



# GOVERNMENT AFFAIRS SUMMARY OF 2014

This was a record year for our government affairs activities and our members' grassroots efforts. As the saying goes, we moved some mountains. Or, maybe those who say human activity can produce earthquakes are on to something. There certainly were some legislative tremors last year. In 2014 we changed legislation, defeated damaging proposals, and continued to expand our influence. Going forward we will be a key player in 2015, tackling some of the most vexing problems that affect the health of Pennsylvania's apartment industry.

The following is an account of our 2014 Government Affairs program

## STATE - NEW LAWS

### **Abandoned Personal Property- New law changes what owners must do when residents leave personal belongings behind.**

**Act 167 of 2014 went into effect on December 22<sup>nd</sup>.** We were a major stakeholder during the bill's journey and prevented tenants groups from seriously perverting the bill's provisions. Among the more dangerous legislative grenades we defused was a landlord retaliation amendment which would have effectively prevented owners from evicting or refusing to renew the leases of problem residents. We also found ourselves the sole rental owner stakeholder who rose up against a proposal that would have required rental owners to give residents an 800 telephone number for instructions on how to sue rental owners.

The new law finished its legislative journey with a few scars, but the final product is largely in keeping with what its primary sponsor, State Representative Scott Petri (R, Bucks) envisioned.

Several Association members provided tangible information and testimony on the problems rental owners face when confronted with belongings left by a resident who is obviously gone for good. Our repeated reference to the ubiquitous abandoned dirty mattress took hold as the symbol of the rental owners' dilemma. The old law would in many cases require the pursuit of an eviction procedure before an owner could freely dispose of a deserted mattress. Lawmakers got the point, and tenants groups' efforts to paint the bill as a license for de facto evictions fell flat among the majority of House and Senate members. Many thanks to members who stepped up with testimony, photos and letters of support for our legislative efforts.

Act 167 addresses some of the unintended consequences of the 2012 Abandoned Personal Property law. Details of the new law can be found on our website: [paa-east.com](http://paa-east.com).

### **Blighted Properties and Out of State Owners:**

Act 171 went into effect in late 2014. It amends Pennsylvania's Neighborhood Blight, Reclamation and Revitalization Act. The new law allows not only out of state owners but also out-of-state responsible parties to be extradited to Pennsylvania to face criminal prosecution if the person is charged under the criminal code. This is another addition to the arsenal of laws to come out of Harrisburg in recent years to deal with blighted properties throughout the Commonwealth. The issue remains a concern for legislators throughout Pennsylvania.

### **Carbon Monoxide Detectors: New Law as of December, 2013. Everyone must be compliant by June, 2015**

The new CO law requires residences, including apartment units and multifamily dwellings with a fossil fuel burning heater, appliance, fireplace or attached garage to have carbon monoxide alarms in the vicinity of the bedrooms and the fossil fuel-burning heater or fireplace by June, 2015.

We were proactive as a major stakeholder in this issue and secured important helpful provisions in the law, including an 18 month period in which to become fully compliant. Our efforts also resulted in provisions that limit the CO alarm requirements to places with heaters, appliances etc. that burn fossil fuels, thus avoiding costs for those owners whose properties do not have fossil fuel burning apparatuses. Additionally, our lobbying led to requirements for multifamily residents to be responsible for their CO alarm maintenance during their occupancies.

Early in 2014 we attended the bill signing and press conferences extolling the value of carbon monoxide alarms. Most of our members polled have them on their properties, or were planning on installing them. Our lobbying efforts made sure we achieved as much fairness as possible in the new law, and went far to enhance our reputation as the industry experts and professional property managers in Pennsylvania.

#### **Domestic Violence and Forced Evictions:**

**New law - Municipalities cannot penalize rental owners or residents for summoning emergency help.** We supported HB 1796, which became law as Act 200 of 2014 last October. Beginning in January, 2015, municipalities are prohibited from enacting ordinances that require landlords to evict residents over incidents in which police or emergency help are called. Representative Todd Stephens (R-Montgomery) introduced HB 1796 in response to the nuisance ordinances several towns have enacted, most notably the Norristown ordinance that penalized residents and landlords when police are called over an incident at the property. These ordinances typically require rental owners to evict residents following incidents of disorderly conduct.

Strange bedfellow jokes aside, we agreed with the American Civil Liberties Union, who brought a lawsuit against Norristown. The Norristown ordinance and others like it put rental owners in an impossible position and unjustly infringe on their property rights. They also unjustly penalize citizens for summoning their public servants for help. 2014 ended on a positive note, regarding this issue, when Act 200 was enacted and Norristown withdrew their ordinance to end the ACLU lawsuit.

**In a related matter**, we will follow the efforts of the ACLU to stop “one strike” ordinance in the city of Wilkes Barre. The ACLU of Pennsylvania filed a federal lawsuit in early 2015 on behalf of landlords and tenants whose rental properties were seized by Wilkes-Barre. The city’s ordinance authorizes city officials to evict tenants immediately and prevent landlords from renting a property for six months if anyone is suspected of illegal

activity involving drugs or guns on the premises, including third parties not on the lease. The so-called “one-strike” ordinance allows the city to close rental properties even if the affected landlord and tenants were unaware of the suspected activity. No responsible property manager would stand for drug related behavior, and Pennsylvania’s Landlord Tenant Act views certain acts relating to illegal drugs go be a breach of the conditions of a lease, and grounds for removal of the resident. But Wilkes-Barre goes beyond those concepts and deprives rental owners of the use of their properties (with no due process) for six months even if the miscreants are not residents and even if the owner has no knowledge of the criminal activity. If the case progresses to a higher court we will consider filing an amicus brief.

### **Municipal Tax Liens, New Law:**

Act 93 of 2014 allows a taxing district to enforce a delinquent property tax claim in many cases, in the same manner as a personal judgment. A taxing district may file a claim for unpaid property taxes in the judgment index in any court of common pleas, as long as the claim has been reduced to judgment under the Real Estate Tax Sale Law (RETSL) or the Municipal claim and Tax Lien Law (MCTL), whichever is applicable. Upon filing, the claim becomes a judgment lien on any real property owned by the delinquent taxpayer in that county. The lien will have the status and priority of an ordinary judgment lien. The Act went into effect in February of 2014. We had discussions with its chief sponsor, Representative Cherelle Parker (D-Philadelphia), who introduced this bill and others as a way of dealing with delinquent property taxes. The bill passed with overwhelming yes votes in both the House and Senate.

## **STATE ISSUES**

### **Spot Appeals of Real Estate Assessments- The practice is spreading, and we have Harrisburg’s ear.**

We met our goals for 2014 for advancing our spot appeals legislative agenda. We got the attention of presiding officers of both Houses in Harrisburg, educated legislators, had a bill introduced, fleshed out opposition, secured funds for the public relations component of our campaign, and created a place holder for an even stronger legislative push in 2015.

Legislative procedures are intended to move at a measured pace, and to serve several objectives. They are to assure uniform treatment of all persons and proposals, impartiality, predictability, and order - all in the public view. Despite the hurdles, our members delivered their compelling spot appeals stories and we succeeded in placing our issue on the agendas of key legislators. Our bill, HB 2348, was introduced and

passed the House Finance Committee. It was referred to rules, where it stayed until session's end. But the exercise of introducing the legislation spawned debate and banter, bringing our issue to the forefront of the activity on property tax reform. It also gave us the chance to engage opposition in the House, to discuss their concerns and provide opportunities to explore compromise – therefore increasing likelihood of a bill's passage next time around.

Spot appeals are reaching crisis proportions for our members as a growing number of school districts are making deals with at least one real estate advisory firm that hunts for properties to target. The firm typically receives a 30% commission on any increased taxes it brings in. Not surprisingly, that creates a strong incentive to go after larger properties. Uniformity and fairness do not seem to be a part of their appeals model. We are working to stop the practice, and our efforts will remain a top priority for us in 2015.

#### **24- Hour Monitored Security:**

A bill to require monitored security in apartment buildings is considered every session, and 2014 was no exception. HB 217 mirrored the efforts of bills in past sessions, and would have created uniform security camera requirements for every apartment community. Estimates suggest installing 24 hour monitored security would cost several thousand dollars at the very least. We expressed our concerns and the bill failed to “grow legs”, in lobbying parlance.

#### **Ban the Box:**

We kept an eye on HB 935 and continually voiced our opposition to this effort that would have prohibited employers from requiring employment applicants to disclose their criminal histories on employment applications. We emphasized the nature of the apartment industry- providing homes to Pennsylvanians- and noted the apartment industry should be exempt from any prohibition against inquiring about a prospective employee's background. A similar ban the box ordinance already in effect in Philadelphia. We will stay tuned in 2015, prepared for a resurgence of this onerous proposal.

#### **Bed Bugs:**

The old phrase in movie ads, “coming to a theater near you”, has a double meaning these days. Bed bugs can be found in all public places, as well as private homes. Multifamily settings are certainly not immune. We monitored both houses of the General Assembly, looking out for a re-appearance of any legislative activity regarding bed bugs. Things were quiet in Harrisburg, but Philadelphia held hearings about the problems bed bugs create, and in 2015 we will be a part of the newly formed bed bug task force in

Philly. And what starts in Philly probably won't stay in Philly. The insects are not the only things that can hitch-hike to other communities. Proposals for legislation have a way of catching on in other locales. We'll continue our vigilance.

### **Blight and Land Banks:**

Late in 2014 two proposals for adding teeth to blight legislation surfaced. We are watching for the introduction of bills in this new session.

A proposal from State Representative Anthony DeLuca (D, Allegheny) would amend the 2010 Neighborhood Blight and Revitalization Act and allow municipalities to file actions against banks and other corporate lenders who fail to maintain foreclosed properties.

A proposal from State Senator Kim Ward (R- Westmoreland) would lower the number of violations (to two or more of the same subsection of the municipal housing code) that trigger a criminal offense against owners of blighted properties. Her proposal would also clarify that the law applies to all residential, commercial and industrial properties.

We support most legislation dealing with blighted properties in communities because they have a significant negative affect on the value of our members' properties. But the devil is in the details of any legislation. In 2014 we continued our conversations with lawmakers, because of the great attention the problem of blight continues to receive throughout the Commonwealth.

### **Death of a Tenant:**

HB 1218 of 2013 was a reincarnation of tenant death bills from previous legislative sessions and contained many of the re-writes we had proposed. But we nearly withdrew our support for the bill in the spring of 2014 after a destructive landlord retaliation amendment was introduced. When the dust settled, our reputation for promoting professional property management and lobbying with integrity served to convince the retaliation amendment's sponsor to withdraw the proposal.

The retaliation amendment would have radically changed the intention of the tenant death bill. Under the Amendment, actions rental owners take to decline to renew a lease or evict tenants would be presumed to be in retaliation against a resident for complaining to agencies or authorities about alleged property issues, lease violations, or if a resident becomes active with any lawful organization. It would have created situations in which responsible residents could be placed in danger from problem residents and rental owners would be powerless to protect them.

After we assured the amendment's sponsor of our sincere desire to make sure responsible property managers could handle situations for the good of all tenants, she agreed to withdraw the amendment.

We were successful in convincing Representative Stan Saylor (R-York) to modify his tenant death bill's proposed language so that rental owners could at least begin to address problems and expenses incurred when a tenant dies. HB 1218 passed the PA House and remained in Committee in the Senate until session's end. In January of this year Representative Saylor indicated his intention to re-introduce the legislation. But the language we secured in last's year's draft will remain in this year's effort. The estate of the deceased resident would be liable for any rent that accrues one month after the resident's death or upon surrender of the rental unit, whichever is later.

### **Domestic violence victims' rights and leasing:**

In November, 2013 Representative Mark Painter (D-Montgomery) offered an amendment to the tenant death bill (see above) that would have included tenants' rights in cases of domestic violence, sexual assault or stalking. A tenant could be released from a lease under certain conditions with proper notice. Rental owners would also be required to terminate the lease of a perpetrator of domestic violence upon the issuance of a court order requiring the perpetrator to vacate the dwelling unit. The amendment is similar to domestic violence laws elsewhere in the nation. We worked to assure the amendment's language did not restrict owners from managing their properties and lease agreements in a way that protects the interests of all parties. Our efforts will have to be renewed in the new session.

Although the tenant death bill failed to make the legislative finish line to become law, the domestic violence victims' rights amendment was adopted. The movement to protect victims of domestic violence is gaining strength throughout the country, and this particular legislative initiative is sure to make a comeback in Pennsylvania this year.

### **Early Lease Termination for Entry in a Health Care Facility, or for Mental Illness:**

Our lobbying efforts to oppose legislation that would allow for early lease termination in a variety of situations continued in 2014. Despite well-intentioned social purposes, our concern is based on the significant financial burden early lease termination creates for rental owners, their considerable potential for abuse or fraud by ill-willed residents, and the unprecedented way in which they interfere with private contracts.

Two bills and a couple of amendments dealing with early lease termination gained little ground in 2014, but we are on the lookout for their return.

HB 1270 would have required rental owners to terminate leases early if the resident must move to a health care facility or a family member's home for daily care. This bill did not see action in 2014, and identical language inserted in other bills as an amendment was not adopted. House Bill 593 would have required early lease termination with 30 days notice for terminal or mental illness.

Our efforts contributed significantly to these bills' extended stay and eventual demise in committee in 2014. As for 2015, we'll keep our heads up.

### **Electronic Lease Payments:**

HB 797 was introduced in response to a small faction of citizens who are leery of electronic rent payments. Although the faction of renters who would prefer to avoid electronic payments is dwindling, we worked to assure the bill allows the parties to a lease contract to mutually agree to electronic rent payments- a growing trend in the industry. HB 797 would have allowed residents to pay rent and deposits by at least one form of payment that is neither cash nor electronic funds transfer. The bill spent 2014 asleep in committee.

### **Evictions:**

We monitor and weigh in on several bills every session that would amend Pennsylvania law regarding evictions.

HB 193 would have changed from 10 to 7 the number of days a district judge has to schedule a landlord-tenant hearing, and change from 10 days to 5 days the time frame a tenant has to appeal the judgment rendered. The bill spent its days in committee, where it remained at session's end. However it could possibly be introduced again in the new session.

HB 1117 would have required an eviction for the unlawful discharge of a firearm in an occupied structure. Responsible managers do not need mandates from Harrisburg on what to do when someone discharges a weapon in an apartment community. But we did not oppose the bill. Its sponsor wanted to provide help to rental owners in removing offending residents. HB 1117 spent 2014 in the House Urban Affairs Committee. We will watch for its return.

### **Immigration and Rental Housing:**

We have always taken the position that regulating the apartment industry and holding rental owners accountable for the immigration status of their residents is a bad idea, as it presents an impossible mandate for rental owners and is wholly outside of their responsibility to provide quality rental housing. We must not be placed in the position of

serving as de facto law enforcement or immigration authorities. Nor must we be placed in the position of having to balance a duty to reconcile the immigration status of our residents with fair housing concerns.

Last year's legislative activity regarding immigration slowed down a bit. Last session's SB 553 received little attention. It would have prohibited employment of illegal immigrants.

We will continue to monitor immigration issues as they pertain to employment or housing and will work at striking down any proposal that poses a compliance problem or financial threat to our members.

### **Marcellus Shale:**

The growth of ancillary industries, land use issues, environmental concerns, an increased need for rental housing, fees, and taxes are among the major issues surrounding the mining of the rich Marcellus Shale natural gas resource in Pennsylvania. The apartment industry cannot afford to ignore its tremendous impact. It presents opportunities for development but also poses challenges from possible regulatory control. The Commonwealth is trying to attract the major industries that use and adapt the extracted gas. We will continue to follow and keep members posted on the development of this very significant issue.

### **Medical Marijuana:**

SB 1182, allowing for the medical use of marijuana in Pennsylvania, passed the Senate and went to the House Judiciary in October of 2014. The concept is gaining widespread acceptance around the country and we were not surprised to see 1182 re-introduced just this past January. The comprehensive bill would create a separate agency to license the manufacture, sale and use of marijuana for medical reasons. But we will devote our energies to make sure it retains its provisions pertinent to multifamily settings.

Marijuana use presents several problems for rental owners. Fair housing concerns top the list. Federal and state law prohibit discrimination against persons with disabilities. Reasonable accommodations may be required of rental owners for residents who are disabled and wish to use marijuana for medical reasons. Secondhand smoke is another problem, and the nuisance or medical risks it could pose to other residents. The potential for property damage from smoking and growing the plants can be severe. Apartment units make poor greenhouses and rental owners in other states have suffered fires from improper use of electric lines for heat lamps, and water and humidity damage in the form of peeling paint, buckled floors and mold. The problem of increased

crime on multifamily properties has reportedly increased in other states who allow marijuana use. Additionally, federal law still prohibits marijuana use, and that poses several concerns for rental owners who would allow marijuana use on their properties. We will be proactive in Harrisburg in the coming session to assure any new legislative proposal accounts for these problems.

### **Meth Labs:**

2014 was quiet on the meth lab legislation front. But State Senator John Rafferty (R, Berks, Chester, Montgomery) has already signaled his intention to re-introduce legislation to require owners and lessors of real property to disclose information if a property has been used as a location to manufacture methamphetamine. We'll have to wait for the actual bill language, but we'll be sure to hit the ground running in opposition to any ill-conceived bill that could pose financial burdens on rental owners. Several bills were introduced in previous legislative sessions that typically required the disclosure of the presence meth labs on properties. We convinced legislators to consider the serious consequences such requirements would hold for rental properties and their efforts to attract and retain residents. We stopped several early bills from requiring owners to continue to disclose, forever, that a property had meth labs even after the problem is remediated. Our task will be to make sure new legislation carries the language we successfully advocated for past legislative efforts.

### **Mortgages and Foreclosures:**

2014 saw little progress for those who wanted to place requirements on mortgage companies and others for maintaining foreclosed properties. HB 853 spent the year in the House Local Government Committee. We monitored bills in committee, and they saw little progress.

In the past legislation requiring landlords to provide notice to all tenants about the threat of foreclosure was championed by several legislators. Their concern was with the possibility that rental residents could lose their homes if the property is foreclosed. Requiring foreclosure notices could unduly panic residents, when in actuality leases will be honored.

We discussed our concerns about the effect mortgage foreclosure bills have on rental owners with the bills' sponsors. We will continue follow all efforts to create requirements for rental owners in foreclosure situations.

### **Paid Sick Leave- Proposed Limits on Mandates:**

We joined several stakeholders in voicing our support for HB 1807, which would have prohibited political subdivisions in Pennsylvania from requiring employers to provide any paid leave that is not required by federal or state law. Small business owners have been especially opposed to municipality efforts to require paid leave. We reiterated the points we have often expressed in our opposition to efforts in Philadelphia to affect a paid leave ordinance. Although many Association members already provide paid leave, an added mandate would increase costs for compliance, record keeping, and reporting. The bill reached the House floor in November 2014 but was tabled. Supporters have an uphill battle this session, as proponents of paid leave are advancing the notion throughout the country.

### **SB 76- To Eliminate Property Taxes for Funding Education in Pennsylvania:**

The nature of property tax philosophy is slowly changing, and proposals to eliminate them as the chief source of education funding are gradually gaining acceptance. No one in the lobbying world can predict when the concept of eliminating property taxes will capture a meaningful place on mainstream political agendas, but proponents made notable progress in their efforts to build legitimacy around the issue in 2014.

A crumbling education system, declining Harrisburg support, and homeowners bearing the brunt of financing local schools propelled the issue forward. The apartment industry, whose property taxes profoundly affect sales and property management costs, cannot afford to ignore any principled effort to limit or eliminate property taxes.

We kept the conversation alive with sponsors of SB 76 and followed its progress. The bill made it out of committee and saw first consideration on the Senate floor, before being laid on the table in October. A solution to the pressing spot appeals problem appears further along in Harrisburg, and holds a stronger place on the agendas of many key lawmakers. But every indication is SB 76 proponents will build on the progress they made in 2014, and try again in the new year.

**Satellite TV and Notifying Rental Owners:** State Representative Gerald Mullery's (D-Luzerne) bill that would require satellite and cable television providers to notify landlords via a certified letter when they agree to provide and install satellite service for a resident stayed in committee in 2014. But Representative Mullery has already signaled his intention to re-introduce the bill in 2015. We agree with Representative Mullery, that owners must be assured of receiving notice about satellite or cable installation, and relying on residents to provide the notice often proves inadequate. Owners are often not aware when an installation causes damage to their property. Landlord Tenant Law currently covers cable television services and requires operators to notify rental owners

when they intend to provide and install services. Representative Mullery's bill would add satellite dishes to notice requirements. We will continue to support his efforts.

### **Taxes on Rent Revenues- A Court Case Challenge:**

In September of 2014 a ruling from Pennsylvania's Commonwealth Court could, if upheld on appeal, have significant implications for apartment community properties. We followed and reported on the case of Fish, Hrabrick and Briskin vs. the Township of Lower Merion and its ruling that Pennsylvania municipalities (other than Philadelphia) may not impose a business privilege tax on a rental real estate business. The Court ruled that the Pennsylvania Local Tax Enabling Act (LTEA) prohibits any tax on, "leases or lease transactions," whether it is a direct tax on a lease or an indirect tax imposed on the privilege of engaging in a leasing business.

Lower Merion is not taking the Commonwealth Court decision lying down, however, and will appeal. They will argue that although LTEA excludes direct taxes on leases or lease transactions, it does not prohibit a tax for the privilege of engaging in a leasing business in the Township. We will follow their appeal of this ruling throughout the coming year. And if the case progresses to the Supreme Court, we will file a friend of the court brief in support of the notion that the PA LTEA prohibits all taxes on leases or lease transactions. After all, our efforts were instrumental in assuring passage of a bill in 2006 that clarified taxes on leases are not allowed under the LTEA.

**HARRISBURG VISIT: It is your story to tell. No legislation can be advanced, and no bad ideas can be defeated, without a compelling story for legislators to embrace. And they want to hear it from those who count. You have a chance to tell Harrisburg lawmakers about your industry and how their actions affect your properties and your residents. Join your fellow industry leaders on April 13 and 14, 2015 for our annual Harrisburg Capitol Conference. Watch for details.**

## LOCAL

### PHILADELPHIA:

#### **Philadelphia Has a New Property Maintenance Code, Effective May 1, 2015:**

Philadelphia adopted the 2009 International Property Maintenance Code as its own property maintenance code and added existing requirements for lead paint disclosure, the Rental Suitability Certificate, and educational housing districts. The effective date was originally to have been January 1, 2015. But many stakeholders and city agencies voiced concerns about their readiness for compliance. So the date on which the new code goes into effect is now July 1, 2015.

The City's Administrative Code regarding rental properties has also been changed. We participated in a great number of stakeholder meetings during the legislative process and secured some important changes. We convinced the city to keep the rental license fee at \$50 per unit, with a maximum of \$20,000, as it is currently. And we were able to kill language, for the time being, about the particulars for a requirement for managing agents to contact L & I if violations are not addressed. The Certificate of Rental Suitability is still required. But we convinced the bill's sponsor to incorporate the language from the consent order in our 2009 lawsuit, instead of the original ordinance's language. Importantly, the updated language requires owners to acknowledge (not swear to) their obligation to provide a fit and habitable property. Additionally, there is no fee for the Certificate.

The text of the property maintenance bill can be accessed on the Government Affairs/Local Issues page of the PAA-east website, [paa-east.com](http://paa-east.com).

#### **Dumpsters:**

We followed up our testimony in 2013 with efforts to convince Philadelphia City Council of the unique problems multi-family properties face regarding the use and regulation of dumpsters. An additional bill introduced in 2014, No. 140903 would add rules regarding dumpster use and further exacerbate multi-family problems.

Multi-family properties face several particular problems when it comes to dumpster use. We are working to get Council members to consider separate legislation that applies to multi-family settings.

#### **Educational Housing Districts:**

Bill Number 140780 celebrated the December 2014 holidays in committee but we will keep an eye out for it emerging as an issue in 2015. Councilman Clarke had the bill introduced in October to designate his Fifth Council District as an Educational Housing District. His District includes Temple University and surrounding neighborhoods. Students would be required to notify the university of their off campus addresses, and notify rental owners of their student status. The university would have to be notified when students are cited for parking tickets and certain code violations. Additionally, rental owners would be required to provide adult supervision in rental buildings.

### **Energy Benchmarking:**

Throughout 2014 we kept an eye out and waited for the second shoe to fall. In 2012 Councilwoman Reynolds Brown's bill to require benchmarking of energy use by commercial buildings became law. Based on what is going on around the rest of the country, it seems inevitable that energy benchmarking for residential buildings will be coming to Philadelphia. We take no pride in noting we were right. As of this writing, a new bill to expand the city's emergency benchmarking requirements to all buildings, residential and commercial of over 50,000 square feet was introduced. Inasmuch as the majority of the housing stock in Philadelphia is pre-World War Two, energy usage and conservation efforts pose unique challenges, to say the least. Moreover, the EPA's idea of comparing the energy usage of like buildings places an emphasis on the wrong issue, especially for multi-family residences with a myriad of different energy users, needs and preferences. There is no evidence that shows a regulatory approach helps reduce energy usage. And benchmarking efforts stigmatize properties, arbitrarily interfere with market forces and influence values. We will work to minimize the effect expanded benchmarking mandates have on multi-family properties.

### **Bed Bugs Hearings:**

Philadelphia City Council had hearings on bed bugs in December. We attended and secured an invitation to be a part of a task force to be formed in 2015 to discuss the city-wide epidemic and possible legislative solutions.

### **Fire Damper Inspections:**

Late in 2014 we were contacted by sponsors of Bill No. 120103 about their intentions to amend the bill to bring city laws into compliance with Pennsylvania law regarding fire damper inspections. We are expecting committee hearings to be called shortly.

A fire damper is a passive fire protection product used in HVAC ducts to prevent the spread of fire through the duct. Bill No. 120103 would require inspections of fire dampers and smoke control systems once every four years. Newly installed dampers would be required to be inspected and tested within one year of installation. Smoke

control systems have to be inspected every six months or twelve months, as required by applicable NPFA standards. All inspections and tests would have to be completed by approved contractors.

We will partner with our real estate allies in presenting testimony and pursuing advocacy.

### **Notice of Rent Increases:**

In September Philadelphia City Councilman Greenlee introduced a bill that would require all rental owners to provide at least 90 days' notice of rent increases for tenancies of one year or more. Tenancies of less than one year would be required to give 30 days' notice. The current language of this proposal, Bill No. 140706, fails to account for situations in which rents could fluctuate downward in the intervening 90 days and thus put renters at a disadvantage.

The bill is in committee and we are in contact with the sponsor's office, awaiting word of any hearings.

### **Notice to Buyers of License Requirements:**

We were consulted and given a heads-up about Bill No. 140939, which will require the licensing and owner accountability information about a property to be included with the state mandated certificate L & I must issue. The Information must include current use, legal zoning classification and violations on record. The bill passed Council in record time and was awaiting the Mayor's signature when Council adjourned for the year.

### **Paid Sick Leave:**

Mayor Nutter has released the long awaited report of the task force he appointed in 2014 to study the need for paid leave for employees who work in Philadelphia. The recommendations were to require leave, but not in as broad a manner as would have been mandated in the second bill the Mayor vetoed in 2013. Councilman Greenlee wasted no time. His response to the task force implied, "thanks for your input, and have a nice day." At the close of 2014 it was clear he had every intention of re-introducing his own version of a paid leave bill. He made quick work of the bill in January of 2015, and the bill was passed into law the first week of February, 2015.

## **NATIONAL**

### **Pennsylvania is a 28 Billion Dollar State:**

We lost track of the number of times in 2014 that we referred lawmakers and others to NAA's research on the economic contributions our industry makes to Pennsylvania's economy. It's one thing to offer general observations about the apartment homes we provide. It's quite another to have hard and fast data to back up our claims. Home ownership is great- but so is apartment living. And apartment living works much better for millions of Americans. It's all about the home that is right an individual's needs. Young professionals on the move and empty nesters looking to downsize and enjoy an easier lifestyle are two of the best examples of renters who increasing chose apartment living.

Lobbying is our best method for teaching legislators about issues, and providing facts.

### **Disparate Impact and the Supreme Court:**

We reported, followed and contributed information to the NAA's efforts to fight the disparate impact issue.

The United States Supreme Court nearly heard oral arguments in a New Jersey case about disparate impact in 2013. But, probably fearing an unsatisfactory outcome, the parties settled and the case was withdrawn. The case, Mt. Holly Gardens Citizens in Action v. Mt. Holly, involved residents of a poor neighborhood whose town's redevelopment plan would replace hundreds of units of low-income housing units with middle-income homes. Plaintiffs claimed the move would have a disparate impact on minorities because some black and Latino residents would not be able to afford to live in the town any longer.

Signaling an apparent engrained desire to make new law on the issue, the Supreme Court agreed in 2014 to hear another disparate case, this time from Texas. The National Apartment Association once again weighed in on the Texas case with an amicus brief.

There are two main categories of discrimination cases. The first is discrimination due to different treatment- that is, treating or behaving differently toward someone because that person a member of a protected class, as outlined in the fair housing laws. Protected classes include race, color, creed, national origin, age, gender, and source of

income (in some jurisdictions). This first type of discrimination is also known as “disparate treatment”.

A second type of discrimination could result when a practice or policy, even if unintentional, has a discriminatory effect on persons of protected classes. This is known as “disparate impact”. For example, overly broad proscriptions against persons with criminal records have been challenged as having a disparate impact on minority groups when they are seeking employment.

The disparate impact case currently before the Supreme Court, Texas Department of Housing and Community Affairs vs The Inclusive Communities Project, was scheduled for oral argument before the court in January, 2015.

A Supreme Court ruling on disparate impact would hold enormous implications for our members. We will follow and report on the Supreme Court developments.

### **Building Codes:**

The National Apartment Association and their lobbying partner the National Multi Housing Council continue to save apartment industry members billions of dollars through their lobbying efforts over building and fire codes.

We participate in a working group with NAA monitoring and commenting on building and fire code developments. The NAA has succeeded in getting various code councils to remove or change a variety of model code requirements that would hurt the apartment industry.

And their work continues.

Included in the code activity of the International Code Council that NAA follows are the International Energy Conservation Code, the International Fire Code, the International Property Maintenance Code, the International Existing Building Code, and the International Residential Code. NAA and NMHC take part in the discussions for each one.

We remain on particularly high alert for any sign of retrofit mandates, for example, of sprinklers in multi-family buildings. When developing the 2015 model codes, the **Council** disapproved a proposal to include a retrofit sprinkler requirement for all existing hi-rise buildings. BUT they approved an alternate proposal to place the retrofit requirement in their code Appendix – which means that a local authority that adopts the 2015 code could elect to specify a retrofit requirement from the code appendix. A local municipality would have to do little more than check off a box on a list in the code package. They would not necessarily hold hearings or invite comment from interested stakeholders.

Our ongoing work with the NAA on this and other issues includes offering the perspective of our members, serving on their Legislative Committee, and participating in meetings such as the EPA meeting on the RRP rules.

### **Immigration:**

We continue to actively follow issues surrounding immigration in Pennsylvania and around the country. This writer serves as a point person on the subject for NAA. It is a critical issue for the apartment industry. Most new immigrants live in rental housing, and immigrants are a significant part of the industry's workforce, both in construction and property operations.

A patchwork of state and local laws dealing with immigration has sprung up to fill the void of federal guidance, and the need for uniform and comprehensive federal legislation is evident. The NAA is advocating for interior and border enforcement, a temporary visa program that addresses our workforce needs, a reliable national employment verification system to be phased in over time, and a practical earned legalization process for undocumented individuals currently working in the United States.

### **Lead Paint Regulations:**

In 2014 the federal Environmental Protection Agency was still trying to expand their lead paint Renovation, Repair and Painting Rules (RRP), and apply them to pre or post 1978 buildings. They invited public comment and NAA obliged. We followed and reported on the issue because of our participation in talks with the EPA in 2013.

The NAA and National Multifamily Housing Council (NMHC) spent 2014 preparing comments with the help of statisticians and air modeling experts that raise technical concerns with the approach the EPA is proposing for the RRP rules. Any change in RRP rules could greatly affect the apartment industry and add huge expenses to properties.

### **Model Landlord/Tenant Act:**

The Uniform Law Commission is an organization that provides states with model laws on a variety of state law topics. They spent 2014 working on the task of revising their model Landlord and Tenant Law which, when finalized this summer, will be available to states for adoption, either in whole or in part. An NAA task force which included PAA members worked throughout 2014 to study and recommend changes to the model law. NAA has made a number of recommendations to the ULC as a result of the task force work. Topics included the death of a tenant, landlord duties, tenant duties, domestic violence and early release from a tenancy, abandonment of personal property, and many others. And we have already seen examples of their work in Harrisburg. The

landlord retaliation proposal we defeated in 2014 was inspired by the provision in the new model L/T law. We are certain to see strains of the model law in future legislation as well.

### **Music Licensing:**

Demanding performance fees from multi-family properties is becoming a big problem. The number of Association members who have been threatened with the choice of legal action or paying license fees for using copyrighted music on their properties is on the rise.

Federal copyright law requires users to pay a license fee when using copyrighted materials in a public performance. This often applies to apartment communities who play music in their fitness rooms, leasing offices, at their pools and other “public” areas. Such use constitutes a public performance. But applying the law can be complicated and many factors regarding a specific case come into play.

The music industry has several organizations who keep tabs on who is using copyrighted music. They include BMI, ASCAP and SESAC. They are collectively known as Performance Rights Organizations (PROs). These organizations search for properties who play copyrighted music.

Many apartment communities have been contacted by PROs and urged to buy licenses or risk being sued for copyright infringement. Annual fees are based on the number of units in the community. For example, properties with 300 units have been charged \$197. Those with 300 to 600 units have been charged \$396. PROs make the assumption that the more units in a property, the more “public performances” are possible. The NAA is following this changing area of the law and we are helping to gather information and chronicle the experience of our members.

[www.weareapartments.org](http://www.weareapartments.org) is an indispensable website, loaded with facts and figures about the enormous contribution our industry makes to the nation’s economy. It presents tangible information lawmakers and stakeholders can use to see the invaluable contribution multi-family rental properties make to their communities. No town can be strong without quality rental housing.

### **WOTUS (huh?) Rules: EPA Efforts to Expand the Clean Water Act:**

In typical bureaucratic fashion, in 2014 the federal Environmental Protection Agency proposed a significant expansion of their control over the “**W**aters **o**f **t**he **U**nited **S**tates”, by characterizing their efforts as a simple attempt to clarify existing rules. Many who were paying attention quickly concluded the federal agency was stepping far beyond fair and reasonable regulatory authority.

We served as information gatherer for the NAA about the impact of the EPA's proposals on Pennsylvania. Small businesses, developers, and large properties such as apartment communities, could see significant adverse impacts. The proposed rules would significantly increase federal regulatory power over private property and add expensive financial burdens and onerous permitting requirements to construction projects.

The rules would expand the federal Clean Water Act's control over ditches and other water conveyances that may only have water in them after a heavy rainfall, such as low-lying areas where storm water collects at certain times of the year (that's right- puddles would be regulated by the EPA).

In 2014 the EPA received over 8,700 public comments on the proposed rule expansion, and at least one lawsuit in opposition was waiting in the wings at year's end.

We polled our members and offered additional information to NAA about the impact the EPA proposals would have. Although it looks like the rule-making process will face significant delay heading into 2015- we will continue our efforts to provide clarifying information about the issue.

#### **ALSO ON THE NAA AGENDA:**

In 2014 NAA/NMHC's extensive lobbying agenda also focused on Housing finance reform, energy efficiency, business and property operations, U.S. Mail delivery to multifamily properties, terrorism insurance, telecommunications, ADA accessibility issues, tax policies, and numerous additional issues.

#### **Looking Ahead:**

**Join us in Washington DC for the NAA Capitol Conference, March 17 and 18, 2015.** NAA needs our members to tell their stories in face-to-face meetings with members of Congress and their staff. Visit [naahq.org](http://naahq.org) for details.

**Our next Harrisburg Capitol Visit is April 13 and 14, 2015.** The absolute best messenger for telling a State Senator or Representative what apartments mean to their districts is you. Please join us for this all important visit. The health of your business and your industry depends on our lobbying efforts.

**We need you "PAC-ING":** Our PAC fund is critical to our lobbying efforts – and our lobbying efforts are critical to every member's bottom line.

Harrisburg lawmakers deal with nearly 5,000 proposals for new laws each session. We must make sure our issues don't get lost in the shuffle. Our Political Action contributions are vital to that effort. The **PAC** is a statewide fund dedicated to supporting candidates for Pennsylvania offices.

PAC contributions are based on the member's committee and leadership roles or affiliation with industry issues.

**Please join the majority of forward thinking Association members and mail in your PAC contribution.**

**Respectfully Submitted,  
Christine Young Gertz, Esq.**

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