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Of Counsel

To: All Property Managers and Apartment Owners Represented by Altshuler & Spiro

From: Bruce J. Altshuler

Re: Resident Manager Contracts

Date: October 23, 2014

Dear Managers and Apartment Owners:

As you know, the California Minimum Wage increased on July 1, 2014 to \$9.00 per hour and will increase again on January 1, 2016 to \$10.00.¹ This increase along with recent legal developments directly affects how you must compensate your Resident Managers. Based upon the growing number of wage and hour lawsuits and class actions by Resident Managers against apartment owners and management companies for wage and hour violations in California, below is a guideline for how to properly compensate your Resident Managers.

First and foremost, it is imperative that you have a written agreement with your Resident Manager outlining the terms of your agreement. Failure to have a properly drafted voluntary written agreement can subject an owner to liability and prevent any credits or offsets that may be applicable.

A Resident Manager is an employee and is not an independent contractor. As such, you should issue pay stubs, make accurate payroll deductions and obtain worker's compensation coverage as an employee of the owner of the property. Other owners/management firms do not do that, but this will not be a defense if you are defending a wage and hour case.

Obtain written time records for all hours worked by the Resident Manager. Keep and maintain these records for at least four years. "Hours worked" is defined as the time spent carrying out assigned duties. Specify in writing the maximum hours in a day and in a week that the Resident

¹For certain cities within California that have enacted higher minimum wages, apartment owners must comply with those higher amounts.

Manager will be working. Provide in your Agreement that sleeping, eating, talking on the telephone, using the Internet, reading and watching television are not compensable, even if the Resident Manager is waiting to perform a task or for a service provider to show up.

All Resident Managers must be paid the current minimum wage (\$9.00 per hour), for every hour worked. Generally, overtime is applicable if the Resident Manager works in excess of 8 hours per day/40 hours per week, or more than six days in any one workweek. Do not let them claim they are on duty "at all times." That is not the law. Exceptions can apply. The maximum monthly rent which may be charged is \$508.38 for a single Resident Manager and \$752.02 when a couple is both employed as the Resident Managers.²

While a Resident Manager cannot be charged more than the monthly rent of \$508.38 (single) /\$752.02 (couple) and must be actually paid for the hours worked, a few exceptions can apply to how a Resident Manager may be compensated.

- 1. Credit/Offset Against Manager's Salary:** The value of the Resident Manager's apartment is credited towards his monthly salary, and thus towards the employer's minimum wage obligation to the Resident Manager. The amount credited may not be more than two-thirds of the ordinary rental value of the apartment, and in no event more than \$508.38 for a single Resident Manager and \$752.02 for a couple that is both employed as the Resident Managers. Thus, the maximum amount that can be offset from the Resident Manager's wages is \$508.38 (single)/ \$752.02 (couple). A voluntary written agreement is required between the Resident Manager and the employer specifying that a credit is being applied toward the Resident Manager's wages.
- 2. Check Exchange:** Rather than offset a Resident Manager's salary from the minimum wages owed to the Resident Manager, the parties can agree that the Resident Manager receives his full minimum wage salary from the first hour worked with no deduction applied for his apartment, and the Resident Manager will separately pay the employer for use of the agreed upon rent for the apartment. In that event, the employer may charge the Resident Manager up to two-thirds of the fair market rental value of the apartment, irrespective of the \$508.38 or \$752.02 limit. It is important to note that separate checks must be exchanged with the Resident Manager providing one check for the rent (not exceeding two-thirds of the rental value) and the employer providing a separate check for the Resident Manager's minimum wages earned. We believe this is a better way to handle this especially in cases where the rent far exceeds the manager's earnings.

² Note that these figures will increase on January 1, 2016 when minimum wage increases to \$10/hr. The credit will be \$564.81 (single) and \$835.49 (couple).

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Based upon the strict rules relating to Resident Managers, it is important to understand an owner's options and the specifics involved therein. A written agreement is vital in all circumstances and is critical to help avoid unnecessary litigation. If you do not have a contract which meets the above requirements, or are unclear as to which option is best financially for you, we will be pleased to advise you.

Once again, we are enclosing a form for time sheets you should use for your managers. Insist on their filling out signing the form for every pay period to calculate their wages.

Sincerely,

BRUCE J. ALTSHULER

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Encl.