

“Where Do I Sign?”

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Residential Rental Agreement Requirements**Introduction**

A rental agreement is a contract between the landlord and their tenant which sets forth the terms of their rental agreement in writing. Generally, a rental agreement should cover the following major topics: Term of Lease; Rent, Security Deposits, Early Termination Penalties, and Default Notice Requirements.

However, a court may refuse to enforce the terms of the rental agreement if those terms are deemed to be unconscionable. Therefore, if you believe the terms of your rental agreement are unconscionable, contact an experienced real estate attorney to ensure your rights are not being violated.

Rental Agreements Must be in Writing

All agreements for the lease or rent of real property that are longer than one year must be documented in writing. Failure by the landlord or tenant to place the terms of the agreement in writing and have each party sign the agreement may result in the landlord or tenant being able to break the rental agreement.

As a practical matter, all rental or lease agreements should be in writing so as to clearly set forth the terms of the agreement as well as establish each party's right and remedies in the event the rental agreement is terminated.

How to Determine Rental Terms

Absent a rental agreement, the Arizona Residential Landlord and Tenant Act (ARLTA) will set forth the basic rules of the rental terms between the landlord and tenant. Specifically, the ARLTA sets forth that:

- 1) The rental rate shall be determined by the fair rental value for the use and occupancy of the dwelling unit;
- 2) Rent shall be paid by the tenant without demand or notice by the landlord;
- 3) Absent an agreement between the landlord and tenant, rent shall be collected at the dwelling unit; rent shall be paid at the beginning of each term (i.e. in a month to month lease, rent is payable on the first of the month); and
- 4) Generally, the rental term will be month to month.

Prohibited Rental Agreement Provisions

Prohibited provisions are terms that cannot be included in a rental agreement. Specifically, a rental agreement cannot contain terms that require the tenant to:

- 1) Waive their rights or remedies provided for in the Arizona Residential Landlord and Tenant Act (ARLTA);
- 2) Agree to pay the landlord's attorney fees, except an agreement in writing may provide that attorney fees may be awarded to the prevailing party in the

event of court action and except that a prevailing party in a contested forcible detainer action is eligible to be awarded attorney fees regardless of whether the rental agreement provides for such an award;

- 3) Agree to the exculpation of limitation of any liability of the landlord arising under law or to indemnify the landlord for the liability of the costs connected therewith; or
- 4) Agree to the payment of money penalties or otherwise penalize the tenant for the tenant summoning a peace officer or other emergency assistance in response to an emergency.

Consequences Prohibited Provisions

If a prohibited provision is included in a rental agreement, the provision is unenforceable. Further, if the landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited, the tenant may recover their actual damages sustained and an amount that does not exceed two (2) months.

Who Should Sign a Rental Agreement

A rental agreement should be signed by all the parties to the lease to ensure the terms of the rental or lease agreement will be binding on all the parties. For example, landlords will want to have each tenant living in the rental property to sign the rental or lease agreement. Further, a landlord should also have each tenant's spouse sign the rental agreement or lease agreement to avoid community property issues in the event the rental or lease agreement is breached. Arizona is a community property state.

Rental Agreement Signing Requirements

If the landlord and tenant have entered into a written rental or lease agreement, the landlord must provide a signed copy of the rental agreement to the tenant and the tenant must sign and return a copy of the fully executed agreement to the landlord within a reasonable period of time. In order for the rental or lease

agreement to be fully executed, the agreement needs to have all the blank spaces completed or filled in. If either landlord or tenant fails to fully comply with these requirements, the non-complying party's actions will be deemed a material noncompliance of the rental agreement.

If the executed rental agreement contains any blank spaces, it has not been fully executed. Therefore, if the executed rental agreement contains any blank spaces, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting a breach and that the agreement will terminate upon a date not less than ten (10) days after the landlord receives the notice, if the breach is not remedied by the landlord within ten (10) days.

Lastly, if the agreement is terminated, the landlord is obligated to return all of the security deposit that the tenant is entitled to recover.

About the Author

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Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

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