

ESSAY QUESTION NO. 7

Answer this question in booklet No. 7

Martha owned a duplex. She occupied one unit and rented the other unit to a tenant under a written yearly lease agreement. Martha decided to sell the duplex. She found a buyer, Bob. Bob indicated to Martha that he was willing to assume the remaining portions of the tenant's yearly lease.

Prior to closing on the sale, Martha visited her tenant at the duplex, Paul. She told him that she was selling the duplex to Bob and that the sale would be completed soon. She told him to talk with Bob after the closing about rental payments, contact phone numbers and the like.

The day after closing on the property sale, Bob left on a one-month vacation. He did not sign any type of rental agreement with Paul, inform Paul of his planned absence, and he did not leave Paul any information as to how to contact him. Two days later, the hot water heater that served the duplex stopped working. Paul left a note that day at the other unit in the duplex (where Martha had lived and which was designated as the address to give notice under her lease agreement with Paul) asking her to fix the hot water heater. After receiving no response by the next morning, Paul called Martha on her cell phone and asked her to fix the problem. Martha's response was: "I sold that building to Bob, and I told you that. Deal with Bob."

Paul then called a repair service and directed them to fix the hot water heater. When the repair service demanded payment to perform the work, Paul paid the bill of \$2,000.

When Bob returned, he talked with Paul and said he thought that \$2,000 was too much to pay for the repair. He told Paul he thought that \$1,200 was a fair price for the repair but that the actual bill of \$2,000 was too high. Bob indicated that he was willing to reduce Paul's next rent bill by \$1,200. Bob then left town on another extended trip and Paul had no way of locating him.

1. Discuss any duties that Bob may have owed Paul that he may have breached under the Alaska Uniform Residential Landlord and Tenant Act (URLTA).
2. Discuss any duties that Martha may have owed Paul that she may have breached under the URLTA.



GRADER'S GUIDE

*** QUESTION NO. 7 ***

SUBJECT: REAL PROPERTY

1. Discuss any duties that Bob may have owed Paul that he may have breached under the Alaska Uniform Residential Landlord and Tenant Act (URLTA). [60 points]

A. Duties of Disclosure. [20 points]

Bob breached his duties of disclosure to Paul. The URLTA places certain obligations on landlords, including a duty of disclosure. AS 34.03.080 provides in relevant part:

(a) The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

Here, Bob did not provide Paul any written notice, much less the required information such as name and address of the person authorized to manage the premises, or receive notice. The URLTA does not provide for a specific damages or other remedy for breach of a landlord's duty of disclosure under AS 34.03.080 and the fact pattern does not indicate that the non-disclosure caused any damages independent of the failure to maintain the premises (the \$800 difference between the actual repair bill and the amount Bob was willing to pay), discussed next. [**Note:** Although the call of the question does not ask for the analysis, clearly if Paul can show that Bob's non-disclosure caused additional damages beyond the difference between the actual costs and the amount Bob was willing to pay, Paul would also be entitled to recover those damages in a contract or tort claim he might bring against Bob under the common law.]

B. Duty to Maintain Premises. [30 points]

Bob breached his duty to maintain the premises. The URLTA requires that landlords maintain their facilities to certain standards. Alaska Statute 34.03.100 provides that landlords must:

(5) supply running water and reasonable amounts of hot water and heat at all times insofar as energy conditions permit, except where the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

AS 34.03.160(a) requires a landlord to remedy any noncompliance with AS 34.03.100 within ten days of receiving written notice of the deficiency or the tenant may terminate the rental agreement within twenty days.

AS 34.03.180 provides that if a landlord fails to supply any essential service, including hot water, a tenant upon giving written notice may immediately “procure reasonable amounts of hot water . . . and deduct the actual and reasonable cost from rent,” “recover damages based on the diminution in the fair rental value,” or “procure reasonable substitute housing in which case the tenant is excused from paying rent.”

AS 34.03.160(b) further provides that a tenant “may recover damages and obtain injunctive relief for any non-compliance with the rental agreement or AS 34.03.100”

A tenant may not pursue remedies under both AS 34.03.160 and 34.03.180.

Here, Bob failed to maintain the premises because the hot water heater failed. Paul exercised his right to immediately procure hot water under AS 34.03.180. Under that provision he had the right to deduct the reasonable cost from his rent. Paul has a claim to the disputed \$800 of the repair cost. The facts do not provide enough information to conclude whether \$2,000 was a reasonable repair cost, but examinees should indicate that Paul has a colorable claim to the \$800 because he in fact paid \$2,000 for the repair and that Bob was only willing to pay \$1,200.

Additionally, applicants may make arguments that Bob is entitled to deduct other reasonable costs of his procuring hot water not specifically identified in the facts. Those costs might include the costs of showering and washing clothes at other locations during the several days that hot water were unavailable at the duplex, and lost work to deal with the repair service. Those costs would be deductible against Paul’s next rent under AS 34.03.180.

C. Duty of Good Faith. [10 points]

Landlords owe a duty of good faith in dealing with tenants under the URLTA. AS 34.03.320 (“Every duty under this chapter and every act that must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. The aggrieved party has a duty to mitigate damages.”) Here, Bob may not have discharged his duty of good faith in disputing \$800 of the \$2,000 repair bill. The facts do not indicate whether or not \$2,000 is a reasonable bill for the repair performed. Further, some applicants may argue that Bob breached his duty of good faith by leaving town again without fully addressing his issue with Paul over the repair bill.

2. Discuss any duties that Martha may have owed Paul that she may have breached under the URLTA. [40 points]

Martha breached several duties she owed Paul, each stemming from her failure to disclose in writing to Paul her sale of the building to Bob. Several sections of the Alaska Uniform Residential Landlord and Tenant Act (URLTA) are applicable.

A. Landlord Disclosure Requirements. [35 points]

The URLTA places certain obligations on landlords, including a duty of disclosure. AS 34.03.080 provides in relevant part:

(a) The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with (a) of this section becomes an agent of each person who is a landlord for the purpose of

(1) service of process and receiving and receipting for notices and demands; and

(2) **performing the obligations of the landlord under this chapter** and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

(Emphasis added).

A second section of the URLTA provides selling landlords relief from subsequent liability if they provide written notice of the sale to the tenants:

(a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchase is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance.

AS 34.03.110.

Here, because Martha did not provide Paul with the required disclosures, she was an “agent of [Bob] for the purposes of . . . performing the obligations of the landlord under this chapter.” AS 34.03.080(c)(2); see *Alaska Teamster-Employer Pension Trust v. Wise*, 120 B.R. 537 (D. Alaska 1990)(holding that owner after foreclosure’s failure to provide notice to tenants created obligations and responsibilities to tenants under various sections of URLTA). She also did not insulate herself from liability because she did not give written notice to tenants of the sale, as required by section .110. The *Wise* court noted, interpreting section .110 that “[w]ritten notice of the transfer must be given to the tenant before the landlord is released from subsequent liability.” 120 B.R. at 540. Thus, Martha owed the same obligations to Paul as Bob under the URLTA (discussed above).

Martha will argue that she is not Bob’s agent because she gave oral notification of her sale of the building to Paul. This is not likely to be a successful argument against any claim asserted by Paul. The Alaska Supreme Court has held that in certain circumstances oral, or actual, notification to a party entitled to notice may suffice despite a contractual or statutory duty to provide written notice. See *Neal & Co. v. City of Dillingham*, 923 P.2d 89, 92 (Alaska 1996)(“[U]nder certain circumstances timely actual notice, even in the absence of written notice, will be considered sufficient notice” despite contractual obligation to

provide written notice.); *Tinker v. Veco, Inc.*, 913 P.2d 488, 492 (Alaska 1996) (discussing employee's duty to provide written notice of injury and concluding "If a legally sufficient written notification would have only duplicated the same information Tinker already had communicated verbally to Veco . . . it would require an exceptional set of circumstances for this difference in form by which the information is communicated to prejudice the employer.").

Here, Martha's argument will fail because the facts indicate only that Martha told Paul of the imminent closing date (but not the date itself) and that Bob would be the new owner. There is no indication in the facts that she provided all the information required by the URLTA (e.g. the closing date, Bob's name and address and persons authorized to receive notice on behalf of the Bob). This lack of information prejudiced Paul because he did not know who to contact to authorize repair of the hot water heater – as displayed by Paul addressing the note about the hot water heater to Martha – and a court would therefore reject Martha's argument. See *Tinker*, 913 P.2d at 492-93.

B. Duty of Good Faith. [5 points]

As with Bob, Martha also owed a duty of good faith to Paul. AS 34.03.320. Under the circumstances she probably failed to discharge her duty of good faith when she told Paul "I sold that building to Bob, and I told you that. Deal with Bob," and then failed to help Paul either locate Bob or fix the problem.