

WARNING MONTANA LANDLORDS: CHANGE YOUR LEASES

A recent Montana Supreme Court case significantly changed the law regarding Montana Residential Leases. Montana Landlords should immediately have their leases reviewed by their attorneys for the following issues:

Acceleration Clauses: Acceleration clauses are common in home loans and car loans. Typically, an acceleration clause mandates that if you don't make a payment, you become obligated to immediately repay the entire loan. In other words, an acceleration clause accelerates your payments if you breach. This way your creditor can promptly sue you for the entire loan and not just for the few missed payments. Recently, Montana Landlords have begun putting acceleration clauses in leases. These clauses attempt to make the entire lease amount due immediately when a tenant breaks the lease.

In light of the Montana Supreme Court's recent ruling, Montana Landlords should do the following:

1. Remove acceleration clauses from all future leases;
2. Correct your current leases so that your tenants know that acceleration clauses are no longer a part of their leases; and
3. Don't, under any circumstance, attempt to enforce acceleration clauses.

Non-reciprocal Attorney's Fees Clauses: Virtually every lease in Montana has an attorney's fees clause. Sometimes these clauses have been drafted so that they aren't reciprocal. A non-reciprocal attorney's fees clause will read something like this:

"If the landlord has to collect rent, the landlord shall recover the landlord's attorney's fees."

All non-reciprocal attorney's fees should be made reciprocal, something like this:

"If there's a dispute about or arising from this lease, then the prevailing party may recover its attorney's fees."

Please note that there are many ways to draft a proper reciprocal attorney's fees clause. The important concept is that the attorney's fees clause can work against either the landlord or tenant depending on who wins a dispute. The operative words are "*prevailing party*."

Also, the Montana Supreme Court seemed to criticize use of the word "*shall*" in attorney's fees clauses. Montana Code 70-24-442 *allows* judges to award attorney's fees in landlord tenant cases. The statute uses the word "*may*." It doesn't *require* the judge to award attorney's fees. The Supreme Court seems to want Montana Landlords to track the Montana Landlord Tenant Act in its leases. Because of this, all attorney's fees clauses should be changed from the word "*shall*" to the word "*may*."

Sometimes, landlords will also attempt to limit attorney's fees to a specific amount. Do not attempt to limit attorney's fees in a Montana Residential Lease. If your existing leases do attempt to limit attorney's fees, then change them.

It's also possible that some of your leases will contain other clauses which are non-reciprocal. Since the Montana Supreme Court's ruling, we've already found a non-reciprocal anti-waiver clause. While the Supreme Court did not opine against non-reciprocal anti-waiver clauses, it would seem prudent to review your lease for any other non-reciprocal clauses.

Also, the Montana Supreme Court seemed critical of the length of lease being litigated. It seems common in Montana to use 15-20 page leases. Here at HH Evictions, we frequently enforce leases that are only a page or two long. So far, we've had no difficulty stemming from the shortness of these leases. On the other hand, most attorneys seem to agree that there's a direct relationship between the amount of litigation regarding an agreement and the number of words in an agreement. If you have a lengthy lease, it may be time to have your attorney comb through it and eliminate excess language.

If you'd like HH Evictions to review your lease for potentially damaging clauses, you can contact us through our website at www.montanaevictions.com.