

# **BOULDER TENANT'S GUIDE**

## **INTRODUCTION**

Welcome to the Boulder Tenant's Guide, produced by the University of Colorado Off-Campus Student Services office. Although The Guide is written from the perspective of the tenant, it contains loads of information useful to both tenants and landlords. The Guide is intended to provide an overview of the landlord/tenant relationship, in-depth information regarding leases and lease provisions, as well as addressing some of the most common problems and issues which arise in rental housing situations. While The Guide will refer to various legal principles, Colorado statutes, and local ordinances, **The Guide is not and should never be used as a substitute for legal advice from an attorney regarding a specific factual scenario or set of circumstances.** The Guide does, however, have a list of valuable resources which you can and should utilize to assist you in your rental housing experience.

In addition to an overview of the landlord/tenant relation, The Guide also contains information, suggestions, and helpful hints in finding a suitable place to live. Once you have found a place, The Guide can assist you through the process of signing a lease, steps to take to protect your security deposit, and even tips on how to get along with your roommates. Heck, The Guide even offers ideas on how to become a good (or better) neighbor!

As we mentioned, The Guide is produced by Off-Campus Student Services (OCSS), which offers CU students and affiliates information and services regarding the rental housing experience and other issues related to living off-campus. OCSS has a huge database of available rental property which fee-paying students can access anytime for free. We can also assist with lease reviews, repair issues, and we even sponsor cooking classes periodically throughout the year. We are located on the CU Boulder campus in the University Memorial Center, Room 313, and are open Mondays through Fridays from 8 a.m. to 5 p.m. during the school year and 7:30 a.m. to 4:30 p.m. during summer break. If you are a CU student or affiliate and have additional questions after reading through The Guide, need more information as to a specific problem or issue, or just want to know more about living in rental housing, feel free to give us a call at (303) 492-7053 or stop by anytime.

## **PRELIMINARIES - EVEN BEFORE YOU BEGIN LOOKING**

Finding appropriate rental housing, whether an apartment, condominium, or a house, requires plenty of forethought and planning. Even before you begin the actual adventure of finding available housing, you should consider whether you want to share a place with roommates or whether you are the type of person that operates better on your own. You will also need to consider your financial resources – not everyone can afford to live in Trump Towers and you will likely be signing a year-long lease. You don't want

to find yourself in a position of spending all your rent money on the first six-months of a lease and not be able to pay rent for the remainder of the year! You should consider transportation needs – do you need to live close to a bus line, or within walking distance of CU or work? If you have a vehicle, you'll need to consider parking facilities both at your residence as well as on campus. Finally, do you want to live in a house or an apartment or condominium? If you have a pet, apartment living may not be for you. On the other hand, if you choose to live in a house, you need to make sure you have the time and want to be responsible for maintaining the yard. These are all issues which should be addressed before you even begin looking for a place to live.

### **Roommates**

There's a saying that you never really get to know someone until you live with them. Although there's no way of knowing whether you really will be compatible with your roommates until you've lived with them for awhile, there are steps you can take to assure you have the best shot at avoiding the nightmare roommate scenario.

First, how well do you know the people who will be your roommate(s)? Are they life-long friends, dorm-mates, casual acquaintances, or complete strangers? The more you know about the person you're about to move in with, the better off you'll be. Do you know their general lifestyle habits – Are they neat-freaks or slobs, academics or party animals, willing to compromise or control freaks? Take a serious look at your potential roommates and ask yourself if these are people that are responsible and will pay rent on time, or that you would be comfortable with sharing your bathroom in the morning, sitting down with in the live room after a long day, or discussing how to accommodate differences in lifestyles. Remember, you're probably going to be signing a year-long lease and, unless you want to go through the legal hassles and costs of breaking your lease, you will be committed to having these people live with you for that time.

Assuming you feel comfortable with your roommates-to-be, even though they may be the most trustworthy people you know, it is still wise to have a written Roommate Agreement. This is a legally binding contract between roommates that can address day-to-day living issues which will inevitably arise during the course of your tenancy and which may bring to mind issues you hadn't necessarily thought about initially. For example, a roommate agreement can determine how the household chores will be divided and what happens if they don't get done, how food will be bought and shared (will you have a general "food fund" or is everyone on their own?), what happens if one roommate is chronically late paying rent? You may not think you need a Roommate Agreement or that you would ever have to use one, but they are always a good idea – if for nothing else than to "clear the air" before you start living together.

### **Budgeting**

Whether you have roommates will, of course, effect your budget and living expenses as it generally is cheaper to share living expenses. However, whether you are living in a house with 3 other people or have a studio apartment, you will need to give

plenty of thought to your budget - *realistic* thought about the lifestyle you can *actually* afford and not the lifestyle you *want* to be able to afford. Consider that each month you will be paying rent, utilities, food and household supplies, and possibly other costs (child care, pet care, transportation costs, etc.) Obviously, you may choose to pay more for rent to live in a nicer place, which means you will have to reduce some of your other monthly costs. Therefore, before you start looking for a place to live, you should determine how much your monthly budget will be and which housing you can afford. Remember, in addition to the monthly rent, you will most likely be required to pay a security deposit which can be any where from a few hundred dollars to a few thousand dollars. Therefore, you will need also budget for a significant payment upon signing the lease (first month's rent and a security deposit equal to one month's rent is not uncommon)!

### **Miscellaneous Issues**

In addition to roommates and your budget, there are other more incidental issues you may wish to consider before you begin your housing search. Whether you have a car or will need to rely on the Boulder bus system may effect the location where you wish to live. If you have a dog or cat, you may need to find a place with a yard, which means looking for houses or townhouses rather than apartments. Additionally, you may be required to pay an extra deposit for your pet and will need to factor that into your rental budget. Finally, do intend to stay in one place for a year, or do you need a shorter term lease? Typically, if you are looking for a shorter term lease, your best bet may be a condo or apartment. If you require a house, you may need to consider subleasing issues if you will not be there for a full year.

### **THE HOUSING SEARCH**

After you have gone through all the preliminary issues, you're now ready to begin the adventure of actually finding a place to live. Regardless of what type of rental housing you are seeking, you will be making an expensive purchase and it is wise to shop around. While you may very well come back to the first place you look at, there will likely be many properties that suit your needs and budget and you will want to make certain you make the right and best choice.

There are many resources available to assist you in your housing search. Off-Campus Student Services maintains an extensive data base of available rental housing which can be searched for free if you are a fee-paying CU student and is available to CU affiliates for a nominal cost. In addition, OCSS hosts housing fairs several times a year during which a multitude of landlords and property management companies are present to show their rental properties. Of course, there are the newspaper ads and other on-line resources which list rental properties. Speaking with friends and acquaintances can also lead to available rental housing.

Once you have narrowed your search to several potential properties, you should look at each unit and review your preliminary questions. Can you afford the rent? How much are utilities and are they included in the rent or in addition to rent? How much is

the security deposit? Is the location near a busline? Is the yard (if any) adequate or too big or too small for your needs. Is the property in good condition or disrepair? Is the landlord willing to make any necessary repairs before you move in?

You will also want to make a physical inspection of the premises. While a virtual online tour can be helpful, you need to make certain that the property is in the condition represented by the landlord. Make sure the bedrooms offer sufficient privacy and are not simply modified closets and that there is adequate lighting, electrical outlets, and fire exits in each room. See if the closets offer adequate space and the walls, ceilings, and floors provide good sound barriers. Check to see if all the appliances and lighting fixtures are working and that the plumbing is sound and offers hot and cold running water on demand. Water stains underneath the kitchen or bathroom sink can indicate leaky plumbing. Open the refrigerator door and make sure it is working properly, as well as the stove.

In addition, you should make certain the property is compliant with Boulder housing codes, that there are adequate fire exits and ventilation, and that there are no obvious defects which the landlord failed to mention. Also, if you are looking at apartments or condominiums, make certain you look at the specific unit you are interested in renting. Many apartment complexes may show you one apartment that they use for showings and tell you the apartment you will be renting looks just the same or close to it. If you're going to be living in the place for a year, make sure you know *exactly* which place you'll be living in and not something that's "pretty similar".

## **BEFORE YOU SIGN THE LEASE**

Now that you've finally found the perfect place, make sure to protect yourself. The single most important step to take is to **READ YOUR LEASE** thoroughly and understand the provisions. Don't simply "skim over" the lease or skip parts that sound like legal mumbo-jumbo – those are the provisions that will inevitably come back to haunt you. Be assertive and take the time to understand what you will be paying and what your obligations will be. A prospective landlord that demands that you sign your lease before you have had an opportunity to read it thoroughly or is pushing you into signing a lease threatening that someone else will take the property should raise immediate red flags about the property as well as the landlord.

## **Lease Applications**

At the same time you obtain a copy of the lease from your landlord, she may want you to fill out a lease application. Lease applications are fairly standard and a normal part of the leasing process. The application may or may not bind you to the lease, so you will need to be very clear on the provisions and parameters of any lease application. In addition, there is usually a relatively nominal fee that is associated with a lease application, which is used to cover the landlord's administrative expenses and costs of checking you out. Be specifically aware of any provision in a lease application that says

you will be responsible for paying monetary damages if your lease application is approved by the landlord, but you fail to sign the lease thereafter.

Generally, a lease application is a way in which the landlord obtains background information from you to determine whether you will be a responsible tenant. Lease applications can be very short or quite extensive, even requiring you to sign an authorization for the landlord to obtain confidential information about you, such as past employment history, credit history, and even a criminal background check. While the landlord will want to obtain as much information about your financial resources, it is not a good idea to give specific bank account numbers, credit card information, or any other confidential information you do not wish to disclose. Instead, offer to provide the landlord with a copy of your most recent bank or credit card statement and you can then black out any information you do not wish to be made public.

### **Check Out Your Landlord**

Just as the landlord wants to find out information about you, you should find out as much information as possible about your landlord. When the landlord showed the property to you, did he have a pre-scheduled appointment or did he just walk into the property? One of the best ways to get information is to speak with the current tenants. However he deals with the current tenants is how he will most likely deal with you during your tenancy. If the specific property you are looking at is vacant, find other listings offered by the same landlord and talk with those tenants. You can also check out the Better Business Bureau, the Boulder Board of Realtors, and even the local courts to see if your prospective landlord has been involved in litigation with prior tenants.

As mentioned above, assuming you are satisfied with your background check of the landlord, you should understand your lease before you sign it. Once you sign a lease, it is a legally binding contract and you can and will be held to compliance with the provisions of the lease. While there is no such thing as a “standard” lease (although the Boulder Model Lease comes about as close as you can get), there are general fundamental principles and concepts applicable to all leasing relationships, some more important than others. In order to assist in reading through your lease, we have summarized some of these concepts for you in The Guide.

### **THE LEASE**

**\*NOTE: There are as many varieties and variations of residential leases as there are landlords renting property. This Guide cannot even possibly begin to consider or address all of the lease provisions or issues which may arise in any given lease or rental situation. It is therefore always advisable to seek legal counsel if you have a question about a specific lease provision.**

### **Background**

The landlord/tenant relationship is one of the oldest and most historic legal relationships in the law. Although there are a few Colorado statutes which control certain aspects of the landlord/tenant relationship, generally the duties and obligations of a landlord and a tenant are defined by the lease. Because of this, it is vitally important to not just read a lease, but actually understand what the consequences and benefits of the lease terms actually are. The lease, in Colorado, is the law when it comes to the rights and obligations of a tenant.

### **Get It In Writing!!**

So, what exactly is a lease? A lease is a legally binding contract in which, simply enough, one party (the landlord) agrees to give the other party (the tenant) temporary possession of a premises in return for money. Although Colorado state law only requires that leases for more than one-year be in writing, Boulder has adopted a local ordinance that requires ALL residential leases to be in writing. Even in the absence of any legal requirement, it is always a good idea to have a written lease for several reasons. First, it is proof of your right to possession of your residence. Second, having the provisions of a lease in writing will avoid disputes before they arise. Third, if the lease terms are not in writing, ultimately a judge would have to resolve any disputes by determining what the lease terms are based on the prior actions of the landlord and tenant. This could mean that you could end up being legally bound by a lease provision you didn't even realize existed or which you didn't intend on agreeing to in the first place!

### **Rights, Obligations, and the Art of Negotiating**

A lease will give the tenant the right to possession of the premises to the exclusion of all others, just as someone who owns their home. However, the lease does not give the tenant absolute right or control of the property. For instance, a tenant obviously would not have the ability to sell the property and, similar to the rental of a car, has a duty to maintain the property so that it is returned in reasonably the same condition as when the lease commenced. In addition, a landlord retains the absolute right to enter the premises periodically to make sure the property is being maintained. These are all aspects of a lease which will be discussed in greater detail in this handbook.

In some states, there are laws which control the principle terms of a lease. For example, New York has rent control laws, which limit the amount of rent a landlord can charge. In California, there are laws which expressly allow the tenant to repair the premises and then deduct the cost of the repairs from the monthly rent. Because there are no such laws in Colorado which expressly control the principle terms of a lease, whatever terms the parties agree to in the lease are going to govern the how much, when, and where of the rental of residential property. This means that each party can negotiate the terms of a lease to their benefit. However, the leverage or negotiating power each party has in signing a lease will depend largely on the market conditions in any given location.

Currently, the rental market in the Boulder area is very soft, meaning there are more rental units available than tenants to fill them. Because of this, CU students are in a more favorable position as tenants and have a lot more bargaining power than they have had in past years. With very few exceptions, any and all terms of a lease are negotiable. The terms of a lease which are not legally negotiable generally are for the protection of the tenant - such as the time within which a landlord must return the security deposit, the requirement that the landlord provide a written itemization of damages withheld from a security deposit, or the payment of interest on the security deposit (specific only to Boulder). In addition, certain provisions may be deemed unenforceable for the protection of the tenant, such as any provisions which require the tenant to waive or forfeit certain statutory rights or which impose penalties for breaking the lease early. Again, we will come back to these aspects later in the The Guide.

### **Keep A Copy and Keep It Handy!**

What is important to know is that when you encounter a problem with a landlord, the first thing to do is look at your lease and determine if the terms of the lease address the relevant issue at hand. If the lease provisions do not address the issue or if the landlord has violated the relevant lease term, you may wish to seek further advice - CU students should contact OCSS for further assistance. Secondly, especially given the soft rental market, you should be aware that both the amount of rent and the length of the lease are negotiable and you don't necessarily need to accept the first offer a landlord makes. You might be surprised what the effect on a landlord is when a tenant says, "That's too expensive, I have several more properties to look at that are much cheaper!" Even if the landlord walks away in a huff or pretends not to care, in many instances the landlord may be quite willing to reduce the rent later on.

Finally, because the lease is the law of the landlord/tenant relationship, it is important to keep a copy (preferably one with both parties' signatures) of the lease. You should buy a separate file folder or notebook specifically for the lease and other documents regarding your rental housing. As will be discussed later on, ANY communication with a landlord should be in writing and you should keep a copy - this includes agreements to modify the lease provisions, requests for repairs, requests to sublet, and any other relevant documents. The biggest problems in landlord/tenant disputes invariably occur because the tenant either didn't get a copy of a lease or lost their copy. If you don't have a copy of the lease, you don't have any way of proving the landlord is in violation of the lease other than your word against the landlord's word.

### **GENERAL PROVISIONS OF THE LEASE**

While the lease is "the law" when it comes to landlord/tenant relations, there are as many different types of leases as there are rental housing units. In an attempt to standardize residential leases, the City of Boulder has adopted the "Boulder Model Lease", which incorporates the most common lease provisions, however it is by no means the only lease used by landlords. Therefore, it is important to know the basic elements

which need to be in every lease and make sure they are included in any lease you are considering signing.

### **The Address Where You (Will) Live**

First and foremost, as blatantly obvious as it may seem, make sure that your lease includes the specific address of the property you will be renting. You would be surprised how many leases don't contain this vital information and you can imagine the potential arguments and headaches which would arise if you moved into a place that your landlord said was the wrong address. Also, make sure your name, your roommates' names, and your landlord's name all appear on the lease. Finally, you will want your landlord to be bound by the same terms and conditions to which you are agreeing – so make certain your landlord signs the lease, too.

### **The Length of The Lease**

Once you have made sure the address and all names appear on the lease, you'll want to review the lease provisions. One of the two primary provisions of a lease is how long the lease period will run, which is called the "term" of the lease. There are generally two types of leases in this regard – a "definite term lease" and a "periodic term lease". Just as it sounds, a "definite term lease" is a lease for a specific amount of time which then terminates by its own provisions. A "periodic term lease", however, is a lease which is continuously renewed until terminated by the landlord or tenant. The most common form of a residential periodic term lease is a "month-to-month" lease. These two types of leases will be discussed further in the section addressing the termination of a lease. However, for now we will only be addressing the "definite term lease".

The term of the lease will establish when the rights, duties, and obligations of the parties commence and when they will terminate. The term of the lease can be for any period of time from an hour to several years. A lease which does not have an express term is a "tenancy at will" and the tenant is deemed to be in possession of the premises at the will of the landlord. Generally, a residential lease will be for a one-year period, although, again, this is negotiable depending upon market conditions. The term of a lease is negotiable, but the negotiating strength of the student will generally be dictated by market conditions. For the most part, CU students sign a one-year lease from August to August. However, there is obvious interest in a 9-month lease for those out-of-state students who wish to return home during the summer months.

When the lease terminates, that is, when the term of the lease has expired, a tenant may either vacate the rented premises, sign a new lease with the landlord, or simply remain in the premises after the end of the lease. This third option is called "holding over" and can lead to some undesirable results. For example, a tenant who holds over with the consent of the landlord may be deemed to have entered into a lease for the same term as the prior lease - which may mean another entire year! Obviously, this may not be what the tenant had intended. On the other hand, a tenant who holds over *without* the consent of the landlord may be evicted immediately and, in addition to court costs and

attorney's fees, will likely be liable to the landlord for monetary damages for any delays in allowing a new tenant to move in. Because of these unintended consequences, leases should and generally will include a specific provision addressing the issue of holding over. Most residential leases include a provision that if the tenant holds over with the consent of the landlord, the lease will be deemed to become a month-to-month lease under the same provisions as the original lease. These "holdover clauses" and "renewal clauses" will be addressed in more detail later on in The Guide.

### **The Cost of the Lease – Rent and Utilities**

The secondary primary provision of a lease is how much the lease will cost, which is called the rent and which is typically broken into monthly payments. Although rent is the central monetary charge, there may be additional payments for which the tenant is responsible, such as utilities. Whether utilities or any other costs are included in the rent should be expressly set forth in the lease. If the rent include does not utilities, there should be a separate provision identifying which utilities the tenant is responsible for paying and whether the tenant will pay these monthly charges directly to the respective utilities, or to the landlord, who will then pay the respective utilities.

If the tenant is responsible for paying utilities, it will be important to find out how much the utilities run each month. You don't want to rent a house that is inexpensive in the summer, but incurs a heating bill in the winter that is equal to the monthly rent. There are a couple of ways of determining an approximation of utilities. First, ask the current tenants what they pay on average for utilities. If they are not able or willing to tell you, call the utilities directly and give them the address. The landlord should also be able to give you an approximation, however this may not be necessarily reliable information.

Finally, if the lease requires that the tenant put the utilities in the tenant's name during the term of the lease, it is very important to remember to put the utilities back in the landlord's name upon the termination of the lease. There should be a separate provision which provides that the landlord will agree to pay any charges for failing to put the utilities back in the landlord's name.

### **Security Deposits**

Because of their unique nature, there are separate laws which apply only to security deposits. As discussion of these laws will be more detailed, security deposits will be addressed in a separate section of this handbook. For purposes of this section, it is enough to make sure the security deposit provision identifies how much the landlord is asking as a security deposit, when the security deposit is to be paid, and how the security deposit will be returned - i.e. to each individual tenant or to one tenant who will then disburse the proportionate shares of the security deposit to the other tenants. Also, the lease should specify the interest rate to be paid on the security deposit (specific to Boulder) and whether the landlord will be allowed longer than the statutory thirty (30) days to return the security deposit.

### **Additional Costs – Administrative fees vs. Penalties**

Typically, landlords will include provisions which require the tenant to pay an additional sum of money in the event the tenant fails to perform some provision of the lease. For example, residential leases almost always include a “late fee” if the rent is paid past the due date. Similarly, landlords will charge a fee for having to shovel the walk or mow the lawn or perform some other task that is the tenant’s obligation under the lease.

These types of “fees” are enforceable so long as 1) they are intended to cover a legitimate administrative expense and, 2) are not excessive. If the fee charged does not meet these two criteria, it then becomes a penalty which is designed to be nothing more than a consequence for the tenant’s failure to perform the provisions of the lease. Remember, a lease is a contract and when the lease is breached, the landlord is only entitled to recover monetary damages which put him in the same position as if the lease had not been breached. In other words, a landlord is only entitled to charge a fee in order to recover the costs of receiving late rent, or having to have the lawn mowed, etc., and nothing more.

### **Subleasing, Assignments, and Replacement Roommates**

Another area where many landlords will try and impose a “fee” is for sub-leasing, assigning your rights under a lease, or allowing a replacement roommate. As with security deposits, this is an area which can be deceptively complex and will be discussed in greater detail later on. For now, you should simply be aware that nearly all leases prohibit subleasing, assignment of the lease, or replacement roommates without the written consent of the landlord. In addition, landlords generally will want to charge a fee for allow subleasing or assignment of the lease. While these fees can actually be enforceable, for reasons which will be discussed in the Subleasing section, generally these fees are actually little more than the landlords incentive against subleasing. For purposes of this section, you should simply make sure you now how much the landlord will want to try and charge you for subleasing.

### **Property Damage**

Your lease should also contain a provision addressing who is responsible for paying for damage to the leased property. Under general Colorado law, a tenant is only responsible to the landlord for the costs of repairing damage which is beyond normal wear and tear. The term “normal wear and tear” is defined by Colorado statutes as, “...that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests.” C.R.S. §38-12-102. Therefore, in order to hold a tenant responsible for damage to the rented property, a landlord must be able to show that the damage was the result of negligence, carelessness, or abuse by the tenant or a guest of the tenant.

Although historically a tenant could be held responsible for any repairs which need to be made, most leases now include a specific provision that limits the tenant's responsibility to only damage which is caused by the negligence or willful acts of the tenant, members of the household, or tenant's guests. You will definitely want to make sure this provision is in your lease. If it is not, make sure to ask about this before you sign a lease. You don't want to get into a dispute with your landlord about whether you have to replace a faulty furnace or water heater or repair damage that you did not cause.

### **Repairs to the Property**

One of the most pervasive complaints from tenants is the inattentiveness of the landlord to timely address repair issues. To compound this problem, most leases will prevent the tenant from making repairs to the property without the prior consent of the landlord. Unfortunately, very few leases will include a provision specifically identifying what steps the landlord is willing to take to effect any repairs. Instead, the lease will only generically state that the tenant must contact the landlord to request repairs be made, but does not obligate the landlord to actually commence the repairs. Again, because nearly all lease provisions are negotiable, you may want to try and get your landlord to agree to modify the repair provision of the lease to further define how repairs will be handled. Such a provision should require the landlord to take some action within a certain time (usually one week or "a reasonable time") after receiving notice of the need for repairs. The provision should also give the tenant the ability to conduct the repairs if the landlord fails to take any action as required and then charge the landlord for the costs of the repairs. In any event, it is *never* wise to withhold payment of rent or to pay only partial rent as reimbursement for making repairs. The issue of payment of rent and being reimbursed for repairs are two separate issues and failure to pay complete rent can and usually will lead to the landlord filing an eviction action against you.

Because most lease provisions do not obligate the landlord to actually make repairs, *a request for repairs should always be made in writing*. It is important to document a request for repairs for several reasons. First, a written request will be necessary in order to prove that the landlord failed to make the repairs promptly. Second, it proves that the landlord was put on notice of the need for repairs and therefore the tenant should not be responsible for any subsequent damage which may occur due to the failure of the landlord to make the necessary repairs. Third, it can support a claim for reduced rent by showing that, while the tenant complied with the lease provisions, the landlord failed to make the requested necessary repairs and as a result the value of the property was diminished and not what the tenant had originally agreed to in the lease.

### **Maintenance of the Property**

A lease can also determine the responsibility for maintaining the leased premises. This can range from specific household chores, such as periodic vacuuming or waxing hardwood floors, to outdoor maintenance such as mowing the lawn, watering and weeding a garden, or snow removal. In addition to which responsibilities will be placed with the tenant, the lease should also provide for what (if any) equipment the landlord

will provide for the tenant's use. If the landlord expects you to mow the lawn, you'll want to make sure she provides you with a lawnmower! In a condominium or townhouse situation, the maintenance of the common areas is generally held to be the landlord's responsibility, but you'll still want to have that spelled out in the lease.

Occasionally a situation will arise where, rather than simply making repairs to the property, a tenant may wish to actually make alterations, such as painting a room a different color, installing a new light fixture, or putting a fence around the yard. Similar to the restriction on a tenant making repairs to the property, a tenant will also be required to obtain the landlord's consent before making any alterations or improvements to the property. Again, it is important to get the landlord's consent in writing, although for reasons different than where the tenant simply wants repairs to be made. First, written consent proves a tenant's compliance with the lease. Second, any improvements that a tenant makes will become part of the property and ownership of the improvements will vest in the landlord. Therefore, a written consent can also confirm any agreement by the landlord to compensate the tenant for the alteration or improvement, such as a monetary payment or reduction in rent.

Usually, issues of alterations or improvements to the property arise in situations where the tenant is interested in a long-term rental, meaning a period of more than one-year. As such, these issues rarely arise in student rentals. That, and the fact that students generally don't have the time, money, or incentive to improve a landlord's property!

### **Privacy and a Landlord's Right to Inspection**

As indicated previously, a lease gives the tenant a right of privacy in the rented premises, meaning the tenant has the right to possession of the rented premises to the exclusion of all other persons. However, this is not an absolute right of privacy and a landlord will always retain the right to enter the premises for purposes of making repairs or to inspect the property. There are restrictions, however, to when and how often a landlord can enter a rented premises.

Generally, Colorado leases will include a provision that allows a landlord or an agent of the landlord, such as a repairman, to enter a rented premises at reasonable times upon reasonable notice to the tenant. The definition of "reasonable times" encompasses not only the time of day a landlord may enter the rented premises, but also the frequency with which a landlord may enter the premises. The definition of "reasonable notice" includes both the manner of notice given and the amount of time between the notice and the entry into the premises.

What constitutes "reasonable" in both instances is open for debate and left to common sense. For example, 24-hours notice is typically sufficient to be "reasonable", whereas 15-minutes notice would not be. Similarly, having repairmen show up at three o'clock in the morning is certainly not a reasonable time, nor having a landlord schedule inspections three times a week. Obviously, with such a vast spectrum of interpretation of what is "reasonable", it is always a good idea to have the lease specify when and under

what circumstances the landlord may enter the premises. In this regard, it is in the tenant's best interests to require at least 24-hours notice which must be in writing. In addition, the lease should state that the landlord may not enter the premises unless the tenant is present or there are emergency circumstances requiring immediate entrance. In the event repairs are necessary, the lease should require that the landlord schedule the repairs to be made at a time approved by the tenant.

Of course, landlords will not want to be tied down to these requirements and will want to have the ability to enter the leased premises at times it is most convenient to them. As you can imagine, the most convenient time for the landlord will inevitably be the most inconvenient time for the tenant – such as during normal business hours when the tenant is either at work or school. Therefore, this provision will require some negotiation on the part of the tenant, but will also require some flexibility from the landlord. Again, the negotiating strength of the tenant will largely depend on the market conditions and the desirability of the property. However, a lease provision that states the landlord may enter the lease premises at any time is simply not in compliance with Colorado law and a landlord who enters a leased premises without prior notice to the tenant is in breach of the tenant's right to privacy.

### **Renter's Insurance**

Three words - GET RENTER'S INSURANCE! Many leases will require the tenant to purchase insurance, but even if a lease does not have such a requirement, it is still a good idea. Keep in mind that a landlord's property insurance policy will not cover a tenant's personal possessions. Therefore, if something were to happen, such as a fire or flood, while the landlord's insurance would cover the cost of repairs, in the absence of renter's insurance, a tenant would not be able to recoup any losses for damage to personal property. In most cases, the tenant needs to make a cost-analysis determination. Renter's insurance is generally inexpensive - \$15 or \$20 a month and is well worth the cost if the tenant has valuable belongings which are kept in the leased premises, such as an expensive computer, stereo equipment, or jewelry. In some situations, however, the tenant has little or no personal property and can afford to take the risk of not obtaining renter's insurance. In the case of CU students, the renter's insurance may be actually be covered under the student's parent's home owners insurance policy.

### **Rules and Regulations**

Many leases will have attachments which contain additional guidelines or rules for the rented premises. These provisions are typically seen in leases of larger apartment buildings or large property management companies and pertain to use of and conduct relating to common areas, such as swimming pools, barbeque areas, or the like. Generally, these "rules and regulations" will be incorporated into the lease and will constitute a material provision of the lease. Therefore, it is very important to read these attachments and understand that violating the rules and regulations can be grounds for eviction. In addition, many times the "rules and regulations" will be drawn up by the landlord to address issues or problems about which the landlord has specific concerns. In

these cases, if the landlord took the time to write out these specific provisions, you can bet these are the terms to which the landlord will give the most attention and be most likely to enforce.

### **Municipal Ordinance Disclosures**

In the City of Boulder, there is a requirement that all leases, in addition to being in writing, contain disclosures of certain municipal ordinances. This is one of those provisions that is, by law, not subject to negotiation. These ordinances include noise regulations, environmental regulations (weed control, snow removal, etc.), and occupancy limitations. Violations of these ordinances not only carry penalties under the Boulder Municipal Code, but may also constitute a material breach of the lease which could subject the tenant to eviction. CU students must be particularly aware of these ordinances as they could also trigger proceedings by CU Judicial Affairs.

Of utmost importance, however, is the awareness that these types of violations are almost always generated by neighbor complaints. No other area of the landlord/tenant relationship is dictated by third party actions and therefore it is not only good stewardship, but can be pre-emptive to get to know your neighbors beforehand and make a good impression. A neighbor will be less likely to file a complaint against a tenant they know (and hopefully like), than someone they don't know who hasn't shown an interest in them or their neighborhood. In addition, violation of environmental regulations, such as snow removal, can expose the tenant to personal liability for injury caused by the failure to comply. In other words, if you forget to shovel your walk and someone slips and falls and is injured, you could be responsible for their medical bills and other losses and damages.

### **IMPORTANT LEASE PROVISIONS**

While most residential lease provisions are pretty much self-explanatory, there are several lease provisions which have practical and legal implications which are not evident from the simple language of the lease. These provisions can require the tenant to take specific steps to protect their rights or carry consequences which are not only be unknown to the unwary, but which can lead to unintended liability. For that reason, we will discuss each of these important provisions separately and more in-depth.

#### **I. Joint And Several Liability**

##### **a. I'm responsible for *what.....!?!***

A tenant's legal responsibility to the landlord may take two distinct forms: 1) individual liability, or; 2) joint and several liability. If only one person signs a lease as a

single occupant, that person will have individual responsibility for paying rent, utilities, and complying with any other requirements under the lease. However, when more than one person enters into and signs a lease agreement for the same premises, they generally are held to be jointly and severally liable for any payments required under the lease, including rent, utilities, late fees, or damage to the property.

As opposed to individual liability, where each person is legally responsible only for his or her own percentage of rent, joint and several liability means that *all* tenants equally share full legal responsibility for the *entire amount* of rent for the premises. In other words, in joint and several liability, you are responsible not only for your *own* rent, but also for your *roommates'* rent and, conversely, your roommates are jointly responsible for your rent. This "shared liability" is not limited only to rent, but extends to any payments required under the lease, including late fees and any payments for damage to the premises. This means that if one of your roommates moves out in the middle of the lease, the remaining roommates will still be liable for the full amount of the rent. If the remaining roommates do not or cannot pay the departed roommate's rent, they can be evicted. Similarly, if one of the roommates punches a hole in the wall or kicks in a door, all of the roommates will be responsible for paying the landlord for the damage.

Therefore, it's a good idea to make sure you know not only who you are going to be living with, but whether that person will be able to pay the monthly rent on a continuous basis and intends to stay around for the full term of the lease. Conversely, if your roommates are your friends and you want to keep it that way, don't move out in the middle of your lease unless and until you make arrangements to have your portion of the rent paid, either by you, a guarantor, or a sub-lessee or replacement tenant.

#### **b. Roommate Agreements - Revisited**

Because joint and several liability obligates all roommates equally to the terms and provisions of the lease and all monetary damages, as demonstrated above, it is highly recommended that the tenants enter into a separate Roommate Agreement. Just as with the lease, a Roommate Agreement is a legally enforceable contract between the roommates. Obviously, it is important to have all of the roommates sign the agreement, which may require some negotiating in order to get everyone to agree to the provisions. Because of this, the prime time to discuss and sign a Roommate Agreement is prior to or at the same time as the lease is signed. By doing so, the roommates are able to decide beforehand how they will share responsibility between themselves. However, a Roommate Agreement can be signed at any time and can even specify not only how the roommates have decided to handle future issues of rent, etc., but can also memorialize how roommates have decided to resolve past disputes if any exist.

The primary purpose of a Roommate Agreement should be to address issues in the lease, such as how rent is to be divided, who is responsible for making the rent payment to the landlord, how the security deposit will be divided, how damages to the property will be shared, and how reimbursements will be handled. However, the Roommate Agreement can go much further and also address how food will be shared,

when study time will be in the house, how many and how long over night guests are allowed to stay at the house, and how the household chores will be divided.

In the absence of a separate Roommate Agreement, each roommate will still have a legal right to reimbursement from the other roommates for any money paid beyond his or her proportionate share. This implied general contract right is called a “right of contribution”. However, the implied right of contribution will be based on the original lease and the terms of any reimbursement will ultimately be left up to the courts. Again, it is much better for the roommates to decide themselves how reimbursements will be handled than to have that determination made by an uninterested judge.

### **c. Parental Guarantees and Joint and Several Liability**

Many of the CU students living off-campus will be signing a lease for the first time or have not established a credible rental or credit history. In these situations, a landlord will typically want some type of assurance that the rent will be paid, which usually takes the form of a guarantee from the student’s parents. These “Parental Guarantees” can be deceiving where there is joint and several liability and can easily obligate a student’s parents to liability far beyond what they had intended. Remember, in joint and several liability, a tenant is responsible for the entire amount of rent. Therefore, when a parent guarantees a student’s monetary obligations, that guarantee extends to payment of *all* the rent. As a result, a parent may end up being responsible for paying not just their own kid’s rent, but the kid’s roommates’ rent, as well. While this does not necessarily directly affect the students, many parents don’t understand the extent to which they can be held liable under a parental guarantee and the student should at least warn his or her parents. Once warned, the parents (or the student) certainly can negotiate with the landlord to limit their exposure as guarantor and are strongly advised to do so.

### **d. Joint and Several Liability and the Over-Occupancy Issue**

While it is illegal in Boulder, it is not uncommon for students to have more roommates living in a residential unit than the lease or zoning laws allow. The obvious reason for doing so is to avoid the high cost of rent. However, not only are there steep consequences for over-occupancy (\$2,000 per day fine which can be imposed on BOTH the landlord and/or tenant), in a joint and several liability setting it’s just a bad idea. While living arrangements and the reduced rent may be just fine while everyone is getting along, when things go sour, everybody gets screwed.

Let’s take an example – 5 students living in a 3-tenant house. The first three tenants all sign the lease with the landlord, but the 4<sup>th</sup> and 5<sup>th</sup> tenants (who are in a serious relationship) do not sign the lease and move into the study. Rent is \$2,000/month and security deposit is \$2,000. Each of the 5 students pays \$400 toward security deposit and \$400/month rent. Halfway through the lease, the happy couple (tenants #4 and #5) decide to move to California to become movie stars.

The first thing that happens is Tenants #1,2, and 3, who signed the lease, are jointly and severally liable for Tenant's #4 and #5 rent, meaning they now have to come up with an additional \$266/month in rent above what they had planned for in their budget. While they may have a right of contribution against their ex-roommates, they have no way of enforcing that right because in order to sue the ex-tenants, the original tenants would have to admit that they were over-occupying the premises. Once a judge hears they were over-occupying the premises, the original tenants could face a \$2,000/day fine. So, because of joint and several liability, the remaining tenants are responsible for covering the rent of the tenants who move out in the middle of the lease. However, because the ex-tenants were over-occupying in violation of Boulder ordinance, the remaining tenants have virtually no way of making them legally responsible for paying their share of the remaining rent.

On the other side of the fence, the happy Hollywood couple in effect gives up any way of recovering their security deposit for the same reason. The only way to really force the landlord to return their security deposit is file a lawsuit. However, if they do so, again, they would have to admit that they were over-occupying the premises and would be facing a \$2,000 per day fine. So, while the over-occupier may get away with not paying rent (or is protected from being sued for rent), he/she/they will have no recourse to force the landlord to return their security deposit, whether there's damage to the house or not. Basically, a landlord could keep the \$400 of the Hollywood couple for no reason other than spite and the Hollywood couple couldn't do a thing about it.

So, for the reasons above, while over-occupancy may seem like a great way to save money on rent, it is not only against the law in Boulder, it's just a bad idea anyway.

### **I-a. Individual Liability or "Who's Your Roommate?"**

As opposed to the "shared" aspect of joint and several liability, individual liability means just that - each roommate is responsible for his/her own individual share of the rent, no more and no less. Typically, in such a situation, each tenant will have signed a separate lease and the roommates will want to make sure their lease provisions do not conflict (i.e. - one lease prohibits pets, but another lease allows for one dog/cat). However, with individual liability leases also comes the issue of whether the landlord can freely substitute roommates without the consent of the other tenants. While individual liability leases are fairly rare, there are potentially significant issues of which student should at least be aware. Of course, C.U. students may always contact OCSS with any legal questions regarding their lease.

## **II. Security Deposits (Or "Everything You Always Wanted To Ask But Were Afraid You Wouldn't Get A Refund")**

### **a. The Nature of Security Deposits**

Security deposits are one of the few lease provisions that are expressly regulated by Colorado statutes. The legal definition of a security deposit is any money that is paid

to or deposited with the landlord which is primarily intended to secure performance under the lease. See Colorado Revised Statutes, §38-12-101, et seq. To state the definition conversely, a security deposit is any money that you pay to the landlord to which is NOT rent or other monthly payment (such as late fees, etc.). Therefore, whether the payment is called a “damage deposit”, “pet deposit”, “cleaning deposit”, or “last month’s rent”, it is nonetheless a security deposit and must be treated as such by the landlord. The only exception is for money which is given to the landlord as pre-payment for the rental period. While “last month’s rent” is seemingly a pre-payment of rent, the primary function of paying last month’s rent upfront is actually to secure the tenant’s performance under the lease of paying timely rent. Therefore, even “last month’s rent” is actually a security deposit.

Practically, the purpose of a security deposit is to provide the landlord with a fund from which the landlord can deduct any expenses or losses incurred by the landlord either as a result of the tenant’s breach of the lease provisions or as part of the lease agreement. This can include costs of professionally cleaning the carpet, paying unpaid rent or late fees, paying for repairs necessitated by the tenant, paying for cleaning or trash removal, or any other number of items. The most important item to keep in mind, however, is that any money deducted from the security deposit must be for a monetary expense or loss incurred by the landlord which was either authorized by the lease or caused by the tenant’s actions or inaction. A landlord can NOT require that a tenant “forfeit” a security deposit or deduct a “penalty” or “fine” from the security deposit. Any amount deducted must be for a reasonable expense or cost which the landlord has incurred.

#### **b. The Process of The Security Deposit**

Once paid to the landlord, a security deposit becomes something akin to an escrow or trust account. Although the money placed as a security deposit technically belongs to the tenant, neither the tenant nor the landlord have a right to withdraw money from the security deposit absent the occurrence of certain events. For example, a landlord cannot deduct any amount from the security deposit unless she is authorized to do so by the lease, or to pay for monetary damages caused by the tenant. Similarly, a tenant cannot demand the return of the security deposit until after all obligations under the lease are performed, including payment of all rental requirements, fulfilling any cleaning or maintenance requirements, and expiration of the waiting period following the termination of the lease or surrender and acceptance of possession of the premises.

Generally speaking, a common amount for security deposits is equal to one month’s rent. Of course, this can and will vary from lease to lease. There is no maximum or minimum set amount for a security deposit established by Colorado law and the amount of the security deposit is generally dictated by the subjective determination of the landlord as to how much risk the tenant poses for causing damage to the property or not fulfilling his or her financial obligations under the lease. This risk assessment by the landlord is balanced, however, by market conditions which, in a “soft” rental market, can force the landlord to accept less of a security deposit in order to attract tenants to sign a lease.

Because the purpose of a security deposit is to assure the landlord that she will have funds available from which to pay for damages or losses, a tenant may be able to negotiate a lower amount of security deposit by providing some other type of security. These can be as simple as providing proof that the tenant has sufficient funds in a bank account to cover any of the landlord's losses, or having a parent or other third party sign a "guarantee" of payment of the tenant's financial obligations under the lease. Although landlord's will usually prefer to have funds immediately available in the form of a security deposit, these alternate types of financial security give the tenant room to negotiate the amount of the security deposit.

### **c. Return of the Security Deposit**

Under Colorado law, a landlord must return the security deposit to the tenant, together with an itemized list of deductions, if any, within one month of either the termination of the lease or surrender and acceptance of the leased premises, whichever occurs last. The one-month period can be extended to 60-days by express agreement in the lease, but cannot exceed 60-days. For purposes of discussion, however, we will simply use the one-month period.

If the landlord fails to return the entire security deposit or to provide an itemization of damages with a balance of the deposit within the one-month period, the landlord forfeits any right to retain any portion of the security deposit and the tenant is entitled to have the entire security deposit returned. This is expressly set out in Colorado statutes and is generally strictly followed - one month means one month, not a month and a half of the next day. However, simply because the landlord misses this deadline does not let the tenant off the hook for damages to the leased premises. It only means that the landlord cannot deduct those damages from the security deposit. Even if the landlord returns the entire security deposit, the landlord can still pursue the tenant for damages.

In addition to losing the ability to retain any portion of the security deposit, a landlord who misses the one-month deadline can also be required by law to pay the tenant three times the amount of the security deposit. This "treble damages" provision in Colorado law is based upon what is called "willful and wrongful" withholding of the security deposit. However, before a landlord can be held responsible for willfully and wrongfully withholding the security deposit, the tenant must first give the landlord notice that the one-month period has expired and that the tenant intends to file legal proceedings to recover the security deposit. This is accomplished by sending the landlord what is called a "seven-day demand letter".

The seven-day demand letter generally states that the landlord has missed the deadline to return the security deposit and the tenant is demanding the return of the entire security deposit. The letter must also notify the landlord that if the landlord does not return the entire security deposit within seven days of the date of the letter, the tenant will institute legal action asking for three-times the amount of the security deposit. In order to prove the date of mailing and receipt by the landlord, the seven-day demand letter should

always be sent by certified mail. This seven-day period provides an opportunity for the landlord to return the entire security deposit and avoid the claim that the security deposit was “willfully” retained, thereby precluding a claim for treble damages. However, if the landlord does not return the entire security deposit within the seven-day period, Colorado law states that the landlord “shall” be liable to the tenant for three-times the amount of the security deposit, meaning the courts do not have discretion and are required to impose the treble damages penalty.

Even if the landlord provides the tenant with an itemization and payment for the residual amount of the security deposit in a timely manner, the landlord is not necessarily off the hook for the treble damages penalty. The Colorado security deposit statute states that, upon the appropriate notice being given, the landlord shall be liable for “... treble the amount of *that portion of the security deposit* wrongfully withheld from the tenant.” C.R.S. §38-12-103(3)(a) (emphasis added). That section of the statute has thus been interpreted to mean that when a landlord retains part of the security deposit, if any portion of that retention is subsequently determined by a court to have been “wrongfully” withheld, the landlord can be held liable for three times the amount wrongfully withheld. However, the court would have to first make a factual determination that the landlord did not have a good-faith basis for retaining the amount of the security deposit withheld from the tenant. Generally, if the landlord has a rational basis for withholding a portion of the security deposit, such withholding will not be “wrongful” within the meaning of the statute and therefore not subject to the treble damages penalty. In making such a determination, the court are allowed to liberally construe the applicable statutes so as to render proper administration of security deposits and protect the interests of both landlords and tenants. C.R.S. §38-12-101.

#### **d. Depositing and Refunding The Security Deposit – Accounting 101**

One of the basic issues surrounding security deposits is making sure that there is a proper accounting of any security deposit paid by a tenant. In an individual liability lease situation, accounting for the security deposit is rather simplistic as there is only one tenant and one security deposit. However, where multiple tenants with joint and several liability reside in a single rental property, how the security deposit is paid and how it will be refunded are always of concern. This is particularly true when one of the tenants leaves the premises and a replacement tenant moves into the property mid-way through the lease.

In the best accounting scenario, each tenant should tender a separate check to the landlord and receive a separate check and itemization from the landlord. However, this is typically time consuming for landlords and also puts the landlord in the middle of any dispute between roommates of how the residual security deposit should be divided. As a result, most landlords will either require that the tenants select one person who will be responsible for receiving and disbursing the security deposit, or will simply put all of the tenant’s names on one check for the security deposit. Because of this, it is essential that roommates all agree beforehand on how the security deposit will be divided which, once again, can be set forth in a roommate agreement.

In addition, problems can arise if the replacement tenant simply pays the original tenant for the security deposit, rather than paying the landlord. Although this may seem to be a simple way of handling the security deposit, it can create unforeseen problems. For example, because the replacement tenant paid the security deposit to the original tenant, it now technically becomes the responsibility of the original tenant – not the landlord - to make a timely accounting of the replacement tenant’s security deposit. Further, the landlord’s obligation is to return the security deposit to the original tenant, not the replacement tenant. These types of problems can be avoided, however, by making sure the original tenant, the replacement tenant, and the landlord all sign an agreement as to how the security deposit will be handled, including acknowledgment of receipt of the replacement tenant’s security deposit and release of any claims against the original tenant’s security deposit.

### **III. Subleases And Assignment Of Rights**

Lease provisions which address subleases and assignment of rights are often confusing two very distinct legal principles. As a result, often times a tenant who simply wants to get out of a lease erroneously enters into a sublease, rather than a more appropriate assignment of rights. Generally, this is true, too, of landlords, who believe a sublease is the appropriate method to handle situations involving “replacement tenants”. Because of the issue of lingering liability and the resolution of security deposits, it is important to understand these two concepts.

In a sublease, the tenant basically leases his or her property rights to another person, who becomes the sub-tenant. In this regard, the tenant then becomes the landlord and the sub-tenant assumes the position of the original tenant, including possession of the premises and all obligations of the original tenant under the lease. However, the original tenant will still remain liable for all legal obligations under lease – meaning if the sub-tenant damages the property or fails to pay rent, the landlord can collect those monetary losses from the original tenant. On the other hand, if the sub-tenant pays rent to the original tenant and the original tenant fails to pay the rent to the landlord, the sub-tenant can be evicted. Because of this continuation of liability, a sublease is generally is appropriate only in situations where the original tenant intends to return to the premises. For example, an out-of-state student who goes home for the summer, but wishes to return to the same residence for the fall, may wish to sublet the residence for the time they are gone, thereby avoiding paying rent when they’re not living in the residence, but still retaining the right to re-take possession of the residence upon their return to school.

An assignment of rights is almost identical to a sublease and will transfer the right of possession to a third party. However, in an assignment of rights, the new tenant (or “assignee”) will deal directly with the landlord. Just as in a sublease, the original tenant may still remain liable for payments under the original lease. However, the new tenant will have direct control over whether the rent gets paid and whether any other obligations to the landlord are fulfilled. In some situations, the tenant who is assigning her rights of

possession will also be able to negotiate a termination of liability agreement with the landlord - for a fee, of course!

In both sublease and assignment of rights, all of the parties should be clear how the security deposit will be handled. The two basic options are that the landlord returns the original security deposit to the original tenant and obtains a new security deposit from the new tenant. The parties may also agree that the new tenant pays a security deposit to the old tenant, who then assigns his interest in the original security deposit to the new tenant. In such a situation, the old tenant will also want to obtain a release of liability from the new tenant. The landlord will likely also want a release of liability from the old tenant.

Because of the continued liability of the original tenant, a sublease is advisable only in situations where the original tenant intends to move back into the residence at the end of the sublease. However, if a tenant is moving in the middle of a lease term and does not intend to move back into the leased premises, it is advisable for the tenant to simply break the lease and assume the monetary consequences, rather than pay a sublet or assignment fee. The reason to do so is two-fold.

First, in both a sublease and assignment of rights, the original tenant will be still remain ultimately responsible for payment of any monetary losses incurred by the landlord. However, in addition to this liability, in a sublease or assignment of rights, the original tenant will also be responsible for the actions of the subtenant. So, if you're going to be liable anyway for the monetary losses incurred by the landlord, why would you also agree to be liable for the actions of the new subtenant? Again, if the original tenant is intending on moving back into the leased premises, then the original tenant may want to assume that liability. However, if the original tenant is not going to return to the leased premises, there really is no reason to assume liability for the sub-tenant.

Second, generally landlords will charge an "administrative fee" for a sublease or assignment of rights. This "fee" can range from a couple hundred dollars to 50% of the monthly rent. Again, the fee is intended to cover the landlord's administrative costs and if the landlord cannot justify what expenses the fee is supposed to cover, it is likely a penalty, rather than a true fee. In a situation where the tenant just breaks the lease, there is no "administrative fee".

#### **IV. Unlawful and Unenforceable Lease Provisions**

Simply because a provision is contained in a lease doesn't necessarily mean that the tenant will be bound by that provision. If there is a lack of "mutuality of obligation" or a provision is deemed to be so one-sided as to violate the basic sense of fairness, the courts can and do hold such provisions to be unenforceable, thereby relieving the tenant from the imposed obligation. In addition, if a provision attempts to impose a right, duty, or obligation that is not within legal contractual principles, the provision can also be voided. These latter types of provisions typically seek to impose a monetary penalty or fine against a tenant for conduct which the landlord wishes to prohibit.

As described previously, in order to recover a monetary payment from a tenant for breach of the lease, a landlord must generally prove some loss or other damage. If there is not a monetary loss or provable damage associated with the claimed breach, then the monetary payment is deemed a penalty, which is not enforceable under contractual principles of law. An example of such a provision would be a provision which imposes a “fine” simply for climbing on the roof of the leased premises. In such a situation, there is no damage to the premises and the landlord has not experienced a monetary loss. Therefore, the payment required of the tenant under such a provision is not a compensatory payment, but a penalty, which is unenforceable.

There are some types of lease violations, however, for which there are associated damages which are difficult to prove or to determine exactly the amount of the damage. In such a case, the parties may agree that such violation triggers what are called “liquidated damages”. However, the lease provision must specifically identify the monetary payment as liquidated damages and must set forth the nature of the damages caused by the violation and an agreement that the actual amount of damages is difficult to ascertain.

Some examples of unlawful and/or unenforceable lease provisions are:

1. A provision that requires the tenant to “waive” any responsibility of the landlord for injury to the tenant or damage to the tenant’s property which is caused by the negligent or intentional act of the landlord.
2. Any requirement or agreement that the tenant waive a legal right to notification of court proceedings or eviction processes. This type of provision generally is couched in terms of the ability of the landlord to enter and retake possession of the premises upon a claimed breach (i.e. failure to pay rent) “without further notice to tenant”.
3. A clause that requires the tenant to forfeit a security deposit if the lease is broken or that waives a tenant’s right to contest the deductions from the security deposit. As discussed earlier, security deposits are one of the few issues in landlord tenant law in Colorado that are governed by Colorado statutes. A landlord cannot require a tenant to forego a right that is provided by law.

Of course, there are going to be any number of provisions written in an infinite variety of language which attempt to circumvent tenant’s rights. A good rule of thumb, however, is to be aware of four specific words – “waiver”, “forfeit”, “penalty”, and “fine”. While there may be occasions where these words are used appropriately, by and large when these words appear in a lease with reference to the tenant’s rights, it should raise red flags. And, of course, these are only guidelines and there may be any number of lease provisions which are unenforceable in which these words do not appear. Again, if a lease provision appears to be completely one-sided or there are other questions regarding the

legality of a lease provision, it is always a good idea to seek legal counsel before signing the lease.

**a. Reality, Practicalities, and the Unenforceable Lease Provision**

There are also practical realities that must be considered when discussing unenforceable provisions of a lease. First, what a tenant believes to be an unlawful or unenforceable provision may actually be found to be valid by a court. In that case, if the tenant has failed to comply with the challenged provision believing it to be unlawful, the court may find that the tenant has breached the lease. If this occurs in the middle of the tenancy, the tenant may actually end up facing eviction. It is one thing to stand up for principles, but quite another to have to move in the middle of your lease AND pay all the costs associated with an eviction!

Another consideration is simply the time and cost of challenging a lease provision as being unlawful or unenforceable may far exceed the benefit gained by the tenant. For example, a tenant may end up spending several hours and close to \$100.00 in fees and expenses in order to avoid paying a \$50.00 fine for climbing on the roof. Obviously, in such a scenario the purely economical choice would be to simply pay the \$50.00 fine, which would otherwise be unenforceable. That decision is, of course, up to each individual tenant.

The most important practical aspect of unenforceable lease provisions is to first be aware that they are included in your lease. Once you have identified a lease provision as potentially being unlawful or unenforceable, you can then make a determination as to how to deal with that provision. If the provision is one which calls for a forfeiture of the security deposit or waives a tenant's material rights, then it will likely be necessary to try and negotiate with the landlord to remove the clause from the lease. If the landlord refuses to remove the clause, then you must make a determination as to whether to sign the lease or look for alternate housing. The important issue is that, if you choose to go ahead and sign the lease, you are doing so knowing that you may end up in a legal battle with your landlord.

On the other hand, if the suspect provision is one which really doesn't apply to you as the tenant, then you may not need be concerned about whether it is enforceable or not. For example, if a lease unlawfully imposes a fine for riding a motorcycle on the property and you don't even have a motorcycle, the legality of that provision doesn't effect you. Of course, at that point your best friend will decide to buy a motorcycle and come visit you.

In any event, you as the tenant must be aware of the lease provisions and then make a practical determination whether they are important enough to you to try and negotiate a modification with the landlord or, even, to not sign the lease altogether. In any situation, it is *never* advisable to withhold payment of rent as a reaction to what a

tenant considers an unenforceable lease provision. Whether a lease provision is or is not enforceable has little or no relevance to the tenant's obligation to pay monthly rent (and to pay it on time) and the one *sure* way to get evicted is to not pay rent.

## **TERMINATION OF THE LEASE**

Okay, so now that you know all there is to know about finding a place, reading a lease, and what lease provisions to look for, how and when does a lease end and what happens when the lease is over? Typically, a residential lease is for a specific period of time (called a "term lease") and will automatically terminate at the end of the leasing period. If all goes according to plan, it's simple – you move out and wait to get your security deposit back, right? Hopefully that will be the case (remember, a picture of your clean, undamaged rental unit is worth a thousand words and is the best way to preserve your security deposit!). On the other hand, a periodic lease (which will be discussed further in a moment) will automatically *renew* until terminated by appropriate notice given by the landlord or tenant. This is typically the "month-to-month" lease.

However, there are two ways in which a lease will terminate prior to the end of the leasing period - either by agreement of the parties or because one of the parties has breached the lease. In either event, there will likely be some costs and expenses involved in the early termination. If the lease is terminated by agreement of the parties, the costs and expenses (if any) that each party will pay should be part of the agreement. However, if the lease is terminated because one of the parties violated the terms of the lease (called "breaching the lease"), not only will there be an issue regarding possession of the rental premises, but there will also be an assessment of costs and expenses (called "monetary damages") which he or she may be required to pay. However, there are some issues regarding the termination of the lease which you will need to be aware of at the time you sign the lease.

### **I. Termination of a "Definite Term" Lease**

Most leases have a specific beginning date and ending date, which as discussed previously is the "term" of the lease. The lease term may be for any specific length of time and will terminate upon the expiration of that term. In residential rentals, typically the lease term is for one year, with monthly rental payments. A definite term lease may (and usually do) have provisions that regulate what the tenant must do prior to the end of the lease period and which may have unintended consequences for failing to comply with these provisions.

#### **A. Preliminaries – Considering termination issues when signing a lease.**

When you are reading through your lease (before you have signed it, of course!), you may find two corresponding provisions that deal with the end of the lease. The first is a "non-renewal clause", which requires the tenant to give the landlord prior notice that the tenant will not renew the lease. While this may seem redundant because the lease is

scheduled to terminate on a specific date anyway, many landlords like this type of provision because it gives them some degree of certainty as to whether they will need to find a new tenant. If the tenant fails to give the landlord the required notice that they will not renew the lease, the tenant could be required to pay for any expenses incurred as a result thereof, including loss of rent if the landlord is not able to promptly re-rent the premises. Conversely, the lease may contain a clause that requires the tenant to provide written notice that they will be renewing the lease. In either a renewal clause or non-renewal clause, you will need to make specific note of any date by which you are required to provide the appropriate notice to the landlord (this means marking that date on your calendar or PDA as a reminder!). Also, always put the notice in writing so you can prove you complied with the deadline.

The second provision to be aware of is a “holdover clause”. As mentioned earlier in The Guide, holdover clauses typically state that if the tenant does not vacate the premises after the end of the lease term, the tenancy then becomes a month-to-month tenancy under the same provisions as the original lease. However, this type of clause may also state that if the tenant does NOT give timely written notice that the tenant will vacate the premises at the end of the lease term, then the tenant is deemed to be a holdover tenant and will have *automatically renewed* the lease, which could commit you to another year of the lease. Therefore, it is important to read and understand the specific wording of a holdover clause. In any event, the easiest way to avoid these issues is to simply give your landlord written notice that you do not intend to renew the lease and will be vacating the premises at the end of the lease. Of course, if you wish to renew the lease, you will need to also give the landlord appropriate written notice.

#### B. Voluntary Termination of the Definite Term Lease

As we have seen, a lease for a definite term automatically terminates upon expiration of the specified period of time. Unless there are specific notice provisions, the lease will simply expire of its own provision. At that point, the tenant no longer has a legal right to possession of the rented premises and the landlord may force the tenant out of the premises through lawful means. In the event the tenant fails to move out (or “vacate the premises”) upon the expiration of the lease term, the landlord may recover any monetary damages she has suffered as a result, such as the cost of delay in allowing a new tenant to move into the premises.

A definite term lease, however, may also be terminated at any time upon mutual agreement of the landlord and tenant. This is what is known as an “Early Termination Agreement”. In an early termination agreement, the parties in essence agree to modify the lease to a shorter term than what was originally expressed in the lease. While the terms and conditions of an early termination agreement will be based upon the facts and circumstances of the situation at the time, there should always be a specific provision which addresses any fees or costs associated with the early termination and who will be responsible for payment of those fees and costs.

A definite term lease may also be terminated based upon what is known as a “constructive eviction”. However, this is not necessarily a voluntary termination and will be discussed in further detail shortly.

## **II. Termination of a Periodic Term Lease**

As briefly discussed, a “periodic term lease” is a lease for an indefinite term which is automatically renewed on a periodic basis. A periodic term lease will, therefore, continue indefinitely until it is terminated by either the landlord or the tenant. To lawfully terminate a periodic term lease, the terminating party must give appropriate and timely notice that he wishes to terminate the lease. The notice to terminate basically states that the tenant (or landlord) will not renew the lease for the next leasing period and must be given in advance of the next lease period within the following requirements as specifically set forth in Colorado statutes:

<b><u>Lease “period”</u></b>	<b><u>Minimum Notice Requirement</u></b>
One year or longer	Three months notice
Less than one year, but more than six-months	One month notice
One month – six months	Ten days
One week – one month (Or tenancy at will)*	Three days
One day – one week	One day

(\* - A “tenancy at will” is defined as a tenant who is in possession of premises with the consent of the owner absent a showing of any specific periodic lease term)

Failure to provide the required notice within the time frame set forth above will result in the periodic lease not being terminated for the following lease period. In such a situation, the tenant will be liable for payment of rent for the next lease period.

## **III. Involuntary Termination of Lease – Breach of the Lease and Evictions**

A landlord may also terminate a lease based upon a violation (or “breach”) of a material provision in the lease. The classic example of this is failure of the tenant to pay the rent. In a situation where the tenant has breached the lease, the landlord can elect to terminate the lease, evict the tenant, and proceed against the tenant for any monetary losses the landlord has suffered as a result of tenant’s breach. However, before a landlord can evict a tenant, there is a specific process which must be followed by the landlord.

a. Notice Requirements and Right to Cure

Under Colorado law, before a tenant can be evicted, the landlord is required to give the tenant written notice of the alleged violation of the lease and provide three-days for the tenant to cure the violation. This is what is known as a “three-day demand” and a landlord cannot lawfully evict a tenant until three-days after the notice has been given. A landlord can give the tenant a three-day demand simply by posting the notice on the front door of the rented premises, whether or not the tenant is at home.

The three-day demand comes in two forms which are very similar. The first is a “Demand For Rent or Possession” and the second is a “Demand For Compliance or Possession”. In both situations, the demand must be in writing, must specifically identify the rented premises, must specifically identify the lease provision which the tenant is alleged to have breached, and must be signed by the landlord. If the tenant fails to pay rent or come into compliance with the lease provisions within three-days after the notice is given, the landlord can then elect to evict the tenant.

However, if the tenant cures the lease violation within the three-day period, the landlord cannot thereafter continue eviction proceedings. While this is relatively straightforward when the demand is for payment of rent, curing a demand for compliance may be somewhat more confusing. For example, if a landlord has alleged that the tenant failed to pick up trash in the front yard as required by the lease, but the tenant does so within the three-day period, the alleged lease violation has been timely cured and the tenant cannot be evicted. However, if the same violation occurs a second time, the tenant loses her right to cure and the landlord can simply issue what is called a “Notice to Quit”, which is notice that the landlord is terminating the lease. If, on the other hand, the second alleged violation is of a different lease provision, the tenant retains her right to cure the violation within the three-day period.

There is one exception to the three-day notice requirement, which is what is termed a “Substantial Violation”. Although Colorado laws specifically define what constitutes a “substantial violation”, roughly it is an act of a tenant or guest of the tenant which endangers any person living on or near the premises, which constitutes a drug-related felony, or which is a criminal offense that carries a jail-sentence of six-months or more. In the event of a substantial violation, a tenant is not afforded an opportunity to cure the violation and the landlord may immediately issue a Notice to Quit and terminate the lease three-days thereafter.

b. The Eviction Process – Or “What does ‘F.E.D.’ Really Mean?”

The eviction process in Colorado is called an action in forcible entry and detainer (“F.E.D.”). The term is actually an archaic and out of date expression meaning that the landlord is prohibited from forcibly entering the premises and the tenant is prohibited from forcibly possessing (or “detaining”) the premises. In practical modern terms it simply means the landlord is proceeding in court to evict the tenant from the rented premises.

An “FED” action is, quite simply, a lawsuit filed by the landlord against the tenant in which the landlord is seeking a court order to have the tenant removed from the rented premises and, in certain cases, a monetary judgment entered against the tenant for the landlord’s lost rent, expenses, and costs arising from the tenant’s breach of the lease. As with almost all lawsuits, the landlord must file a formal Complaint which sets forth the alleged lease violation. The landlord must also serve the tenant with a copy of the Complaint together with a Summons which tells the tenant when and where she must appear to answer to the allegations in the Complaint. Failure to properly serve the tenant with a Summons is a violation of the tenant’s rights of due process and the court cannot enter judgment against the tenant. There are two methods by which the tenant may be served with the Summons and Complaint and each has different consequence.

First, the landlord can have the tenant personally served. In this case, a process server must physically hand the Summons and Complaint to the tenant or to a person over 18 years of age living in the same household as the tenant. If a tenant is personally served with the Summons and Complaint, the court will have the authority to order that the tenant vacate the rented premises (called “judgment for possession”) and to pay to the landlord any monetary losses the landlord has incurred (called “judgment for damages”).

Exclusive to FED actions, the landlord also has the ability to serve the tenant simply by posting the Summons and Complaint on the front door of the premises, similar to posting the three-day notice. However, if the Summons and Complaint is served by posting, the court is only allowed to consider the issue of possession of the premises. In such a case, if the landlord wishes to obtain a judgment against the tenant for monetary damages, the tenant must still be personally served with the Summons and Complaint. The rationale for this disparity is that the issue of who has the right of possession of the rented premises requires a speedy resolution, whereas the issue of whether the tenant owes money to the landlord (or vice versa) does not.

Upon service of the Summons and Complaint, the courts must provide the tenant with an opportunity to challenge the allegations in the Complaint. Colorado law provides that a hearing on the Summons and Complaint cannot be held less than five (5) days but no more than (10) days after the Summons and Complaint is served upon the tenant. In Boulder, this translates to the court holding FED hearings only on Fridays and the tenant must be served with the Summons and Complaint sometime during the business week prior to the Friday hearing.

If the tenant fails to appear at the hearing or if the judge rules in the landlord’s favor at the hearing, the court will issue an order allowing the landlord to re-take possession of the rented premises. This is what is known as a “Writ of Restitution” in that possession of the rented premises is “restored” to the landlord. A Writ of Restitution is the formal order from the court to the county sheriff to evict the tenant. In order to allow the tenant at least some lead time to move out of the rented premises voluntarily, a Writ of Restitution cannot go into effect for 48-hours after the court enters judgment for possession to the landlord.

b. Damages For Breach of Lease