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CHECK YOUR LEASE FOR ILLEGAL CLAUSES

We commonly see leases with illegal clauses. In most contracts an illegal clause isn't likely to cause problems. Usually, Courts simply ignore or refuse to enforce an illegal clause in a contract.

However, having an illegal clause in a Montana residential lease can cost you money. Sometimes an illegal clause can expose you to some liability. More likely, having an illegal lease clause could expose you to what's commonly called a "lawyer's claim." A "lawyer's claim" is a claim made by a lawyer who is representing a client who is probably going to lose a lawsuit. The lawyer doesn't have much of an argument and so he reads and rereads the law and the lease until he comes up with some contrived far fetched argument so that the lawyer will have some conceptual "handle" to hold onto while countering your threats with threats of his own. This process of contriving a "lawyer's claim" is in some ways made easier by the Montana Residential Landlord Tenant Act. The Montana Residential Landlord Tenant Act expressly prohibits some illegal clauses in leases. The MRLTA also mandates the amorphous concept of "good faith" in landlord tenant dealings. Both these aspects of the MRLTA make it easier to raise "lawyer's claims" as defenses to a righteous eviction action. Eventually your own attorney can beat virtually all "lawyers claims." However, beating "lawyer's claims" is time consuming and expensive.

Regardless of how you feel about the concept of "lawyer's claims", they're real and they can cause you unnecessary expense. Because lawyer's claims are sometimes raised as a defense to an eviction action, you should carefully review your lease to make sure it doesn't contain illegal clauses.

The following are the three most common illegal clauses that we see in leases:

1. **Accelerated Notice And Eviction Schedules:**

Montana Law mandates specific notice periods and eviction procedures for every situation that we've ever encountered. Sometimes Landlords try to mandate different notice periods and eviction procedures in their leases. This is illegal unless you are lengthening the notice periods. If your lease lengthens the notice periods then the language probably binds you and you should comply with the longer notice periods when you do your evictions. Often leases describe notice periods and eviction procedures which exactly track the periods and procedures mandated by Montana law. This works just fine. However, you will need to update this portion

of your lease virtually every time the legislature meets because the legislature often changes one or two of the notice periods. Since Montana Law specifically describes notice periods and eviction procedures, we see no reason to describe them in your lease at all. The statutes describing eviction procedures and notice periods are relatively straightforward. If Landlords or Tenants want to know what the notification periods are, then they can look them up. We usually prefer it if our Landlord clients keep their leases as simple as possible.

2. Exculpatory Clauses:

An exculpatory clause is any clause which attempts to shield the Landlord from a reasonable level of liability. For example, ski areas frequently try to use exculpatory clauses by printing blanket waivers of liability on signs where you buy your tickets and on the backs of the tickets themselves. Exculpatory clauses at ski areas attempt to waive all of the ski area's potential liability for accidents. You can easily imagine why Courts tend to ignore blanket exculpatory language like the blanket waivers found on ski tickets. Imagine a situation in which the entire ski patrol shows up drunk one day and for entertainment skis around and removes all the cliff warnings. Obviously, under circumstances like that, the Court should ignore the blanket exculpatory clause. Courts feel the same way about Landlords. If your back steps are rotten, and you know they're rotten and you don't repair them, then like the drunk ski patrollers and the ski area, you should be held liable for the resulting injuries. Because of this, Courts regularly ignore broad exculpatory clauses. In Montana Landlord Tenant Law, using such an exculpatory clause could expose you to a lawyer's claim or worse. Don't use broad exculpatory clauses. Please note however that I don't mean to discourage Landlords from using the common clauses which assign the responsibility to insure personal property solely to the tenant. These clauses are reasonable, legal and enforceable.

3. Discriminatory Clauses:

I still occasionally receive leases with discriminatory clauses or with clauses that might give rise to a "lawyer's claim" of discrimination. However, this problem is disappearing fast. The occasional discriminatory clause that I still see usually involves an age restriction like a prohibition on children. Other things to avoid are any mention of family relationships like references to "marriage", "couples", "partners", "related" or "spouse." Also, Landlords are increasingly modifying their pet provisions to allow pets which assist disabled people.

HH Evictions, Inc. reviews leases at its hourly rate of \$200 per hour. We do so much work in this area that these reviews tend to be quite inexpensive especially when considered in the light of the fact that you'll probably use your lease for many years in hundreds of rental situations. Our experience with evictions and with counseling Landlords makes it so that we're able to offer these services efficiently and inexpensively. Please feel free to fax us your lease for review.