

**Counseling Mom & Pop
Landlords**

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CERTIFICATE OF IGNORANCE
[Continuing Legal Education Edition]

- I, the undersigned attorney-at-law, hereby certify that I attended the Continuing Legal Education Session as follows: _____ on the ____ day of _____, 20__.
- Even though I was in attendance to qualify for credits toward my mandatory education requirements for license renewal, I paid no attention to the presentation because I: [Check Appropriate Reason]
 - _____ read the newspaper or other material
 - _____ worked or read on my Kindle/iPad/laptop
 - _____ texted friends, read e-mails on my smart phone
 - _____ dozed off
 - _____ other reason, (please specify) _____
- Not having paid any attention to the presentation, I learned absolutely nothing and I am totally ignorant of the subject matter discussed. Therefore, the legal principles concerning inferred knowledge do not apply to me.

Date Certified: _____

Attorney-at-Law
ID# _____

**Mom & Pop Landlord Annual Budget
For Legal Services**

\$00.00

Mistake #1

"I was a tenant, I am smart, and there is no specialized training required to be a landlord. How hard can it be? You just put the unit on Craigslist and rent out the unit to a tenant who can pay the rent and looks like they won't cause any trouble. "

Horizontal lines for notes

Mistake #2

"No way I'm paying a lawyer to draft a simple lease for me. I just Googled® "residential lease forms" and tons of free samples popped up. I picked the simplest one, downloaded it, printed it out, copied it and I saved lots of money on legal fees."

Horizontal lines for notes

Downloaded Form

- RESIDENTIAL LEASE AGREEMENT
 - THE LANDLORD ASSOCIATION OF PENNSYLVANIA
 - CAUTION: Consult a lawyer before using or acting under this form. The publisher of this form makes no warranty of its fitness for any particular purpose
 - PARTIES: This lease is made on _____, 20____ between the LANDLORD _____, address: _____ and the TENANTS: _____
 - PROPERTY: The landlord agrees to rent to the tenant the property described as: _____ located in _____ Pennsylvania
 - CONDITIONS:
 - The rent for the property is \$ _____ per month The tenant must pay the rent on the day of the month and deliver it to the LANDLORD at the above address
- If the tenant fails to pay the rent on the due date, the LANDLORD may end this lease if the rent is more than _____ days late, the tenant must pay a late fee of \$ _____ and then another \$ _____ for each additional day that the rent is late The late fees specified are reasonable estimations of the losses the landlord will suffer as a result of late payment of rent

Horizontal lines for notes

Ron's Lease

- The amount of rent is: \$_____ each month.
- **Tenant** agrees to pay the monthly rent in advance on or before the__day of each month. **Landlord** does not have to ask (**MAKE DEMAND UPON**) **Tenant** to pay the rent. **Tenant** agrees to pay rent by first class mail postage prepaid or in person to **landlord** at the place specified by **landlord**.
- (Note: Pa. Realtor® residential lease form has similar language)

Mistake #3

I know there are fair housing laws, but they don't apply to me because I am not a big apartment complex owner and I don't have to rent to someone I don't want to. After all, it is my property and I can rent it to whomever I want.

PHRA

- 43 P.S. §954 Definitions
- (i) The term "**housing accommodations**" includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. *The term "housing accommodation" shall not include any personal residence offered for rent by the owner or lessee thereof or by his or her broker, salesperson, agent or employee* (emphasis added)
- (k) The term "**personal residence**" means a building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups or two families living independently of each other and used by the owner or lessee thereof as a bona fide residence for himself and any members of his family forming his household.

Note Regarding Exemption from PHRA

- If the Landlord uses any form of public media advertising for an exempt residence offered for rent, then the “personal residence” exemption may not be effective and the Landlord may be subject to Federal and Pennsylvania Fair Housing Laws.
- Given the prevailing political situation advertisements put on a website online may be subject to Fair Housing Laws also.

Mom and Pop Landlord Misconceptions

[They Think They Know But Don't]

Mom & Pop Misconceptions

- If there is no written lease, there is no lease; I can make the terms whatever I want
- If there is a written lease but the lease term has not begun, then the lease is terminable anytime I want since the lease has not started
- It is my property and I can go onto the leased premises whenever I want to

Misconceptions- Continued

- I don't have to ask the tenant to pay the rent, the tenant knows when and where to pay
- Rental payments in Pennsylvania are always made in advance
- If a year-long lease continues at the end of the year, it automatically becomes a month-to-month lease
- It is my property and my locks. I can change them if I want to and lock the tenant out.

Misconceptions- Continued

- Because the tenant now is a trespasser I can lock the tenant out and move the tenant's stuff if the tenant holds over after the lease term is over.
- All of the form leases I have are ok to use even if there is a provision that is not legal because the worst that can happen is that the illegal provision cannot be enforced. [Some attorneys believe this also]

Misconceptions- Continued

- If the tenant leaves stuff behind, it becomes mine to do with what I want.
- Since it is my property, I can have a lease provision that there can be no men (or women) visitors in the apartment after dark because I don't condone or want any hanky-panky.
- The tenant has to give the property back in the same condition it was when the lease term started.

Misconceptions-Continued

- If the tenant does damage or doesn't pay the all the rent, I can keep the security deposit with no obligations to the tenant.
- I never have to put the tenant's security deposit into an escrow account
- ("What's an escrow account, anyway?")

Misconceptions-Continued

- I know I have to return the security deposit less any cost of repair within the 30-day limit. (68 P.S. §250.512)
- But, the damage was extensive and I don't have the estimates back from the contractor who is going to do the repairs.
- Therefore, It is not my fault that I cannot comply with the 30-day statute but I am ok since it was the tenant who did so much damage

Misconceptions-Continued

- I know the landlord-tenant law about returning the security deposit. The 30-day deadline for accounting to the tenant for the security deposit does not apply unless the tenant gives me a written forwarding address when the tenant turns the property back to me.
- *Nitardy v Chabot*, ____A.3d____ (Pa. Super., 2018).

Misconceptions-Continued

- The UTPCPL is designed for combatting car dealers' and window salesmen's unfair and dishonest trade practices. It does not apply to me as a landlord with just a couple of rental properties.
- The Federal and Pennsylvania fair housing laws are for big apartment buildings in the cities. These laws do not apply to me.

Misconception

- I don't need an attorney to help me file an eviction action against my tenant for non-payment of rent. The fee would be more than any judgment for rent I could get which the tenant is not likely to pay anyway. All I want is the tenant to be gone.
- The forms are easy and the judge's assistant (or my next door neighbor who is a cop) will show me what to do if I can't fill in all the blanks.

Suggested Steps an Attorney May Take in Counseling Mom and Pop Landlords

The Practical and Legal Realities

- The lease continues as long as the tenant wants it to continue.
- The tenant will honor the terms of the lease only so long as it is in the tenant's interest to do so.
- After the tenant decides to move, the landlord is forced into damage control mode despite the fact that there is a legally binding contract.

Revenge Is Not a Good Legal Motive

- Centuries Ago Confucius offered the following advice:
- "Whoever embarks upon a journey of revenge should first dig two graves"
- 50 Years ago my Old Grandpappy said:
- "It never is a good idea to burn down the barn to kill the rats inside."

STEP ONE

- **Take their temperature. How mad are they? Are taking the tenant's actions personally?**
- You may hear words such as: *"they treat us like that after we took a chance and out of the goodness of our hearts rented to them when they needed a place to live and they turn around and trash the place and don't pay the rent"*
- **Explain as best you can that residential rental activity is a business. It is not personal.**

STEP TWO

- Carefully review the lease document to verify the landlord's legal rights under the lease contract as well as any other documents such as correspondence or legal notices. *[If it is an oral lease keep in mind that an oral lease is not worth the paper it is written upon. It is the landlord's worst kind of lease].*
- As with all legal matters involving a client's facts in disputes with others, remember that the landlord recounts only the landlord's view of the facts. This interpretation is likely to be very subjective. Weigh the client's position carefully allowing for the possibility that the client may be interpreting and recounting the facts in the light most favorable to the landlord.

STEP THREE

- Based upon the facts asserted by the landlord, and a critical examination of all the evidence available, assess the legal risks. Do the tenants have a valid claim? Is the Landlord's claim unenforceable?
- If not, then reassure the landlord. Try to lower the landlord's temperature.
- If so, craft a plan of action to reduce or limit the risk through modification of the landlord's behavior or compromise between the landlord and the tenant. Most tenants do not want to go to court even if it costs them little or nothing.
- Explain [again] that residential rental activity is a business. It is not personal.

The End

**Thank you for your
attention and good
luck!**

STEP FOUR-CPL and PHRC

- If the client has received notice of a claim under either of these laws, the first step is to determine if your client is exempt. If so, assert this defense if it is viable.
- If the client is not exempt, examine the alleged act that has led to the claim, and advise the client accordingly. A settlement during the investigative stage can forestall greater consequences if the case proceeds.

Avoiding “No Pet” Provisions

**EMOTIONAL SUPPORT ANIMALS-FAST, EASY
ESA LETTERS**
**VISIT XXXXX.COM WHERE YOU MAY CONSULT A
LICENSED THERAPIST TO QUAIIFY FOR AN
EMOTIONAL SUPPORT ANIMAL LETTER**
**SECURE AND COMPASIONATE WITH FREE
SHIPPING OF EMOTIONAL SUPPORT LETTERS
AND MORE**

Act 118 of 2018 effective 12/25/18

Minimum standards.--Any documentation proving that a person is disabled and requires the use of an assistance animal or service animal as a reasonable accommodation in housing under the Fair Housing Act (Public Law 90-284, 42 U.S.C. § 3601 et seq.), the Rehabilitation Act of 1973 (Public Law 93-112, 29 U.S.C. § 701 et seq.), the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or the act of October 27, 1955 (P.L.744, No.222), known as the Pennsylvania Human Relations Act or local law shall:

- (1) Be in writing.
- (2) Be reliable and based on direct knowledge of the person's disability and disability-related need for the assistance animal or service animal.
- (3) Describe the person's disability-related need for the assistance animal or service animal.

.....

(a) Offense defined.--A person commits the offense of misrepresentation of entitlement to assistance animal or service animal if the person intentionally:

- (1) misrepresents to another that the person has a disability or disability-related need for the use of an assistance animal or service animal in housing; or
- (2) makes materially false statements for the purpose of obtaining documentation for the use of an assistance animal or service animal in housing.
