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FAILURE TO EVALUATE YOUR ATTORNEY FEE PROVISION COULD COST YOU

A good lease is critical to successful property management. Some lease provisions are desirable, some lease provisions are important, and some lease provisions are essential. Despite the necessity of some lease language, we continue to see many leases that lack key provisions, or have poor language on key provisions. Specifically, many



leases lack a solid attorneys' fees provision. A well thought out and drafted attorneys' fees provision can be the difference between winning and losing thousands

of dollars in a single resident case. A solid attorneys' fees clause also saves you time and money because it acts as barrier against resident lawsuits.

To evaluate the impact of your attorneys' fees lease provision on your property management activities, you need to understand the law of legal fees and attorneys' fees lease provisions. Like all other United States jurisdictions, Colorado follows the American rule. Under the American rule, you can only recover attorneys' fees if there is a statutory basis, or if the resident has contracted to pay them. Attorney fee provisions come in many forms, but there are two primary types of lease provisions: one-sided and two-sided. A two-sided provision provides that the winning party gets its legal fees. A one-sided provision provides that you get your attorneys' fees if you win, but the resident gets nothing if the resident wins.

Prior to 2008, even if you didn't have an attorneys' fees provision in your lease, the eviction statute awarded prevailing landlords legal fees in eviction cases. However, when the Colorado General Assembly enacted the warranty of habitability law in 2008, the General Assembly amended

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Are Poor Screening Habits Costing You \$\$\$\$?

There's no guarantee that someone isn't going to experience a financial crisis during a tenancy...but you can cut your losses by eliminating as many of the potential problem residents up-front using good screening habits.

Here are some of the common red flags that management can often overlook.

WATCH OUT FOR:

CURRENT AND PREVIOUS RESIDENCES

- Current or previous address sections left blank
- Addresses that don't match those in the credit report
- Illegible or confusing address information
- Claims that they have no current address
- Unexplained time gaps between past/current addresses
- Misstated dates when they lived at the addresses
- Different addresses on the driver's license and application
- Current landlords/manager references
- References that are difficult or impossible to trace, such as living with relatives or friends
- Claims that the landlord just moved or sold the house they were living in and can't be contacted
- The information was not provided

CREDIT ISSUES

- Credit reports which, when run, show long lists of debts and charge-offs, debt payments that amount to more than the stated monthly income, unpaid utility bills, bankruptcies, judgments, and other red flags
- Multiple credit inquiries from other apartments or businesses just prior to the application date
- Employment
- Claims that an employer just went out of business or other excuses so there is no one to call to verify recent employment
- Non-existent employers.
- Unexplained gaps between present/previous employment

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the attorneys' fees section of the eviction statute. Now you can only recover attorneys' fees in an eviction case if your lease has a two-sided attorneys' fees provision. Similarly, the warranty of habitability law awards the winning party legal fees only if the lease has a two-sided provision.

A one-sided attorneys' fees provision is critical to discourage resident lawsuits. Lawsuits are expensive. An attorney will charge \$2000 to \$4000, or more to prosecute or defend a county court landlord tenant case. Attorneys will only take cases if they get paid, or have a chance to get paid.



Many residents are unwilling or unable to pay legal fees to sue you. However, if your lease contains a two-sided legal fees provision, the resident's attorney can recover the resident's legal fees from you if the attorney is successful. Thus, a two-sided legal fees provision incentivizes litigation against you by providing a source of funds to pay the attorney who is suing you. A one-sided attorneys' fees provision has the opposite effect of strongly discouraging litigation against you. If the attorney has no chance to recover his legal fees from you, and the resident is unwilling or unable to pay the attorney, an attorney is much less likely to sue you.

The following typical county court resident lawsuit illustrates how an attorneys' fees lease provision can greatly impact your net operating income. Resident sues for breach of warranty of habitability, and breach of covenant of quiet enjoyment. Both of these legal theories revolve on the condition of the premises, and failure to make repairs. The case involves a leaky faucet that went on for nine months. The landlord's handyman diligently tried to fix the problem, but was unsuccessful. The court rules against the resident on the breach of warranty of habitability claim. The court rules in favor of the resident on the breach of covenant of quiet enjoyment claim, and awards \$400 in damages.



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Are Poor Screening Habits Costing You \$\$\$? CONTINUED FROM PAGE 1

FINANCIAL INFORMATION

- No financial information provided (some applications do not ask for ANY financial information!); spaces left blank; or sketchy, unusable information provided
- Information that doesn't match the credit report
- NO monthly income stated.

TIPS TO AVOID DELINQUENT TENANTS

- Every adult prospect should complete an application in full. Let them know that if there are blank spaces, the application will not be considered (per your written and posted policy).
- Make sure the applicant's handwriting is legible. Clarify any portions you can't decipher.
- Verify the information on the application by comparing it with information on the driver's license or other identification. (Do not photocopy the license or other photo ID until after you have rented to an applicant to avoid fair housing implications.)
- Screen EVERY applicant thoroughly. Run a credit report, check eviction history, call current/past landlords, verify current/past employment (if employed) and other financial information.
- Don't assume everything on the application is 100% truthful unless you have verified it.
- A repeat "evictee" is not going to provide you with accurate information.
- Beware of information that is impossible to trace. Ask for proof, such as pay stubs from a "defunct" employer.
- Help eliminate the "revolving door" syndrome. Get a money judgment whenever possible.



*I have
a dream...*

Martin Luther King Holiday
January 16th 2012

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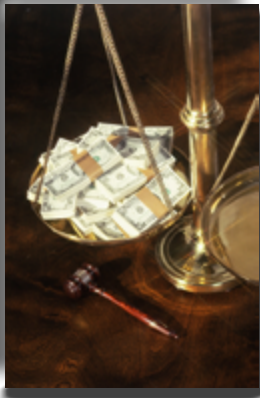
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However, the real killer is the attorneys' fees. Because the lease contains a two-sided provision (winner gets legal fees), the court awards the resident's attorney over \$4,000 in attorneys' fees. The landlord also ends up paying its attorney over \$2,000 in attorneys' fees. The two-sided attorney fee provision costs the landlord over \$6,000, in a \$400 case. If the landlord had a one-sided fee provision, this case probably isn't even brought thus saving the landlord thousands of dollars, and countless hours of time.

Because a one-sided attorneys' fees provision is preferable but changes in the law require a two-sided provision in certain cases, you have to carefully review and evaluate the attorneys' fees language in your lease. A well-drafted provision can meet both of these goals. You can get by without many lease provisions. You cannot get by without a solid and well thought out attorneys' fees provision. Sooner or later a poorly drafted attorneys fee provision will cost you. We strongly encourage you to evaluate your attorneys' fees provision before it becomes an issue in a real case, and costs you significant time and money. Because different clients have different goals and objectives, attorneys' fees lease language is not one size fits all. If you have questions about your attorney fee provision, let us know.



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IMPORTANT THS JANUARY DATES

- January 6th** **Basic Fair Housing**
THS Lower Conference Center
3600 S. Yosemite Street
Denver, CO
8:30 a.m. - 11:30 a.m.
- January 16th** **All COURTS CLOSED**
MLK JR. HOLIDAY
- January 20th** **North Client Lunch**
Dave & Busters
Westminster
11:30 a.m. - 1:00 p.m.



New Year Diet



Twas the Month after Christmas

**Twas the month after Christmas, and all
through the house,
Nothing would fit me, not even a blouse.**

**The cookies I'd nibbled, the eggnog I'd taste,
At the holiday parties had gone to my waist.**

**When I got on the scales there arose such a
number!**

**When I walked to the store (less a walk than a
lumber).**

**I'd remember the marvelous meals I'd
prepared,
The gravies and sauces and beef nicely rared.**

**The wine and the rum balls, the bread and the
cheese,
And the way I'd never said, "No thank you,
please."**

**As I dressed myself in my husband's old shirt,
And prepared once again to do battle with
dirt.**

**I said to myself, as I only can,
"You can't spend a winter disguised as a
man!"**

**So--away with the last of the sour cream dip,
Get rid of the fruit cake, every cracker and
chip.**

**Every last bit of food that I like must be
banished,
'Till all the additional ounces have vanished.**

**I won't have a cookie--not even a lick,
I'll want only to chew on a long celery stick.**

**I won't have hot biscuits, or corn bread, or
pie,
I'll munch on a carrot and quietly cry.**

**I'm hungry, I'm lonesome, and life is a bore,
But isn't that what January is for?**

**Unable to giggle, no longer a riot,
Happy New Year to all and to all a good diet!**

***"Never doubt that a small group of thoughtful,
committed people can change the world.
Indeed, it is the only thing that ever has"***

Margaret Meade

