

# Understanding Leases

Leases are often a person's first encounter with an important legal document. This packet is designed to help you understand your rights and responsibilities regarding your lease. Leases are binding legal documents that can make you responsible for thousands of dollars in rent payments, even if you never move in. When you find a rental property that you like, please contact our office at the number below to schedule a free appointment to review your lease before you sign it. We can save you time and money!

Don't get caught up in the fall lease-signing craze! Most campus area properties enter into lease agreements on a first come/first serve basis. To avoid this craze, begin looking for apartments at least six weeks prior to your move-in date. Canyon has a wide variety of rental housing choices. If you rush into a lease agreement, you may find that you have signed a lease for a property that you don't like, with roommates that you no longer want to live with, or in a bad location and you can't get out of it. Take your time and make sure the lease, landlord, location, and roommates are right for you.

**For more information on available rental options, contact Commuter Programs at (806) 651-2394.**

## **Top 10 Things to Do Before You Sign Your Lease:**

1. Read your lease agreement. Read this informational packet, and then read your lease agreement again.
2. Have a lawyer, friend, or relative read your lease agreement and give you their thoughts.
3. View the actual apartment you will be renting. Not a model—your actual apartment. If there are problems with the apartment, have the landlord note on the lease agreement what repairs s/he will make and when s/he will make them by. Have the landlord sign or initial the changes to the lease. Do not accept oral promises that the landlord will make the repairs by the time you move in.
4. Complete the Lease Checklist at the back of this informational packet and make sure that the results are satisfactory to you.
5. Ask your landlord for references. Talk to other tenants. How has the landlord responded to requests for repairs? What are the other tenants in the building like? Have tenants gotten their security deposits back? Have they had any problems? You can also check with the Better Business Bureau to see if any complaints have been lodged against the landlord.
6. Check with the police department. Is there crime in the area? Are there particular problems with the apartment complex that you are looking at? Have the police been called out to the apartment complex for drugs, burglaries, assaults, etc.?
7. If possible, walk by the apartment at different times of day. Is there a lot of street noise? Is it near a construction project? Is it well lit at night? Is there garbage on the lawn? Are there people loitering around the entrance or parking lot? Do windows and doors look like they are secure? Are garbage dumpsters adequately maintained?
8. Determine what terms, if any, that you want to change. Do you want to be able to have pets? To have a particular parking space? To have cable installed? To have a smoke free apartment? Ask your landlord to make these changes in writing on the lease agreement, and to sign or initial the changes. If the landlord refuses to make important changes, re-think whether or not you want to rent the apartment.
9. Sit down with your roommates-to-be. Are these really people that you want to live with? Will they be able to pay rent? Will they damage the property? Will they clean? Smoke? Throw big parties? Determine whether you are willing and able to assume financial responsibility for your roommates. If not, think about getting a single apartment.
10. Think before you sign!

## Oral and Written Leases

A lease is a written or oral contract that records the agreement made between a landlord and a tenant. Remember that all leases are all negotiable. If you see a clause in the lease that you do not like, negotiate with the landlord to come to an agreement. In exchange for your promise to pay rent, the landlord agrees to provide a place for you to live. Generally, oral leases can only be for terms of less than a year (usually they are month-to-month agreements). Leases of a year or more must be in writing to be enforceable.

Although legal, an oral lease may be unwise because it often leads to disputes. The best idea is to put the whole agreement into a written lease that is signed by both you and the landlord. A written lease sets out the responsibilities and terms for both parties clearly, and it is easily referenced when questions come up. Always keep a copy of the written lease for your records, as well as a copy of any other documents you receive from your landlord.

If you have a written lease, most oral agreements made between you and your landlord will not be enforceable. Any promises made by the landlord (such as promises to replace carpeting, paint, etc.) should be put in writing on the lease agreement and signed by both parties. Don't rely on oral promises, no matter how friendly your landlord seems! If your landlord refuses to put the promise in writing, it is a sign that your landlord probably will not follow through.

## Lease Terms

Because of confusing legal terminology (and small print), many tenants do not bother to read their entire lease before signing it. However, it is extremely important that you understand what you are signing because you will be bound by it. The following breakdown of common lease clauses will help you understand what the provisions of your lease really mean.

But remember—just because the lease says something, does not mean that it will be enforceable in a court of law. The Texas Property Code prohibits many common lease provisions. If you have already signed a lease and your landlord is trying to enforce a provision that you think might be illegal, you should see an attorney. If you have not yet signed the lease, but are concerned that there are many illegal terms in the agreement, you may want to think carefully before you sign the agreement. Although the illegal terms will not be enforceable, chances are that your landlord will try to enforce them, which may lead to problems throughout your tenancy.

**Lessee and Lessor** – You (the tenant) are the “lessee.” Your landlord is the “lessor.”

**Lease Term** – Leases are generally month-to-month, year-to-year, or for a “fixed term.” Fixed term leases begin and end on a set date (for example, they begin on September 15, 2003, and end on August 31, 2004.) Your lease should clearly state the lease term.

**Terminating the Lease** – Month-to-month leases and year-to-year leases automatically renew unless either party gives proper notice of termination. To terminate a month-to-month tenancy, the landlord or tenant needs to give 30 days notice in writing to the other party that they want to terminate the lease. For example, if you gave your landlord notice on October 1st that you wanted to terminate the lease agreement, it would terminate as of October 31st. If you gave notice October 15th that you wanted to terminate the lease agreement, it would terminate as of November 30th (at the end of the next full rental term). The notice requirements for terminating a year-to-year lease should be set out in the lease agreement. Most campus area lease agreements are fixed term leases. These leases have a set starting and ending date. But you need to be careful to check your lease to see if it has a notice requirement for lease termination. Most tenants assume that their lease will automatically end on

the set ending date unless they sign a renewal. However, many lease agreements require tenants to give 30, 45, or even 60 days written notice of termination before the end of the lease. Make sure you read your lease to determine whether or not you have to give written notice of termination. Some leases state that if you fail to give the required notice, your lease automatically renews for an entire year. These provisions may be enforceable, and may subject you to liability for thousands of dollars in rent. As soon as you determine that you do not want to renew your lease, give your landlord notice in writing that you intend to terminate at the end of your lease term, and keep a copy of the notice for your records.

**Rent and Late Fees** – Your lease should state how much rent is due each month, when it is due, and where it should be paid. If it is required that you send the rent by mail, the postage date will stand as the date that rent was paid, not when the landlord received the check. The lease may also state how rent is to be paid, such as by personal check or money order. You should not pay rent in cash because it is more difficult to track payments. *If you pay by cash, get a receipt!*

Make sure you understand how much rent is due for the first month. Example, if your lease starts in mid-September, you may owe a full month's rent payment. This is because the landlord has determined the total amount of rent due for the lease term, and simply divided by twelve. Your first month's rent payment will *not* be prorated unless your lease explicitly states that it will.

Most leases state that rent is due on the first of the month. It is your responsibility to make sure that your landlord receives the rent payments *on or before the first of the month*. Remember that it may take several days or even longer for mailed rent payments to reach the landlord. Unless your landlord requires you to mail rent payments, any rent payments that are mailed and reach your landlord after the due date will be considered late. The safest thing is to personally deliver your rent payments to the rental office and obtain a receipt.

If you signed your lease with another person, you will be responsible for their rent payments as well. It is important to make sure that all of your roommates are paying their portion of the rent on time. If your landlord does not receive a full rental payment on time each month, the landlord has the right to evict *all* of the tenants.

Some leases state that late fees will accrue after a certain period, such as five days. *This does not mean that your rental due date is on the fifth of the month.* Your rent payment is still due on the first of the month, and the landlord can evict you if it is late. This just means that late fees will not be charged until the fifth. Most late fees will be unenforceable if they are not related to the landlord's actual loss, such as lost interest. Courts have found that late fees as low as \$1/day are unenforceable.

**Utilities** – Make sure that you understand how utilities will be charged. This should be included in the lease agreement. Will you be responsible for all utilities, or will your landlord pay for some, such as water? Many landlords do include a basic fee for water, but the fees should and can be negotiated as to the usage amount billed each month. Additionally, the landlord cannot change the fee without 30 days prior notice. Example: If the tenant is in a rear apartment or garage apartment and there is only one meter. There would be no way to prove how much water the tenant used as opposed to the main house, so the landlord could only give a flat fee and not increase as to the usage unless it was stated in the lease. If a landlord does pay for any utility, they cannot bill the tenant for any taxes, franchise fees, etc associated with that utility. Will you be required to sign up for service directly with the utility company, or will the landlord charge you each month? How will bills be calculated? If you are going to be living in one of multiple units in a house, how does the landlord determine your share of the bills? If the apartment has multiple units, the landlord cannot estimate the usage of utilities, there must be some way to prove the usage of each unit. If the landlord is estimating charges for utilities, they are in violation of the Railroad Commission rules. Will you have to pay a budgeted amount to cover utilities each month? If so, how much might you owe beyond the budgeted amount at the end of the year (read the fine print—most leases with a budget provision state that the landlord has the right to charge you at the end of the

year if your actual usage exceeds the budgeted rate). Is the apartment already wired for cable, internet access, or phone service (the landlord is not required to provide any of these)? If you do not feel that the utility calculation is fair, you should reach a new agreement with your landlord and put it in writing or rent from someone else.

**Security Deposits** – Tenants are generally required to pay a security deposit at the start of the lease, usually in the amount of one month’s rent. There are no limits on the amount the landlord can charge. The purpose of the security deposit is to give money to a landlord to provide some protection to a landlord for damage to the rented premises or for some other failure of a tenant. You will be responsible to the landlord for any damage done to the apartment beyond reasonable wear and tear. However, the landlord cannot automatically hold you responsible for charges such as steam cleaning the carpet at the end of the lease unless it was agreed upon in the lease. Make sure that you document the condition of the apartment at the time you move in and move out, and give the landlord your forwarding address in writing when you move out. Your landlord then has 30 days to return your security deposit to you.

Make sure that you understand exactly what you are paying for when you pay your “deposit.” Some fees may be nonrefundable, such as pet deposits or application fees.

**Joint and Several Liability** – Each tenant who signs the lease is usually responsible for all terms of the lease, including the full amount of the rent—you are not just responsible for your portion. In legal terms, this is called “joint and several liability.” The landlord can go after any individual tenant or all of the tenants for any rent or damages owed. It is very important that you choose co-tenants you trust and who will be able to pay the rent and fulfill their other obligations under the lease. If any of your co-tenants violates the lease or fails to pay rent, the landlord can hold you responsible.

**Co-Signors and Guarantors** – A “co-signor” is any person who signs a lease with you (co-tenants, parents, etc.). If your parents co-sign the lease agreement, they will also be jointly and severally liable for any rent or damages owed by any of the tenants—not just their own child, unless the lease expressly states otherwise. So if the tenants owe the landlord any money, the landlord can sue the tenants *and/or* any of the co-signors. Co-signors are *primarily* liable.

A “guarantor” is slightly different from a co-signor. A guarantor promises that the landlord will receive all payments from the tenants. If the tenants fail to pay any charges, the landlord first has to go after the tenants. Only if the tenants can’t pay, can the landlord go after the guarantor. Guarantors are *secondarily* liable.

**Occupants and Guests** – Landlords can reasonably limit the number of occupants and guests in an apartment based on health and safety concerns. A landlord *cannot* refuse to rent to families with children under the age of 18 or pregnant women.

Landlords can also reasonably limit the length of time a guest can stay in the apartment. In general, one week may be considered a reasonable limit. If the guest stays longer, the landlord has the right to treat them as an unauthorized occupant and either evict the tenant for breach of the lease agreement or charge additional rent. If you want to add a tenant to your lease, make sure that you get your landlord’s permission in writing.

Landlords can require registration of guests as long as it is for safety purposes. Landlords cannot overly regulate the presence of guests on the basis of “morality” or other concerns.

**“As Is” Clauses** – Some leases contain a provision which states that the tenant has had an opportunity to inspect the leased premises, that it is in good condition, and that the tenant takes the premises “as is.” Generally these provisions are intended to relieve the landlord of any responsibility to make repairs. Some landlords have

tenants sign early move-in agreements, which state that the landlord is allowing the tenant to move in before the start of the initial lease term, and in return the tenant agrees to accept the premises “as is,” with the understanding that the landlord will not have time to clean up the apartment before the early occupancy begins.

Although these lease provisions may serve some purpose (such as to document the fact that the tenant was able to inspect the property before taking possession and signing the lease, although tenants are rarely given this opportunity), they are NOT enforceable for the purpose of waiving the landlord’s duties under the Texas Property Code Law. The landlord still has an obligation to keep the premises fit and habitable and make any necessary repairs within 7 days (Depending on the severity and nature of the condition, and the reasonable availability of materials and labor and of utilities from a utility company must be considered) of receiving notice of a problem. So even if the tenant signs an “as is” early move-in agreement, if the tenant gives the landlord notice that there are problems that need to be repaired, the landlord must make those repairs within a reasonable amount of time.

**The Landlord’s Right to Enter the Premises** – Some landlords try to waive their obligation to give a reasonable amount of notice before entering the rental unit. Such provisions violate the Texas Property Code which requires landlords to give the tenant reasonable notice of intent to enter and enter only at reasonable times (during normal business hours) except in the case of an emergency. The duty to notify tenants before entering the property cannot be waived in the lease agreement. This duty also is not waived by a tenant’s request for repairs. Even if a tenant asks the landlord to repair something, the landlord still needs to give the tenant a reasonable amount of notice (24 hours) before entering the apartment. A violation of this duty subjects the landlord to liability for actual damages and attorney’s fees, and the tenant may be entitled to terminate the lease agreement.

**Acceleration Clauses** – Acceleration clauses are lease provisions that state that all rent becomes immediately due and payable upon the tenant’s breach. Theoretically this means that as soon as the tenant breaches the lease, the landlord can sue the tenant for all rent that is due for the entire remainder of the lease term. These clauses are unenforceable. In Texas, landlords are responsible for mitigating damages. This means that if a tenant terminates the lease early, the landlord must take reasonable steps to re-rent the apartment. The landlord is only entitled to recover rent payments from the tenant if the landlord attempts to re-rent the apartment and is unable to do so. Therefore, it is impossible to determine how much rent the tenant will owe the landlord at the time of the initial breach. The landlord can only make a claim for unpaid rent as it comes due.

### **Liquidated Damages Provisions**

Some landlords include automatic damage provisions for a tenant’s breach. For example, the lease might say that if a tenant breaches any provision of the lease the tenant automatically forfeits the security deposit and is responsible for any actual damages suffered by the landlord. Likewise, the lease may purport to hold the tenant liable for the cost of professionally cleaning the apartment at the end of the lease term. As a general rule, landlords can only charge tenants for actual losses suffered (such as lost rent or damage beyond reasonable wear and tear). Landlords cannot charge tenants automatic fees that are not reasonably related to the landlord’s actual losses.

### **Waiver of Liability**

Landlords cannot waive or limit their liability to tenants through an exculpation clause in the lease (example: “Lessee shall assume the full risk of any damage to the leased premises, personal property, or person and Lessor shall not be liable to Lessee for any of said damages”). The Texas Property Code prohibits such clauses. If the landlord breaches a duty to the tenant and the tenant consequently suffers damages or injury, the landlord will be liable to the tenant.

The landlord also cannot hold the tenant strictly liable for damage caused by third parties through a lease provision (example: “Lessee shall be liable to Lessor for all damage to windows in the leased premises no

matter what the cause”). Tenants can generally only be held responsible for damages caused by themselves or by others with their knowledge and consent.

### **Attorneys Fees, Jury Trials, and Binding Arbitration**

The Texas Property Code prohibits landlords from automatically holding tenants liable for attorney’s fees. Only a court can order a tenant to pay a landlord’s attorney’s fees, and generally the availability of attorney’s fees is determined under the statute (example: under the law, a landlord may recover attorney’s fees if the tenant violates a statutory duty, such as failing to keep the premises safe and sanitary, and the landlord is forced to take legal action to recover damages or evict the tenant).

A lease term, which states that a tenant waives their right to a jury trial, is enforceable. Binding arbitration clauses or clauses which state that the parties agree to resolve their disputes through a professional arbitrator, instead of the court, are also enforceable. If you want to maintain your right to a jury trial and/or to a court proceeding, you should not sign a lease that waives these rights.

### **Subleases**

Your lease agreement may put limitations on subleases. Most leases will require a tenant to obtain the landlord’s written permission before subleasing the apartment. Generally, your landlord cannot arbitrarily or unreasonably withhold approval of subtenants. However, the landlord does have the right to submit the subtenant to their normal application process, such as a credit check and criminal background check. Your landlord can charge you the actual cost of processing a subtenant (such as the cost of advertising or running a credit check), but excessive fees will not be enforceable.

### **Quiet Enjoyment of the Premises**

Most leases contain a provision forbidding you from using the rental unit in violation of any law or ordinance. This clause also prohibits the possession, use, or sale of illegal drugs in connection with the premises. This clause often prohibits you or your guests from seriously damaging the property or creating a nuisance (e.g. constant loud noise) which disturbs other tenants or neighbors. This right to be free from disturbances is often called the “right to quiet enjoyment.” These clauses insure not only that other tenants will be free from disturbance by you, but also that you will be free from disturbances from other tenants and from the landlord.

### **Possession of the Premises**

Some leases have provisions explaining what happens if you fail to move in after signing the lease. In most cases, the landlord can hold you responsible for rent, although there is a duty for the landlord to mitigate his/her damages. This means that if you are not moving in, the landlord must take reasonable measures to find a new tenant. You will remain responsible for the rent until another tenant is found. Keep in mind that a landlord may be forced to rent the premises for less than you were paying. If this happens, you may be responsible for the difference in the rental amounts.

Sometimes the lease will also cover what happens if the rental unit is not ready at the move-in date. This may happen in a variety of situations, including fire in the building, repairs that need to be completed, or an old tenant whom illegally holds over after expiration of their lease. The lease may state that you have to give the landlord a reasonable time (usually 30 days) to give you possession of the property and that the lease itself does not terminate. If you know that you have to be in the apartment on a certain date, make sure it is clear in the lease agreement that if the landlord is unable to provide possession on the start date, that your obligations under the lease agreement will terminate.

### **Self-Help Evictions**

Some leases state that the landlord may enter the apartment, remove the tenant’s belongings, and lock the tenant out if the tenant violates a provision of the lease agreement. The Texas Property Code prohibits landlords from taking any action, including utility shut-offs or lockouts, to evict a tenant. The ONLY way a landlord may evict

a tenant from the property is through a court-ordered eviction process. If a landlord violates this section, the landlord will be liable for all damages caused to the tenant (such as moving expenses, the cost of alternate accommodations, damage to personal property, utility re-connection fees, etc.), attorneys fees, and even punitive damages.

### **Lead Paint Disclosure**

Federal law requires landlords to give a variety of lead paint disclosures and informational materials to you *before* you sign the lease agreement if the apartment was built before 1978. Lead paint can be extremely hazardous, especially to children. You may have legal rights if your landlord has failed to give you the required notices and disclosures.

### **Lease Addendum**

Sometimes landlords will include rules or regulations in the lease. However, these rules and regulations are frequently contained in separate documents, or addendums. These rules affect how you may live in a rental unit, so read them carefully and make sure to keep a copy on hand in case any questions come up. If your lease agreement refers to an addendum, make sure that you see it before you sign the agreement.

### **Bedrooms and Boarding Houses**

Make sure that you understand how many bedrooms are available in the house, and which rooms may be used as bedrooms. If you are only renting a bedroom, signed an individual lease, and are sharing all other spaces in the house with the other tenants, you may be staying in a boarding house.

**THIS INFORMATIONAL PACKET ONLY REFERS TO TEXAS LAW AND DOES NOT CONSTITUTE LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, YOU MUST CONTACT AN ATTORNEY. THE LAW MAY HAVE CHANGED SINCE THE DATE OF THIS PUBLICATION. 5/09**

# **Commuter Programs**

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