

Kimball, Tirey & St. John LLP

Negative Online Apartment Reviews

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Online apartment reviews are a double-edged sword. Positive reviews can help attract new residents. Negative reviews can have the opposite effect.

Management should periodically investigate information available online about their property. This can be accomplished by entering a few select search terms (e.g. “XYZ Management”, “Ridgecrest Apartments”, or “123 Main Street, Sacramento”) in one or more search engines (e.g. Google, or Yahoo), and reviewing the results. Periodic searches can be automated using Google Alert (at <http://www.google.com/alerts>) or a similar service. Google Alert will search for new material posted on the internet based on selected search terms, type of materials to be searched (e.g. news, blogs, or discussions), and frequency of reports (daily, weekly or monthly). When the automated searches find the searched terms in new online materials, the results will be automatically sent to the email address entered.

If negative information is posted, the first step is to review the website’s review guidelines, and determine if the website operator provides any options to management.

- Some websites have a “report abuse” feature that may result in deletion of the posting if the posting doesn’t comply with the website’s guidelines. Yelp, Craigslist and ApartmentRatings.com are examples of websites with this feature.
- Some websites allow reviewed businesses to respond to, delete and/or edit reviews. For information from Yelp about how to respond to reviews, see https://www.yelp-support.com/Responding_to_Reviews?l=en_US.

If the website allows the reviewed business to respond to a review, consider whether a response is a good idea. There are two trains of thought.

- Some managers choose to ignore negative reviews, under the theory that negative reviews won’t affect their property, and/or that they are unlikely to win an online “war of words”, and/or that by responding they are lending credence to the complaint.
- Other managers choose to be more proactive, reasoning that prospective applicants are likely to use an online search to investigate the property before entering into a lease, and that a negative review may “turn off” a prospect.

Before choosing to respond, the surrounding circumstances should be considered.

- If the negative reviewer is an irrational resident that has a long-existing personal vendetta against a property, who is ranting on his or her personal home page, management may choose to ignore it, feeling that (1) it is unlikely to be found or read by prospective residents if it isn’t highly ranked by a search engine, (2) prospective residents won’t give much weight to a review by an obviously irrational reviewer, and/or (3) there may be no reasonable or cost-effective way to placate the negative reviewer or have the negative review removed or modified.
- If the negative review appears on a highly ranked, “neutral” third party review website, a thoughtfully crafted response may be the most effective method of damage control. Yelp allows public comment responses and private message responses.

If management chooses to respond to a negative review, there are at least two reasons for the response, and both should be kept in mind when formulating the response.

- One reason to respond is to try to convert an unhappy reviewer into a happy resident, who once happy, may renew his or her lease and/or post a follow up statement reflecting that the problem has been resolved.
- The second reason to respond is to show prospective residents that management is dedicated to resident satisfaction, and will work to resolve resident concerns whenever possible.

Management dealing with negative reviews need to understand the legalities of negative statements. A false statement of fact published on the internet may be actionable, including as libel (harmful to a person's reputation), trade libel (harmful to a person's business reputation), interference with contracts (e.g. interfering with leases with current tenants), or interference with prospective business relationships (e.g. interfering with prospective applicants for tenancy). However, many negative postings are expressions of opinion (which are not actionable), as opposed to false statements of fact (which are actionable). In the United States, we have first amendment rights to speak, which includes the right to express our opinions, whether they are logical, well-reasoned opinions, or illogical, ignorant, biased rantings. A property owner has no right to pursue claims based on an expressed negative opinion with which the property owner disagrees, but is legally allowed as free speech. A property owner may have the right to pursue claims based on a false statement of fact. As examples, "Magnolia Grove Apartments is a horrible place to live" is an opinion, and is legally allowed. On the other hand, "East West Acres increased my rent by \$200 a month" is a statement of fact. Because many negative reviews are expressions of opinion, legal action is often not an appropriate response to a negative posting.

If a false statement of fact is posted, and cannot be removed or mitigated using another method, a cease and desist letter from an attorney should be considered. A cease and desist letter may result in a false statement being removed, but on the other hand, could also be posted on the internet by a ranting critic. Therefore, careful consideration should be given before sending a cease and desist letter.

If a cease and desist letter is sent, but is not successful, a property owner should think very carefully before resorting to litigation. Litigation is rarely a cost-effective response to a negative review. It is likely to be time intensive and expensive. Even identifying the person who made the negative comment can be difficult and expensive, since many online postings are made anonymously or with a pseudonym. Even if successfully prosecuted to judgment, a losing tenant may not be able to pay a substantial judgment. Property owners need to conduct a careful cost-benefit analysis at the outset, with the assistance of legal counsel, before initiating litigation.

If negative information is posted, management should also consider whether changes should be made in business operations. If operational changes can help mitigate or remove the problem in the future, those changes should be considered.

Contract provisions prohibiting consumers from posting bad reviews are not allowed under both Federal law (the Consumers Review Fairness Act of 2016) and California law (Civil Code § 1670.8).

Management and owners of negatively-reviewed properties should consider applicable law, available options, and the costs and benefits of the available options, before choosing a course of action. If they feel that they need guidance, they may benefit by consulting with experienced legal counsel who can advise them.

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