

Best Practices

The AMA member attorneys have met to discuss what to teach at Five Star Classes, as well as what advice to give to clients who face these issues, regarding what to say and/or give to officers that come to rental properties requesting to either gain access to a resident's unit or access either the file or information in a resident's file.

Issue #1 - Access to the Unit:

This is the easy issue. The Fourth Amendment of the US Constitution guarantees the right of people to be secure in their persons, houses, papers and effects against unreasonable search and seizure. A landlord should not give access to the police or anyone else, unless there is a legitimate welfare check that is needed or the officer has a warrant and the agency is going to damage the door or residence unless you agree to open the door.

Issue #2 – Access to the resident's file or request for information in the file:

The quick answer is that a property owner may only share information with the police that is not otherwise protected absent a subpoena. The idea of Five Star is to comply with Crime Free principles. Five Star properties use the Crime Free Addendum. The landlord should want to work with the police who are trying to help the property detect and deter criminal activity, thereby helping law enforcement and the entire community.

Currently, there is no known Arizona case where a property owner has been sued and found liable for providing the police information from a resident's file on a theory of privacy or otherwise. However, there are a number of federal cases that have found the landlord liable when the court determined that the intrusion was unreasonable based upon the tenant's actual and subjective expectation of privacy and that society recognized that expectation as reasonable. As such, liability and exposure for providing information about a resident to the police is very low but the risk still exists. It is probably acceptable to provide the police with the names of persons in a specific unit, but owners should take care not to provide sensitive information such as credit reports and social security numbers without a warrant. Realistically, that information is not usually even what the police are needing.

The bigger and harder question is whether a landlord can provide a list of everyone who lives on site or in a particular building. That request may be too broad but it isn't necessarily a potential violation of the Resident's rights to privacy. It should be noted that there is a City of Phoenix Code that requires motel and hotel operators to provide lists of occupants and police may argue that that provision can be broadened to include apartment complexes.

What do the Police Typically Want When They Appear at a Property:

First, the police that show up to a property are frequently looking for information and they do not know the property or the manager. They are usually beat cops or detectives of some kind

that know little about the Crime Free or Five Star Programs. These officers can sometimes be pushy, but a property manager should not be intimidated. They just don't know the program. The AMA is trying to work on creating a better training program for all involved. The staff should not get defensive but stay calm and courteous and stay in control of the conversation. After all, the staff are in control of the file and the police can't get the information from the staff unless they either voluntarily give them information contained therein or the police have a warrant or a subpoena for it. Even with a subpoena, the landlord has the right to consult legal counsel before having to give them anything.

If the Crime Free officers needs something, they generally just call and most managers already know them. They won't ask for information that is intrusive, because they don't need it and they know that landlords want to be careful. Generally, the information they request is simply the names of everyone residing in a specific unit, but there have been rare instances that an officer has asked for the entire resident list. There is generally no reasonable reason that they would need such a list. The staff should attempt to get the police to reduce the list to just specific units and specific unprotected information.

What Management Should Do when an Officer is Demanding or Requesting Information:

No one likes an officer demanding anything. But either way, it is suggested that staff use the following strategy:

1. Listen to the officer and determine what they actually need.
2. If you do not know the officer;
 - (a) Ask for identification (they have additional police issued identification in their wallet);
 - (b) Ask for their agency name;
 - (c) Ask for their supervisor's name;
Call their supervisor, give the supervisor the person's name and ask the supervisor to explain what the officer looks like (do not simply ask if the person is an officer for obvious reasons);
3. Call your Crime Free Officer and see if the Crime Free Officer knows what is going on.
4. Call your attorney and explain what is going on and get their advice.

Generally, the information that can be provided in a tenant's file is:

1. The name of a person that is living in a unit without a warrant and without a subpoena.
2. The unit number that a particular person is living in.
3. The dates of birth disclosed on the lease or application.

The landlord should not give the office the file but should simply use the file, keeping it in their possession, to answer questions. If, at any time, the discussion or questions get too sensitive or seem too private, a landlord should get the attorney on the phone.