

Seven Things You Need to Know Before You Buy Rental Property — Thing Two: Leases

[On behalf of Dornish Law Offices, PC](#) | Nov 1, 2009 | [All, Landlord-Tenant, Real Estate Practice](#)

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Some people think that any lease is a good lease, or that all leases are created equal. They couldn't be more wrong, and it is a very expensive lesson to find out after you buy a rental property that the lease or leases on which you depend for the income to pay the mortgage and taxes are the wrong forms. So, how do you know if the leases your seller used are O.K.? First, you need to make sure you get copies of all the leases as soon as you have a signed agreement, at the very latest. The sooner you get the leases and look at them, the better. Make sure the numbers on the leases match the income represented by the seller, make sure the leases are all current, and have been extended for annual terms instead of month to month. Lenders don't like to lend based on income from month to month leases. If the tenant leaves when you buy, you won't have the cash flow to make the first mortgage payment.

Next, review the utilities and other services and charges spelled out in the leases. If a lease says the tenant is paying a share of a common electric or water bill, go read the first article in this series on utilities. If the lease provides that the landlord provides a washer and dryer in the basement for all tenants, make sure you get the washer and dryer with the building, or if they are provided by a laundry service, get that lease, too. And don't forget to make sure the gas and electricity for the washer and dryer are on house meters to the landlord, and included in the expense information for the building.

If the lease provides that the landlord cuts the grass and shovels the snow, make sure those activities are in your plans or those costs are in your budget. A landlord who lives down the street and cuts his own grass may not mention that he also spends an hour a week each Spring to Fall cutting grass at the rental, and it won't show on his income and expense records.

You will find out when the grass grows too high, and the municipality cites you. Even if the tenant is responsible under the lease, you are responsible to the public and the municipality.

The same issue applies to snow falls. Under Pennsylvania's "hills and ridges" case law, if someone slips and falls on your sidewalk and there were footprints frozen into the ice, or ridges from wind during freeze/thaw cycles, you can be liable for not clearing your walks or parking areas fast enough. Local ordinances can require even faster shoveling.

My wife will never let me forget the snowy weekend a few years back when our handyman was away, and the plowing service wanted over \$2,000.00 to clear the walks, steps and driveways at all of our units. Instead, I started the day at 6am at Walmart buying all kinds of waterproof gloves, hats and scarves, stopped for a snow blower, 20 bags of salt, shovels and gas, built a ramp to get the snow blower in and out of my SUV. My wife, son and I spent from sunup to after sundown clearing and salting sidewalks, steps, and parking lots to avoid fines or injury to other people. I learned that day never to ask my wife to do that again, that as we age, back and extremity strains take much longer to heal, and that \$2,000.00 to clear all of that snow wasn't so ridiculous.

The next consideration for the leases is whether they fit the property and the use. A warehouse lease fits a warehouse, an office lease fits an office, and a retail lease fits a retail space. Confessions of judgment fit and are pretty standard in commercial leases of all types, but are *illegal* in Pennsylvania residential leases.

For that matter, Pennsylvania residential leases must meet the requirements of the Plain Language Consumer Contract Act. If the lease doesn't say it is a PA Plain Language Lease, it most likely isn't. I would not recommend using a Pennsylvania Plain Language Lease anywhere outside of Pennsylvania, and I would strongly advise you never to use a lease other than a PA Plain Language Lease to rent residential property here. If you buy a property with a bad lease, you become responsible for that bad lease the day you close. If you have to evict a residential tenant on a non Plain Language Lease, you can be liable for fines, the tenant's attorneys' fees, and any costs the tenant incurs because he or she misunderstood the non-compliant lease. I recommend giving the seller a copy of the law, and a copy of your good lease, and getting the seller to have the tenants sign compliant leases before you close on the property. An ounce of prevention is worth a pound of cure.

Beyond the Plain Language issue, there are even more requirements for Section 8 Leases. Section 8 rental vouchers aren't a bad way to rent some properties. In some places, they may be the predominant rentals, or just about the only way to keep your units full. But landlords and even property managers make a lot of mistakes with Section 8 leases. First, you have to understand that the Federal Housing Assistance Payments (HAP) Contract which you sign with the local housing authority will control the terms of your lease for section 8 housing. Next, you must use a special Pennsylvania Plain Language Lease form for section 8 housing. This is because there are certain clauses, like a waiver of notice of default, which you want in every non section 8 residential lease, but which are prohibited in section 8 leases. Other such provisions prohibited in section 8 leases include distraint, exculpatory clauses, waiver of legal proceedings, jury trial or appeal, and clauses imposing attorneys fees except by a court after a tenant loses an action on the lease.

You also have to understand that the HAP Contract specifies the **TOTAL** amount of rent the landlord can charge for the property, and divides that amount between the housing authority and the tenant, subject to changing the division but not the total at any time during the term of the lease. Simply put, this means that if you want \$650 per month for your unit, and the Housing Authority determines that fair market rent is only \$550 per month, you can either accept the \$550, however that number is divided between the tenant and the housing authority, as PAYMENT IN FULL FOR THE UNIT, or you can refuse and rent to someone who is not on a section 8 rent subsidy for more money.

You cannot under any circumstances sign two leases for the unit, one at \$550 and one at \$650, show only the \$550 lease to the housing authority, and collect the \$650 from the tenant. If you read the HAP contract, it says in several places that the owner can't get and the tenant can't pay more than the amount specified by the HAP contract at any time during the lease term. Fraud in connection with the HAP Contract is violation of federal laws, subject to federal criminal prosecution. Federal prisons are supposed to be much nicer than state prisons, but I'd rather not reside at either. Real estate agents who participate in double leases risk loss of their real estate licenses, as well as breach of contract actions against them by the owners they represent badly, and of course the same criminal prosecution as an owner committing the violation.

This doesn't mean you have to use the lease form provided by the Housing Authority with your HAP contract, if they provide one. Some of those forms don't have any teeth whatsoever, and HUD doesn't require a spineless lease, just the absence of prohibited provisions. I include both a regular Plain Language Lease and a Plain Language Lease for use with HAP Contracts in my lease packages, and that HAP complementing lease has been accepted by several housing authorities. It is the one I use for my own section 8 rentals. I simply tear up the lease form the housing authority provides with my section 8 acceptance and renewal packages, and have the tenant sign three copies of my HAP lease form instead. Then, I provide a signed original of my HAP lease form back to the housing authority with the signed HAP contract and other forms. If you do the same thing, you won't collect more than permitted for your section 8 units, but won't run the risk of federal prison, either.

Don't forget that rent from the housing authority won't automatically come to you as the new owner, either. You should send proof of title transfer to the housing authority right away, and sign acceptance of the Hap Contract. Otherwise, the old owner or the management company will continue to get the rent subsidy payments until you do.

You should also check the lease forms the seller uses to see if their provisions on loss of discount, due dates, attorneys' fees, waiver of notice, pets and repairs match your normal leases or not. You may have to live with some differences until the existing leases expire, but you should know the differences before you close and be prepared if they come up.

Once you cover all of the above bases, you should be O.K. until the leases on your new property expire. As each one does, make sure you substitute a renewal lease on the form you always use on your rentals. That way, within a year you will know all your leases are the same, except the tenants, unit, section 8 differences and rent. Using the same lease forms for everyone is like using master keys. It makes landlording so much simpler!

That is all I have room for on leases, and covers the highlights. Watch for Thing Number Three in this series coming soon!

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