

Residential leases – some basics

One of the most common contractual relationships that ordinary people enter into on a regular basis is the residential lease. Despite its commonness, leasing is complex, both from a legal perspective and a practical perspective, and the parties to a lease have a lot at stake in the process. This column is intended to shed some light on common issues that arise in connection with a residential lease and how they can be addressed proactively by the parties.

First, a lease should be reduced to writing. Although a lease can technically be entered into for up to a year by oral agreement, neither the landlord nor the tenant should feel secure in an oral lease for obvious reasons. Human memory is fallible. People are biased, and they are easily tempted to lie, and it's unlikely that parties can be expected to address all of the necessary or advisable terms and conditions in an oral lease.

At the very least, the written lease should describe the parties, what's being leased, the duration of the lease, the rent and payment terms, and the material rights and responsibilities of the

parties, including the permitted uses of the lease premises. In addition, for reasons described below, it is vital for the parties to document the condition of the property at the time of commencement of the lease, paying particular attention to any defects in the property.

Regardless of what a lease may say, several provisions under law cannot be waived. Some would argue that the tenant is at a natural disadvantage when dealing with a landlord, so many of the unwaivable provisions under law protect tenants. For example, subject to certain exceptions, a lease cannot require that the tenant waive the implied warranty of habitability or permit a landlord to retain an otherwise-refundable security deposit for longer than 60 days.

During the term of the lease, so long as rent is paid, the tenant is ordinarily entitled to quiet enjoyment of the property without interference from the landlord, and the landlord is ordinarily entitled to rent. Unless there is a problem with the property, it may be the case that landlord hasn't inspected the property until the end of the lease. For

that reason, the landlord should ensure that the lease provides that the landlord can enter the premises to ensure compliance with the lease, perform maintenance, and for other reasonable purposes. The tenant should ensure that the notice provisions are reasonable and acceptable to the tenant. The lease should allocate responsibility for maintenance and improvements.

Tenants may be surprised to learn that they may be personally liable to their guests or other parties for hazardous conditions on the property, depending on the circumstances. For that reason, it is ordinarily a good idea for both landlord and tenant to carry adequate insurance. It's not a bad idea for the lease to require that the parties carry insurance.

Perhaps the most crucial period for a lease agreement is the end of the term. The tenant wants as much of his security deposit back and to move on without further liability to the landlord. The landlord wants her valuable property returned intact.

The parties should be aware of the process required to terminate the lease and to observe it scrupulously. A failure to provide the notice required under the lease may result in the automatic renewal of the lease.

Finally, the matter of damage

to the property is the source of much dispute between landlords and tenants. The landlord is ordinarily entitled to return of her property in its original condition other than normal wear and tear. The tenant, meanwhile, should expect to pay only for the extraordinary damage to which he is legally required to pay for. Ideally the parties have documented the condition of the premises at the outset of the lease, which will typically prevent many disputes.

In any event, and this is really important for both landlord and tenant, the landlord must either return the security deposit or, if all or a portion of the deposit is being withheld, send the tenant a written statement specifically itemizing the damage. Depending on what the lease says, the return of the money or the written statement should be delivered to the tenant within a month of termination of the lease, and no more than 60 days after the termination, no matter what the lease says.

If the landlord fails to provide the required itemization in a timely fashion, she could be forced to pay the tenant three times the withheld amount, plus attorneys fees, even if the landlord can prove beyond all doubt that the tenant damaged the property in violation of the

lease.

I once worked on a lease dispute where the landlord withheld a tenant's security deposit based on a provision in the lease that allowed him to charge (what the court determined to be) a punitive amount if a pet was kept on the premises. So-called "penalties" in contracts are often unenforceable as an unlawful forfeiture, so the landlord was deemed to have wrongfully withheld the security deposit, exposing him to a judgment in favor of the tenant for so-called treble damages plus considerable attorney's fees.

For a young person entering into a lease for the first time, it's understandable that he won't get legal counsel to review the contract. For the landlord or for established persons entering into a lease for a million-dollar, four-bedroom home, failing to retain counsel when drafting or negotiating a lease is like skipping dental appointments or annual doctor exams: Bad things won't necessarily happen, but the types of things that can go wrong far exceed the cost of having an experienced legal professional or property manager look things over.

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Matthew Trinidad
Pro Bono Publico

BUSINESS BRIEFS

Rocky Mountain Brain Institute brings Brainwave Optimization to the Western Slope

Rocky Mountain Brain Institute has just opened a facility in Rifle, to offer Brainwave Optimization to clients from west of the Continental Divide. The office is operated under the management of Malcom Shaw, a certified technologist in the modality, and licensed by Brain State Technologies of Scottsdale, Arizona.

Brainwave Optimization is an effective, holistic and noninvasive method of achieving greater brain balance and harmony. Improving brain function has shown to help with injuries, including sports injuries and concussions, eating and other compulsive disorders, stress, pain, anxiety, depression, PTSD, sleeplessness, addictive dependencies and challenges to learning and performance.

Shaw brings with him a history of fieldwork in hospice care and pastoral counseling in the Denver area, and 20 years of

experience as a company-owner providing training for enterprises in both the private and public sectors.

To make an appointment, or to learn more, call Malcolm Shaw at (970) 456-2233, or visit www.balancingmybrain.com.

Vijita J. Evans joins Un-Wind Therapies

Midland Fitness would like to welcome Vijita J. Evans to Un-Wind Therapies. "VJ" has been practicing massage therapy in the Glenwood area for over 10 years. She has been nationally certified since 1998 through Brenneke School of Massage in Seattle, where she studied Integrative Treatment massage.

VJ is a certified yoga instructor and Qi Gong instructor, and has continuing education credits in many modalities including polarity therapy, reiki and



Vijita J. Evans

reflexology.

To make an appointment with VJ call Midland Fitness at 945-4440.

WPX recognized for reducing emissions

WPX Energy has been recognized by the state for its commitment to reducing emissions and helping protect air quality.

One of the rigs WPX uses for drilling in the state's Piceance Basin in western Colorado runs entirely on natural gas. WPX deployed the new rig last year.

During initial operations in 2013, the rig saved WPX Energy more than \$7,000 in daily fuel costs, and reduced fuel consumption by 85 percent. With less fuel required, truck traffic was also reduced — resulting in less dust, noise and impact to roadways, which benefits neighbors and the local community.

Successfully using the natural gas rig has led WPX to convert six other rigs in Western Colorado to dual-fuel engines that use a combination of both natural gas with

diesel.

This is the 16th honor WPX has received from the Colorado Oil and Gas Conservation Commission. The agency also has recognized WPX for water management, water recycling, water quality protection, green completions, use of new technology, reclamation and best practices.

Brown & Brown presenting summer workshops

The law office of Brown & Brown P.C. will be presenting a series of estate planning workshops in Glenwood Springs. The workshops are open to the public, free of charge and will be held from 6:30-7:30 p.m. at the Glenwood Springs Branch Library, 815 Cooper Ave. Interested persons can sign up by calling the Glenwood office at (970) 945-1241 or by going to www.browncandbrownpc.com. The final workshop is Long Term Care Planning on Aug. 28.

ANNEX

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The Annex also sells produce to local restaurants and is the pickup point for several raw milk community-supported agriculture groups.

It's important for the community to support local agriculture, Anzini said.

"We're relying on other countries to feed us," she observed.

The local approach means a seasonal selection.

"We're used to getting whatever we want whenever we want it," said Anzini. "When you eat on a 100-mile diet, the weather has a big impact. I don't try to have

everything."

The store has new products in all the time, and a lot of the old favorites are in high demand. Bacon and eggs sell out every week, and produce shopping can be competitive, too.

"I will challenge anyone to find a better tomato," said Anzini.

The Annex's selection is available on its website, www.thecarbondaleannex.com. It also provides weekly delivery from Carbondale to Aspen for just \$10, but most folks prefer to come into the store. Anzini is thinking of offering a special variety basket with option add-ons to drive interest in the program.

If all goes well in the long run, she's even hoping to add a local food restaurant to the mix to give folks a healthier \$6 lunch.

The Annex is located at 1054 Highway 133 in Carbondale, and is open weekdays 10 a.m. to 7 p.m., Saturday 9 a.m. to 7 p.m., and Sunday 11 a.m. to 5 p.m.