JEFFERSON COUNTY MEDIATION SERVICES

VOLUNTEER COLLOQUIUM MINUTES

November 15, 2011

Volunteers Present: Neila Achter, Floyd Borakove, Lorna Dwyer, Anita Gilbertson, Jim Gurley, Loretta Koehler, Georgine Kryda, Nancy Martch, Deirdre Santoscoy, Randy Stein, David Troxel, Frank Tsu

Other Attendees: Maria Fenton, Magistrate Schaefer

Staff Present: Mark Loye, Julie Carter, Helena Jo Goldstein, Brian Beck

I. Welcome:

Mark Loye welcomed everyone to the meeting and asked those present to introduce themselves.

II. Program

- A. Pending Cases: This report shows all pending cases currently assigned to mediators. If you have an open case, please remember to keep the office informed about case activity.
- B. Cases Available: Emails are sent regularly to inform volunteers about available cases. Please remember to respond <u>only</u> if you are volunteering for a case. (Hint: change the subject line if you are using the email to correspond about something else!)
- C. Statistics: Right now it looks like the number of cases JCMS will handle in 2011 will surpass prior year case totals. Many thanks to all of our volunteers, who make this possible!

III. Presentation: Implications of the Colorado Warranty of Habitability Law on Landlord-Tenant Mediations, Particularly in Connection to Mold and Bed Bugs

David Volkel, who works at the Jefferson County Public Health Office, started the program. He first talked about mold. He suggested that rather than spending money on testing the mold to determine what type it is, the priority should be on locating the water source to stop the accumulation of moisture, and to quickly dry any damp areas. The moisture can be from many sources: overuse of humidifiers, leaking pipes, floods, poorly ventilated bathrooms, etc. It is important to find the moisture source, because unless that is corrected mold can return, even if it has been painted or even plastered over. Carpet and carpet padding provide a good habitat for mold, but mold will grow on just about anything. The color of the mold is not a good indicator of dangerousness- every patch of mold grows slightly differently.

Individuals can remove mold if it is not too extensive, but masks, gloves and eye protection should be worn. It is important not to stir up the mold, and to remove damaged areas while they are still moist. Anything larger than about three square feet

should be removed by a professional. The Department of Public Health does not go on location to investigate the source of mold. They have very limited authority in mold cases. They will send a letter to a landlord on behalf of a tenant experiencing a mold problem. Often the letter helps the tenant negotiate a clean-up or other resolution.

Mr. Volkel next addressed concerns about bed bugs. While there is no current evidence that bed bugs can spread human pathogens, the proteins in their saliva cause an itchy red swelling when they bite humans. Bed bugs are not indicators of poor housekeeping. They are intrepid hitchhikers who can survive for months at a time without feeding. Females produce one to seven eggs a day for ten days after a blood meal, and can produce 200-500 eggs during their lifetime. The eggs hatch within six to ten days.

No insect repellants are rated as effective for bed bugs. They are also very difficult to kill. Extreme heat works, but can destroy the item being heated. The types of chemicals that kill them are not safe to use in a residence. If a tenant experiences a problem with bed bugs, the Department can send the landlord a letter asking that the pest be eradicated. The letter cites State Board of Health Regulation 1010-14, Control of Insects and Rodents. However, the Department has no enforcement power to make a landlord do anything about a bed bug infestation.

Mr. Volkel kindly provided JCMS a copy of his power point, which contains much additional information and many reference sources. The power point is attached to the email with these minutes.

JCMS Mediator Victor Grimm spoke next. He is the author of "Landlord and Tenant Guide to Colorado Leases and Evictions." Mr. Grimm's handout is also attached to the email with these minutes. (Disclaimer: What follows is a quick overview of some aspects of Colorado landlord-tenant law. It is not a substitute for consulting a lawyer if you are a landlord or tenant with a habitability problem!)

Colorado was the 49th state in the country to adopt a law establishing the concept of a warranty of habitability in leases. (See, Colorado Revised Statutes, beginning at 38-12-501.) The law puts obligations on both landlord and tenants. When a landlord rents property, the law requires that the landlord provide heat, keep common areas clean, etc. Once the tenant moves in, the tenant assumes certain responsibilities, for example to keep the rented premises in a safe and sanitary condition.

To claim a breach of the warranty of habitability, the tenant must first send a letter to the landlord notifying them that the condition of the premises is materially dangerous or hazardous to tenant's life, health, or safety. The letter must demand that the landlord fix the problem within a reasonable period of time. (It is not clear what a reasonable amount of time might be, or whether the tenant should suggest what s/he considers reasonable in the letter.)

If the landlord does not complete repairs within a "reasonable" period of time, the tenant needs to send a second letter, notifying the landlord of intent to terminate the lease due to the breach. The statute requires that this letter give the landlord a last chance of five days to cure the problems. Note: Colorado law does not have any provision allowing tenants to use rent money to do repairs themselves. If the landlord brings an eviction action for non-payment of rent, the tenant can claim repair expenses as a defense. But any rent money that can not be shown to have been used for repairs must have been deposited with the court, in effect to be held in escrow until the landlord-tenant dispute is resolved.

Prior to passage of the warranty of habitability law, Colorado courts recognized the concept of constructive eviction. Mr. Grimm reminded the audience that this defense is still available to tenants, and can be a good option. To claim constructive eviction, for example in a suit for non-payment of rent, the tenant has to move out of the premises within a reasonable amount of time after it became, in their opinion, uninhabitable. The standard is much lower than the current statutory standard for warranty of habitability, which requires the premises be materially dangerous or hazardous. However, the tenant does have to move out. Tenants with a month to month lease will have a hard time explaining why they did not simply give notice to terminate their lease, and move.

Another common law defense to a non-payment of rent case, breach of quiet enjoyment, is also still available to tenants. This covenant means that the law recognizes a tenant's right to be able to live in peace in the leased property. The tenant is not required to move out to claim this covenant was breached. Examples of breaches: flooding from pipes, rodent infestation, collapsed ceiling.

Bed bug infestations bring a host of complications. If a tenant claims the landlord is responsible for a bed bug infestation, the landlord may claim the tenant brought them in. Some landlords require tenants to sign bed bug addendums when they sign their lease. The tenant basically has to state in writing that s/he does not currently have bed bugs before the landlord will let them move in. Some addendums include provisions that the tenant can not bring in any second hand furniture, or that the tenant must notify the landlord immediately if bed bugs manifest themselves.

Mr. Grimm advised tenants who develop a bed bug problem to contact the Health Department, and to document, document, document. He advises landlords to develop a regular, documented pest control program. This would probably involve regular inspection by a professional, and regular pest control measures (spraying, etc.). While the law requires asbestos to be removed by professionals, there are no currently no provisions that require a landlord to use a professional service to handle mold or bed bug problems. However, inexpert remediation attempts can worsen both problems, costing the landlord even more in the long run.

There are still many uncertainties in the Colorado warranty of habitability statute. The good news: this leaves lots of room for mediation!

Mark Loye thanked everyone who attended for participating in the discussion, and wished them a good evening.

IV. Next Colloquium: Tuesday, January 17, 2011, 6:00 – 8:00 p.m. in the Open Space Hearing Room (Ponderosa Room). The topic will be mediation of issues involving the elderly - this can include disputes between family members over care for elderly parents, disputes between elderly parents their children about whether the parents can safely drive, or remain in their home, etc. We hope to see you then!

Also, suggestions for Colloquium topics are always welcome.

The meeting was adjourned.

Submitted by: Helena, Jo Goldstein

Helena Jo Goldstein, Programs Manager

Approved by: <u>Mark Loye</u>

Mark Loye, Director