to perform landscaping work, but on the day the tenants were expected to be out, pressed her nose up against the kitchen window "Just to see if they were out." They weren't and they were more than a little angry to find their landlady-neighbor looking in the window. They didn't insist on assessing the penalty of one months' periodic rent, but could have. She was immediately released from her contract.

- ✓ Clients who go around the manager and make side agreements with the tenant. I once had an owner, who unbeknownst to me told his tenant that he could install a gate and grow medical marijuana at the property. We were supremely unhappy to discover the risk he had created not only for himself, but for us as well.
- ✓ Clients who refuse to do reasonable things that can help rent the property or keep tenants happy. One of my former clients had a unit where the interior paint was a mess. It hadn't been painted for many years, and was covered with primed, but not painted patches, and he refused to paint the interior. In his exact words, "It's good enough, it's just a rental." Actually, this will be someone's home. I would not want to manage for a client with that attitude.
- ✓ Clients who believe their way is the only way. Often, owners who have self-managed for a long time make the worst clients because they think their way is the only way or the best way to do something. So, if you want a good relationship with your manager understand that they have their own experience and way of doing things. At the end of the day does it matter how we arrive at the destination as long as we get there in a cost-effective, efficient way?
- ✓ Clients who expect extra services for free. Many property owners seemed to feel that whatever they asked for, was included in the contract price. While it may seem that some months the manager is getting their percentage for very little effort, even the standard work like collecting rents, taking maintenance requests, hiring vendors, paying invoices, reconciling trust accounts, and delivering payments and reports is a lot of work. They're also providing emergency maintenance services, collecting and confirming vendor information, managing an office and staff, and providing tax statements. Pile on your request for them to arrange for and oversee your unit remodel for nothing, or handle your insurance claim for restoration after your spectacular roof failure, and you're out of line. That costs extra, usually a surcharge of around 10% of the total costs for labor and materials to oversee the restoration.
- ✓ Clients who say they can't afford an essential repair. If you can't afford to be a landlord then you should sell your asset. Owners need to be in a position to fork over possibly thousands of dollars to replace a drain mainline when it fails, replace a worn-out heat pump or furnace, or replace the roof. Just like in your personal finances, you need an emergency fund. (Read "Minding Your Business, means Minding Your Budget" on the ROA website for more details on planning for maintenance over time. You will also find depreciation schedules that can help you plan for replacement costs down the line.)
- ✓ Clients who want more than the two bids provided. If you are not satisfied with the bids your manager has provided, then you can do your own research and see if you can find acceptable service for less. I did once have an owner with a broken specialty stove who found the replacement part for his stove in an obscure corner of the internet that saved him a considerable amount over the costs of parts our appliance repair company was going to charge. Managers just don't have time to do that, and it can be unreasonable to expect it.
- ✓ Clients who want sole approval rights over tenant placement. Your manager has a very fine line to walk in regards to Fair Housing and equitable treatment of all applicants and may not be able to deny someone you would rather not rent to for whatever reason. If you want control, then manage your own property. Or, screen and place tenants yourself and then hand it over to the manager (if they're willing to allow it).
- ✓ Clients who expect that there will never be problems with tenants that their manager has placed in the unit. Screening is a risk assessment, but it's not perfect at separating out successful tenancies from unsuccessful tenancies. Just like when owners screen, sometimes things blow up in our faces. I once had a lady apply for a unit who seemed perfect. She presented well, had great rental history, no criminal history, decent credit and enough income to qualify. A few months after she rented the unit, she displayed very disturbing behavior to the other residents. Turns out she had an alcohol problem and mental health issues, but when she had applied and leased up, she had been in treatment and off the booze. After she moved in, she stopped her meds and started drinking again. There's just no way to predict things like that or prevent all problems. People are by nature unpredictable beings. Once they've been placed in the unit, they may start gambling, doing drugs, or get divorced and have the "War of the Roses" inside your unit. That same thing could have happened to you if you had screened and placed the tenants.
- ✓ Clients who display angry, abusive or inappropriate behavior to residents or staff - self-explanatory.
- ✓ Clients who insist that a bad tenant be retained. For whatever reason, some owners are so reluctant to ever have a vacancy they want their manager to continue to work with uncompliant, unreasonable, or unstable tenants. It's the manager's job to manage and that includes terminating tenancy for cause. They have an obligation to you, but also to the neighbors and the community.

- ✓ Clients who think their manager should know everything about the condition of the unit at all times. One of my management colleagues had a client who was very angry after a leak was discovered that had created a lake under her house. I'm sorry, managers are not professional home inspectors. They're not going to crawl under your house, or on the roof and they're not qualified to assess the quality of the fixtures, systems or foundation of your home. That requires a professional home inspector, which they can probably arrange for if you ask and pay for it. Otherwise, they will report and respond to visible issues discovered upon inspection or reported by tenants or vendors.

Choose in haste, repent in leisure

Choosing a property manager requires careful consideration. Don't wait until you're up against the wall and make a decision in haste, because it could be a decision you will regret. If you have multiple properties, you might consider splitting them up and trying out two or three different managers for a year then transfer them all to the one you like best. Not everyone has the same style, so all other things being equal, some people's personalities or management styles are best served by one manager over another.

The takeaway

Choose wisely, be professional, document well, be accountable, hold your manager accountable, read reports, and follow up and you're likely to have a great experience with professional property management services. You might even wonder why you waited so long.

This column offers general suggestions only and is no substitute for professional legal counsel. Please consult an attorney for advice related to your specific situation.

Rev 1/2023