

# LOUISIANA LANDLORD/TENANT LAW

## CLE by the Hour 2002

**Lafayette Parish Bar Association**

**Lafayette Hilton and Towers**  
Friday, November 22, 2002

**Presenter:**  
Greg Landry  
Senior Attorney, Litigation Unit Leader  
Acadiana Legal Service Corporation  
1020 Surrey Street  
Lafayette, LA 70501

## **I. LEASE**

### **A. Contract**

1. Oral or written
2. Creates rights in the parties
3. Cancellation disfavored, subject to judicial control
4. Termination
  - a. Ends at expiration of term (C.C. 2727)
  - b. Ends upon destruction of property (C.C. 2728)
  - c. Either party can seek judicial dissolution (C.C. 2729)
  - d. Not death of a party (C.C. 2731)
  - e. Lease does not end by unilateral declaration of one of the parties

### **B. Abide by lease terms and:**

1. Local laws/housing codes
2. State law
3. Federal statutes/regulations (especially subsidized housing)

### **C. Recordation to affect third parties (sale of rental property) (R.S. 9:2721)**

### **D. Recondition**

1. "Automatic", month to month, if lessee remains in possession (C.C. 2685)
2. Presumption only – subject to rebuttal
3. Lessee's lease cancellation rights
  - a. Month to month lease – 10 days prior to end of month (C.C. 2686)
  - b. Lease terms may vary time or method required
  - c. Must have recognized reason (see below)

## **II. PARTIES' RIGHTS AND OBLIGATIONS**

### **A. Lessor's Rights**

1. Rent or Possession, not both
  - a. Remember the nature of the lease
  - b. Lessor may not take the rent and get possession  
Exception - C.C. 2712 money lessor gets in subsidy is not rent.
  - c. Can accelerate remaining rent due
  - d. May demand money in ordinary process (not in summary eviction rule)
  - e. Lessor is always limited to actual damages
  - f. Practical considerations
2. Receipt of rent
  - a. Certain amount - no duty to accept partial rent
  - b. Certain date - no duty to accept late rent
  - c. Certain place - no duty to go to lessee to collect
3. Dictate term of lease
  - a. Literal term - year, month or day
  - b. Other terms
  - c. Usually, no real negotiation
  - d. Care when deviating from codal provision – strict construction will apply
  - e. Provisions null if against the public interest (C.C. 7)
4. Have the lessee act as a good caretaker while in possession
5. Lessee's compliance with lease terms and state law
6. Lessor's Privilege

- a. Right of pledge over lessee's property (C.C. 2705)
  - Can seize items belonging to third parties but must release if timely demanded (C.C. 2707)
- b. Only up to amount of rent owed (not utilities or damages)
- c. Must have a lease and must get a writ of seizure/sequestration (C.C. 3219)
- d. There are exemptions:
  - i. Clothes
  - ii. Bed
  - iii. Tools
  - iv. Stove, pots, dishes
  - v. Dining table & chairs
- e. Can chase "skips" for 15 days after items removed from leased premises

#### B. Lessor's Obligations

- 1. Deliver possession to the lessee (C.C. 2692)
- 2. Give up exclusive possession
  - a. Specific period of time
  - b. Can't go on property whenever he wants absent lease provision allowing it
  - c. Can't even make alterations w/o lessee's consent (C.C. 2698)
- 3. Maintain lessee in peaceful possession
  - a. Need not protect from disturbances by trespassers (C.C. 2703)
  - b. Must protect from other lessees
- 4. Maintain the property – (see below)
- 5. Liability to lessee
  - a. For "vices and defects" (C.C. 2695)
  - b. For eviction (C.C. 2696)
- 6. Others – see the lease

#### C. Lessee's Rights

- 1. Use of the Property
  - a. Exclusive use (lessors have paid damages for invasion of privacy & trespass)
  - b. Without interruption
  - c. Includes right to sublease (unless lease restricts) (C.C. 2725)
- 2. Maintenance – (see below)
- 3. Peaceable possession
  - Lessor liable for knowing or negligent disturbances to lessee's peace
- 4. Terminate lease
  - a. Lessor's breach (C.C. 2729)
  - b. Partial destruction of premises (C.C. 2697, 2728)
  - c. Property becomes "impaired", but not by lessor (C.C. 2699)
  - d. Military relocation (R.S. 9:3251)
  - e. Some subsidized housing – job loss, illness, etc. (7 C.F.R. 1930)
- 5. Others – see the Lease

6. In Subsidized Housing, Grievances and Appeals

a. Application (see more detailed descriptions below)

- i. Public Housing Authority – “The Projects”
- ii. Section 8 complex
- iii. Vouchers – could be anywhere
- iv. Rural Rental Housing

b. General Process

- i. Any action or failure to act, taken or proposed is subject to grievance
- ii. Lessor notifies lessee of proposed adverse action, right to respond
- iii. Lessee's right to examine and copy records and regulations
- iv. Informal meeting
- v. Lessee has limited time to request formal hearing
- vi. Selection of grievance hearing officer or panel
- vii. Formal grievance hearing

c. Possible exceptions:

- i. If lessee is required to escrow rent and fails to do so
- ii. Authorized rent or rule changes
- iii. Discrimination complaints
- iv. Projects with tenant associations
- v. Notice of termination of tenancy and eviction
- vi. Disputes between lessees
- vii. Displacement due to prepayment of loans
- viii. Changes in federal rules or local plans

7. Other rights as granted in lease contract

D. Lessee's Obligations

1. Pay the rent when due (C.C. 2710)

- a. Rent is late at midnight on due date
- b. “Late Charge” is at Lessor's option (But if so, the rent is still late)
- c. Lessor doesn't have to accept late or partial rent

2. Act as good administrator (C.C. 2710)

- a. Timely report maintenance problems
- b. “Tolerate” repairs, even if inconvenient (C.C. 2700)
  - i. May get a rent break if deprived of use for >1 month
  - ii. Rent abatement if lessee has to move out

3. Make necessary repairs (C.C. 2715)

4. Liable for his own acts & those of his guests & family (C.C. 2722)

5. Use the property for the leased purpose (C.C. 2711)

Otherwise, lessor can end the lease, seek indemnity from lessee for losses

### III. REPAIRS & MAINTENANCE

#### A. Maintenance

1. Lessor's Obligations
  - a. Warranty of habitability (even if accepted "as is")
  - b. Delivery free from needed repairs (C.C. 2693)
  - c. Maintenance (by making "necessary" repairs) (C.C. 2693)
    - i. Wells (C.C. 2718)
    - ii. Rotten steps, balustrades, balcony, porch floor (jurisprudence)
    - iii. Ceiling plaster, walkways (jurisprudence)
    - iv. Sinks, faucets, roofs, pipes, electrical services (jurisprudence)
  - d. Repairs needed due to decay or unforeseen events (C.C. 2717)
  - e. Lessee can sue for specific performance or for damages
2. Lessee's Obligations
  - a. Repair damage he causes
    - i. Windows broken by accident (C.C. 2716)
    - ii. Fires he or his family causes (C.C. 2723)
  - b. Make "necessary" repairs (C.C. 2715, 2716)
    - i. Plastering of lower part of interior walls
    - ii. Flooring (text says "pavement" partially broken, not decayed)
    - iii. Hearths & mantels
    - iv. Shutters, locks, hinges,
    - v. Doors, windows, running toilet (cases)
  - c. Return with only normal wear & tear (C.C. 2719)
  - d. Lease contract may deviate from codal provisions
3. Destruction of the property
  - a. Partial – rent reduction or revoke lease (C.C. 2697, 2728)
  - b. Total – lease ends

#### B. Repair & Deduct (C.C. 2694)

1. Requirements – strict compliance (1st Cir. jurisprudence)
  - a. Repairs must be those that the lessor was obligated to make;
  - b. Lessee must call on the lessor to make repairs
    - i. must come from lessee (notice from city not sufficient)
    - ii. must go to lessor (not agent, family, etc.)
    - iii. oral or written
    - iv. follow notice method in lease
    - v. how will you prove it?
  - c. Lessor must refuse or fail to make these repairs in a "reasonable" time;
    - i. factual determination
    - ii. depends on circumstances: exigency & cost of repair
  - d. Lessee must then make the repairs;
  - e. Deduction of the cost of the repair must be from the rent due;
    - i. can't deduct from other sums owed
    - ii. month to month lease – probably limited to one month's rent
    - iii. longer term – may be up to amount of rent due under lease (cases)
  - f. Proof that the repairs were necessary;

- g. Proof that the price paid for the repairs was just and reasonable.
  - i. Normal proof problems – need bills, receipts  
(not just estimates w/o foundation)
  - ii. Unsupported testimony of lessee, probably not enough
  - iii. Expert witness for opinion testimony
  - iv. Lessee can recoup fair value of his own labor
- 2. May be used as a defense to non-payment
- 3. May be used as a set-off to demand for monies owed
- 4. If the argument fails – lessee may be able to remove improvements, but must be able to do so w/o damaging property (C.C. 2796)
- 5. Using this remedy with a private landlord is likely to prompt a Notice to Vacate
- C. Security Deposits (R.S. 9:3251)
  - 1. Checklists - presumption (in absence of checklist) is that everything was in good order (C.C. 2720)
  - 2. Notice to Lessor (demand for return & forwarding address)
  - 3. Lessor has 30 days to act, either full refund or partial with itemized deductions
  - 4. Penalties
    - a. Lessee can sue for damages
    - b. Lessor pays court costs
    - c. Lessor pays lessee's lawyer

## **IV. HOUSING DISCRIMINATION**

- A. Statutes
  - 1. Fair Housing Act – (42 U.S.C. 3601)
  - 2. Louisiana Open Housing Act – (R.S. 51:2601)  
May be advantageous to file in State court - pre-emption of eviction
- B. Coverage
  - 1. All dwellings (homes, apartments, mobile homes, motels, condos, shelters, etc.)
  - 2. Except
    - a. Owner selling his own single family home
    - b. Lessor-occupied buildings, with <4 units
    - c. Housing for older persons can discriminate against families
    - d. Private clubs' & religious organizations' noncommercial lodgings
- C. Bases
  - 1. Race or Color
  - 2. National Origin
  - 3. Religion
  - 4. Sex (or Sexual Harassment)
  - 5. Handicap (or regarded as having one)
  - 6. Familial Status

#### D. Practices

1. Refusal to rent or negotiate
2. Lies about availability
3. Discriminatory terms, conditions, services
4. Eviction
5. Steering
6. Retaliation
7. Coercion, intimidation, threats, interference
8. Advertising
9. Rehabilitation
10. Failure to seek subsidized housing
11. Brokerage services
12. Municipal services
13. Refusing handicapped accommodation/right to modify

#### E. Damages

1. Actual
2. Punitive
3. Equitable Relief
4. Attorneys Fees

#### F. Enforcement

1. State AG's office
2. Regional HUD office
3. Local Fair Housing agencies
4. Private suit – 2 year prescription  
Disparate treatment, mixed motive or discriminatory effect claims

### **V. ADMISSION SCREENING**

- A. Should always be case by case (not by category)
- B. Fair Housing Act should influence decision making
- C. Legitimate Grounds
  1. Housekeeping
  2. Rent payment history
  3. Credit history
  4. Criminal history
- D. Subsidized Housing
  1. Can additionally check unit size & income, but not assets
  2. Local, not federal preferences

## **VI. FEE PROVISIONS**

- A. Unpaid Rent (R.S. 9:3534)
- B. Lease terms (contractual)
- C. Unfair Trade Practices (R.S. 51:1401)
  - 1. “Unfair and Deceptive” acts in conduct of commerce  
(immoral, unethical, oppressive, unscrupulous or substantially injurious)
  - 2. LA courts say look to Federal jurisprudence, FTC rulings for guidance
- D. Security Deposits (R.S. 9:3251)
- E. Wrongful Seizure (fees awarded by courts as an element of damages or using UTP)
- F. Housing Discrimination (42 U.S.C. 3613)
- G. Civil Rights (42 U.S.C. 1988)

## **VII. EVICTIONS**

- A. Administrative Process
  - 1. Notice to lessee that his conduct will be considered Good Cause
    - a. Can be incorporated in lease or house rules
    - b. Only required in some subsidized housing
  - 2. Notice of Lease Violation – Subsidized housing only
    - a. Refer to relevant lease provisions
    - b. State violation with specificity
    - c. State specific date for corrective action
    - d. Inform lessee of right to informal meeting
    - e. Court proceeding required for eviction
    - f. Lessee's opportunity to present a defense
    - g. Service of notice - First class mail or personal delivery
  - 3. Notice to Vacate or of intent to terminate lease or take adverse action
    - a. Notice to Vacate can be waived if not subsidized housing
    - b. Wait until date for corrective action has passed
    - c. State occupancy terminated, Landlord will file suit for eviction
    - d. State reason(s) with specificity
    - e. Inform lessee of opportunity to review & copy file (subsidized housing)
    - f. Eviction proceeding if remain in unit after \_\_\_ days  
(Can not give less than 5 days to move out)
    - g. Service of notice - First class mail or personal delivery
    - h. Tacking allowed if not in subsidized housing
    - i. Copy to RHCDS district office (Rural Rental Housing only)
  - 4. Any grievance process required by subsidized housing rules (see above)
  - 5. If also have Section 8 subsidy, those regulations must be followed in addition.
  - 6. If lessee is paying over 25% of income in rent, RHCDS may have to help seek any other available assistance (Rural Rental Housing only)
  - 7. Wait prescribed period (depending on facts)

## B. Legal Process

1. File eviction in court after notice to vacate period is over
2. Court serves suit on lessee
3. Notice of court date (at Least 72 hours Away)
4. Court hearing
5. Judgment making rule absolute
6. Possibility of appeal within 24 hours
7. If no appeal, *Court Officers* effect eviction 24 hours later

## C. Protections for Lessees

1. In subsidized housing, certain "grievance" rights
2. Lessor may not actually or constructively evict until court says so
3. Lessor may not throw lessee or belongings out, only a court officer may

## D. Lessors are asking for trouble if they:

1. Don't have a written lease or written procedures for handling disputes & evictions
2. Don't follow their procedures or train their personnel
3. Don't give the proper notice
4. Ignore lessees' requests to talk about problems
5. Start the eviction before the grievance process is over
6. Change the locks or remove the lessee's belongings before getting the eviction judgment
7. Let their personal feelings interfere with their professional judgment

## **VIII. SUBSIDIZED RENTAL PROGRAMS**

### A. Public Housing Authority

1. Owned and operated by political subdivision of the state (city or parish)
2. HUD subsidizes operations through annual contract with lessor
3. Rent based on income, but with minimum rents
4. Eviction only for good cause

### B. Section 8, Project Based (many flavors)

1. Owned by private individuals
2. Local PHA subsidizes lessee's rents
3. Rent based on income
4. Housing must meet minimum standards
5. Good cause required for mid-term evictions

### C. Section 8 Vouchers

1. Housing is owned by private individuals
2. Lessee gets "hunting license"
3. Government subsidizes a portion of rent, up to amount of voucher
4. Voucher amount based on income & type of unit
5. Housing must meet minimum standards
6. Good cause required for mid-term evictions

### D. Section 515 Rural Rental Housing

1. Rural areas only, housing must be modest in design and cost
2. Builder is unable to obtain conventional credit
3. Rent is capped at 30% of adjusted gross income
4. Good cause required for eviction

# EVICTON PROCESS

## **ADMINISTRATIVE PROCESS (SUBSIDIZED HOUSING):**

Notice that Conduct will be Considered Good Cause for Eviction

Notice of Lease Violation/Action Adverse to Lessee

Grievance (Request for Meeting) w/in 10 calendar days

"Informal Meeting" w/in 5 working days

Written Summary of Meeting (4 copies) w/in 10 calendar days

Written Request for Hearing w/in 10 calendar days

Hearing w/in 15 days

Written Decision in Formal Hearing w/in 10 calendar days

Review by District Director w/in 10 calendar days

## **JUDICIAL EVICTION PROCESS:**

State Court Notice to Vacate  
(may be combined w/Notice of Termination)

Landlord Files Suit (Summary or Ordinary)

Court Serves Suit, Notice of Court Date

Eviction Trial

Judgment

# RESEARCH AND SUPPORT MATERIALS

RHCDS (FmHA) HOUSING PROGRAMS: TENANTS' AND PURCHASERS' RIGHTS  
(2d ed. 1995), The National Housing Law Project

HUD HOUSING PROGRAMS: TENANTS RIGHTS  
(2d ed. 1994 & 1998 Supplement), The National Housing Law Project

## Internet Sites:

Louisiana Landlord-Tenant Law (advocate's guide) –  
<http://www.loyno.edu/~gwlong/booklandlord.pdf>  
Federally Subsidized Housing Programs (advocate's guide) –  
<http://www.loyno.edu/~gwlong/bookhousing.pdf>  
United States Code - <http://uscode.house.gov/usc.htm>  
Code of Federal Regulations - <http://www.access.gpo.gov/nara/cfr/>  
Federal Register - [http://www.gpo.gov/su\\_docs/aces/aces140.html](http://www.gpo.gov/su_docs/aces/aces140.html)  
HUD Handbooks - [http://www.hud.gov/offices/adm/handbks\\_forms/handbooks.cfm](http://www.hud.gov/offices/adm/handbks_forms/handbooks.cfm)  
HUD, New Orleans Office - <http://www.hud.gov/local/la/working/neworleansoffice.cfm>  
USDA Rural Housing programs –  
[http://www.rurdev.usda.gov/rhs/ProgramBriefs/program\\_info.htm#MFH](http://www.rurdev.usda.gov/rhs/ProgramBriefs/program_info.htm#MFH)  
USDA Rural Development - <http://www.rurdev.usda.gov/>  
USDA Rural Development regulations - <http://rdinit.usda.gov/regs/>

Louisiana Civil Code - <http://www.legis.state.la.us/home.htm>  
Generally - Articles 2669 through 2792  
Eviction - Articles 2712 to 2714  
Lessor's Rights and Duties - Articles 2692 to 2709  
Lessor's Privilege - Articles 2705 to 2709  
Lessee's Rights and Duties - Articles 2710 to 2726  
Dissolving the Lease - Articles 2727 to 2744

Louisiana Code of Civil Procedure - <http://www.legis.state.la.us/home.htm>  
Evictions Generally - Articles 4701 through 4735  
Notice - Articles 4701 to 4703  
Procedure - Articles 4731 to 4735

Louisiana Revised Statutes – <http://www.legis.state.la.us/home.htm>  
Security Deposits – R.S. 9:3251  
Unfair Practices – R.S. 51:1401

Public Housing Statutes – Volume 42 of the United States Code  
42 U.S.C. §1437 and following

Public Housing Regulations – Title 24 of the Code of Federal Regulations  
Vouchers - 24 C.F.R. §813 and following  
Public Housing – 24 C.F.R. §913 and following  
Section 8 Existing Housing – 24 C.F.R. §247 and following

Rural Development Statutes - Volume 42 of the United States Code  
§§1485 and following

Rural Development Regulations - Title 7 of the Code of Federal Regulations  
§515 Generally - Part 1944, Subpart E and following –  
<http://rdinit.usda.gov/regs/regs/txt/1944e.txt>  
§515 Tenant Grievances and Evictions - Part 1944, Subpart L  
<http://rdinit.usda.gov/regs/regs/txt/1944l.txt>  
§515 Management Handbook - Part 1930  
<http://rdinit.usda.gov/regs/regs/txt/1930c.txt>  
Management Handbook - Part 1930, Subpart C, Exhibit B  
Rental Assistance - Part 1930, Subpart C, Exhibit E  
§514-516 Farm Labor Housing - Part 1944, Subpart D  
<http://rdinit.usda.gov/regs/regs/txt/1944d.txt>