

**ON THE SAME PAGE**

**Reinforcing Rights  
& Protections for  
Utah Renters**



The University of Utah  
SJ Quinney College of Law  
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# WHAT IS JUSTICE LAB?

Justice Lab at the S.J. Quinney College of Law is a clinical course where law students learn to solve legal, policy, and practical problems for clients. With faculty supervision, Justice Lab students represent community groups, non-profit organizations, and government agencies in short-term capacity-building projects that launch and support visionary systemic change work in our community.

## The Justice Lab Team

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**Lauren Brown-Hulme** is a former investigative journalist turned aspiring attorney and a Midwesterner turned backcountry camper. She is passionate about using the power of law to transform systems and increase access to justice. Her work experiences have focused on prisoners' rights, right to counsel, fighting wealth-based inequality in the criminal legal system, and now, housing justice.

**Matt Nepute** is a Legal Observer Coordinator for the Utah chapter of the National Lawyers Guild. He is interested in employment law, federal Indian law, landlord-tenant law, and several other critical public interest areas. His professional background in consumer-facing technology has influenced his view that the law—much like technology—is a powerful structural force that profoundly shapes our daily lives.

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# 1. INTRODUCTION

Utah's renter protections are weak compared to most other U.S. states, including Utah's neighboring states. From confusing or unfair terms in lease agreements to the harsh consequences of eviction, Utah renters face many structural obstacles that constrain, and sometimes block entirely, attempts to protect or assert their rights.

- Utah's housing law leaves the terms of lease agreements mostly unregulated. As a result, renters are subject to many intimidating lease terms that, if challenged in court, may not be upheld.
- Renters do not have any meaningful ability to negotiate lease terms. Lease terms are confusing and lack transparency, including necessary information like the total monthly cost of rent.
- Renters who violate lease terms face harsh penalties, including eviction and judgments that, by law, require tenants to pay triple damages to their former landlords.

In the fall of 2020, a team of students at the S.J. Quinney College of Law's Justice Lab conducted original research to understand the substance and practical consequences of the complex laws, policies, and practices that shape the landlord-renter relationship in Utah.

This report synthesizes the results of the Justice Lab team's research and analysis. It highlights the unfairness of common terms in lease agreements, compares Utah law to laws that protect renters' rights in other jurisdictions, and recommends a series of steps to reduce the inequities in Utah housing law, beginning with a Truth in Renting Disclosure.

The Justice Lab team's research revealed that Utah leases commonly include confusing terms, conflict with state statutes, and are unfair to tenants. For example, many lease agreements in Utah do not clearly state the total cost of a month's rent. A Truth in Renting Disclosure would require more clarity and transparency to Utah's lease agreements and offer renters (who almost universally lack access to lawyers)<sup>1</sup> accurate, understandable, and actionable information about their legal rights.



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## 2. MANY UTAH LEASE AGREEMENTS UNFAIRLY HARM RENTERS

In the fall of 2020, housing law and policy stakeholders asked Justice Lab to identify opportunities for promoting equity in the landlord-renter relationship in Utah, including possible ways to create more robust legal protections for Utah renters. Our team spent months studying housing law, policy, and practice, including researching housing law and policy in Utah and other states, collecting local and national housing and eviction data, and consulting with attorneys, the court staff, housing experts, and community members about the practical consequences of housing laws in Utah and other states.

We found that Utah's eviction rate is similar to other states'. Unfortunately, we also learned that **Utah's eviction consequences are among the nation's harshest and most economically punishing.**

An eviction can, and most often does, change the course of people's lives. People evicted in Utah typically pay triple damages to their landlord, along with a long list of compounding fines and fees. A person with even one eviction on their record, possibly the result of just one missed payment of a few days, may never be able to secure rental housing again.

Years of research show that stable, safe, and healthy housing is necessary for getting and maintaining gainful employment. **Eviction reduces economic productivity, causes financial harm to both landlords and tenants, and harms community well-being.**<sup>2</sup>

Most other states long-ago recognized the negative consequences of eviction and the imbalance in bargaining power between landlords and renters. These states created statutory protections for renters. But Utah lacks such renter protections.

We collected leases from Utah court records and online providers. We compared these leases with Utah's housing statutes and found that Utah leases typically include terms that conflict with state statutes. Leases also contain terms that do not directly conflict with state statutes but are still functionally unfair to renters.

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Renters have little to no bargaining power to negotiate lease terms. Many renters misunderstand the meaning of terms they agreed to and are unaware of their legal rights. Given the tight housing market in many parts of the state and Utah's lack of renter protections, tenants have almost no power to object to unfair terms commonly used in Utah lease agreements.

Before housing advocates can create meaningful reforms in eviction law and process, **Utah needs a pragmatic, fair regulatory framework that requires all Utah leases to be transparent, understandable, and actionable for landlords and renters.**

In this report, we discuss renters' lack of bargaining power in the lease agreement and review the terms commonly included in Utah leases that conflict with state statutes or are functionally unfair to renters. We describe how common Utah lease terms result in long-term, harmful, and unnecessary consequences for renters. We recommend Utah begin taking steps to protect renters from unfair and nontransparent lease terms. Such reform would make landlord-renter disputes much less likely to result in housing loss and debilitating debt for renters and less likely to generate financial harm for landlords.

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## A. RENTERS MUST ACCEPT UNFAIR LEASE TERMS TO SECURE HOUSING

### Utah's housing shortage means landlords have functional control of lease agreement terms.

Utah's housing shortage, including a shortage of affordable housing, significantly limits options for renters.<sup>3</sup> When renters have few housing choices, landlords have near-complete power to set the lease agreement's terms.<sup>4</sup> When there is a high demand for housing, multiple people will apply for the same rental unit. If a renter finds lease terms unacceptable, the landlord can simply offer the rental to the next applicant in line. Housing is a critical determinant of security and well-being for most people,<sup>5</sup> so in a tight housing market, renters have little choice but to agree to the terms a landlord offers.<sup>6</sup>

### Renters have very little control over lease terms.

Currently, challenging the fairness of a lease agreement in Utah requires a lawsuit between renter and landlord where a court determines whether the lease or any of its terms are unconscionable.<sup>7</sup> In legal terms, unconscionable means that a contract is so unfair and unreasonable to one of the parties that it would be unjust to enforce it.<sup>8</sup> Other states prohibit certain unfair terms in residential lease agreements.<sup>9</sup> Utah does not. In Utah, the question of unconscionability requires individual lawsuits<sup>10</sup> where a renter asks a court to find the lease, or a term in it, unconscionable.<sup>11</sup>

The Utah Supreme Court has explained that unconscionability includes "an absence of **meaningful choice** on the part of one of the parties" along with or without "contract terms which are **unreasonably favorable** to the other party."<sup>12</sup>

Utah's current approach to solving problems created by unfair lease terms—on a case-by-case basis via lawsuit—is ineffective and inefficient. Utah's approach:

- 1) Does not prevent landlords from including excessively unfair terms in lease agreements.
- 2) Is a costly (for courts, landlords, and renters) way of remedying a systemic problem.
- 3) Makes remedying an unfair lease term or lease agreement nearly impossible for most renters. Bringing a lawsuit against a landlord is cost-prohibitive for most renters, as we explain below.

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## **Renters do not get legal services.**

Most Utah renters need legal services. Most never receive a lawyer's help.

A recent report by the Utah Bar Foundation addressing the unmet legal needs of lower-income Utahns found that limited resources prevented people from accessing legal services.<sup>13</sup> According to the report, landlord-tenant disputes are the number one reason people call the Utah Courts Self-Help Center seeking information and referrals for legal services.<sup>14</sup> However, Utah renters have lawyers in only 5% of eviction cases.<sup>15</sup> Renters are housing cost-burdened<sup>16</sup> at more than twice the rate of homeowners.<sup>17</sup> For already cost-burdened renters, the expense of hiring an attorney remains the biggest barrier to securing legal representation, as most Utah attorneys charge more than \$150 an hour for their services.<sup>18</sup>

## **Utah does not protect renters from unfair lease agreements and lease terms.**

Utah's approach to remedying unconscionable lease terms provides almost no preventative protection for renters and functionally allows residential lease agreements to include terms that should be prohibited by law. Our research suggests that renters regularly enter lease agreements containing grossly one-sided terms that would likely be unenforceable by a court.<sup>19</sup> However, renters rarely bring such suits, as we describe above. We draw two conclusions from our research:

1. Utah's housing shortage places landlords in a position to control the terms of a lease agreement. Housing is a necessity. Renters cannot refuse unfair leases and lease terms.
2. Utah does not prohibit or prevent unfair lease terms. Challenging the fairness of a lease term in court is cost-prohibitive for renters and it is currently renters' only option for relief.

Landlords regularly use residential lease agreements containing unfair lease terms because Utah has not taken minimal steps to protect renters.<sup>20</sup> At first glance, lease agreements used by different landlords in Utah appear different. However, a close read reveals that while the language might vary across leases, many leases in Utah share substantively similar terms that are excessively one-sided and unfairly harm renters.

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## THE LANDLORD-TENANT RELATIONSHIP: WHO IS A LANDLORD?

### Three General Types of Landlords

- **Property Owner Landlord:** an owner who self-manages rental property they own.
- **Apartment Property Manager:** generally, an employee of an apartment complex owner who manages apartments. Alternatively, a person who lives at the apartment complex in exchange for any rent can also be an apartment property manager.
- **Licensed Property Manager:** an agent of a property owner who is paid to manage rental property on behalf of the owner. This type of landlord must have a real estate license with the Utah Division of Real Estate.

### Overview Utah's Regulation of Property Managers

Real Estate Licensing and Practices Act requires licensing for property managers who are paid to act as agent for a property owner in the management of real estate.<sup>21</sup>

**License requirement.** A Sales Agent or Broker License is required for any individual who is paid to act as a property manager on behalf of a property owner. This includes advertising real estate for lease or rent, procuring prospective tenants or lessees, negotiating a lease or rental terms, and executing a lease or rental agreements.<sup>22</sup>

A Licensed Property Manager must work under a Licensed Broker.<sup>23</sup>

**Exempt from the Licensing Requirement.** The following types of property managers are not required to be licensed with the Division of Real Estate:

- a) an owner who manages his or her own property (**Property Owner Landlord**)
- b) an employee for one property owner (**Apartment Property Manager**)
- c) apartment managers who reside in the apartments at reduced rent, (**Apartment Property Manager**)
- d) full-time salaried employees of a Homeowners Association,
- e) hotel or motel management, or
- f) management activities associated with rental accommodations for less than 30 consecutive days.<sup>24</sup>

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## **B. UTAH LEASES COMMONLY INCLUDE TERMS THAT CONFLICT WITH STATE STATUTES**

Renters have rights to peaceful enjoyment of the rental unit and habitable living conditions under the [Utah Fit Premises Act](#).<sup>25</sup> Renters also have rights in the eviction process as outlined in the [Utah Unlawful Detainer Statute](#).<sup>26</sup> Utah leases commonly include terms that conflict with these statutes, such as terms that reduce a landlord's duties to the renter or terms that require renters to waive their statutory rights altogether.

The rights and remedies available to a renter and guaranteed by law have little effect because most renters are unaware of those rights and how to protect them. When a renter has a reason to understand their rights and responsibilities, they will most often read the lease and rely solely on its information, rarely seeking legal advice when they face a problem with their landlord.<sup>27</sup> Consequently, a renter may act according to information the lease provides about rights and may unknowingly waive their rights under statutory law.<sup>28</sup>

## CONFLICT BETWEEN UTAH LAW AND LEASE TERMS

Right	What Utah's Laws State	Terms Common in Utah Leases
Right to <b>know of the condition of the rental unit</b> prior to signing lease agreement	Under the <u>Fit Premises Act</u> , before a landlord and prospective renter sign the lease, the landlord <b>must do one of three things</b> : (1) Provide the renter with a <b>written report</b> of the condition of the unit; (2) Give the renter a form to make a <b>report</b> of the unit's condition upon move-in; OR Allow a <b>"walkthrough" inspection</b> of unit by renter.	Some leases state that the renter is required to <b>accept the existing conditions of the rental unit at lease signing</b> , even if defects were not easily discoverable or if the landlord knew of a problem related to the condition. This term allows the landlord to hold the renter liable for the cost of repairing the problems.
Right of the <u>landlord</u> to <b>seize renters' personal property</b> to satisfy a renter's unpaid balance under a <b>landlord's lien</b>	The Utah Code creates a <b>statutory lien</b> that allows a landlord to seize and sell <b>non-exempt</b> property from a renter who is in arrears on rent for up to 30 days after the renter leaves the rental unit.  There is a category of <b>exempt property</b> that cannot be taken by the landlord under this statutory lien.  The list of exempt property (which cannot be taken by the landlord) can be found in <u>Utah Code Ann. § 78B-5-505</u> .	Leases can grant the landlord a supplemental lien on a renter's personal property under virtually <b>any</b> terms. The exemptions to property types in the Utah Code <b>do not apply</b> to these separate <b>contractual liens</b> , which are often more expansive than the one provided by state law.  Additionally, lease agreements do not include explanations of the statutory lien, even though it automatically applies to all leases.

## CONFLICT BETWEEN UTAH LAW AND LEASE TERMS (CONTINUED)

Right	What Utah's Laws State	Terms Common in Utah Leases
<b>Right to Peaceful Enjoyment</b>	Under the <u>Fit Premises Act</u> , a landlord may not enter a renters' unit without first notifying the renter. The landlord must give a renter 24-hour notice before entering the rental unit <b>unless the lease states otherwise</b> .	The lease agreement will outline the time frame necessary for a landlord to notify a renter before entering the rental unit. Some leases give landlords the right to enter the rental unit <b>without notice to the renter</b> .
<b>Right to Habitable Living Conditions</b>	<p>Under the <u>Fit Premises Act</u>, a landlord has the <b>duty to maintain</b>:</p> <ol style="list-style-type: none"> <li>(1) Common areas in a safe and sanitary condition</li> <li>(2) Electrical systems, plumbing, heating, and hot and cold water</li> <li>(3) Air conditioning systems in an operable condition</li> <li>(4) Other appliances and facilities listed in the lease agreement</li> <li>(5) For multi-unit buildings, provide <i>and</i> maintain garbage receptacles and trash removal, unless the renter and landlord agree otherwise in the lease</li> </ol> <p>If a problem arises in any of these areas, a landlord must begin corrective action <b>within 3 days</b> of the renters' request for repairs. For all other needed repairs, the Fit Premises Act allows a 10-day corrective period.</p>	<p><b>The 3-day or 10-day corrective period is sometimes waived if a lease does not give the landlord a specific time to cure a deficient condition.</b></p> <p>Additionally, the ambiguity of the law—such as what constitutes the landlord "beginning" corrective action—<b>allows a landlord to define what a substantial step in making repairs is</b>, e.g. calling a repairman within the 3-day corrective period but not completing the repairs in 3 days. Notably, <b>there are limits on when and how renters may use Fit Premises Act</b>. Renters must be current on their rent and any other fees when they request conditions be addressed through the Fit Premises Act. Renters can be evicted for nonpayment of rent even if their rental unit is not considered habitable. <b>The renter may not sue the landlord over the landlord's breach of duty to maintain the rental unit's habitability.</b></p>



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What consequences do landlords face when the terms in a lease contradict renters' rights guaranteed by statute?

Currently, in Utah, there are no consequences.

If a landlord uses a lease that includes terms that conflict with Utah statutes, they will not face any legal penalties, such as paying money damages to the affected renter. Whether the contract drafter inserted these terms into the lease intentionally or inadvertently, terms that conflict with state statutes should not be enforced by a court and should be banned by the legislature. Examples of common problems include:

- Many Utah renters have signed leases requiring them to give up their statutory rights when they agree to live in the unit. Renters have a right to peaceful enjoyment and habitable living conditions under the [Utah Fit Premises Act](#). Renters also have rights in the eviction process as outlined in the [Utah Unlawful Detainer Statute](#).
- Many Utah renters sign leases that give the owner or property manager the right to enter their home at any time without notice. Under the [Utah Fit Premises Act](#), a landlord may not enter a rental unit without providing 24-hour prior notice unless the lease states otherwise.
- Most leases contradict the [Utah Fit Premises Act](#) by misrepresenting a renter's right to terminate a lease when the landlord fails to make the rental unit available on the date stated in the contract. In disregard of the law, leases commonly require that a period (typically 10 to 30 days) must pass before the lease is terminated. Utah law gives a renter the right to terminate a lease on the first day that the unit is not available, and this right cannot be waived.
- Leases often require a renter to agree to pay their landlord's attorney fees, even if a lawsuit is not filed and regardless of who wins in court if a lawsuit is filed.

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### Summary of Renters' Rights Under Fit Premises Act

- Right to live in the rental unit in **peace** and without interference
- Right to **notice** of landlord entering rental unit
- Right to **safe and sanitary living conditions**
- Right to **knowledge** of the condition of the rental unit prior to signing lease
- Right to **maintenance** of deficient conditions within a specific time

### Summary of Renters' Rights Under Unlawful Detainer Statute

- Right to **notice** of “pay or vacate”
- Right to notice of **reason for eviction**
- Right to eviction only by **court order**

Other states have put renter protections in place by regulating the types of terms that can and cannot be used in residential lease agreements. Some of the most common terms that have been prohibited by states are:

1. Any clause that waives a renters' rights or remedies (AZ, NV, CO, ID, MT, WA, MI, KS, OK)
2. Any clause requiring a renter pay a landlord's attorney fees (AZ, NV, CO, WA, MI, KS, OK)
3. Any clause that limits or waive a landlord's liability for not upholding their obligations under law (AZ, NV, CO, MT, WA, MI, KS, OK)
4. A clause requiring a renter to waive their right to live in a habitable unit (C.O., MI)

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5. Any clause waiving a renters' right to get their security deposit back (C.O., MI)
  6. A clause that makes the renter consent to eviction without proper notice (C.O., MI)

In addition, Arizona, Colorado, and Nevada limit fees that can be tacked onto the lease.

In contrast, Utah law gives landlords the right to charge fees for any reason and any amount, without restriction, as long as they are in the lease agreement.

Arizona, Colorado, Nevada, Washington, and Kansas also allow awards of monetary damages to the renter if their lease includes prohibited terms.

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## C. LEASES COMMONLY INCLUDE TERMS UNFAIR TO RENTERS

Other provisions frequently seen in leases do not directly conflict with the law but are functionally unfair to renters.<sup>29</sup> These terms often protect the landlord's interests at the renters' expense. The intimidating length and complicated language of leases mean most renters do not read or understand the potential consequences of signing a lease—this makes it easy for misleading and unfair terms to go unnoticed.

The following are some of the most frequently seen types of one-sided provisions:

- **Exculpatory Clauses:** Renter agrees they will not take legal action against the landlord for damage or injury caused by the landlord's violation of the lease or negligence.
- **Payment of Attorney's Fees:** Any clause that requires the renter to pay the landlords' attorney's fees in any judicial action arising under the lease, regardless of the outcome.
- **Withholding a Security Deposit:** Any clause allowing the landlord to withhold any or all of the renter's "returnable deposit" if the renter does not perform certain obligations outlined in the lease to the landlord's satisfaction, and elimination of a renter's right to dispute this decision.
- **Waiver of Tenant Rights to Receive Notice of Changes in Monthly Fee Amounts:** Waiver of renter's right to be alerted of any changes in monthly fee amounts.
- **Exclusion of Liability for Failure to Perform on Contract:** If the landlord fails to make the rental unit available for move-in on the date stated in the lease. During this delay, the renter must uphold the lease terms, and the landlord can keep the renter's security deposit.
- **Acceleration of Rent and Fees for Remaining Length of Rent & Fees Upon Move-Out for Any Reason Including Eviction:** If the renter moves out before the end of the lease—including because of an eviction—all rent, fees, and utilities remaining on the contract become immediately due. The

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renter does not have the option to continue paying according to lease, whether it is re-rented by the landlord. Renters are also responsible for re-renting property, which may include marketing and advertising costs.

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### 3. COMMON TERMS IN UTAH LEASES HAVE LONG-TERM, HARMFUL CONSEQUENCES FOR RENTERS

Renters across the U.S. inevitably face severe hardships following an eviction. Background checks are common in rental applications. It can be challenging for renters to find new housing with an eviction on their record.<sup>30</sup> The risk of job loss rises significantly after eviction.<sup>31</sup> And, of course, evictions often leave renters homeless.<sup>32</sup>

This report has described how and why standard Utah lease terms are unfair for renters. As a result of these terms, renters evicted in Utah face additional harsh consequences compared to evicted renters in other states. The two most notable lease terms that harm Utah renters even after an eviction are fee pyramiding and landlord's liens.

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## A. FEE PYRAMIDING

In the practice of "pyramiding," a debtor is assessed late fees on unpaid late fees.<sup>33</sup> Under common Utah lease terms, when a renter makes a late payment, they are charged a late fee for each day that payment is overdue. Renter are also charged a late fee for outstanding unpaid late fees, even after paying the rent balance.

Utah lease agreements typically include a 24% A.P.R. late fee, compounded daily, if the following payments are late:

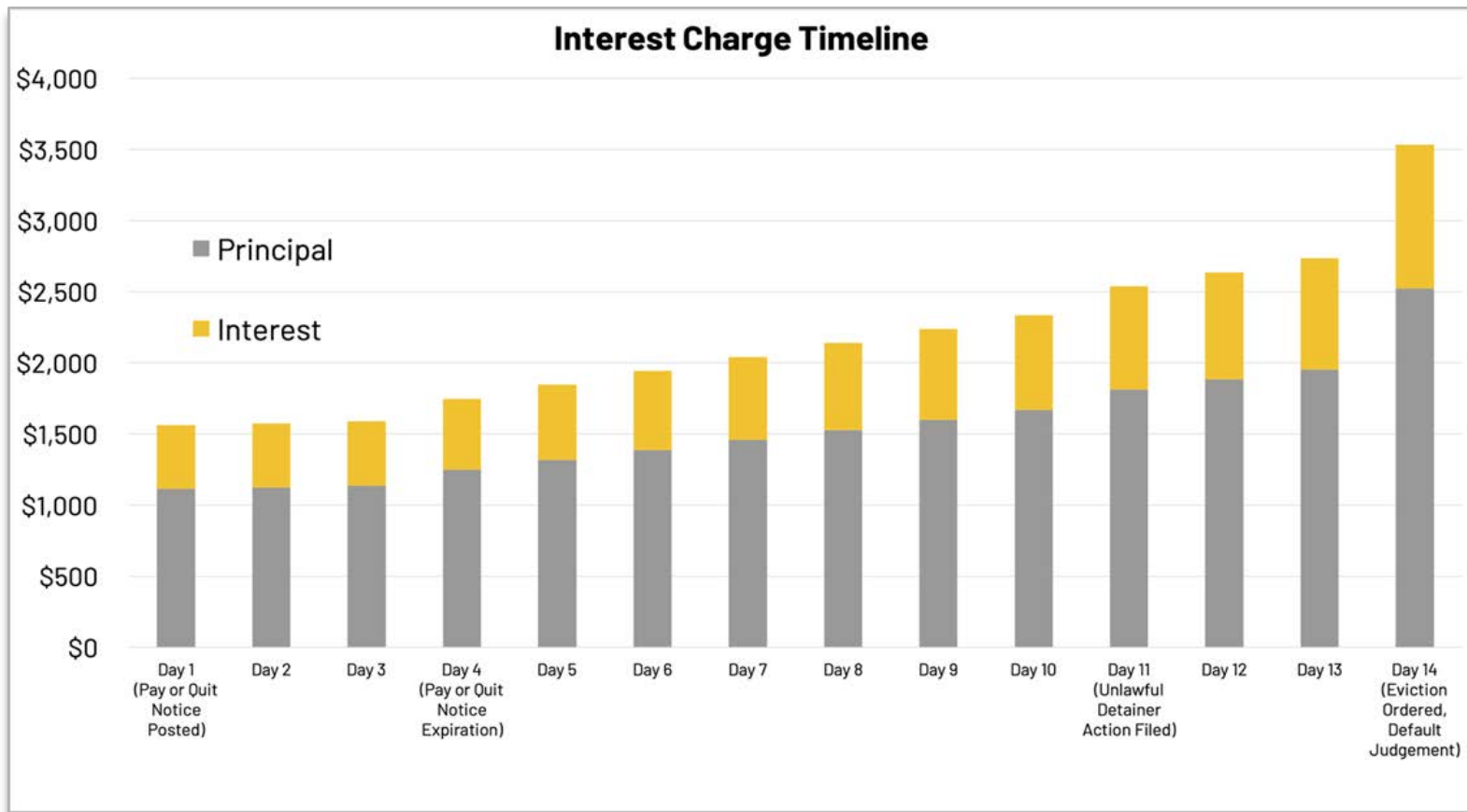
1. Any outstanding rent
2. \$10 + 5% late fee for every day there is a due balance
3. \$75 charge to post the Pay or Quit Notice
4. Treble damages which accrue after the Pay or Quit Notice expires
5. Fees charged by the court for filing an eviction action, and
6. Any other amounts included in the final court judgment (most commonly attorney's fees)

**If a collections service is used, there is a 40% collections fee on all the sums listed above.**<sup>34</sup>

The "treble damages" mentioned on the list above are a punitive multiplier a court applies to a judgment, tripling the amount of money owed to the prevailing party. In most areas of law, treble damages are reserved for when one party *wilfully* wrongs the other. In Utah eviction cases, courts award treble damages regardless of intent or the reason rent is late or missing

Once a renter is in unlawful detainer, a landlord can begin to claim treble damages: three times the regular daily rent for every day the renter stayed on the premises after the notice to vacate expired. Courts award landlord's treble damages even in the event of a renter's default.<sup>35</sup>

The table on the following page shows how pyramiding affects a Utah renter paying fair market rent (\$1,031) for a two-bedroom apartment in the Salt Lake City area. In this scenario, the renter remains in the unit for 14 days before being evicted. The principal includes all six of the costs listed above, and the interest consists of both the 24% late fee and 40% collections fee explained above.



According to staff from Utah organizations who help renters, most renters are evicted because they cannot pay rent on time. A renter who cannot afford a ~\$1,000 rent payment or pays rent late will be saddled with ~\$3,500 or more in debt after being evicted because Utah allows landlords to collect treble (triple) damages and additional fees in eviction cases, as described above.

According to a Utah debt collection attorney, some landlords use the fees in their lease agreement to intimidate renters into payment agreements, rather than make the risky move of challenging, in court, the validity of debt the landlord is claiming. Some renters may believe it is better to settle with the landlord out of court, given that an **eviction order often results in an order for garnishment of future wages until the debt is repaid.**

In Utah leases, fee pyramiding is usually written in opaque legalese. As a result, renters may be unaware of the actual effect and cost of pyramiding terms. If this fee scheme were made transparent, renters would have a powerful incentive to avoid missing rent payments.



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## B. LANDLORD'S LIENS

Utah leases contain standard terms that grant the landlord a "lien" on the renter's personal property.<sup>36</sup> This means that, when a renter has unpaid rent, any of the renter's appliances, valuables, furniture, or other items on the rental property can be taken by the landlord and sold to pay the renter's outstanding balance. Everything from a renter's laptop to her toothbrush to her grandmother's ashes can be taken by a landlord and sold to the highest bidder after rent is late for a certain period. This "landlord's lien" is prohibited by many states.<sup>37</sup> In Utah, it is enshrined in statute.<sup>38</sup>

In Utah, the statutory lien created applies to all leases for rental property. Many forms of essential personal property are exempt from this statutory lien.<sup>39</sup> However, many Utah leases include contractual liens that do not have exemptions for any type of personal property.

In addition to coming away from eviction with a mountain of debt and no housing, many Utah renters also lose personal belongings, gaining only a small reduction in their debt to the landlord in return.

Landlord's liens are yet another lease term buried deep in dense pages of legalese, often in phrases such as "security interest" and "deemed effective against all property." As with pyramiding, most renters have no idea that they are signing over their belongings when they sign a rental lease. Even leases that do not create contractual liens typically do not explain Utah's statutory landlord's lien.

If this term were made more explicit for a renter, the renter would have a stronger incentive to ensure their rent is paid on time and may be cautious about what personal property they leave behind if they have to leave the rental unit quickly. Clear disclosure would also prevent a more studious renter from finding Utah's statutory property exemptions and mistakenly believing these exemptions apply to their contractual lien.<sup>40</sup>

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## 4. RECOMMENDATIONS

Rebalancing renters' rights and landlords' responsibilities in Utah will require a long-term organized effort. Landlords and property managers are powerful and organized. Renters are not. Renters have little to no bargaining power in the landlord-renter relationship and face unreasonably harsh financial penalties if they violate the lease terms. Renters are a diffuse group of individuals and have no central organization to represent them and their interests.

In recent years, the Utah legislature has resisted efforts to reform the law that upholds the power imbalance between renters and landlords.<sup>41</sup> However, an area of reform that might survive potential pushback is the promotion of renter protections in lease agreements. Thus, Justice Lab recommends the steps that follow.

### RECOMMENDED STEPS

#### STEP 1: Truth in Renting Disclosure

#### STEP 2: Strengthen and Protect Renters' Rights

Proposed Prohibited Lease Provisions

#### STEP 3: Prohibit Punitive and Excessive Penalties for Renters

Proposed Restrictions on Excessive Penalties

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## **STEP 1: Truth in Renting Disclosure**

### **1. Require a Truth in Renting Disclosure in all Utah leases**

If Utah protected renters from unfair lease terms and all leases were completely transparent and easy to understand, disputes between landlords and renters would be less likely to occur or result in harsh consequences for renters and lost income for landlords.

While renters may not be in the best position to negotiate terms in the lease, requiring renters to be given a disclosure that informs them of their legal rights will provide them with an opportunity to compare the law with the terms of their lease. This comparison may alert the renter of unfair terms hidden in the pages of their lease.

## **Truth in Renting Action Plan**

Utah should require a Truth in Renting Disclosure in all Utah lease agreements. The disclosure would include accurate information, in plain language, that renters and landlords can rely on to determine their rights and remedies. A Truth in Renting Disclosure would reduce and lessen the severity of disputes that result from misunderstandings about:

- Landlord and renter rights and duties
- Unexpected fees in addition to rent
- Penalties for nonpayment or other violations
- Acceptable condition of the rental unit
- Responsibility for maintenance issues

Currently, Utah landlords can, without consequence, require renters to sign leases with terms that contradict the law. Research shows that the inclusion of these likely unenforceable terms significantly affects renters' behavior and decisions in their relationship with their landlord.<sup>42</sup> A disclosure with reliable and accurate information about renter and landlord legal rights and responsibilities is a critical step in reducing the harsh consequences of terms commonly included in Utah leases.

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## STEP 2: Strengthen and Protect Renters' Rights

1. Ban lease provisions that waive renters' legal rights
2. Impose consequences on landlords who insert unenforceable terms into a lease

In Utah today, many leases include terms that that conflict with state statutes. Landlords face no consequences if they use such terms in leases. Without mechanisms that deter landlords from inserting unenforceable terms in the lease, renters' legal rights and remedies have little effect if a renter is unaware of them or can waive them in the lease they sign. Other states protect renters from including such terms.

Utah should prohibit certain lease terms that conflict with existing statutes and should allow courts to award money damages to the renter if their lease includes prohibited terms.

### **Proposed Prohibited Lease Provisions:**

- 1) A residential rental agreement may not provide that the renter:
  - a) Agrees to waive or forego rights or remedies under the laws of this state (Utah)
  - b) Authorizes any person to confess judgment on a claim arising out of the rental agreement
  - c) Agrees to pay the landlord's attorney's fees (other than provided by statute)
  - d) Agrees to the exculpation or limitation of any liability of the landlord arising under Utah law or to indemnify the landlord for that liability or associated costs
- 2) Courts may not enforce a provision included in (1) in a residential rental agreement.

(This proposal is modeled on an existing [Kansas statute](#).)<sup>43</sup>

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## STEP 3: Prohibit Punitive and Excessive Penalties for Renters

- 1) Regulate residential lease fees like other areas of consumer law, such as consumer banking
- 2) Restrict the use of treble damages for nonpayment of rent

Utah residential renters do not enjoy the protections that other kinds of Utah consumers (and renters in other states) enjoy.<sup>44</sup> Without basic consumer protection for renters, landlords can make the necessity of housing contingent on the renter's agreement to extreme penalties for minor breaches of the lease terms. Restraining the types of penalties landlords can impose on renters, including damage awards, is essential to ensure that renters do not plunge into a poverty cycle with runaway debts they can never repay. Such restraints would decrease the likelihood of renters defaulting on their debts to landlords.

### Proposed Restrictions on Excessive Penalties:

- 1) Limit treble damages to situations where punitive damages are appropriate<sup>45</sup>
- 2) Restrict interest
  - a) Prohibit pyramiding of fees so that interest only accrues on unpaid rent
  - b) Cap the interest rate on interest and the collections fee
- 3) Exempt essential personal property from contractual landlord's lien

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## Additional Strategic Recommendations

**Research.** Utah needs more information to determine the prevalence of unfair terms in lease agreements and whether certain landlords or types of landlords are more likely to use unfair terms in leases. We recommend stakeholders conduct research to answer the following questions:

- **Frequency of unfair and unenforceable lease terms used in lease agreements in Utah.** Housing advocates should conduct a study analyzing a large sample of residential leases across the state and collect data about Utah renters' experiences with these leases to determine whether and how unenforceable and misleading terms in leases affect renters' decisions and behavior. This data would likely reinforce the need for a Truth in Renting Disclosure in Utah.
  - A study conducted in the Greater Boston Area found that most residential leases included terms that contradicted local law and misinformed renters of their rights. It also found that renters mainly rely on lease language to determine their rights and responsibilities.<sup>46</sup>
- **Rates of eviction actions by plaintiff type.** Housing advocates should gather data regarding plaintiffs' identity in eviction suits to determine eviction rates by landlord type such as individual private owners, business entity owners, licensed property managers, or apartment managers. These data would reveal potential areas of focus for reform efforts.

**Media Advocacy.** Utah media outlets have begun to report on legislative actions by elected officials who may have conflicts of interest. Such outlets may be interested in learning more about challenges facing people who have been evicted in Utah.

- Cultivate relationships with news outlets and reports and share information about the effects of Utah's existing housing law regime. The Salt Lake Tribune is [already reporting](#) on inequities in Utah landlord-tenant law.

**Landlord Allies.** Improving Utah's housing law, policy, and practice can benefit landlords by reducing eviction rates. Reform stakeholders should develop relationships with and find allies who are landlords.

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**Amend the 3-day Notice Requirement.** The rapid pace of Utah's eviction process places an unreasonable timeline on a renter to secure new housing and may prevent renters from having a fair opportunity to defend themselves against eviction.

**Utah's 3-day (business day) notice to vacate is the shortest amount of time in the nation.**<sup>47</sup> Washington, Vermont, and Tennessee grant renters up to two weeks to pay or vacate. Utah's neighbors also allow renters a longer period to pay money owed or secure alternative housing:

- Arizona: 5-day notice to pay or vacate<sup>48</sup>
- Nevada: 7-day notice to pay or vacate<sup>49</sup>
- Wyoming: 7-day notice to pay or vacate<sup>50</sup>
- Colorado: 10-day notice to pay or vacate<sup>51</sup>

**Exemptions for Self-Managing Owners.** Any reform efforts should not unnecessarily burden individual landlords who own and manage a small number of rentals. The Utah Fair Housing Act is of a model of such exemptions.<sup>52</sup>

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## WORKS CITED

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<sup>1</sup> UTAH BAR FOUNDATION, THE JUSTICE GAP: ADDRESSING UNMET LEGAL NEEDS OF LOWER-INCOME UTAHNS 6 (April 2020).

<sup>2</sup> See Clark Merrefield, *Eviction: The Physical, Financial and Mental Health Consequences of Losing Your Home*, JOURNALIST'S RESOURCE (last visited, November 28, 2020), <https://journalistsresource.org/studies/society/housing/evictions-physical-financial-mental-health/>.

<sup>3</sup> See JAMES WOOD AND DEJAN ESKIC, HOUSING PRICES AND THE THREAT TO AFFORDABILITY (Kem C. Garner Policy Institute, 2018).

<sup>4</sup> See *Wade v. Jobe*, 818 P.2d 1006, 1010 (Utah Sup.Ct. 1991) (citing *Javins v. First Nat'l Realty Corp.*, 138 U.S. App. D.C. 369, 428 F.2d 1071, 1079 (1970) (explaining that a shortage of adequate housing further increases the landlord's bargaining power and place tenants in a poor position to bargain effectively).

<sup>5</sup> See OPPORTUNITY STARTS AT HOME, PUBLIC OPINION POLLING ON HOUSING AFFORDABILITY 8 (2019) (91% of people in the United States believe stable and affordable housing is highly important to their security and well being).

<sup>6</sup> See Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. of Legal Analysis 1, 1–49 (2017).

<sup>7</sup> 18 A.L.R.3D 1305 (stating that as a matter of law, a contract or any clause within a contract is unenforceable if a court finds it to be totally one-sided, oppressive, or unfair).

<sup>8</sup> See *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 450 (1965).

<sup>9</sup> See Furth-Matzkin, *supra* note 6.

<sup>10</sup> See *Wade*, 818 P.2d at 1016 (stating that a determination of unconscionability is a question of law).

<sup>11</sup> See Utah Code Ann. § 70A-2a-108.

<sup>12</sup> See *Sosa v. Paulos*, 924 P.2d 357, 360 (Utah 1996).

<sup>13</sup> UTAH FOUNDATION, THE JUSTICE GAP: ADDRESSING THE UNMET LEGAL NEEDS OF LOWER INCOME UTAHNS 4 (Utah Bar Foundation 2020)

<sup>14</sup> *Id.* at 18.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> See MARY SCHWARTZ & ELLEN WILSON, WHO CAN AFFORD TO LIVE IN A HOME?: A LOOK AT DATA FROM THE 2006 AMERICAN COMMUNITY SURVEY 1 (U.S. Census Bureau 2007) (explaining that a moderately cost-burdened household is one paying 30-50% of their income to housing and a severely cost-burdened household is one paying more than 50% of their income to housing).

<sup>17</sup> UTAH DEPARTMENT OF WORKFORCE SERVICES, AFFORDABLE HOUSING REPORT 19 (2019).

<sup>18</sup> *Id.* at 3.

<sup>19</sup> See *Brady v. Park*, 2013 UT App 97, ¶ 17, 302 P.3d 1220 (holding that when a contract is unclear about terms that the law disfavors such as the compounding of interest it cannot be enforced).

<sup>20</sup> See Appendix B: Prohibited Lease Terms by State.

<sup>21</sup> Utah Code Ann. 61-2f-1 to -5.

<sup>22</sup> See Utah Code Ann. 61-2f-201.

<sup>23</sup> See Utah Code Ann. 61-2f-206 (1).



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<sup>24</sup> Utah Code Ann. 61-2f-202.

<sup>25</sup> See Utah Code Ann. § 57-22-4.

<sup>26</sup> See Utah Code Ann. § 78B-6-802.

<sup>27</sup> See Furth-Matzkin, *supra* note 6; see also Rebecca L. Sandefur, *Civil Legal Needs and Public Understanding*, Am. Bar Found. & Univ. of Ill. at Urbana-Champaign (2016).

<sup>28</sup> *Id.*

<sup>29</sup> See Appendix C: Sample Utah Lease.

<sup>30</sup> See Utah Legal Services, *Eviction for Nonpayment* (last visited Nov. 25, 2020), <https://www.utahlegalservices.org/node/70/eviction-nonpayment>.

<sup>31</sup> Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, 63 SOCIAL PROBLEMS, February 2016, at 46–67.

<sup>32</sup> See NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 7 (2018).

<sup>33</sup> See Official Interpretation of 12 CFR § 1026.34(a)(8)(iii) (explaining pyramiding, which is prohibited in mortgages).

<sup>34</sup> See Appendix C: Sample Utah Lease at 5.

<sup>35</sup> UTAH COURTS, EVICTION, <https://www.utcourts.gov/howto/landlord/eviction.html> (last visited Nov. 25, 2020).

<sup>36</sup> *Id.* at 7.

<sup>37</sup> See Appendix B: Prohibited Lease Terms by State.

<sup>38</sup> See Utah Code Ann. § 38-3-1.

<sup>39</sup> See Utah Code Ann. § 78B-5-505.

<sup>40</sup> See *Butters v. Jackson*, 917 P.2d 87, 90 (Utah Ct. App. 1996) (holding that statutory exemptions only apply to “unsecured creditors” and that landlords are “secured creditors”).

<sup>41</sup> Taylor Stevens, *Renters’ rights bills face an uphill battle in a state Legislature full of landlords*, SALT LAKE TRIB., Feb. 9, 2020, <https://www.sltrib.com/news/politics/2020/02/09/renters-rights-bills-face/>.

<sup>42</sup> See Furth-Matzkin, *supra* note 6.

<sup>43</sup> See Kansas Statutes Ann. § 58-2547.

<sup>44</sup> See Utah Code Ann. § 15-8-7.

<sup>45</sup> See Utah Code Ann. § 78B-8-201.

<sup>46</sup> See Furth-Matzkin, *supra* note 6.

<sup>47</sup> See State Laws on Termination for Nonpayment of Rent, Nolo (Dec. 15, 2019), <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

<sup>48</sup> See Arizona Revised Statutes § 33-1368.

<sup>49</sup> See Nevada Revised Statutes § 40.251.

<sup>50</sup> See Wyoming Statutes Ann. § 1-21-1003.

<sup>51</sup> See Colorado Revised Statutes § 13-40-104.

<sup>52</sup> See Utah Code Ann. § 57-21-3.

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## **APPENDIX A: PROPOSED TRUTH IN RENTING DISCLOSURE**

This Truth in Renting Disclosure must appear at the top of all residential leases and must be signed by all named tenants and the owner or property manager prior to signing the accompanying lease agreement. Failure to follow the provisions of the Truth in Renting Law may result in an unenforceable lease.

**Rental Information**

**Property Address:** \_\_\_\_\_

**Owner/ Property Manager Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

**Utah Real Estate License#** \_\_\_\_\_ **Broker Name:** \_\_\_\_\_

☐ Check box if **Service of Notice** is to be delivered to person other than named above and provide delivery information:

Name: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

<b>Rent and Fees Due Monthly: \$0.00</b> Includes: <div> <div>Rent</div> <div>\$0.00</div> </div> <div> <div>Management Fee</div> <div>\$0.00</div> </div> <div> <div>Liability Insurance</div> <div>\$0.00</div> </div>		<b>Late Rent Fees:</b> 10% of unpaid rent <b>\$0.00</b> plus daily late fee <b>+ \$0.00 each day late</b>	
<b>Due at Lease Signing: \$0.00</b> Includes: <div> <div>Refundable Deposit</div> <div>\$0.00</div> </div> <div> <div>Lease Initiation Fee</div> <div>\$0.00</div> </div>		<b>Other Fees that can be charged with this lease (</b> actual fee amount must be written in the lease agreement): <div> <div>Lease Renewal Fee</div> <div>\$0.00</div> <div>Check Processing Fee</div> <div>\$0.00</div> </div> <div> <div>Service of Notice Fee</div> <div>\$0.00</div> <div>Pet Fee</div> <div>\$0.00</div> </div> <div> <div>Eviction Fee</div> <div>\$0.00</div> <div>Re-key Fee</div> <div>\$0.00</div> </div> <div> <div>Insufficient Funds Fee</div> <div>\$0.00</div> <div>Tenant Change Fee</div> <div>\$0.00</div> </div>	

**IMPORTANT INFORMATION ABOUT RENTING**

**Property Owner's Duties:** (Utah Code 57-22-4)

- Rental housing must be "safe, sanitary, and fit for human occupancy."
- Each rental unit must have working electrical, heating, plumbing, and water (hot and cold).
- An owner must maintain air conditioning and any appliances included in the lease.
- Even conditions do not meet these standards you must continue paying rent.
- If conditions remain deficient after requesting maintenance, you can deliver a Notice of Deficient Condition to the owner.

**Renter's Duties:** You are required to

- Pay all rent and fees on time.
- Maintain the rental property in a safe, clean, and sanitary condition.
- Use the rental unit and equipment in a reasonable manner for its intended use.
- Comply with terms of the lease agreement and all rules and regulations of the property. (Utah Code 57-22-4)

**You may not:**

- Damage or destroy any part of the residential unit.
- Disturb the peace of others.
- Unreasonably deny the owner or property manager access to the rental property.

**Before you pay an application fee,** the owner or property manager must disclose to you in writing: (Code 57-22-4)

- whether a rental is available to rent and
- the criteria used to consider each applicant. (Utah

**Before you sign the lease agreement,** the landlord must give you either: (Utah Code 57-22-4)

- an opportunity to conduct a walkthrough inspection of the rental unit or
- a written inventory of the rental unit's condition, or
- a form for you to document the condition at move-in and reasonable time to return the form after occupancy.

Renter's Initials \_\_\_\_\_

**Before you move in you must be given each of the following:** (Utah Code 57-22-4)

- A copy of the lease agreement with all signatures.
- A copy of all rules and regulations related to the rental unit, and
- A written disclosure of the name, address, and telephone number of the owner or property manager for the rental unit. (Utah Code 57-22-4)

**If your rental unit is not ready for you to move in on the date agreed to in the lease:** (Utah Code 57-22-4.1)

- You have the right under Utah law to terminate the lease agreement by giving written notice to the owner or property manager.
- If you terminate the lease, all rent and deposits must be returned to you as promptly as reasonable.
- If you choose not to terminate the lease agreement, you cannot be charged rent until the rental unit is available for move-in.

**You have a right to 24-hour prior notice of entry unless your lease states otherwise.** (Utah Code 57-22-4)

- Unless your lease agreement says otherwise, you have a right to receive a 24-hour notice before the owner or property manager enters rental.
- You must read your lease agreement to know what notice you are entitled to.

**Fees**

- There is no limit on fees charged in addition to rent.
- Your lease must explain how and when each fee is charged — read it carefully to identify every fee you may be charged.
- Some fees are required to be paid, and some are charged only under certain conditions.
- To calculate the true cost of renting, each fee must be identified and calculated to a monthly cost and added to the cost of the rent.
- When rent is paid after the due date, you can be charged a late fee if it is stated in your lease.

**Refundable deposits**

- There is no limit to the amount that can be charged for a deposit.
- Deposit funds can be applied to the cost damages (not normal wear and tear) or rent and fees that you agreed to in the lease.
- If less than the full deposit is returned, each deduction must be listed and explained in writing.
- You must provide a current address to the owner or property manager for your deposit to be sent to.

**Return of your deposit.**

- Utah law requires that your deposit be returned to you within 30 days after you move out.
- If it is not returned to you within 30 days, then you can give a 5-day notice to the owner or property manager.
- If your deposit and itemized list are not given to you within five (5) days after you notice, your next step is to file an action in court to recover your deposit. (Utah Code 57-17-(1-5)).

**Free notice forms are available at the Utah State Courts' Self-Help Center website; see below.****Eviction**

- You cannot be forced to leave the home you rent without a court order.
- You cannot be locked out of the home you rent without a court order.
- You must be given notice before an eviction lawsuit is filed against you.
- A 3-day pay or vacate notice means that you have 3 days to resolve the problem by paying the rent and fees you owe.
- If you cannot resolve the situation within the time given on the notice, an eviction lawsuit can be filed against you.
- If an eviction lawsuit is filed against you, you will receive a 'summons complaint,' and you will have 3 days to answer the complain

**The Utah State Courts' Self-Help Center provides information and assistance for navigating landlord-tenant legal issues. Website: [www.utcourts.gov/selfhelp/housing.php](http://www.utcourts.gov/selfhelp/housing.php) (free forms and information about legal processes) Phone: 888-683-0009, email: [selfhelp@utcourts.gov](mailto:selfhelp@utcourts.gov)**

Renters sign to acknowledge that this disclosure was provided with your lease agreement and prior to signing the attached lease agreement. Owner or property manager signs to acknowledge the legal rights of the tenant.

Tenant/Renter Signature: \_\_\_\_\_

Owner/Property Manager Signature: \_\_\_\_\_

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## **APPENDIX B: PROHIBITED LEASE TERMS BY STATE**

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## **States' Efforts to Prevent the Use of Unenforceable Lease Terms**

Although certain grossly unfair and one-sided lease terms are often unenforceable in a court of law, such terms still routinely appear in residential lease agreements. Partially in response to their continued inclusion in lease agreements, many states have chosen to reinforce renter's rights through statutes that invalidate or prohibit certain residential lease terms. This appendix samples several states' approach to these statutory protections.

The descriptions of lease terms prohibited by the legislature vary by state, usually identified in an enumerated list of unenforceable and prohibited lease terms. Most commonly prohibited terms can be classified into four types.

### **Most Common Types of Prohibited Lease Terms:**

- 1) **Waivers of Statutory Rights:** Requiring a renter to agree to waive or forego rights provided by state statutes.
- 2) **Exculpatory Clauses:** Requiring a renter to agree to exculpation or limitation of any liability of the landlord arising under the laws of this state or indemnify the landlord for the related liability or costs.
- 3) **Payment of Landlord's Attorney's Fees:** Requiring a renter to agree to pay the landlord's attorney's fees.
- 4) **Confessions of Judgment:** Requiring a renter to authorize any person to confess judgement on a claim arising out of the rental agreement (this would include settlement stipulations).

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## **Damages**

Because statutory prohibitions without consequences fail to meaningfully regulate rental agreements, many states allow for a renter to be awarded damages if a residential lease agreement includes prohibited terms.<sup>1</sup>

### **A Note on the 10<sup>th</sup> Circuit**

In the list below, several states are noted as belonging to the 10<sup>th</sup> Circuit. This is the federal circuit that contains Utah. These states are so identified because they geographically and culturally neighbor Utah and are often a more persuasive basis of comparison to lawmakers and courts.

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<sup>1</sup> Uniform Residential Landlord Tenant Act (2015) provides the following language “If the landlord seeks to enforce the provision or accepts the tenant’s voluntary compliance with the provision, the court may award the tenant an amount not to exceed [three times] the periodic rent.”

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# STATES WITH ENUMERATED PROHIBITED & UNENFORCEABLE LEASE TERMS

## Arizona

- Prohibits Waivers of Statutory Rights.
- Prohibits Exculpatory Clauses.
- Prohibits Payment of Landlord's Attorney's Fees.
- Prohibits Confessions of Judgment.
- Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
- Additional Protections: Limit on Fees.

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Arizona Revised Statutes § 33-1414. Prohibited provisions in rental agreements; late payment penalty

- A. A rental agreement shall not provide that the tenant agrees to:
1. Waive or to forgo rights or remedies under this chapter.
  2. 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.
  3. The exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.
  4. Permit the landlord to charge a penalty fee for late payment of rent unless a tenant is allowed a minimum of five days beyond the date the rent is due in which to remit payment.
  5. Permit the landlord to charge a fee for a guest who does not stay for more than a total of fourteen days in any calendar month.



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6. Waive or limit the tenant's right to summon or any other person's right to summon a peace officer or other emergency assistance in response to an emergency.

7. Payment of monetary penalties or otherwise penalizes the tenant for the tenant summoning or for any other person summoning a peace officer or other emergency assistance in response to an emergency.

8. Place any additional person's name on the title to the mobile home as a condition of tenancy or residency for that additional person or pay a fee or other form of penalty for failing to place an additional person's name on the title to the mobile home.

- B. A provision that is prohibited by subsection A of this section and that is included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known to be prohibited, the tenant may recover actual damages sustained and the rental agreement is voidable by the tenant.
- C. A landlord may charge a penalty fee of not to exceed five dollars per day from the due date of the rent for late payment of rent if the payment is not remitted by the sixth day from the due date.
- D. This section does not limit the landlord's right to evict a tenant pursuant to section 33-1476.

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## Colorado (10<sup>th</sup> Circuit)

- Prohibits Waivers of Statutory Rights.
  - Prohibits Exculpatory Clauses.
  - Prohibits Payment of Landlord's Attorney's Fees
  - Prohibits Confessions of Judgment.
  - Prohibits Agreeing to Forcible Removal of Tenant and Tenant's Personal Property
  - Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
  - Additional Protections: Limit on Fees.
  - Unconscionability Codified.
- 

### Colorado Revised Statutes Annotated § 38-12-213. Rental Agreement—Disclosure of Terms in Writing—Prohibited Terms.

5) A **rental agreement** may not include any provision:

- (a) By which a home owner waives any rights created by this part 2 or part 11 of this article 12;
- (b) That requires a home owner to agree to a possessory lien;
- (c) That binds a home owner to arbitration in lieu of a civil trial; or
- (d) That authorizes a third person to confess judgment on a claim that arises from the **rental agreement**, this part 2, or part 11 of this article 12.

6) Any provision of a **rental agreement** that is prohibited by subsection (1) of this section is against public policy, unenforceable, and void.

### Colorado Revised Statutes Annotated § 4-2.5-108. Unconscionability.

(1) If the court as a matter of law finds a **lease** contract or any clause of a **lease** contract to have been **unconscionable** at the time it was made the court may refuse to enforce the **lease** contract, or it may enforce the remainder of the **lease** contract without the **unconscionable** clause, or it may so limit the application of any **unconscionable** clause as to avoid any **unconscionable** result.

(2) With respect to a consumer **lease**, if the court as a matter of law finds that a **lease** contract or any clause of a **lease** contract has been induced by **unconscionable conduct**

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or that **unconscionable** conduct has occurred in the collection of a claim arising from a **lease** contract, the court may grant appropriate relief.

(3) Before making a finding of **unconscionability** under subsection (1) or (2) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the **lease** contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims **unconscionability** with respect to a consumer **lease**:

(a) If the court finds **unconscionability** under subsection (1) or (2) of this section, the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find **unconscionability** and the lessee claiming **unconscionability** has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) of this section is not controlling.

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## Kansas (10th Circuit)

- Prohibits Waivers of Statutory Rights.
  - Prohibits Exculpatory Clauses.
  - Prohibits Payment of Landlord's Attorney's Fees.
  - Prohibits Confessions of Judgment.
  - Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
  - Unconscionability Codified.
- 

Kansas Statutes Annotated § 58-2547. [Rental Agreement]; prohibited terms and conditions; damages.

(a) No rental agreement may provide that the tenant or landlord:

- (1) Agrees to waive or to forego rights or remedies under this act;
- (2) authorizes any person to confess judgment on a claim arising out of the rental agreement;
- (3) agrees to pay either party's attorneys' fees; or
- (4) agrees to the exculpation or limitation of any liability of either party arising under law or to indemnify either party for that liability or the costs connected therewith, except that a rental agreement may provide that a tenant agrees to limit the landlord's liability for fire, theft or breakage with respect to common areas of the dwelling unit.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by such landlord to be prohibited, the tenant may recover actual damages sustained by such tenant.

58-2544. Finding of unconscionability; remedies; evidence.

(a) If the court, as a matter of law, finds:

- (1) A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

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(2) a settlement in which a party waives or agrees to forego a claim or right under this act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination.

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## Nevada

- Prohibits Waivers of Statutory Rights.
- Prohibits Exculpatory Clauses.
- Prohibits Payment of Landlord's Attorney's Fees.
- Prohibits Confessions of Judgment.
- Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
- Additional Protections: Limit on Fees.
- Unconscionability Codified.

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### Nevada Revised Statutes § 118A.220. Rental agreements: Prohibited provisions.

1. A rental agreement shall not provide that the tenant:

- (a) Agrees to waive or forego rights or remedies afforded by this chapter;
- (b) Authorizes any person to confess judgment on any claim arising out of the rental agreement;
- (c) Agrees to pay the landlord's attorney's fees, except that the agreement may provide that reasonable attorney's fees may be awarded to the prevailing party in the event of court action;
- (d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith if the liability is based upon an act or omission of the landlord or any agent or employee of the landlord; or
- (e) Agrees to give the landlord a different notice of termination than that required to be given by the landlord to the tenant.

2. Any provision prohibited by subsection 1 is void as contrary to public policy and the tenant may recover any actual damages incurred through the inclusion of the prohibited provision.

### 118B.050. Rental agreements: Void provisions.

Any provision in a rental agreement or lease for a manufactured home lot which provides that the tenant:

- 
1. Agrees to waive or forego any rights or remedies afforded by this chapter;
  2. Authorizes any person to confess judgment on any claim arising out of the rental agreement;
  3. Agrees to pay the landlord's attorney's fees or costs, or both, except that the agreement may provide that attorney's fees may be awarded to the prevailing party in the event of court action;
  4. Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or costs connected therewith, if the liability is based upon an act or omission of the landlord or any agent or employee of the landlord;
  5. Agrees to a period within which the tenant will give notice to the landlord of the termination of the tenancy which is longer than the term of the lease; or
  6. Agrees to pay any additional charge for children or pets, unless the landlord provides a special service regarding children or pets, is void. A tenant may recover actual damages resulting from the enforcement of such a provision.

118A.200 (3). Rental agreements: [...]required provisions:[...].

3. Any written rental agreement must contain, but is not limited to, provisions relating to the following subjects:
  - (a) Duration of the agreement.
  - (b) Amount of rent and the manner and time of its payment.
  - (c) Occupancy by children or pets.
  - (d) Services included with the dwelling rental.
  - (e) Fees which are required and the purposes for which they are required.
  - (f) Deposits which are required and the conditions for their refund.
  - (g) Charges which may be required for late or partial payment of rent or for return of any dishonored check.
  - (h) Inspection rights of the landlord.
  - (i) A listing of persons or numbers of persons who are to occupy the dwelling.

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(j) Respective responsibilities of the landlord and the tenant as to the payment of utility charges.

(k) A signed record of the inventory and condition of the premises under the exclusive custody and control of the tenant.

(l) A summary of the provisions of NRS 202.470.

(m) Information regarding the procedure pursuant to which a tenant may report to the appropriate authorities:

(1) A nuisance.

(2) A violation of a building, safety or health code or regulation.

(n) Information regarding the right of the tenant to engage in the display of the flag of the United States, as set forth in N.R.S. 118A.325.

#### 118A.230. Rental agreements: Unconscionability.

1. If the court as a matter of law finds that a rental agreement or any of its provisions was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result.

2. If unconscionability is put in issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making its determination.

#### 118A.360. Failure of landlord to comply with rental agreement or maintain dwelling unit in habitable condition where cost of compliance less than specified amount.

1. If the landlord fails to comply with the rental agreement or his or her obligation to maintain the dwelling unit in a habitable condition as required by this chapter, and the reasonable cost of compliance or repair is less than \$100 or an amount equal to one month's periodic rent, whichever amount is greater, the tenant may recover damages for the breach or notify the landlord of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to use his or her best efforts to comply within 14 days after being notified by the tenant in writing or more promptly if



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conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and after submitting to the landlord an itemized statement, the tenant may deduct from his or her rent the actual and reasonable cost or the fair or reasonable value of the work, not exceeding the amount specified in this subsection.

2. The landlord may specify in the rental agreement or otherwise that work done under this section and [N.R.S. 118A.380](#) must be performed by a named person or firm or class of persons or firms qualified to do the work and the tenant must comply with the specifications. If the person qualified to do the work is unavailable or unable to perform the repairs the tenant shall use another qualified person who performs repairs.

3. A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's household or other person on the premises with his or her consent.

4. The landlord's liability under this section is limited to \$100 or an amount equal to one month's periodic rent, whichever amount is greater, within any 12-month period.

5. A tenant may not proceed under this section unless the tenant has given notice to the landlord that the dwelling is not in a habitable condition as required by this chapter.

# Montana

- Prohibits Waivers of Statutory Rights.
- Prohibits Exculpatory Clauses.
- Prohibits Confessions of Judgment.

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## Montana Code Annotated § 70-33-2. Prohibited Provisions in Rental Agreements.

(1) A rental agreement may not require a party to:

- (a) waive or forego rights or remedies under this chapter;
- (b) authorize any person to confess judgment on a claim arising out of the rental agreement; or
- (c) agree to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or related costs or attorney fees.

(2) A rental agreement or a related document may not permit the receipt of rent free of the obligation to comply with the provisions of 70-33-303.

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## Oklahoma (10<sup>th</sup> Circuit)

- Prohibits Waivers of Statutory Rights.
- Prohibits Exculpatory Clauses.
- Prohibits Payment of Landlord's Attorney's Fees.
- Prohibits Confessions of Judgment.
- Prohibits Contractual Liens.

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### Oklahoma Statutes § 41-113. Rental Agreements.

- A. A rental agreement may not provide that either party thereto:
1. Agrees to waive or forego rights or remedies under this act;
  2. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
  3. Agrees to pay the other party's attorney's fees;
  4. Agrees to the exculpation, limitation or indemnification of any liability arising under law for damages or injuries to persons or property caused by or resulting from the acts or omissions of either party, their agents, servants or employees in the operation or maintenance of the dwelling unit or the premises of which it is a part; or
  5. Agrees to the establishment of a lien except as allowed by this act in and to the property of the other party.
- B. A provision prohibited by subsection A of this section and included in a rental agreement is unenforceable.

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## Washington

- Prohibits Waivers of Statutory Rights.
- Prohibits Exculpatory Clauses.
- Prohibits Payment of Landlord's Attorney's Fees.
- Prohibits Confessions of Judgment.
- Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
- Additional Protections: Limit on Fees.

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Revised Code of Washington § 59-18-230. Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies.

(1) (a) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(b) A landlord may not threaten a tenant with eviction for failure to pay nonpossessory charges limited under RCW 59.18.283.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forgo rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorneys' fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into; or

(f) Agrees to pay late fees for rent that is paid within five days following its due date. If rent is more than five days past due, the landlord may charge late fees

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commencing from the first day after the due date until paid. Nothing in this subsection prohibits a landlord from serving a notice to pay or vacate at any time after the rent becomes due.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her, statutory damages not to exceed five hundred dollars, costs of suit, and reasonable attorneys' fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his or her personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to five hundred dollars per day but not to exceed five thousand dollars, for each day or part of a day that the tenant is deprived of his or her property. The prevailing party may recover his or her costs of suit and a reasonable attorneys' fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his or her personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

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## Michigan

- Prohibits Waivers of Statutory Rights.
- Prohibits Exculpatory Clauses.
- Prohibits Payment of Landlords' Attorneys' Fees.
- Prohibits Confessions of Judgment.
- Prohibits Contractual Liens.
- Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
- Additional Protections: Limit on Fees.

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Michigan Compiled Laws § 554.633 Rental agreement; prohibited provisions or clauses; violation.

Sec. 3.

(1) A rental agreement shall not include a provision that does 1 or more of the following:

(a) Waives or alters a remedy available to the parties when the premises are in a condition that violates the covenants of fitness and habitability required pursuant to section 39 of 1846 RS 84, MCL 554.139.

(b) Provides that the parties waive a right established by 1972 PA 348, MCL 554.601 to 554.616, which regulates security deposits.

(c) Excludes or discriminates against a person in violation of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804, or the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607.

(d) Provides for a confession of judgment by a party.

(e) Exculpates the lessor from liability for the lessor's failure to perform, or negligent performance of, a duty imposed by law. This subdivision does not apply to a provision that releases a party from liability arising from loss, damage, or injury caused by fire or other casualty for which insurance is carried by the other party, under a policy that permits waiver of liability and waives the insurer's rights of subrogation, to the extent of any recovery by the insured party under the policy.

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(f) Waives or alters a party's right to demand a trial by jury or any other right of notice or procedure required by law in a judicial proceeding arising under the rental agreement.

(g) Provides that a party is liable for legal costs or attorney's fees incurred by another party, in connection with a dispute arising under the rental agreement, in excess of costs or fees specifically permitted by statute.

(h) Provides for the acquisition by the lessor of a security interest in any personal property of the tenant to assure payment of rent or other charges arising under the rental agreement, except as specifically allowed by law.

(i) Provides that rental payments may be accelerated if the rental agreement is breached by the tenant, unless the provision also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any.

(j) Waives or alters a party's rights with respect to possession or eviction proceedings provided in section 2918 of the revised judicature act of 1961, 1961 PA 236, MCL [600.2918](#), or with respect to summary proceedings to recover possession as provided in chapter 57 of the revised judicature act of 1961, 1961 PA 236, MCL [600.5701 to 600.5759](#).

(k) Releases a party from a duty to mitigate damages.

(l) Provides that a lessor may alter a provision of the rental agreement after its commencement without the written consent of the tenant, or, in the case of a rental agreement between a consumer cooperative that provides housing and a member of the consumer cooperative, without the approval of the board of directors of the cooperative or other appropriate body elected by members who are also tenants of the cooperative, except that an agreement may provide for the following types of adjustments to be made upon written notice of not less than 30 days:

(i) Changes required by federal, state, or local law or rule or regulation.

(ii) Changes in rules relating to the property that are required to protect the physical health, safety, or peaceful enjoyment of tenants and guests.

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(iii) Changes in the amount of rental payments to cover additional costs in operating the rental premises incurred by the lessor because of increases in ad valorem property taxes, charges for the electricity, heating fuel, water, or sanitary sewer services consumed at the property, or increases in premiums paid for liability, fire, or worker compensation insurance.

(m) Violates the Michigan consumer protection act, 1976 PA 331, MCL [445.901 to 445.922](#).

(n) Requires the tenant to give the lessor a power of attorney.

(2) A rental agreement shall not include a clause or provision that, not less than 90 days before the execution of the rental agreement, has been prohibited by statute or declared unenforceable by a published decision of the supreme court of this state or the United States supreme court relating to the law of this state.

(3) A provision or clause of a rental agreement that violates this section is void.



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## Texas

- Prohibits Waivers of Statutory Rights.

### Texas Statutes § 92.006. Waiver or Expansion of Duties and Remedies.

(a) A landlord's duty or a tenant's remedy concerning security deposits, security devices, the landlord's disclosure of ownership and management, or utility cutoffs, as provided by Subchapter C, D, E, or G, respectively, may not be waived. A landlord's duty to install a smoke alarm under Subchapter F may not be waived, nor may a tenant waive a remedy for the landlord's noninstallation or waive the tenant's limited right of installation and removal. The landlord's duty of inspection and repair of smoke alarms under Subchapter F may be waived only by written agreement.

(b) A landlord's duties and the tenant's remedies concerning security devices, the landlord's disclosure of ownership and management, or smoke alarms, as provided by Subchapter D, E, or F, respectively, may be enlarged only by specific written agreement.

(c) A landlord's duties and the tenant's remedies under Subchapter B, which covers conditions materially affecting the physical health or safety of the ordinary tenant, may not be waived except as provided in Subsections (d), (e), and (f) of this section.

(d) A landlord and a tenant may agree for the tenant to repair or remedy, at the landlord's expense, any condition covered by Subchapter B.

(e) A landlord and a tenant may agree for the tenant to repair or remedy, at the tenant's expense, any condition covered by Subchapter B if all of the following conditions are met:

- (1) at the beginning of the lease term the landlord owns only one rental dwelling;
- (2) at the beginning of the lease term the dwelling is free from any condition which would materially affect the physical health or safety of an ordinary tenant;
- (3) at the beginning of the lease term the landlord has no reason to believe that any condition described in Subdivision (2) of this subsection is likely to occur or recur during the tenant's lease term or during a renewal or extension; and
- (4)

(A) the lease is in writing;

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(B) the agreement for repairs by the tenant is either underlined or printed in boldface in the lease or in a separate written addendum;

(C) the agreement is specific and clear; and

(D) the agreement is made knowingly, voluntarily, and for consideration.

(f) A landlord and tenant may agree that, except for those conditions caused by the negligence of the landlord, the tenant has the duty to pay for repair of the following conditions that may occur during the lease term or a renewal or extension:

(1) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling;

(2) damage to doors, windows, or screens; and

(3) damage from windows or doors left open.

This subsection shall not affect the landlord's duty under Subchapter B to repair or remedy, at the landlord's expense, wastewater stoppages or backups caused by deterioration, breakage, roots, ground conditions, faulty construction, or malfunctioning equipment. A landlord and tenant may agree to the provisions of this subsection only if the agreement meets the requirements of Subdivision (4) of Subsection (e) of this section.

(g) A tenant's right to vacate a dwelling and avoid liability under Section 92.016 or 92.017 may not be waived by a tenant or a landlord, except as provided by those sections.

(h) A tenant's right to a jury trial in an action brought under this chapter may not be waived in a lease or other written agreement.

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# Idaho

- Prohibits Waivers of Statutory Rights.

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## Idaho Statutes § 55-2007. Required rental agreement provisions and exclusions – disclosures.

- (1) Any rental agreement executed between the landlord and resident shall contain:
  - (a) The terms for the payment of rent, including the time and place for payment, and a description of any other charges to be paid to the landlord by the resident. Other charges that occur less frequently than monthly shall be itemized in a billing to the resident;
  - (b) A description of the utilities and services which are included in the monthly rent;
  - (c) The rules of the community;
  - (d) The names and addresses of the manager of the community and the owner of the community or a person who resides in the state who is authorized to act as agent for the owner; and
  - (e) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the resident as a deposit or as security for performance of the resident's obligations in a rental agreement.
- (2) Any rental agreement executed between the landlord and resident shall not contain:
  - (a) Any provision by which the resident agrees to waive or forgo rights or remedies under this chapter;
  - (b) Any provision allowing the landlord to charge an "entrance fee" or an "exit fee." The expense of repairs or maintenance required by the landlord as a condition of the landlord's approval of a rental application shall not constitute an "entrance fee" or "exit fee" as those terms are used herein; or
  - (c) Any provision which unreasonably restricts access to the community by invitees of the resident.
- (3) The following terms and conditions shall be an implicit part of any rental agreement between the landlord and resident:

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- (a) The landlord shall provide a base upon which the home is to be located and, in the case of a mobile or manufactured home, the base shall be prepared in accordance with the provisions of section 44-2201, Idaho Code.
  - (b) The landlord shall, prior to removal of the wheels and axles, approve the positioning of the home upon the lot.
  - (c) The landlord shall not permit any portion of the home, including the tongue, to extend into a roadway.
  - (d) The landlord shall maintain street lights, entry lights and common area lighting, if any, in good working condition.
  - (e) The landlord shall have the right of entry upon the lot for maintenance of utilities, protection of the community and periodic inspection of the premises, but shall not, except in the case of emergency or suspected abandonment by the resident, otherwise have the right of entry to such lot without the consent of the resident.
  - (f) The landlord shall notify each resident within fifteen (15) days after a petition has been filed by the landlord for a change in the zoning of the land upon which the community is situated.
- (4) Upon request, the landlord shall, prior to the execution of a rental agreement, provide the resident with a written statement containing the following information:
- (a) The name, address and telephone number of the owner or manager of the community.
  - (b) A general description of the types of homes which may be brought into the community.
  - (c) A general description of the boundaries of the lot to be provided.
  - (d) A description of the utilities and services which are included in the rent.
  - (e) A description of other utilities and services which are available within the community.
  - (f) A description of the zoning under which the community operates, and the governmental entity having zoning jurisdiction.
  - (g) The date and amount of the most recent rent increase.

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## New Mexico (10<sup>th</sup> Circuit)

- Prohibits Waivers of Statutory Rights.
  - Prohibits Contractual Liens.
  - Damages for Renter if Landlord Attempts to Enforce a Prohibited Lease Term.
  - Additional Protections: Limit on Fees.
- 

### New Mexico Statutes Annotated § 47-8-16. Waiver of rights prohibited.

No rental agreement may provide that the resident or owner agrees to waive or to forego rights or remedies under the law.

### New Mexico Statutes Annotated § 47-8-12. Inequitable agreement provision.

- A. If the court, as a matter of law, finds that any provision of a rental agreement was inequitable when made, the court may limit the application of such inequitable provisions to avoid an inequitable result.
- B. If inequity is put into issue by a party to the rental agreement, the parties to the rental agreement shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement, or settlement, to aid the court in making determination.

### New Mexico Statutes Annotated § 47-8-17. Unlawful agreement provision.

If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney's fees.

### New Mexico Statutes Annotated § 47-8-36.1. Landlord lien.

- A. There shall be no landlord's lien arising out of the rental of a dwelling unit to which the Uniform Owner-Resident Relations Act applies.
- B. Nothing in this section shall prohibit the owner from levy and execution on a judgment arising out of a claim for rent or damages.

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# STATES WITH NO PROHIBITED LEASE TERMS

## Wyoming (10<sup>th</sup> Circuit)

- No Prohibited Lease Terms
  - Very Similar to Utah's Landlord-Tenant Laws
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## APPENDIX C: SAMPLE UTAH LEASE

Below is a sample of a lease agreement commonly used by Utah landlords. It is annotated by the Justice Lab team to highlight problematic terms that we have discussed at length in the report above.

# RESIDENTIAL RENTAL AGREEMENT

## Parties

being all the allowed Occupants of the Premises eighteen years of age or older (hereinafter collectively referred to as "Resident"); **and**

being all the allowed Occupants of the Premises under the age of eighteen; and the herein named rental unit owner (hereinafter referred to as "Owner"). Resident represents and warrants that it has legal custody and is legally responsible for all minors.

**THIS AGREEMENT, entered into the date first written below is between the parties listed herein for the Premises located as follows:**

## Premises

\_\_\_\_\_ located in \_\_\_\_\_ County, State of Utah (herein referred to as the "Premises") is for use as a private residence only, according to terms set forth herein. No other occupants shall reside in the Premises except as listed above. Occupancy by guests remaining over three consecutive days or more than five days in any calendar quarter will be considered to be a violation of this provision unless prior written consent is given by Owner. Owner may restrict any guest for any or no reason.

## Rent & Fees

MONTHLY RENT \$ \_\_\_\_\_  
PRO-RATA RENT FOR MOVE-IN FROM \_\_\_\_\_ TO \_\_\_\_\_ IN THE AMOUNT OF \$ \_\_\_\_\_  
LATE FEE \$ \_\_\_\_\_  
DUE IF FULL PAYMENT IS NOT RECEIVED BEFORE 5:00 PM ON THE \_\_\_\_\_ DAY OF THE MONTH \_\_\_\_\_  
LEASE INITIATION FEE \$ \_\_\_\_\_  
SERVICE OF NOTICE FEE \$ \_\_\_\_\_  
EVICITION TURNOVER FEE \$ \_\_\_\_\_  
COMMENCEMENT DATE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_ SECURITY DEPOSIT \$ \_\_\_\_\_  
INITIAL TERM END DATE: LAST DAY OF MONTH OF \_\_\_\_\_, 20 \_\_\_\_ MONTH TO MONTH FEE \$ \_\_\_\_\_

## Term

The initial term shall commence on Commencement Date and will end on the Initial Term End Date. Occupancy will start on the commencement date unless the premises are not ready for occupancy. Owner shall not be liable for any damages in the event the premises are not available for occupancy on the commencement date. This Agreement will automatically renew on a month-to-month basis unless written notice of termination is given by either party at least thirty (30) days before the initial term ends. The above month-to-month fee shall be added to the Monthly Rent in the event Resident remains in the Premises after the expiration of the Term, no notice is necessary. Additionally, Owner may increase the rent on a month-to-month tenancy upon thirty (30) days written notice. In the event this Agreement extends beyond the term above on a month-to-month tenancy, such tenancy shall then terminate only on the last day of a month. The Lease Initiation Fee above shall be paid upon execution of this Agreement and shall be deemed consideration for the institution of this Agreement and is not a deposit.

exculpatory  
clause

The Pro-rata rent charged is a stated amount and is not related to the Monthly Rent. Owner shall be entitled to the Eviction Turnover Fee for the work processing the paperwork to the attorney for an eviction after failure of the Resident to comply with any eviction notice. Resident shall pay this fee once the work is done regardless of whether the eviction is filed.

Attorney  
fee  
clause

## Security Deposit

1. Resident agrees that security deposit above shall be payable on/or before signing of this Agreement. Any sums due or owing by Resident to Owner may at any time be deducted from said deposit; deductions shall be used to pay non-rent items first. Resident agrees to promptly reimburse the security deposit within five (5) days after notice is given and Resident may not apply any portion of the security deposit to any month's rent. **Resident's security deposit will be refunded in full, if all of the conditions of this Agreement are fulfilled, including:**

owner's  
right  
to use  
deposit  
for non  
rent fees  
first

a. The full Agreement term has expired or the Agreement has been terminated without default of Resident and Resident has not "held over." "Held over" means the Resident is still in possession of the Premises after either party has given the other notice of termination.

b. Resident has provided a written notice of intent to vacate as required by this agreement to Owner prior to the Initial Term End Date and/or the notice required by this agreement if on a month to month prior to the last day of the month Resident intends upon vacating. This provision does not allow Resident to terminate the lease prior to the expiration of the initial term but does require the appropriate and timely notice of the intent to vacate at all times.

**This Agreement may not be cancelled once executed by Resident without the express written consent of the Owner.**



c. Resident has no other monies due pursuant to any term or condition of this Agreement or any other amounts due to Owner from any other agreement, arrangement, addendum, or other indebtedness.

d. Resident has thoroughly cleaned the Premises, appliances, and fixtures. Resident acknowledges that there are specific charges that Owner may charge for cleaning and damages. Those charges are agreed to by Resident and Resident does affirmatively agree to have Owner's agents inspect the premises prior to move-out. The Owner will be entitled to and may deduct from the security deposit monies due pursuant to the Owner's cleaning charge list and all other reasonable charges to accomplish cleaning or repair from damage to allow the premises to be re-rented.

e. All individuals using or occupying the Premises have surrendered the Premises to Owner, and all keys to the mailbox, storage rooms, Premises, and all other keys and passes related to the Premises are turned in to the Owner.

2. Within thirty (30) days following the later of Resident's surrender of said Premises to Owner or Resident providing a forwarding address, Owner will forward the balance of the security deposit less all deductions with an itemized statement of any deductions made.

**Move-Out Notice** In a month-to-month tenancy or end of lease term termination, **at least thirty (30) days written notice** of intent to vacate must be given to Owner's representative by Resident prior to move-out. In the event of a month-to-month extension, the Agreement term shall extend to, and the rent shall be paid through the last day of the calendar month; in other words, the last month's rent must be a full month without any prorating (unless otherwise agreed to in writing by Owner). This lease may only terminate on the last day of a month unless otherwise provided by law, stated herein, or by written agreement with Owner. Owner is only obligated to give a thirty (30) day notice during the lease term and a fifteen (15) day notice on a month to month tenancy.

**Subordination** This Agreement as executed is subordinate to the mortgage or mortgages financing the Premises, which are of record or may become of record during the term of this residential rental Agreement and subject to the provisions of any regulatory agreement with any Housing Authority and others that burden such property. Resident agrees to be the tenant of a new landlord or owner of the Premises upon such new owner's acquisition of the Premises and agrees that foreclosure by a mortgagee shall not void this Agreement.

**Credit Checks** Resident agrees that Owner may conduct background, criminal history, and credit checks at any time after application, during the term of this Agreement or thereafter so long as Resident has an outstanding balance due to Owner. Resident grants consent to Owner and its agents to disclose information about Resident so long as Resident has an obligation under this agreement.

**Government** In the event the premises are condemned or access is restricted as a result of any type of governmental action or damage to the premises, Owner shall not be liable for any damages to Resident including alternate housing, damage to personal property, replacement of personal property, and/or any other consequential damage. Such action may include any action by any governmental agency or entity including but not limited to health departments, division of environmental quality, fire departments, police, zoning departments, etc. If the action is taken, tenant shall be relieved of rental obligations effective the date that access is restricted or prevented unless the cause of such governmental action relates to actions of Resident, its guests, or occupants. In the event this agreement is terminated pursuant to this provision, Resident shall be responsible to take all steps necessary to have its contents immediately removed at Resident's expense.

right to  
private  
information  
at any time

**Notices to Owner** In the event Resident determines to utilize the provisions of the Utah Fit Premises Act, notice as required by that Act shall be delivered in writing to Owner at the address below. If there is an on-site management office, notices may be delivered at such office during normal business hours. Provisions of the Utah Fit Premises Act may be found in Utah Code 57-22 or at <http://le.utah.gov>

**Release of Resident** Resident will not be released on grounds of voluntary or involuntary school withdrawal or transfer, voluntary or involuntary business transfer, loss of employment, marriage, divorce, loss of co-residents, bad health, problems with other tenants, or any other reasons, unless otherwise provided in this Agreement or mandated by law. Upon vacating prior to the expiration of the term, this Agreement shall remain enforced in full, with all monies and future rent (later of through the end of the initial term or required notice period) immediately due and payable. In the event Resident files a bankruptcy and fails to accept this lease through the bankruptcy and remains in the premises, this Agreement shall be deemed to be a tenancy at will with rent payable daily and calculated at the current monthly rate divided by 30, all other obligations shall remain in effect.

**Rules and Regulations** Resident, its guests and other occupants shall comply with all written rules and regulations which shall be considered part of this lease. Such rules and regulations shall be available from Owner and Resident acknowledges receipt of such Rules and Regulations. Owner may make reasonable rule changes if made in writing and notice is given to all Residents. Resident agrees that the conduct of Resident, his guests or other occupants shall not be disorderly, boisterous or unlawful and shall not disturb the rights, comforts, or convenience of other

persons. Resident shall be liable to Owner for damages caused by Resident, its guests or other occupants. Sidewalks, steps, entrance halls, walkways and stairs shall not be obstructed or used for any purpose other than ingress or egress. The Premises are to be used only as a residence and may not be used for any business. The Premises and other areas which are reserved for Resident's private use shall be kept clean and sanitary by Resident. Garbage shall be disposed of only in appropriate receptacles. Swimming pools, storage rooms, laundry rooms and other facilities, amenities, and common areas are available to Resident as a privilege and not a right granted under this Agreement, and is to be used wholly at the user's risk. Any person including Resident may be restricted from usage at Owner's sole discretion. All written rules may be enforced through Owner's representatives or agents and Resident shall hold same harmless for reasonable enforcement. Owner may regulate the manner, time and place of all parking. Owner may regulate, limit, or prohibit from the premises and the areas owned by Owner the following: swimming pools, motorcycles, trampolines, commercial equipment, non-residential materials, weight or workout equipment, bicycles, tricycles, skateboards, recreational vehicles, boats, trailers, inoperable vehicles, guest vehicles, guests who have lived or stayed in Resident's Premises, former tenants, and guests who, in the Owner's reasonable judgment, have been disturbing the peace or disturbing other residents, may cause a threat to other tenants or who have or may be violating rules and regulations. Resident acknowledges the review of such rules and regulations and agrees to be bound by them. Such rules and regulations may be changed or modified at any time with thirty (30) days notice to Resident. Resident agrees that all firearms and weapons are restricted from all the common areas, amenities and other areas controlled by Owner.

#### **Premises Condition**

Resident has the right to inspect the Premises prior to signing this Agreement and Resident agrees that it has been given the opportunity to conduct whatever inspection of the Premises is needed prior to signing this lease. Resident acknowledges that the Premises have been inspected, are satisfactory in condition, and all existing damages have been acknowledged in writing by Owner. Resident by taking possession of the Premises evidences the fact that the Premises (including appliances, furnishings, and fixtures) are in clean, safe, sanitary, and in good-working condition and that any exception has been or will be delivered to Owner in writing within 48 hours of taking of possession of the Premises. Owner makes no warranty of any kind, expressed or implied, and relies upon the fact that Resident has inspected the Premises. Resident agrees to maintain the Premises, appliances, furnishings, and fixtures in good condition throughout the term of this Agreement (excepting normal wear and tear). Resident will return the Premises to the Owner in the same condition as when Resident moved in (subject to normal wear and tear). Resident agrees to make no alteration or repair to the Premises (including painting, wallpapering, stickers, new locks, etc.) without first obtaining the prior written consent of the Owner, which permission may be withheld for any or no reason.

Denial of warranty of habitability

#### **Repairs**

Resident agrees to request all repairs and services in writing from Owner's designated representative. Owner shall have the right to temporarily turn off equipment and interrupt utilities to avoid damage to property or to perform repairs or maintenance which require such interruption. In case of malfunctions of equipment or utility damage by fire, water, or other cause, Resident shall notify Owner's representatives immediately. Owner shall act with due diligence in making repairs; the lease shall continue, and rent shall not abate during such periods. Resident may not hire or allow any third party to perform work on the premises without Owner's prior written approval (or as allowed by law). Resident is responsible for, and will reimburse Owner for, any damages or loss caused to the premises while Resident is entitled to possession of the premises. This includes, but is not limited to, damages caused by the negligence, carelessness, abuse or intentional misconduct of Resident, Resident's family, occupants, pets, guests or others. Resident shall indemnify Owner from any liability to any unapproved third party. Owner may assess costs for such damages when they occur. The intent is to require the premises to be maintained in substantially the same condition as when Resident took occupancy. If the damage to the Premises, regardless of how caused, is substantial in the reasonable judgment of Owner, Owner may terminate this lease by giving written notice to Resident. Such termination due to damage may occur immediately if the premises are uninhabitable. The costs of repairs, restorations and replacements shall be paid for by the Owner if rendered necessary by normal wear and tear. Otherwise, if such repairs, alterations or replacements are rendered necessary by the negligence, carelessness, accident or abuse of Resident and/or Resident's guests or other third parties, then all such costs shall be paid by Resident. Resident agrees to reimburse Owner for all such costs within five (5) days of notice. Such reimbursement shall be a priority payment over all other obligations of Resident to Owner. Owner may periodically deduct such costs from Resident's security deposit and Resident agrees to promptly reimburse security deposit to its original amount. It is agreed that Owner carries insurance for its own protection and that Resident is not a beneficiary of such insurance. None of Resident's rent is considered to pay for insurance. Resident shall be responsible to Owner for all costs of repair for damages as stated herein regardless of Owner's insurance. In the event Resident has complied with the Utah Fit Premises Act and is allowed to make repairs, Resident agrees that it will first obtain three independent estimates, utilize the lowest estimate and only use licensed and insured contractors to perform the repairs.

requiring tenant to indemnify landlord from "others"

adding requirements to statutory rights

#### **Right of Entry**

Unless otherwise restricted by law, Owner may enter the premises during reasonable hours with or without notice in order to inspect, make repairs, provide general or preventive maintenance, replace filters, leave any notices and/or any other reasonable business purposes while Resident is present in the Premises. If Resident is not present at the Premises, then owner will have the same right to make such entries by duplicate or master key. If, in Owner's opinion, there exists an emergency or a violation of this Agreement exists, Owner may enter without notice at

waiving the right to notice prior to entry for any reason

any time for any inspection, repair, or to determine the condition or occupancy of the premises. It is the intent of the parties hereto that this provision grant to Owner immediate access if Resident is in default of any term of this Agreement, immediate access if in Owner's sole opinion giving notice could change an investigation, and that this provision be interpreted with the existing law to grant as broad and timely access as possible and permissible. Any request for maintenance or repairs shall be deemed to give Owner authority to enter the premises without requiring notice or further permission. Owner may secure the premises at any time Owner deems, in its sole discretion, that the security of the premises may have been compromised, including but not limited to death of a Resident, incarceration or hospitalization of a Resident, usage of the premises by non-residents, and protection of Owner's assets or security.

#### Contamination

Resident agrees to defend, indemnify and hold harmless Owner against any and all claims, actions, causes of action, demands, liabilities, losses, damages, and expenses of any kind, including but not limited to, attorney's fees and court costs, that may be made as against Owner (its officers, directors, employees, agents, managers, and affiliates) as a result of or arising out of the growth or proliferation of mold or mildew or other contaminations in the premises. It is further agreed that such indemnification shall extend to the existence of any contamination of any type from any person or cause that is unknown to Owner. **Resident further agrees that it will not cause, hire, or conduct any inspection or testing to be done in the premises for any type of contamination but may request that Owner conduct such testing provided Resident prepays the costs of such testing. Owner shall have the right to retain the third party certified testing of its choice.** The results of such testing shall be the property of Owner who shall only be obligated to disclose positive results exceeding the legal limits. Resident further agrees that Owner shall not be liable for any damages caused to Resident, Resident's guests, occupants, or any property within the premises resulting from mold, mildew or any other contamination. Resident shall indemnify Owner from any liability relating to mold, mildew, or any other contamination resulting in damages to any person or property within Resident's premises regardless of the source. Resident agrees to immediately notify Owner of the existence of any mold, mildew, or other contamination within the premises. Failure by Resident to diligently inspect and notify Owner of mold or contamination issues will result in Resident being liable for the damages to the premises caused by the mold or contamination.

#### Military Clause

In the event Resident is or becomes a member of the Armed Forces on extended active duty and receives change of station orders to permanently depart the local area, then resident may terminate this Agreement by giving thirty (30) days written notice as provided herein and by the Act. Resident may also utilize the Servicemembers' Civil Relief Act (SCRA) to otherwise terminate the lease as provided by such Act. As required by the Act, Resident shall be required to pay rent for thirty (30) days after the notice is given with appropriate documentation. Resident agrees to furnish Owner a certified copy of his official orders which warrant termination of this Agreement. Permission for base housing does not constitute a permanent order. Other termination as provided under the SCRA will be allowed as provided by that Act.

#### Disability

It is the policy of Owner to reasonably accommodate all handicaps and disabilities as defined under state and federal laws. It is agreed that Resident shall notify Owner of any need relating to a disability or handicap (in writing if possible) to insure the proper procedures are implemented to comply with existing laws. In the event Resident fails to notify Owner of any needed accommodation, Owner shall not be liable for damages suffered by Resident. It is agreed that Owner is under no obligation to accommodate Resident until proper notification with supporting documentation (if necessary) is provided to Owner.

#### Limited Liability

It is agreed that Owner will not be liable for any damages or losses to person or property caused by any Resident or any other person including, but not limited to, any theft, burglary, assault, vandalism, or other crimes. Resident agrees to be responsible for its own property and for its own safety. It is acknowledged and agreed that although Owner is responsible for the upkeep of common areas, parking lots, sidewalks, and areas of the community not subject to control by Resident, Resident agrees to accept liability and responsibility in the use of these areas. It is agreed that once Owner gives notice to Resident by any means of any potential hazard, it is Resident's obligation to avoid the hazard or it assumes the risks of the hazard. It is acknowledged and agreed that Resident's duty of care shall be significant as it pertains to its awareness of use of areas under control of Owner. It is the agreed intent of this Agreement (to the greatest extent allowed by law) that Owner shall not be liable for personal injury or for damage to or loss of Resident's personal property (furniture, jewelry, clothing, etc.) unless caused by gross negligence of Owner, its agents, management, or assigns. It is specifically mutually agreed that Owner shall NOT be liable for any damages (personal injury or to property) directly or indirectly caused by any other occupant, resident, tenant or guest. Owner shall not be liable to Resident for any type of damages from fire, flood, water leaks, theft, rain, hail, ice, snow, smoke, structural problems, environmental issues, toxins, mold or mildew, or contamination left by prior residents, explosions, interruptions of utilities, acts of God, or negligent behavior of Owner or its agents, unless such injury or damage is caused by gross negligence of Owner or its agents. OWNER STRONGLY RECOMMENDS THAT RESIDENT SECURE RENTERS INSURANCE TO PROTECT AGAINST ALL OF THE ABOVE OCCURRENCES and may require renter's insurance. Resident agrees to indemnify and hold harmless Owner and its representatives from any and all liability for actions or inactions of Resident which cause damage or injury to any party or person. Resident agrees that locks and latches are acceptable subject to Owner's duty to make needed repairs upon request of Resident. It is acknowledged and agreed that Resident had other options available for

release of liability and indemnifying landlord if the property is contaminated and requiring that tenant cannot hire an independent company to test for contamination



obtaining housing and chose to enter into this agreement with the limitation on liability of Owner. Further, Resident acknowledges that it had to qualify to enter into this agreement. Upon payment of a reasonable charge, Resident shall have the right to require Owner to change (re-key) a door-lock for a fee. Resident may not place its own locks on the Premises or devices which prevent Owner entry. Resident shall pay for and replace smoke detector and/or carbon monoxide detector batteries as needed. If Owner's employees are requested to render services not contemplated in this Agreement, Resident agrees to hold Owner harmless for all liability regarding the same. Owner may provide security patrols and/or security equipment for the purpose of protecting its property. However, Owner will not provide any security for residents. Each Resident is responsible for its own personal security and the security of its property. It is acknowledged that the premises have been occupied and used by other individuals and that Owner cannot represent what such persons have had or done within the premises. Resident acknowledges that it will not hold Owner, its agents, or employees liable for prior actions within the premises by other occupants or their guests, including such actions that may have unknown continuing residual effects on the premises. Owner does not warrant that other tenants will have or maintain renter's insurance, and shall not be liable for damages resulting from the actions of such other tenants. Rental insurance obtained by Resident must have a non-subrogation provision as against Owner and Owner's insurance. It is the intent of the parties that this section be applied so as to provide the maximum allowable protection from actions against Owner and that any provisions determined to violate law or policy be severed only to the minimal extent possible leaving all other provisions intact.

#### General

**No oral agreements have been made.** Nor shall any oral agreements be allowed between the parties during the term of Resident's occupancy. This Agreement is the entire agreement between the parties and it may be modified only in writing signed by all parties except for reasonable rule changes or additions to the Owner's "Rules and Regulations." This Agreement integrates all previous agreements except those entered into concurrently. All of Resident's statements in the rental application were relied upon by Owner in executing this Agreement and any misinformation therein shall be considered cause for immediate termination by Owner of Resident's right of occupancy. Resident may not withhold rent or offset against rent except as specifically allow and provided for by law. In the event of more than one Resident, each Resident is jointly and severally liable for each provision of this Agreement. In addition, each Resident shall be jointly and severally liable for any statutory damages accessed pursuant to state law, even if one Resident vacates the premises appropriately. No Resident shall be released from this Agreement unless agreed to in writing by Owner. Liability under this Agreement continues until all occupants and Residents vacate or a new lease is signed. In the event any Resident transfers to another premises, any amounts due for rent or damages shall automatically transfer as rent to the new premises and shall be immediately due. Resident shall not be entitled to interest on security deposits. All Residents' obligations are to be performed in the County where the Premises is located. Owner's past delay or non-enforcement of rent payment due date or any other provision hereof shall not be a continuing waiver thereof under any circumstances. To enforce any breach or in any lawsuit involving statutory or contractual obligations of Owner or Resident, the non-defaulting party

shall be entitled to recover costs of collection, attorney's fees, court costs, and all other costs from the defaulting party regardless of whether the matter is litigated or not. All amounts past due and/or in any lawsuit the entire judgment shall bear interest from due date at the rate of twenty four percent (24%) per annum compounded daily until paid. Any clause declared invalid by law shall not invalidate the remainder of this Agreement. In the event Resident brings a claim against Owner or its agents with a state or federal agency, Owner shall be entitled to recover as against Resident any attorney fees and/or costs and damages for its time (including an hourly rate for Owner or its agent's time) if the agency fails to make a finding against Owner. This Agreement may not be assigned by Resident nor can Resident sub-let the premises. In the event obligations under this agreement or its addendums is assigned to a licensed collection agency or attorney, a collection fee of forty percent (40%) of the debt/obligation assigned shall be added to the amount owed pursuant to the terms hereof and as allowed by law.

#### Miscellaneous

**Monthly Rent is due on or before the first day of each month by 5:00 p.m.** local time. Rent paid after such date and time is delinquent. If all rent and other accrued fees are not paid on or before the date stated in Rent And Fees above, before 5:00 p.m. (Time determined by time at Owner's office), Resident agrees to pay a late charge as stated above. Any payment due must be paid before 5:00 pm on the due date or will be deemed paid late. Any check returned shall accrue the maximum charges as allowed by law which shall be in addition to the late fees. In the event, Owner determines to serve any notice upon Resident due to Resident's failure to pay rent or for Resident's violation of this Agreement, Resident shall be liable to Owner for the Service of Notice Fee stated above. Owner may without notice require payments in money orders or certified funds. Acceptance of personal checks is not required. Electronic payments are not deemed received if paid after service of an eviction notice. Owner shall be entitled to reject and return any funds paid electronically if done so within five (5) days after Resident gives notice in writing of such payment. Resident shall notify Owner in writing when paying electronically. Any dispute in amounts due by Resident must be stated in a separate written notice provided to Owner and not merely stated on the face or rear of a negotiable instrument. Such dispute must be mailed to the Owner at the registered agent's office or delivered to the address herein. As used in this Agreement, rent shall mean all obligations of the Agreement (and addendums) owed to Owner, including but not limited to, monthly rent, late fees, service fees, attorney fees, damages, month to month fees, court costs, pet fees, taxes, and security deposits. However, for accounting purposes only, payments shall be applied in the following order: first to damages, security deposits, late fees, services fees, month-to-month fees, other fees, court costs, attorney's fees, any and all other amounts due, and lastly to rent. The lease initiation fee provided herein shall be deemed to apply to the operational costs

tenant accepts liability for all landlords attorney fees and agree to pyramiding fees including a 24% interest and a 40% collection fee if unpaid amounts go to collections  
agrees that payment are applied to rent last to prevent the ability of disputing non rent fees

of Owner in preparation of documents, files, and such other costs incident to the leasing of the premises to Resident. It is in addition to any application fee which may be charged. The Eviction Turnover Fee shall be deemed to compensate Owner for costs and time related to preparation of materials for an eviction. The above rental rate is for an unfurnished Premises. Resident's right to possession and all Owner's obligations are expressly contingent on prompt payment of rent. Use of the premises by Resident is obtained only on the condition that the rent is paid on time. Payment of rent shall be an independent covenant and all monies received by Owner shall be applied first to non-rental obligations of Resident, then to the oldest amounts due, regardless of notations on checks. After the initial term above, at least thirty (30) days prior written notice is required for any rent increase unless

grant of power  
of attorney to  
all other  
named tenants

stated otherwise herein. Each Resident does hereby grant to each of the other Residents herein the power to sign documents binding all of the Residents as it may pertain to this tenancy and this Agreement. By this Agreement each Resident herein grants a power of attorney to each other Resident to bind all Residents as it pertains to this Agreement, addendums, notices, and pleadings which relate to this tenancy, including the ability to accept service of process and give notices to Owner.

#### Early Vacate

If Resident does not fulfill the entire initial term (even if such failure is due to eviction by Owner), Resident shall be liable to Owner for the costs incurred by Owner as a result of the early termination. These costs are in addition to the other damages and rent (including future rent) that may be assessed pursuant to this Agreement. They may include, but are not limited to: leasing agent costs, advertising expenses, turnover expenses, and such other costs incidental to re-renting the premises. If Resident vacates prior to the end of the initial term, all future rents under this Agreement shall accelerate and become immediately due. Resident shall additionally be responsible for damages, repayment of concessions, and such other provisions as contained herein. It is agreed that an eviction notice shall terminate occupancy but NOT the obligations to pay rent under this Agreement. It is agreed that termination notices pursuant to an eviction due to non-payment of rent or nuisance shall not relieve Resident from obligations for future rent until such time as the premises have been re-let or the expiration of the initial term whichever occurs first. Eviction at the end of a term shall still obligate Resident to pay for the time notice should have been given as required by this agreement for vacating the premises.

#### Rent Increases

If, during the lease term, taxes (non-property), utilities, governmental fees, or other common expenses paid by Owner increase in any year in excess of five percent (5%), Owner may increase Resident's monthly rental amount by a pro-rata amount (formula to be determined by Owner) with thirty (30) days written notice. In addition, if any utility or governmental entity creates a new fee, tax, or assessment at any time during the tenancy, such amount may be assessed directly to Resident in a pro-rata amount as stated herein or as otherwise assessed by such entity. Business license fees may be directly passed on to Resident as they are imposed by any municipality. Payment of such amount is due five (5) days after Owner sends the billing. Owner may not assess Residents an amount greater than Owner is assessed. Owner may make any such assessments based upon a reasonable formula that requires one hundred percent of the new assessment to be paid by the Residents.

acceleration  
clause of entire  
lease and fees

#### Default by Owner

Owner agrees to act with diligence to: (a) keep common areas reasonably clean, (b) maintain fixtures, furniture, hot water, heating equipment; (c) remain in substantial compliance with accepted federal, state and local laws regarding safety and sanitation; and (d) make all reasonable habitability repairs subject to Resident's obligation to pay for damages caused by Resident, its guests, third parties, or other occupants.

#### Resident Default

The following events shall constitute events of default: (a) failure to pay any rent, deposits or other amounts agreed to herein or any other sums due and owing by Resident to Owner pursuant to any terms of this Agreement and addendum; (b) failure to perform all or any part of this Agreement or a violation of this Agreement or any of the rules and regulations adopted by Owner or of any law; (c) Resident's abandonment of the premises--abandonment is hereby agreed to mean Resident's absence from the premises for fifteen (15) consecutive days without first notifying Owner in writing and with the rent unpaid and no reasonable evidence that Resident is occupying premises other than items of personal belongings left in said Premises OR by vacating the premises without providing appropriate notice; (d) violation by Resident, an occupant, or any guest of any state, federal, or local law or ordinance including the violation of any such law by an occupant or resident while living in the premises regardless of where the violation occurs; (e) allowing the property to be named on any listing relating to sex offenders; (f) Resident agrees not to take any action which may jeopardize Owner's status within any good landlord program; (g) if Resident holds over and fails to vacate on or before the required move-out date (i.e., the end of current lease term, the end of the month or any renewal or extension period, or the move-out date agreed to by both parties) Resident shall be liable to pay rent for the hold-over period and to indemnify Owner and/or prospective Resident for damages including rental loss, lodging expenses and attorney's fees. Hold-over rent shall be immediately due on a daily basis and delinquent without notice or demand. Resident shall be liable to Owner for any and all costs incurred as a result of any breach by Resident. Notice of termination of housing assistance by any housing authority (if Resident's qualification included such assistance) shall be deemed a default of this Agreement and grounds for immediate termination and eviction.

agree in  
advance to not  
file action  
against the  
landlord that  
affect standing  
in the  
good landlord  
program

#### Illegal Acts

Resident may be evicted from the Premises without further notice or opportunity to cure for any illegal activity conducted by Resident, any occupant, or guest whether or not such activity is cited by a police authority. It shall be considered a breach of this Agreement for any Resident or occupant to commit a criminal act on the premises

or elsewhere while an occupant of these premises. Prior undisclosed or unresolved criminal acts shall also be a breach. It is the responsibility of Resident to fully disclose all prior criminal activity, including but not limited to, convictions, pending charges, and plea bargains of all Occupants including minors. Resident has an affirmative duty to keep its premises from being reported on any Sex Offender's list. Any such listing is grounds for immediate eviction.

#### **Lien**

By this Agreement, Resident grants to Owner a security interest in any and all property which is placed on the property of Owner pursuant to the Resident's occupancy of the Premises. This shall include any and all property in the Premises, storage areas, parking lots, common areas, or other Premises of Owner. The right to execute and take possession upon this security interest shall become effective upon any rent or fees being due and unpaid. Owner shall have the right to retain such property and utilize it to satisfy any monies due under this Agreement. Owner may file a security filing with any governmental agency as notice of this Lien. This security interest shall be deemed effective against all property in the premises and shall be in addition to the statutory Landlord's Lien. Owner may inspect the Premises at any time that there is an unpaid balance due for purposes of preparing an inventory of the secured items. Sale of items under this provision may take place with seven (7) days written notice to the last known address of Resident. Resident agrees to waiver of notice of the sale, to the sale being a public auction, to the sale taking place at a location determined by Owner within the State, notices to be posted at the location of the sale and listed in the electronic version of any paper within the State, and to be held at such time and day as determined by Owner.

#### **Animals**

Resident may not keep, allow, or maintain animals of any kind on or near the premises for any length of time without the prior written consent of Owner. For any violation of this provision, in addition to Owner's other remedies, Owner may charge and collect the sum of \$50 per day, per violation. All costs of cleaning, de-leasing of other damage or loss suffered on account of a violation of this section shall be promptly paid to Owner by Resident. Violation of this provision will allow Owner to commence eviction on the basis of nuisance without any further notice or opportunity to cure. Resident is required to get approval for any companion or service animal PRIOR to the animal coming onto the premises. Failure to obtain prior approval is a significant violation of this agreement which shall allow for immediate eviction. Owner may create and maintain such rules and regulations relating to animals as Owner, in its sole discretion, determines appropriate.

granting of a security interest in all personal property with a right to seizure and sale of property

#### **Tax Pass-Through**

Owner may pass through to Resident a pro-rata amount of the property taxes assessed against the entire premises. Such amount shall be billed monthly and be deemed to be part of the rent due each month. Owner shall inform Resident of the assessment at the commencement of the term (or may commence such assessment at any time with thirty days notice) and may increase such assessment upon thirty (30) days written notice. Owner may utilize any such formula for pro-rating the tax assessment provided that the aggregate amounts billed to all residents may not exceed the actual property tax for the entire property

#### **Utilities**

Utilities shall be used for ordinary household purposes only. Resident will provide and pay for all utilities except those listed below or those for which a separate agreement is entered into concurrently. All utility services whether provided by Owner or Resident, are subject to interruption or temporary termination for the purpose of repairs, alterations, or improvements to the Premises or for emergency reasons. Any such interruption or temporary termination of utility service shall not constitute a default by Owner, nor is Owner liable for interruption or termination. In any event, Resident shall be responsible for its own telephone service, cable service (unless specifically stated otherwise), and any other optional service which may be deemed a utility. Resident must obtain written approval to install a satellite dish and sign an addendum to this Agreement. Resident shall establish the utilities for which it is responsible in its name immediately. If Resident fails to establish the utilities, Owner may at its option terminate this Agreement or bill Resident a handling fee of \$50 per utility per month. It is required that all Residents have both gas and electrical service. Owner may establish a policy for payment of pro-rating utilities that are not directly metered, including but not limited to sewer, water, and garbage and may charge Resident a monthly administrative fee for such utility billing.

Utilities to be paid and established by Owner \_\_\_\_\_

#### **Pests**

It is acknowledged that most pest problems result from the actions of residents and that such problems often cannot be detected by Owner. Resident acknowledges and warrants that any and all furnishings, clothing, food items, and other materials which are brought into the premises or upon Owner's property are free from any type of pest infestation including but not limited to bed bugs, mice, lice, and cockroaches. Resident warrants and represents that none of the items brought onto Owner's property or within the premises have been exposed to such pests and that all such items have been inspected by Resident. Resident agrees that during its tenancy, it warrants to Owner that no infested items will be brought into the premises or on Owner's property. Resident agrees that it will be responsible for all costs relating to removal, extermination, control, cleanup, and management of pests which are brought in by Resident, its guests, occupants, or others (intentionally or not). Resident further agrees to be responsible for all costs relating to removal, extermination, control, cleanup, and management of pests which exist or whose existence is supported by the actions or inactions of Resident, particularly issues relating to cleanliness and clutter of the premises. Pests include but are not limited to cockroaches, bed bugs,

mice, ants, lice, and moths. Resident agrees to assist in enforcement of this provision by reporting to management any violations. Resident agrees to notify Owner immediately of any infestation or sighting of any pests within the premises. Resident may hire any licensed and bonded pest control/extermination company to remedy such infestation but shall notify Owner prior to such company entering the premises. All costs related to resolution of any pest problem shall be the responsibility of Resident. In the event it is necessary for Owner to obtain pest control for another unit, a whole building, or the entire community, Resident agrees that it will pay its pro-rata share of the costs relating to such pest control regardless of the source of the pest problem and shall be responsible for the full cost if the infestation. It is agreed and acknowledged that a pest problem may spread to other units. Failure to Resident to notify Owner and take appropriate action may result in additional units becoming infested. All costs relating to resolution any pest infestation that is caused or exacerbated by Resident shall be paid by Resident. These costs include but are not limited to actual costs of pest control/extermination, loss of rents, replacement of infested/damaged materials, and any such other costs as may be incurred. Violation of this provision is grounds for eviction. Resident agrees that it shall hold harmless Owner from any and all damages relating to pests within the premises; extermination, control or cleanup of pests; damages to personal property from pests; and any and all other damages relating to pests, regardless of their source.

**Smoking**

Smoking may or may not be allowed on the premises. However, Owner may restrict smoking altogether at any time. Resident waives any right to a cause of action for a nuisance pursuant to Utah Code 78B-6-1101(3) (smoke and second hand smoke) and holds Owner harmless for any damages relating to smoke. Resident acknowledges that it has been informed that smoke from outside the premises or from adjoining premises may drift into Resident's premises. Resident specifically agrees to abide by the smoking policies of Owner which may prohibit smoking. This waiver shall apply to all residents, occupants, guests, and minors. Second hand smoke is defined as a nuisance and may be a cause for eviction. Resident shall abide by any regulations promulgated by Owner regarding smoking. Further Resident acknowledges that smoking damages the premises and agrees to pay for any such damage.

**Other Obligations/Conditions**

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**This is a binding legal document.**

**Resident acknowledges reading all of this Agreement and any addendum carefully before signing. Residents are jointly and severally liable for all the terms, conditions, and payments due pursuant to this Agreement and its addendums.**

**RESIDENT OR RESIDENTS (ALL RESIDENTS MUST SIGN)**

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Date

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Date

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Date

**OWNER OR OWNER'S REPRESENTATIVE**

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Date