

Contractual Considerations for Short-Term Rentals

In the Dirt: A Real Estate Legal Update

By Lisa Johnson on April 21, 2023

Property owners (“Owners”) interested in engaging in short-term leases should carefully consider the structure of their contracts (“Leases”). Anticipating potential disputes and consequences is essential for avoiding future litigation. A well-written Lease can serve to facilitate friendly, productive, and profitable landlord/tenant relationships. A good Lease can also help insulate Owners from liability and unnecessary expenses related to the short-term rental of their property.

Be Specific - Important Contract Terms

Short-term Leases should include specific terms that prevent future ambiguity and disputes over the contract’s language. The subject premises (“Premises”) should be precisely described to avoid confusion over the tenant’s use of common areas, neighboring property, or areas that the Owner simply wishes to reserve for itself.

Limits on a tenant’s use of the Premises should be specified. For example, if the Owner wants to avoid use of the property as a party location, limits on number of guests, relationship between the parties, or a strict prohibition should be included. Other provisions such as the Lease term and amount of rent should be clearly stated. It is also typical to prohibit subletting and assignment of short-term Leases to avoid dealing with parties other than the original tenant.

Additionally, short-term Leases should be very clear about tenant obligations. The party responsible to keep the premises’ appliances and equipment in working order during the term should be set out. The tenant should be required to immediately notify the Owner of any non-working items so that the Owner may assess whether the tenant is responsible for damage and if the security deposit should be withheld. If the tenant is not responsible for repair, this allows the Owner to promptly repair items to avoid potential claims for reduction of rent by the tenant. If a cleaning fee is to be charged, that and any other charges should be specified in the Lease.

Subdivision Rules – Do They Apply?

Many subdivisions have amenities that are available to the community such as a pool, gym, parking garage, and other common areas. Before entering into a short-term Lease, an Owner should review its subdivision documents and rules that govern whether tenants are permitted to use these amenities. Owners should be very familiar with the rules for such use by tenants and whether the subdivision imposes obligations on Owners contemplating a Lease of their property.

The Lease should require tenant compliance with community rules, including the use of subdivision amenities if such use is permitted. The subdivision association might require the Owner to provide notice in all Lease agreements or might require that the association be provided with a copy of all Leases to ensure these provisions are included.

If amenities within the Premises are provided, such as coffee makers, washing machines, exercise equipment, or other items for tenant use, the Owner would be wise to include specific terms governing the use of these items. In addition, the Lease should require that tenants comply with the law and exercise general safety precautions. The Lease should carefully address liability issues related to accidents or damage on the Premises, including through the use of amenities. Tenants and all guests should be required to sign an indemnification and release of liability and provide proof of insurance covering expenses related to injury.

Know Your Available Remedies

Any short-term Lease should provide adequate remedies for protection of Owners against breach of the Lease by tenants. Potential forms of breach that can cause headaches for Owners include tenants who overstay their Lease term, use the Owner's property that is not part of the Premises, violate subdivision restrictions, or cause damage to the Owner's property or that of neighbors. Essential remedies to include in a short-term Lease include early termination, fines and charges, and the withholding of a security deposit as appropriate. Early termination provisions should be carefully drafted to permit the Owner to reenter the Premises without liability or expense. Remedies should include permission to dispose of any tenant property left on the Premises after termination, which state law also typically addresses.

In Conclusion

It is essential to carefully evaluate what the Owner wants when drafting short-term leases so the contract can be clear for all parties. Such careful drafting is critical for mitigating risk, providing an enjoyable visit for the tenant, and protecting the Owner's property. An attorney's guidance in this process may help to achieve the Owner's goals for short-term rental.

**This blog was written with assistance from law clerk Adrianna Northrop.

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