

LEASE FUNDAMENTALS ... REALITY CHECK
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While every landlord responsible for renting subsidizing housing or any other Government assisted program knows that they are required to use a pre-approved lease format, market rent landlords are sometimes reluctant to use a lease. Some cite the cost of preparing one. Others complain about how much time it takes to complete. Still others worry that they are going to be tied town for an extended period of time with a tenant they do not like.

Renting a house or an apartment to a third-party without a lease to protect yourself is like trying to ride a bicycle with a flat tire. On the other hand, using a poorly drafted lease is like trying to ride a bicycle with no tires at all.

A lease is nothing more than a written contract between a landlord and a tenant. It is a commitment by each side to fulfill certain specified responsibilities and to exercise certain rights for a specific duration of time. The key is to draft a document that is clear, definitive, and covers all of the points that are necessary in order to protect your investment as a landlord. Terms and conditions of the lease must at the very least identify the parties to the agreement, limit the potential occupants, establish a duration, create clear and definitive expectations of how much is to be paid when. Identify exactly what is being provided to the tenant and specify exactly what is being expected of the landlord and of the tenant. When are rental (and other) payments due? What are the consequences of late payment? What are the consequences of any other violation of the lease?

As a member of the Maine Apartment Owners and Managers Association, you have multiple resources to get a satisfactory lease. Shankman & Associates provides multiple, basic lease options for market rent housing and subsidized housing through our 200 page manual: Landlord-Tenant Relations: Process & Procedures. We put on a full day seminar every year, these issues, and many others, are addressed in great detail. Through our "Lawyers On Line" program you can join other MAOMA members who have established a one-on-one telephone or e-mail relationship with our firm to address current and future needs at a substantial discount.

Landlord and property managers who chose to go without a written lease are setting themselves up for failure. An oral lease can do nothing more than create a tenancy-at-will. You face the inevitability of the ambiguity of the terms and conditions that have been agreed to. More importantly, Maine law establishes numerous rights for tenants that arise solely as a function of the landlord/tenant relationship being a tenancy-at-will. For example, the grounds for eviction are limited to those identified in Title 14 M.R.S.A. § 6002. The right to withhold rent due to "unhealthy conditions" and to use that alleged withholding as a defense to an eviction for nonpayment can only be asserted in cases involving a tenancy-at-will.

On the other hand, grabbing a sample from the local business forms store or your local realtor, locating one on-line, or using "my best friend's cousin who has been using it for years" is a terrible idea. Landlord/tenant issues, including lease provisions are controlled by State law. Rent cards, on-line leases, standard forms from national printing companies or other "source material" are likely to get you in trouble. A provision that is perfectly legal in one State may be illegal in Maine which has very specific requirements. More importantly, an illegal provision is not only unenforceable, but may also subject you as a landlord to separate lawsuits declaring that you have created an illegal lease that is in violation of the Unfair Trade Practices Act of the State of Maine.

Landlord will sometimes ask whether they could save some time and money by simply using the twelve page "Model Landlord-Tenant Lease" that is published by the Maine Attorney General's Office. After all, this is created with our dollars and surely it must be a balanced document that fairly protects the rights of both landlord and tenants. NOTHING COULD BE FURTHER FROM THE TRUTH! If you are a landlord trying to protect your own interests, you

will make a mistake by using it. If you are property manager working for the owner of a building and you use this lease, you are going to be sued when things fall apart. If you are a lawyer providing this lease to a client, you have committed malpractice. Is that subtle enough?

The eviction process in Maine is slow enough as it is. The Attorney General's Lease makes it far more complicated. Rather than simply issuing a Notice of Termination when there has been a violation of the terms and conditions of the tenancy, the Attorney General's Lease requires a two step notice process. For "serious or repeated violations" of the lease, you have to issue a notice describing the violation and then giving the tenant 10 more days to stop doing whatever he or she is doing wrong. Only then if the tenant does not comply within the ten day period can the landlord issue a second notice giving the tenants still another 30 days before the tenancy ends. A properly drafted lease will enable the landlord to give a single, 7 day Notice of Termination. State law does not require a second chance for serious or repeated violations. The Attorney General's Lease gives the tenant a 14 day grace period to pay their rent. Only after that period of time are you allowed to send a 7 day notice. Even then, you are required to provide a right to cure the nonpayment (giving the tenant an opportunity to "pay and stay"). A properly drafted lease can move matters ahead far more quickly. Additionally, under the Attorney General's Lease your Notice of Termination must include a number of specific provisions. If you fail to advise to advise the tenant that they have the right to present a defense, the eviction will be thrown out.

The Attorney General's Lease is inadequate and favors the tenant with regard to security deposits. It includes multiple provisions that essentially could "advise" tenants of their rights.

There is no legitimate reason from a landlord's perspective to create a tenancy-at-will. There is even less rational basis to ever use the Attorney General's Model Lease.