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- Get up to speed on residential property law
- Grasp tenant rights and avoid legal ramifications from renters

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For Dummies*



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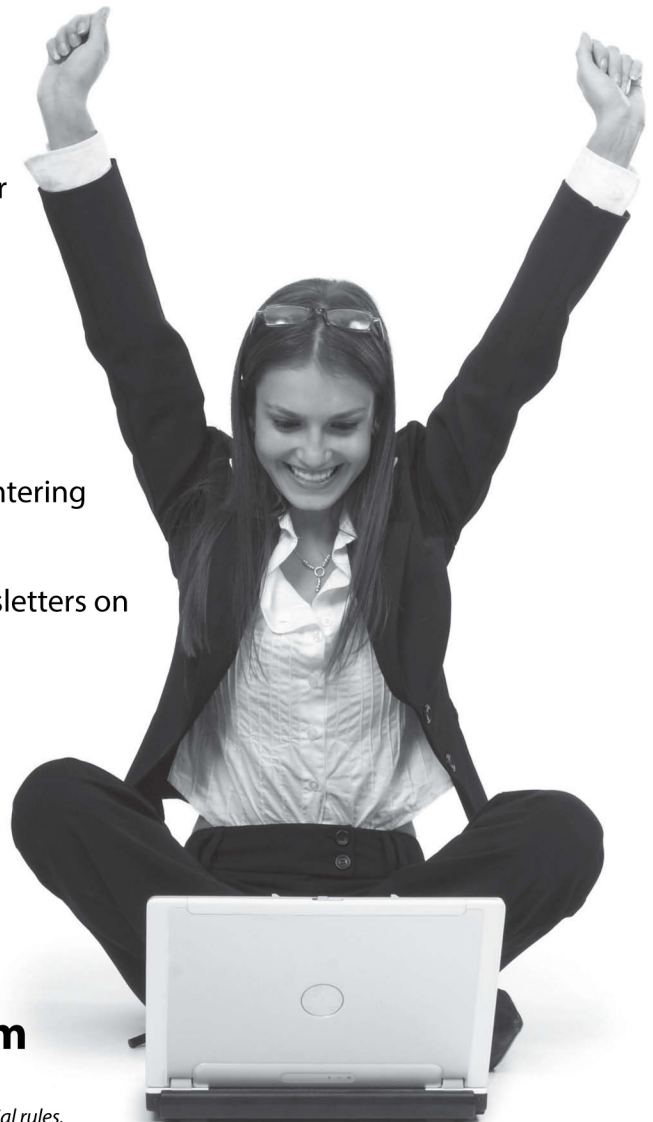
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**by Laurence Harmon, JD,
and Robert S. Griswold, MBA**

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Introduction



Success as a landlord requires more than finding residents, collecting rent, and performing repairs and maintenance. You also need to be familiar with and abide by federal, state, and local laws that govern rental housing. Failure to do business in compliance with those laws can result in severe and very costly consequences.

You need a guide to bring you up to speed in a hurry about the legal aspects of managing residential rental property and provide you with the contracts, forms, and other documents that will help you to comply with those laws. You also need guidance on how to avoid and protect against legal claims commonly filed against landlords. *Landlord's Legal Kit For Dummies* is your guide.

About This Book

In this book, we lead you through the legal minefield of owning and managing residential rental property, from the time you purchase your rental property and market and advertise the property until the rental contract ends and the resident moves out. You steer clear of legal problems in three ways:

- ✓ Understand and comply with all relevant laws — federal, state, and local.
- ✓ Honor your legal obligations as a landlord to your residents, so they're less likely to file a claim against you — and if they do, they're less likely to win a judgment.
- ✓ Document all landlord-resident agreements and communication, so you have evidence that stands up in court.

This book is based on hands-on experience and lessons from our experiences owning and managing residential rental properties and helping other owners comply with federal, state, and local housing laws. To make your life easier, we've included many of the contracts, forms, and other documents — whether you're just starting out with a single-family rental home or condo, you have a handful of rental units, or you possess a whole portfolio of rental properties. To access the forms, go to www.dummies.com/go/landlordlegalkit. We strongly recommend that you have your local legal counsel review them, and then print them out and start putting them to use. You can access this website by using the user name robertgriswold and the password landlord when prompted.

Foolish Assumptions

In order to provide you with the guidance you need, we had to make a few assumptions about who you are. We assumed the following:

- ✓ You own or manage or you plan to own or manage rental property.
- ✓ You're specifically interested in finding out about laws that govern residential rental properties, not commercial properties.
- ✓ You're committed to operating in accordance with all federal, state, and local laws.
- ✓ You want to avoid having legal claims filed against you.
- ✓ When a legal claim is filed against you, you want to win.

Icons Used in This Book

Throughout this book, icons in the margins highlight different types of information that call out for your attention. Here are the icons you'll see and a brief description of each.



This icon points you to files or forms you can use in your day-to-day property management. You'll find them online at www.dummies.com/go/landlordlegalkit. You can access this website by using the user name robertgriswold and the password landlord when prompted.



We want you to remember everything you read in this book, but if you can't quite do that, then remember the important points flagged with this icon.



Tips provide insider insight. When you're looking for a better, faster way to do something, check out these tips.



Focus on this icon for real-life anecdotes from our many years of experience and mistakes. When you've managed more than 60,000 rental units in 35 years, you see some interesting situations. Now, we share them with you.



“Whoa!” This icon appears when you need to be extra vigilant or seek professional help before moving forward.



This icon points out bonus material you can find online.

Beyond the Book

In addition to the material in the print or ebook you’re reading right now, this product also comes with some access-anywhere goodies on the web. Go to www.dummies.com/landlordlegalkit for additional information, such as the following:

- ✔ Sample lease agreement, move-in/move-out inspection checklist, eviction notice, and dozens of other essential legal forms and documents
- ✔ Resources for finding state and local statutes and additional legal information
- ✔ References to organizations, government agencies, media, and vendors/suppliers that provide additional information, training, tools, and services to make you a better landlord

Use `robertgriswold` for the username and `landlord` for the password.

Also, check out the free Cheat Sheet at www.dummies.com/cheatsheet/landlordlegalkit for strategies you can use for screening applicants, establishing security deposits and procedures, meeting your obligations as a landlord, and brushing up on fair housing laws. Be sure to visit www.dummies.com/extras/landlordlegalkit for free articles about retaining good residents, screening residents, complying with your duties to make repairs, and more. You can also read a bonus chapter about establishing competitive, yet profitable rents.

Where to Go from Here

You can approach this book in three ways:

- ✔ **Read it from beginning to end.** Although being a landlord isn’t a linear process, we present topics in the order you’re most likely to encounter them. We start with setting up your business and taking possession of a rental property; move on to advertising vacancies, screening applicants, and fulfilling your legal obligations to residents; and end with a resident moving out.

- ✔ **Skip around.** Each chapter is a stand-alone lesson on a specific legal aspect of property management. If you want to know about fair housing laws, skip to Chapter 5. Head to Chapter 10 for guidance in developing a security deposit policy. For information regarding your legal obligations to perform maintenance and repairs, flip to Chapter 12.
- ✔ **Use it as a reference book.** Whenever you need information and advice on a specific legal aspect of being a landlord, turn to the index, look it up, and flip to the chapter or the specific page where that topic is covered.

If you just need some quick advice on how to avoid having legal claims filed against you, skip to Chapter 21, where you'll find ten tips for staying out of legal trouble.

The more you use this book, the more confident you'll be that you're complying with federal, state, and local laws and that you'll have the documented evidence you need to take legal action against a resident and defend yourself when a resident or someone else takes legal action against you.

Part I

Getting Started with Landlording Fundamentals



Visit www.dummies.com/cheatsheet/landlordlegalkit for more informative tidbits about the ins and outs of landlording.

In this part . . .

- ✔ Get a bird's-eye view of your legal rights and obligations as they relate to owning and managing residential rental property.
- ✔ Discover the benefits of operating as a legal entity, such as a limited liability company (LLC), instead of as a sole proprietorship.
- ✔ Understand your tax obligations, so you can plan ahead and have enough money set aside to cover your tax bills.
- ✔ Find out how to conduct legal research to find out about state statutes and local regulations regarding residential rentals.
- ✔ Take possession of a rental property the right way, so you get everything you paid for and avoid any legal snags.
- ✔ Choose and buy the right insurance policy to cover your rental assets in the event of unavoidable mishaps and disasters.
- ✔ Decide whether you want to outsource some of your landlord chores to a property manager or management firm, weigh the pros and cons of each option, and find the right individual or firm for the job.

Chapter 1

Grasping the Legal Fundamentals of Managing Residential Rentals

In This Chapter

- ▶ Incorporating for legal protection and income optimization
 - ▶ Stepping into a rental property as its new owner
 - ▶ Getting up to speed on landlord legalities
-

Whenver you approach a subject for the first time, you probably try to wrap your brain around it before getting into the specifics. This chapter helps you gain the big-picture perspective by highlighting the key legal aspects of being a landlord and managing residential rentals. Think of this chapter as a framework on which you can hang all the detailed information, guidance, and insights we present throughout this book.

This chapter begins by laying out the legal foundation for your residential rental operation. The first section stresses the importance of running your business as a legal entity in order to protect your personal assets, minimize taxes, and maximize profits. The second section touches on important steps to follow when taking ownership of the property. The third and longest section in this chapter introduces your legal obligations as a landlord; here you find out how to fulfill your obligations while protecting your rights and avoiding legal problems.

Running Your Operation as a Corporation or LLC

Unless you take steps to give your business the status of a corporation or limited liability company (LLC), you're operating as a sole proprietorship and placing your personal assets at risk. If you can't pay what you owe to a creditor, such as a contractor, a utility company, or the bank that holds the mortgage on

your property, they can pursue your personal assets to collect what you owe. Operating your business as a corporation or LLC insulates your personal assets from your business assets, thus protecting your personal assets from such claims. In addition, operating your business as a corporation or LLC potentially reduces your taxes, increasing your net profit.

Most landlords choose to operate as an LLC, because it provides the protection of a corporation without the costs and complexities of forming and managing a corporation. Any claims by creditors against the LLC are limited to the LLC's assets, protecting your home, personal financial accounts, and other personal assets from those claims.



An LLC doesn't provide complete protection. If a court finds that your carelessness or negligence contributed to a resident's injury, for example, you could be held personally liable. We recommend that you purchase a landlord insurance policy that covers such scenarios, as explained in Chapter 3.

Structuring your business and operating it as a corporation is much more complicated and expensive than forming an LLC. You need to register a name for your corporation with your state's Secretary of State, write and file articles of incorporation and bylaws, issue stock (at least one share), have regular corporate meetings, prepare and file minutes from those meetings, and comply with regulations for recording and reporting financial transactions. In addition, to take full advantage of tax savings, you may need to pay a portion of your profits from the rental property to yourself as a salary, which requires payroll processing.

See Chapter 2 for more about the options for structuring your residential rental business.

Taking Ownership of a Rental Property

Assuming you've completed the closing on your rental property, you realize that transferring ownership of any real estate is a fairly complicated endeavor. The process is even more complicated and perilous when transferring ownership of a rental property. When you buy a rental property, make sure you get the following items from the seller:

- ✓ A list of personal property included in the sale
- ✓ All resident files
- ✓ Seller-verified rent roll and list of all security deposits
- ✓ All required governmental licenses and permits

- ✓ Recent utility bills that are due
- ✓ Every service agreement or contract
- ✓ Copy of the seller's current insurance policy

Chapter 3 contains additional information about these items.



Meet with a reputable insurance provider and purchase a policy for the property prior to taking possession, so there's no lapse in insurance coverage before you take possession. If the property burns down before closing, it's the seller's problem. If an uninsured property burns down after closing, it's your problem. For more about choosing an insurance policy that provides sufficient coverage, see Chapter 3.

After you become the proud owner of the rental property, you have a few tasks to attend to as soon as possible, including the following:

- ✓ Meet with the residents in person, introduce yourself as the new owner, and answer any questions they ask.
- ✓ Inspect the outside of the rental property carefully and make a list of any maintenance and repair issues. Address these issues as soon as possible.
- ✓ Evaluate the current rent. You can't raise the rent for current residents until their lease expires or the end of the month (for month-to-month renters), but analyze how much rent your residents are paying now, and how much you need to charge new residents to turn a decent profit and how much to raise the rent for existing residents when that time comes.
- ✓ Prepare rental contracts (either a fixed-term lease or a month-to-month rental agreement), so they're ready for new residents and for current residents who decide to remain after their rental contract expires.

Avoiding the Legal Pitfalls of Managing Residential Rental Properties

Owning residential rental property comes with legal obligations and risks. You're legally responsible to comply with fair housing laws, keep your property in "habitable" condition, ensure your residents' rights to "quiet enjoyment" of the property, comply with laws for handling and refunding security deposits, take reasonable steps to prevent crime, and eliminate any dangerous or hazardous conditions. If you have employees, you may be liable for their legal actions, as well. And residents can file a claim against you for any number of reasons, regardless of whether those claims have legal merit.

These sections highlight many of the most common legal issues you need to be aware of. We also guide you in best practices that help you avoid legal problems in the first place, such as screening applicants carefully and honoring your residents' legal rights.

Obeying fair housing laws

Fair housing laws prohibit landlords from using certain criteria, such as race or sex, to target residents in advertising or to refuse housing to applicants. When screening applicants, for example, you're permitted to consider only factors that are likely to indicate whether the person will pay her rent on time, take care of the property, get along with the neighbors, and comply with your other policies. You may use criteria such as income, credit history, past evictions, criminal history, and similar factors to determine the prospect's qualifications. You can't use race, skin color, religion, or certain other criteria.

In the following sections, we explain the federal Fair Housing Act and look at how some states expand coverage of that Act. We also stress the importance of considering fair housing laws when advertising your rental property.

Federal law: The Fair Housing Act

The Fair Housing Act prohibits you, as landlord, from discriminating against or giving preferential treatment to people based on a *protected class* — a characteristic that can't be used to discriminate against or in favor of an individual or group. The Fair Housing Act specifies the following seven protected classes:

- ✓ **Race:** Ethnicities or cultures, such as African American, Caucasian, Hispanic, Asian, or American Indian
- ✓ **Religion:** Christianity, Islam, Judaism, Hinduism, and so on
- ✓ **National origin:** The country or area a person was born in, such as Canada, Mexico, the Middle East, or Nigeria
- ✓ **Sex:** Physical sex — male or female
- ✓ **Color:** Skin color or shade, which may seem to be the same thing as race, but people of the same race sometimes discriminate against one another based on lightness or darkness of skin
- ✓ **Handicap:** Physical or mental handicaps or disabilities, including hearing and visual impairments, chronic alcoholism, and HIV/AIDS
- ✓ **Familial status:** Whether a person or couple has children



Consider only those characteristics that reflect the likelihood that the person will pay rent in full on time, treat your rental property with care, and get along with her neighbors. As a landlord, you should consider nothing else.

State and local laws

Some states and municipalities have extended the Fair Housing Act to other protected classes, including the following:

- ✓ Marital status or changes in marital status
- ✓ Sexual orientation or domestic partner/civil union
- ✓ Age
- ✓ Source of income
- ✓ Creed (belief system)

For more about the Fair Housing Act, protected classes, and state additions to the Act, see Chapter 5.

Advertising within the law

Fair housing also comes into play when you're marketing and advertising your property. To comply with fair housing laws in advertising, follow these four general guidelines:

- ✓ Avoid any obviously discriminating words and phrases that state or imply that certain protected classes are unwelcome or that you prefer a certain type of clientele, such as singles, married couples, or affluent individuals.
- ✓ If you use photographs or pictures of people in your advertisements, make sure they convey diversity in race, sex, familial status, and so on.
- ✓ Don't use location, place names, directions, and so on that may suggest exclusion or preference for a certain protected class. For example, stating that the property is near a certain country club or religious facility may be construed as a preference for some prospects while discriminating against others.
- ✓ Include the US Department of Housing and Urban Development's (HUD's) Equal Housing Opportunity logo or statement on all advertising to invite people of all protected classes to apply.

Most landlords avoid blatantly discriminatory language and images in their advertisements. They're more likely to inadvertently commit a violation by showing a picture of a young white couple, for example, or mentioning that the property is "perfect" for certain classes of prospects.



Have someone who's well versed in federal, state, and local fair housing laws review all of your advertisements before you start running them. For more about complying with fair housing and other laws in your advertising, see Chapter 6.

Setting rents and payment policies

Sometime prior to renting out a property, you need to set your rents and payment policies to address the following aspects of rent payments:



- ✓ **Amount:** You want to charge enough rent to cover your operating expenses, earn a decent profit, and remain competitive. In a few cities in a handful of states, you also may need to consider rental rate regulation or *rent control* as well. Visit www.dummies.com/extras/landlordlegalkit and click on the bonus chapter for guidance on setting rents.
- ✓ **Due date:** We recommend having all residents pay the rent in full on the first of the month. If the resident moves in on a day other than the first, then you collect the first month's rent in full and then prorate the second rent payment. This way you collect more money up-front and minimize your risk that your tenant will gain possession of your rental property by just paying you a nominal amount of rent.
- ✓ **Payment form:** This may be cash, check, money order, cashier's check, or online/electronic payment, depending on what you're willing to accept.
- ✓ **Late payments and penalties:** Specify when payments are considered late; for example, "Payments received more than five (5) days after the first of the month are considered late payments." Also specify a penalty, perhaps a 5 percent late fee when the payment is past due.
- ✓ **Penalties for bounced checks:** Penalties may include a flat fee to cover the fee your bank charges you plus a little extra for your time, inconvenience, and aggravation. You may also want to specify that if a certain number of checks bounce, the resident loses the privilege to pay with a personal check.
- ✓ **Penalties for missed payments:** The penalty for missed payments is usually that the resident is required to move out for breach of contract, but you need to specify what a missed payment is; for example, if you haven't received it within 15 days of the due date.

For more about legal issues regarding rent collection and rent control, see Chapter 7.

Screening applicants

Carefully screening applicants is essential to keep your rental units occupied with residents who pay on time, take care of the property, and get along with their neighbors. Careful screening can help you avoid legal issues, because you have less need to take legal action against good residents, and they're less likely to file legal claims against you. To screen applicants, take the following steps:



1. **Have the person complete and submit an application that includes her name, current address, Social Security number, employment history, rental history, income, and so on.**

Visit www.dummies.com/go/landlordlegalkit and click on the Leasing folder for a sample application.

2. **Order a credit and background check for the prospective resident.**

You can find several services online that perform credit and background checks. Your application should include language stating that the applicant agrees to a credit and background check.

3. **Contact the applicant's employer to verify the applicant's employment and income and find out how long the applicant has been employed there.**

You may also want to require copies of pay stubs, recent W-2s and 1099s, the previous year's tax return, and a recent bank statement.

4. **Contact the applicant's personal references.**

5. **Contact any landlords the applicant rented from in the past and ask about payment history, the condition the applicant left the property in, and whether the applicant caused problems with her neighbors.**

6. **Interview the applicant in person.**

Ask why the person is moving and why she chose this area. Ask questions related to information you gathered in previous steps to determine whether what the applicant tells you matches up with what you already know. Inconsistencies can be a red flag.



When screening prospective renters, you must comply with fair housing laws, so certain questions are off-limits. You can gather information about a prospect's employment status, income, credit history, housing history, and criminal past, but you're prohibited from asking an applicant whether she has children, what country she's from, her religion, and so forth. For additional details on how to screen applicants, see Chapter 8.

Drafting a lease or rental agreement

Your rental contract (either the lease or month-to-month rental agreement) establishes the terms that you and your resident agree to, including who's going to be living in the unit and paying rent and for how long, the rent amount and when it's due, the security deposit amount and what it can be used for, your obligations, the resident's obligations, whether pets are allowed and under what conditions, and so on.



We recommend that you start with an existing lease and then modify it to suit your specific needs. You can obtain a sample lease by doing any of the following:

- ✔ Visit www.dummies.com/go/landlordlegalkit and click on the Rental Contract folder. In Chapter 9, we explain the terms of this lease and modifications you may want to consider.
- ✔ Search the web for your state followed by “lease” or “rental agreement.” Sometimes attorneys or property management companies post the lease or rental agreement they use.
- ✔ Ask a reputable local attorney who specializes in landlord-tenant law or real estate for a copy of a residential lease and a residential rental agreement. You may be able to obtain the lease for free or for a modest fee.
- ✔ Use an online legal service, such as www.rocketlawyer.com to obtain a state-specific lease or rental agreement. (Many of these services advertise “free lease.” The hook is that they lead you through a long process of creating a rental contract and then require that you sign up for the service and provide credit card information. You may be able to sign up for a free week or month of the service to get the contracts you need and then cancel the service.)
- ✔ Contact your local affiliate of the National Apartment Association (NAA) or a similar rental industry group about membership. They often have comprehensive, up-to-date legal forms that comply with all applicable laws for your area available for their members at a reasonable cost.

Managing security deposits

Prior to when a resident moves in, you need to collect the first month’s rent (or prorated rent) along with a *security deposit* — a lump sum that you hold until the resident moves out in order to cover the cost of any unpaid rent and damages (beyond ordinary wear and tear). As we explain in Chapter 10, you should have a security deposit policy in place that specifies the following:

- ✔ **Amount:** Usually no more than the equivalent of one- or two-month’s rent. Some states and municipalities have specific limits.
- ✔ **Due date:** Usually due at the signing of the rental contract.
- ✔ **Allowed uses:** State and local laws usually allow landlords to use security deposits only to cover unpaid rent, damages to the unit beyond ordinary wear and tear, cleaning expenses (only to make the unit as clean as it was when the resident moved in), and to restore or replace damaged or missing property, including keys and appliances furnished with the unit.