

Landlord-Tenant Transactions.

Landlord-tenant relationships may arise in both residential and commercial leases. The terms of virtually all landlord-tenant transactions and relationships are defined in a written lease, particularly those that last for a year or more (to satisfy the legal requirement called the statute of frauds). Some leases have a specific term of duration (i.e., one year). This differs from a periodic tenancy or tenancy at will, which runs from month to month and can be terminated at any time. Although both residential and commercial leases are governed by the agreement reached between the parties, most states have enacted laws that give residential tenants additional rights that may not be contained in the lease itself. For example, a landlord cannot refuse to rent an apartment to you because of your race, national origin, religion, or sex. In most states, you cannot be denied an apartment because you have children or because of your sexual orientation. However, a landlord can bar you from renting an apartment because you have a pet.

In a lease arrangement, the landlord has the legal right to expect that the rent will be paid on time, that the premises will be maintained in a clean fashion (and not be destroyed or damaged), that the tenant will not interfere with other tenants' quiet enjoyment (e.g., by throwing wild parties), that the tenant will not use the premises for illegal purposes (e.g., engage in prostitution), and that the tenant will not commit sanitary or environmental violations (e.g., by leaving garbage in the hallway).

Tenants have the legal right to live or work in premises that are safe and habitable. This means, for example, that landlords are required to repair all broken appliances and fixtures promptly, comply with building and housing codes, keep the building and all common areas such as lobbies and stairwells safe, respect tenants' privacy rights (e.g., by not eavesdropping or entering the premises without prior notification), and provide essentials such as heat, air conditioning, plumbing, hot running water, electricity, working kitchen appliances, and garbage removal.

All the terms and conditions of the arrangement should be specified in a written lease to reduce misunderstandings and conflicts. Many residential and commercial leases are provided to the tenant by the landlord on a preprinted form. Always review this document before signing it. Be sure that all promises and representations made to you by the landlord and/or broker are contained in the lease, because oral promises not embodied in the lease probably cannot be enforced. Question the meaning of all ambiguous and confusing language. A lease can be such a complicated document that you may want it to be reviewed carefully by an attorney before you sign it. Even if you are presented with or use the standard type of form bought in stationery stores, review it carefully. These forms often contain clauses that can cause difficulty later. For example, as a tenant, avoid signing a lease with clauses that: (1) do not provide the right to trial by jury, (2) obligate you to pay large attorney fees if the landlord commences legal proceedings, (3) require large increases on top of base rent.

Hidden costs in commercial leases often include tax escalation provisions, construction and alteration of the premises fees, insurance obligations, utility charges, and many other costs. Be sure you understand the total bill to be incurred before signing on the dotted line.

If you are a prospective tenant and must sign a complicated lease immediately because you don't want the deal to fall through, here's a suggestion that the landlord may accept and initial on the lease and which is legally binding: add an "escape clause" after your signature. Such a clause essentially states that your obligations and rights under the terms of the lease are subject to your attorney's review and approval within some number of days. This may allow you to back out of the lease legally if it contains onerous provisions that your attorney objects to.

The following points should always be negotiated and included in any lease:

- (a) Name and address of the landlord and the tenant(s).
- (b) Amount of rent and the date the rent is due.
- (c) Whether any late charges are imposed if the rent is not paid on time or if a rent check is returned due to insufficient funds.
- (d) The amount of the security deposit. (Will the security deposit be earning interest? Under what conditions and when will the security deposit be returned?)
- (e) Term of the lease. (Can it be renewed? If so, how much written notice is required for the lease to be renewed and under what new financial arrangements?)
- (f) Fixtures and other property included with the premises. Degree of care that must be taken by the tenant to safeguard such property.
- (g) Tenant's right to assign or sublet the premises. How much notice must be given to the landlord before approval is obtained? Can the landlord reasonably withhold his consent? In an assignment, a new tenant replaces the old tenant on the lease and assumes all rights and responsibilities. In a sublease arrangement, the previous tenant is still legally responsible under the terms of the lease. For example, if the subtenant fails to pay the tenant the rent or causes damage to the premises, the original tenant is still liable to the landlord. His only recourse would be to sue the tenant.
- (h) Are pets allowed?

- (i) Who pays for utility charges? Must the tenant place utilities in his own name?
- (j) Is the tenant responsible for carrying fire and other forms of property insurance? If so, what is the minimum amount of acceptable coverage?
- (k) Who is responsible for making repairs? Will the landlord clean the carpets before the tenant moves in?
- (l) What about parking space, use of a rooftop, additional storage room and concierge service?
- (m) Who is responsible for injuries to invitees and guests?
- (n) What rights does the landlord have if the tenant destroys the premises or moves out before the lease has concluded?
- (o) What rights does the landlord have to commence eviction proceedings?
- (p) What rights does the tenant have to prevent the landlord from entering the apartment or commercial premises? Can the landlord show the premises to a prospective purchaser or future tenant? If so, how much notice is required and at what hours? Does the landlord have a set of keys to the premises? What happens if the landlord enters the premises and property is missing?
- (q) Who will pay for renovations and improvements? Can the tenant remove certain "improved" property after the lease expires?

Provision For Rental With An Option To Buy If Applicable

For example, by treating some of the rent as a contribution toward the purchase price, an eventual reduction of the purchase price may be effectuated. As with any real estate transaction, always seek the advice of a competent lawyer before doing this on your own.

Landlord-tenant relations is a specialized legal subject. Speak to a competent attorney before doing anything that could jeopardize your rights under a lease. For example, do not automatically withhold rent or engage in a rent strike with others when repairs are not promptly made or other poor conditions exist. By doing so you can risk losing your apartment. Document any problem by sending the landlord a letter by certified mail, return receipt requested. The letter should specify all the problems you are encountering and request immediate relief (with timetables for action). Send a second letter if the landlord fails to act within a reasonable time. Then, if the problem is not resolved, discuss your rights and options with an attorney.

Finally, tenants are sometimes exploited in their dealings with real estate brokers and agents. To protect yourself in this area, remember the following:

- Be sure the broker, if you use one, works for you, not the landlord.
- Deal only with a licensed broker.
- If you are the landlord, avoid giving the broker an exclusive right to rent the property; retain the right to rent it yourself or to allow other brokers to assist you.
- Carefully review any rental broker's agreement before signing.
- If you are a tenant, pay a broker's fee only after you rent an apartment found by that broker.
- Do not rent an apartment or commercial unit based only on a floor plan.
- Visit the premises.
- Inspect the apartment carefully—flush the toilet, turn on the oven, make sure the windows open, and so on—before you sign the lease.
- Always read the lease carefully before you sign. If you are leasing property on behalf of a business or company, avoid personal liability.
- Never personally guarantee payment of the lease if you can help it. For example, if applicable, always sign the lease in your official capacity (e.g., "Mary Smith, President," not "Mary Smith").

Other terms to consider include negotiating for the security deposit to be placed in a separate interest-bearing account with you getting the interest on a yearly basis and negotiating for the right to lease with an option to buy the property after a certain period of time. Have the broker negotiate for painting, upgrade, or replacement of old appliances where possible.