ILLINOIS RENTAL PROPERTY OWNERS ASSOCIATION

811 E Rollins Road, Round Lake Beach, IL 60073 www.irpoa.org

SB2829 : DEFENSE FOR UNFAIR CODE ENFORCEMENT

Senate Bill 2829 is legislation intended to provide property owners a reasonable opportunity to appeal a decision of a hearing officer employed by a unit of government in circuit court when they have been improperly penalized.

In order for a citizen to challenge the imposition of a fine by a unit of government, a suit must be filed in circuit court against the unit of government. The expense of maintaining a legal action often exceeds the amount of the fine being imposed. That fact serves to deter people from defending against penalties that are improperly imposed.

The necessity for **SB2829** is found in the municipal code addressing building and sanitation violations. The following conditions exist in these sections which lead to improper violations and extraordinary fines:

- Disputed violations are adjudicated by a hearing officer who is also employed by the unit of government making the accusation against the property owner;
- The inspector's accusation against the property owner is prima facie evidence that the violation exists;
- There is no requirement that an inspector be licensed or much less knowledgeable in the respective portion of the code and,
- Municipalities often impose additional fines when the violation is not remedied within a mandated time frame. By the time the report is written and received, the property owner often has inadequate time to address the code compliance violation by the deadline. In some cases, when the violation is considered a repeat offense, no opportunity to remedy the violation is given.
- Penalties are enforced without a determination of guilt by the courts.

A property owner should not be discouraged from defending themselves. Allowing property owners to recover costs, if they prevail, is a reasonable provision considering that under the existing structure of code enforcement a person accused of being responsible for an ordinance violation is considered guilty unless they prove their innocence.

To see the text of SB2829 click SB2829.
Please call your Senator and ask for their support of SB2829.
To find contact information for your Senator click Legislator Look Up

Following are series of examples supplied by our membership of improper penalties imposed through the code enforcement process.

Sincerely,

Paul Arena
IRPOA Director of Legislative Affairs
815-243-2924 Paul.Arena@IRPOA.org

MEMBERS

Central Illinois Rental Property Professionals

Chicago Creative Investors Association

Coles County Landlord Association

Danville Area Landlord's Association

DeKalb Area Rental Association

Freeport Area Landlord Association

Illinois Valley Creative Investors Association

Joliet Regional Landlords Association

Lake County Property Investors Association

Land of Lincoln REIA

Metro East REIA

Neighborhood Building Owners Alliance (Chicago)

Quad Cities Rental Property Owners Association

Real Estate Investors Association (Alton)

Rockford Apartment Association

Sauk Valley Landlord Association

Westmont Landlord Association

Actual Examples of Improper Code Violation Fines

1) **Circuit Court Reverses Hearing Officer, But Rules That Illinois Law Does Not Allow For Recovery Of Fees.** An owner of a rented property receives a violation notice of a car illegally parked on the grass at the property. The notice is marked as a second notice; is for a violation that occurred one year prior to the issuance of the notice; is the first notice received by the property owner and clearly states on the notice that it is grounds to contest the violation if "you are not the owner or lessee of this vehicle". The violation notice includes a hearing date to dispute the violation which the owner attends. This hearing was dedicated to illegal parking violations and the hearing officer makes a statement to all those in attendance that if they are the owner of the property they will be held liable for the violation. The rental property owner presents the violation notice to the hearing office, points out the violation is one year old, that the second notice is the first notice sent to the property owner and the language on the notice absolving a person who does not own the car from liability. The hearing officer holds the property owner liable and imposes a fine. The property owner files an action for administrative review. The 17th Circuit Court reversers the hearing officer's ruling as improper. The property owner files a motion to recover costs and attorney fees. The 17th Circuit Court rules that Illinois law does not allow for the recovery of fees in a review of the decision of a hearing officer. Subsequent to the ruling of the court, the same owner received the same type of violation for a vehicle he did not own at a different property in the same city.

2) **Property Owner Repeatedly Fined For Trash Violations Caused By Neighbors - No Practical Appeal Available.** An owner of a rented home receives a violation notice of excessive trash in a public alley behind the property where trash is placed for collection. The owner informs his tenant of the violation notice and is told by the tenant that the problem originates from another property on the alley. The tenant does clean up the trash. The owner inspects the property and notifies the code officer the problem has been corrected. The inspector acknowledges that the entire alley is a problem. Several weeks later another violation notice is sent. The owner again responds by having the trash cleaned, inspecting the property and notifies the inspector of his compliance. The following month the owner receives a bill of $260 for a fine and clean-up cost of another incident of trash in the alley. The city is now considering the offensives to be repeat violations at the same property even though the owner responded to each previous notice. The owner contacts the inspector to object to the fine considering he had been making every effort to address the problem. The inspector refused to remove the fine and when asked what appeal process was available responded that there was none and if the penalty was not paid a lien would be attached to the property. The owner believed he had no options and so paid the fine. The following month the owner received another bill for $235 for the same reason. This time the owner contacted the supervisor of the inspector to plead his case. The supervisor informed the owner that it is his responsibility to ensure the public alley remains clean and that he should inspect it daily if he wanted to avoid penalties. Eventually the supervisor agreed to reduce the penalty to $125 which the owner again was forced to pay because no practical method of appeal was available.

3) **After Property is Purchased Unlicensed Code Inspector Changes His Mind Requiring Expensive "Repairs".** An investor of rental property purchased a single family home that had been vacant for more than six months in 2008. Prior to entering into a contract, the code compliance and permit records for the home were requested to identify any code violations outstanding and the work that may be required. Due to a fire six years prior, the roof and electrical systems were replaced entirely and outstanding code violations did not exist at the time of purchase. At the time of purchase, the city required an inspection of any property which had been vacant for more than 6 months, to mandate that it meet current building code

requirements. For this home, code now required that all smoke detectors needed to be hard-wired/inter-connected. In addition, to the new owner's surprise, the inspector went to the Jacuzzi tub, opened the access panel and immediately found that the ground fault circuit breaker was not wired properly. The final inspection after the home was remodeled after the fire was performed by the ***same*** inspector who had approved this installation. This inspector was not a licensed electrician. The cost to repair the wiring was $1,600. Rather than "fight" with the "city", the property owner proceeded to make the repair knowing that the downtime required in fighting the "wrong" would be more costly than proving it "right".

4) **Property Owner Forced to Pay $2,200 for Windblown Trash - Only Recourse Lawsuit.** A violation was cited at a single family rental home of the open trash and windblown debris (sanitation) code. The property owner was notified with the city's standard warning letter. The letter was addressed to the correct property owner but sent to the wrong address. During this period, the city went to this house and wrote a ticket for $200 for violation of the city's garbage code. The ticket indicated that the fine would increase if not cured within seven days from the date of the occurrence, *not* receipt of the letter. The city went back seven days later and issued another ticket for $800. This ticket was not received before the end of the seven day period either (since it was mailed to the old address) and so the city went back again in 7 days and issued another ticket for $1,200. Once the notices were received, the property owner explained to the building department about the incorrect mailing address and that he had no previous record of being an unresponsive to an ordinance violation and offered to pay the original amount of $200.

   The administrative hearing official completely refused any waiver of the other tickets and the property owner was told to pay the complete fine amount of $2,200. In addition, he was informed that this decision could be appealed by filing a lawsuit in Lake County Circuit Court. To fight the case, an administrative hearing was scheduled. The respective property is a small house renting for $1,050 per month.

   When the rental property owner assessed his options, filing a lawsuit was not in his best interest financially because it could cost thousands of dollars and even if the property owner won the case, he would be unable to collect attorney's fees and court costs.

5) **Significant Repairs and Improvements Required of a New Owner Within a Month of a "Clean" Inspection.** A city required significant improvements and repairs to a property that was inspected without issues by the city within a month of the new rental property owner's purchase.

6) **Municipal Inspectors Use Umbrella of Life/Safety to Require "Special" Repairs Beyond Code.** Life/safety is the umbrella under which municipalities feel they can require landlords to do "special" repairs beyond code violations. More unsettling are the inspections performed by the local fire departments where firemen are mandating repairs and improvements, some of which seem to exceed their knowledge and authority -- architectural/ structural, etc. Examples include: support beneath stairs leading into the basement because the stairs felt "spongy", residents no longer allowed to have mats in the hallways at their doors and mandates to relocate handrails because they don't meet current specifications.