

# Landlord/Tenant: Reinvent Your Residential Lease & Attorney Recommended Best Practices



Leave with a better lease than you are using today – guaranteed!

- **Instructor**

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- **AGENDA**

- Download handout
- BONUS Information at: <http://www.caslerlawoffice.com/Hogan/>
- Recent changes in the Landlord/Tenant Act
- Legal requirements for ALL Arizona residential rental agreements
- Where to get a “good” Arizona residential rental agreement
- How to improve your existing Arizona residential rental agreement
- Common landlord/tenant problems, solutions, and “best practices”
- Questions

- **ADRE Requirements**

- Each student must attend at least 50 minutes of instruction for each hour of credit awarded for all live continuing education courses. See A.R.S. §§ 32-2124.B, 32-2124.C, 32-2130.A; A.A.C., R4-28-101(5), R4-28-402; Substantive Policy Statements, Numbers 2005.02 and 2010.02.
- At the conclusion of this course, each attendee will know how to improve their residential rental agreement and practical information that will make being a landlord and/or a property manager easier and more profitable.

- Arizona residential landlord/tenant law
  - Caution: may not apply in any other state

- "Lease" versus "Rental Agreement"

- Arizona Residential Landlord and Tenant Act - the "Act"

[A.R.S. Section 33-1310\(12\)](#)

12. "Rental agreement" means all agreements, written, oral or implied by law, and valid rules and regulations adopted under section 33-1342 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

- **Course Promise: Leave with a better lease than you are using today – guaranteed!**

- **Interest on judgment:**

- a. Pre-judgment interest

- b. Post-judgment interest

- How to access Arizona statutes: <http://www.azleg.gov/>

- The interest a judgment accrues is set by statute: [ARS Sec. 44-1201.](#)

- Link for the prime rate: [1% + Bank Prime Loan: http://www.federalreserve.gov/Releases/H15/current/](http://www.federalreserve.gov/Releases/H15/current/)

[ARS Sec. 44-1201](#)

A. Interest on any loan, indebtedness or other obligation shall be at the rate of ten per cent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to. Interest on any judgment that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of interest not in excess of the maximum permitted by law shall be at the rate of interest provided in the agreement and shall be specified in the judgment.

B. Unless specifically provided for in statute or a different rate is contracted for in writing, interest on any judgment shall be at the lesser of ten per cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any publication that may supersede it on the date that the judgment is entered. The judgment shall state the applicable interest rate and it shall not change after it is entered.

▣ Add this language to your Lease:

"Pre-judgment and post-judgment interest on amounts owed by tenant to landlord under this agreement shall be at the rate of eighteen percent (18%) interest per annum."

• **Hourly fee for landlord's labor**

☑ Add this provision to your lease:

"In the event Tenant vacates the Premises without performing cleaning, maintenance and/or repairs that are Tenant's responsibility, then Landlord shall have the option to: (a) hire a licensed or unlicensed person(s) or company to perform the task and Landlord may then bill Tenant for the cost thereof and/or deduct the cost from the Deposit or (b) Landlord, if willing and able to do the task, may do all or part of the work and may charge Tenant \$35.00 per hour or, if more, an hourly rate equal to that charged by other persons or companies for the same type of work."

[A.R.S. Section 33-1314](#)

33-1314. Terms and conditions of rental agreement

A. The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or any other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

[A.R.S. Section 33-1315](#)

33-1315. Prohibited provisions in rental agreements

A. A rental agreement shall not provide that the tenant does any of the following:

1. Agrees to waive or to forego rights or remedies under this chapter.
2. Agrees to 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 and except that a prevailing party in a contested forcible detainer action is eligible to be awarded attorney fees pursuant to section 12-341.01 regardless of whether the rental agreement provides for such an award.
3. 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.
4. Agrees to 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.
5. Agrees to 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.

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 by the landlord to be prohibited, the tenant may recover actual damages sustained by the tenant and not more than two months' periodic rent.

C. This section does not limit the landlord's right to evict a tenant pursuant to section 33-1368.

- **Notice fees**

- ▣ Add this provision to your lease:

- "**Notice Fees.** In the event Tenant fails to pay Rent when due and Landlord issues a Five-Day Notice to Pay or Quit, Tenant shall be charged a Notice Fee in the amount of **\$50.00** to cover preparation thereof. A Notice Fee may also be charged for providing notice of any noncompliance or breach and for any notice required by law to be provided to Tenant."

- **Dailey late fee**

- **Missed appointment fee**

- ▣ Add this provision to your lease:

- "**Missed Appointment Fee.** In the event an appointment is scheduled whereby the Landlord, a person acting on behalf of the Landlord, and/or a repairman is to meet You at the Premises or some other location and You fail to appear for the appointment within fifteen minutes of the scheduled time, then (and in addition to any other applicable fees) Tenant shall be charged a Missed Appointment Fee equal to \$50.00 plus any amount charged by the repairman and/or the person acting on behalf of the Landlord, and is collectable as Rent."

- **What is reasonable?**

- **Full replacement cost**

- ▣ Add this provision to your lease:

- "**Repairs and property damage.** In the event Tenant is responsible for repairs and/or property damage, Tenant shall be responsible for the full repair and/or replacement cost and shall not pay a depreciated or pro-rated amount, regardless of the age or condition of the damaged/repaired item."

- **Best Practices:**

- 48-Hour Notice

- [A.R.S. Section 33-1315](#)

- D. The landlord shall not abuse the right to access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of the landlord's intent to enter and enter only at reasonable times.

- How to handle a tenant applicant who wants to give a “deposit” to “hold” rental unit?
  - [Rental Hold Agreement](#)
  
- How to serve notice on tenant?
  - Certified mail, personal service
  - Posting, regular mail, email
  - Other?????
  
- 14 Days to return refundable deposits to tenant
  - 14 calendar or business days
  - When do 14 days start?
  
- What requests for repairs can landlord ignore?
  
- What is better: abandonment or eviction?
  
- What are “Landlord’s Rules and Regulations?”
  - [A.R.S. Section 33-1342](#) - Go to Handout 2 for full text
  
- Who signs lease first? Landlord or Tenant
  
- Never let tenant take possession of rental unit until?
  
- Tenant wants to rent your property and brings a lease for landlord to sign
  
- Tenant wants to take care of pool
  - Tenant wants to work in exchange for all or part of monthly rent
  
- What to say/do if current tenant, tenant applicant, or authorized occupant asks if they can have a Service Animal or Assistance Animal?

- Lease with option; option to what?
  - Lease agreement, separate option agreement, Cross-default provisions in both agreements
  - Option to Purchase form attached to Handout 2
  - Attach a COMPLETED but NOT signed purchase contract
    - Neither party should sign purchase contract; make it IMPOSSIBLE to sign
- Lease with option to purchase **versus** Lease/Purchase
  - Which is best for owner/landlord?
- **Asset Protection:** Transfer of real estate from individual to LLC
  - Considerations
    - Lender
    - Title insurance
  - Correct or not correct?
    - Quit Claim Deed from person to LLC (commonly done)

[A.R.S. Section 44-1004](#)

A. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation under any of the following:

...

2. Without receiving a reasonably equivalent value in exchange for the transfer or obligation...

- Correct or not correct?
  - Purchase contract, promissory note, and deed
  - Master lease and sub-lease
- **Tenant Screening** - the single most important task landlord performs
  - Look for reasons to eliminate applicant
    - First cut: Tenant Application

Tenant Screening (continued)

- Second cut: Tenant Information Sheet
  - Get DOB, SSAN, driver's license number
  - Get all the info you can before tenant signs lease (SSAN, DOB, driver's license, bank, employer, vehicles descriptions and license plate numbers)
  - If possible, see Tenant Applicant's current residence
  
- Tenant Screening - **Red Flags**
  - Pay deposit in payments
  - Didn't drive
  - Asks questions about late fees, grace periods, etc.
  - Needs to move in immediately
  - Wants to pay in cash
  
- Is there a law that allows tenant to get out of lease?
  
- Short-Term Rental Agreements
  - VRBO, AirBnb, HomeAway, FlipKey
  - DON'T use AAR Lease or any other lease drafted for tenancy subject to the Act
  - Whether or not you can enter into a short-term rental agreement depends on:
    - Facts about rental property
    - Facts about the owner
    - The short-term rental agreement for that is used
    - [More information](#)
  
- Many different landlord/tenant statutes in Arizona
  - A.R.S. §33-1301, et seq. (residential landlord/tenant statutes)
  - A.R.S. §33-301, et seq. (non-residential landlord/tenant statutes)
  - A.R.S. §33-1401, et seq. (mobile home landlord/tenant statutes)
  - A.R.S. §33-1901, et seq. (slumlord statutes)
  - A.R.S. §33-1701, et seq. (self-service storage unit statutes)
  - A.R.S. §33-2101, et seq. (recreational vehicle long-term rental space statutes)
  - A.R.S. §12-1171, et seq. (forcible detainer)
  - A.R.S. §12-991, et seq. (abatement of crime property statutes)

(Note: et seq. (Latin) – abbreviation for et sequentes, meaning: and those sections that follow)

- This course only applies to Arizona Residential Landlord and Tenant Act (the "Act")
  - "This chapter shall apply to the rental of dwelling units." ([33-1304](#))
    - Rental
    - Dwelling unit
  - Where does it apply? The entire state of Arizona. ([33-1307](#))
    - Exclusions from Act ([33-1308](#))
  - How to find Act online: [www.AZLEG.gov](http://www.AZLEG.gov)
    - Title 33, Property
    - Chapter 10, starting with 33-1301
    - The ACT goes from 33-1301 to 33-1381
    - Download Act, commercial statutes, the slum lord statutes, and the forcible detainer statutes, then go to my website: <http://www.caslerlawoffice.com/Hogan/>
- **Changes in the law**
  - Section [33-1378](#) was added.  
A.R.S. Sec. [33-1378](#). Removal of guest  
A person who is a guest of a tenant who is not named on a written lease and who remains on the premises without the permission of the tenant or the landlord is not a lawful tenant and that person's presence in or on the premises does not constitute residency or tenancy. A person who knowingly remains on the premises without the permission of the tenant or the landlord may be removed by a law enforcement officer at the request of the tenant or the landlord who is entitled to possession of the premises.
  - Section [33-1322](#) amended to say: "landlord shall inform the tenant in writing that the Arizona residential landlord and tenant act is available on the Arizona department of housing's website."
    - If your rental agreement form is dated before 2013, then it MUST be replaced.
  - Section [33-1331](#) amended and added that if the property goes into foreclosure during tenancy, the landlord must give a written notice to existing tenant(s).



- Foreclosure terminates lease
  - “Protecting Tenants at Foreclosure Act” in 2009
  - Expired December 31, 2014
  - May 2018, Protecting Tenants at Foreclosure Act reinstated with NO expiration date
  
- Changes in LL/T Act: January 10, 2018 versus May 17, 2018
  - Complete comparison in PDF form here: <http://www.caslerlawoffice.com/hogan/>
  - Most changes merely word changes\
  
- BIG changes regarding Tenant’s personal property after eviction or abandonment.  
Previously:
  - Landlord had to hold tenant’s property for 21 days after eviction (33-1368.E)
  - Landlord had to hold tenant’s property for 10 days after abandonment (33-1370.E)
  - NOW both are 14 days (33-1370.F)
  
- Landlord still has to:
  - Do an inventory
  - Take reasonable care of it
  - Store it in the rental unit, another unit, or a storage facility
  
- Tenant still has to:
  - Give landlord written notice s/he wants to recover the personal property
  - Pay for moving and storage, BUT NOT anything else (same as before)
  
- Landlord can donate or sell personal property
  
- Landlord can IMMEDIATELY dispose of plants, animals, and perishable items
  
- If tenant gives landlord keys, landlord can dispose of all personal property left behind
  - No holding period and no notice required
  
- Landlord goals:
  - Get the most money, with the least amount of work, and avoid litigation

- Where to get a “good” lease form
  - NOT from Internet, office supply, or ANY form that says it valid in all 50 states
  - Custom-drafted by Arizona landlord/tenant attorney
  - FREE Lease form: here: <http://www.caslerlawoffice.com/Hogan/>
  - AAR lease form (must be a member of AAR)
  
- What **MUST** be in Arizona lease?
  - Must disclose name and address of owner or owner’s agent. ([33-1322.A.2](#))
  - Must inform the tenant in writing that the Act is available on the Arizona Department of Housing’s website. ([33-1322.B](#))
  - All blank spaces must be filled in. ([33-1322.E](#))
  - Must include specific language that allows landlord to raise the rent during a fixed term lease if the rental tax increases during the term of the lease. ([33-1314.E](#))
  - Must give notice that property is in an HOA.
  
- Things Arizona landlord **MUST DO**:
  - EVERY residential rental property owner must register their property with the county assessor. ([33-1902](#))
  - Out-of-state landlord must have an in-state statutory agent. ([33-1902.B](#))
    - What is a statutory agent? <http://www.arizonastatutoryagentservices.com/Landlord-Information>
    - Where to get a statutory agent: <http://www.arizonastatutoryagentservices.com/Landlord-Information>
  - Landlord must deliver a signed copy of written rental agreement to tenant ([33-1321.C](#))
  - Landlord must give the tenant a move-in inspection form ([33-1321.C](#))
  - **IF** the tenant makes a request, then landlord must provide the tenant with notice of the date/time of the move-out inspection. ([33-1321.C](#))
- ▣ You may want to add this language to your move-out inspection form:

“Move-out form. Every effort has been made to document all issues with the Premises at the time of the move-out inspection, but some latent issues (e.g., issues with appliances, plumbing, electrical, sprinklers, etc.) may be discovered after the move-out inspection and, therefore, Landlord reserves the right to amend the move-out inspection if warranted.”

- Things Arizona landlord **MUST do BUT ONLY IF they apply**:
  - If you have a property manager, then you must disclosure name and address of property manager. ([33-1322](#))
  - If you collect nonrefundable fees/charges, such as: (1) cleaning fee, (2) redecorating fee, (3) pet fee, (4) application fee, etc., then:
    - Lease must clearly state that the fee/charge is nonrefundable.
    - Lease must state the **purpose** of the fee/charge. ([33-1321.B](#))

Example:

“The nonrefundable Cleaning Fee is for additional cleaning performed by Landlord after Tenant vacates, including: replacing A/C filters; sanitizing the kitchen, bathrooms and/or appliances; and general cleaning of the rental unit. The cleaning fee, however, does not relieve Tenant of Tenant's obligation to leave the Premises clean and free of debris at the end of tenancy.”

- If tenancy is for **more than one year**, then the rental agreement must be in writing or it is not enforceable. ([44-101.6](#))
    - If lease cannot be **fully performed within one year**, then lease must be in writing. ([44-101.6](#))
  - If the owner of the property has an Arizona real estate salesperson or broker license, then the owner must provide “written notice” that the owner is an Arizona real estate licensee.
    - The same applies if the owner is a corporation and any corporate officer or shareholder has a real estate license.
    - The same applies if the owner is an LLC and any manager or member has a real estate license.
- Arizona Administrative Code: <http://www.azsos.gov/rules/arizona-administrative-code>
- Professions and Occupations.
  - State Real Estate Department
  - Real Estate Department Commissioner’s Rules, Rule R4-28-1101(E).
- If the landlord is a real estate broker OR if the lease is written by a real estate broker, then the lease must state the type of earnest money received from the tenant. ([32-2151.01.C](#))

- If the rental property has (or has access to) a private pool, community pool, or spa, then landlord must give the tenant a copy of the pool safety notice required by state law. ([36-1681](#))
    - Where can you get this notice? At least 2 places:
      - Az Department of Health Services:  
<http://www.azdhs.gov/preparedness/epidemiology-disease-control/environmental-health/index.php#residential-pool-safety>
      - Casler Law Office: <http://www.caslerlawoffice.com/Hogan/>
  - If the property was built before 1978, then the landlord must give the tenant the federal lead based paint lease addendum and pamphlet.
    - Federal law, see 42 U.S.C. § 4852d (1994); 40 C.F.R. 745 (2001).
    - Link to lease addendum: [http://www2.epa.gov/sites/production/files/documents/lesr\\_eng.pdf](http://www2.epa.gov/sites/production/files/documents/lesr_eng.pdf)
    - Link to pamphlet: [http://www2.epa.gov/sites/production/files/2013-09/documents/lead\\_in\\_your\\_home\\_brochure\\_land\\_color\\_508.pdf](http://www2.epa.gov/sites/production/files/2013-09/documents/lead_in_your_home_brochure_land_color_508.pdf)
  - If the property IS NOT a single family home ("SFH"), then the landlord must give notice and specific information about bed bugs.
    - What is "not a single family home?"
      - Duplex, triplex, 4-plex, or any other multi-family apartment complex.
    - If NOT SFH, then landlord must provide educational materials.
  - ▣ IF you rent out "apartments," add this provision to your lease:  
"Pursuant to A.R.S. § 33-1319(A), Tenant may obtain information about bedbugs at:  
<https://www.epa.gov/bedbugs>, <https://www.cdc.gov/parasites/bedbugs>,  
[https://en.wikipedia.org/wiki/Bed\\_bug](https://en.wikipedia.org/wiki/Bed_bug)."
  - Note: if a current bedbug infestation exists, Landlord cannot enter into a rental agreement until the infestation is eliminated.
- If the property is in foreclosure at the time the lease is signed, the landlord must include a specific notice about the rental property being in foreclosure. ([33-1331](#))
  - If the property goes into foreclosure after the lease is signed, then the landlord must give the written disclosure required by this statute within 5 days.
- If the landlord wishes to assess and collect a late fee, the late fee must be stated in the rental agreement **and** must be "reasonable." ([33-1368.B](#))
  - What is a "reasonable" late fee?

- **CANNOT be in the lease**

- Act/Statute ([33-1315](#)) says landlord CANNOT:
  - Require tenant to waive or forego any rights or remedies in the Act.
  - Require tenant to pay attorney's fees, except for a provision stating that the prevailing party in litigation is entitled to attorney's fees.
  - "Exculpation or limitation of any liability," which means you cannot have provisions that eliminate the Landlord's liability for dangerous condition.
  - Require tenant to indemnify landlord for landlord's liability, which is another way of saying you the landlord cannot include a provision that eliminates or reduces the landlord's liability.
    - Can't disclaim liability for pool.
    - Pool barrier laws: [www.aaronline.com/documents/pool\\_contacts.aspx](http://www.aaronline.com/documents/pool_contacts.aspx)
  - Force tenant Lease to waive or limit the Tenant's right to summon police or emergency services.
  - Evict the tenant for summoning the police or emergency services
  - Charge tenant for summoning police or emergency services

- Things a landlord **cannot DO**

- Cannot collect more than 1.5 month's rent as "security". ([33-1321](#))
  - "deposit" versus "fee" or "charge"
  - "Security" means "money or property given to assure payment or performance." ([33-1310.14](#))
  - "Security" **INCLUDES ALL DEPOSITS**
  - Best practice is to collect only one deposit: a security deposit
- Quickest way to remove troublesome tenant
- Cannot turn off Tenant's utilities.
  - 2 Statutes: [33-1374](#) and [33-1364](#)
  - Tenant can sue for damages under [33-1364](#) and tenant WILL win.
  - Tenant can also get damages under [33-1367](#)
    - Tenant can sue for the GREATER of 2x actual damages or 2 month's rent
  - Utilities can be turned off ONLY after a Writ of Restitution is served by the constable upon the tenant and then only by the utility company.

- Cannot can't lock tenant out of property. ([33-1374](#))
  - Cannot do anything that is the equivalent to locking the tenant out, such as removing the front door.
  
- Cannot retaliate against tenant because tenant made a complaint. ([33-1381](#))
  - "Retaliate" means you raise the rent, or decrease services to the property, or file an eviction.
  - You cannot retaliate if the tenant has done any of these things:
    - Made a complaint about the rental property to a governmental agency
    - Made a complaint about the property to the landlord
    - Has joined any type of tenant's union
  - What happens if the Landlord does retaliate?
    - Tenant can sue for 2 months rent under [33-1367](#)
  - If the landlord tries to evict the tenant within 6 months after the tenant has done one of the above, then Act says the landlord's eviction action is **PRESUMED** to be a retaliation against the tenant.
    - "Presumed" means the court must conclude that the Landlord has retaliated against the tenant, **UNLESS** the Landlord can prove otherwise.
      - 2 Exceptions:
        - the tenants, occupants, or guests have caused the problem that the tenant is complaining about.
        - An eviction for nonpayment of rent.
  
- Provisions that **SHOULD** be included in the lease (already covered):
  - "Default rate of interest" provision
  - Hourly fee for landlord's work to repair and/or clean property after tenant vacates
  - "Notice Fee" whenever the landlord must send a tenant default notice
  - Daily late fee
    - When should late fee start?
    - When can you issue a 5-Day Notice?
  - "Missed Appointment Fee"
  - Full replacement cost provision for items damaged/destroyed/stolen by tenant

- Provisions that **SHOULD** be included in the lease (not yet covered):
  - Should be written.
  - Should be comprehensive.
  - Should include a returned check fee
  - Should include a "drive by fee."
  - If the rental property is in an HOA, the Lease should include a provision regarding HOA rules and payment of HOA fines.
    - Give tenant copy of CC&R's, HOA rules, etc.

Example:

The Premises are part of and subject to a Homeowners Association ("HOA") and use of the Premises is restricted by the Covenant, Conditions and Restrictions ("CC&R's"), Articles of Incorporation, Bylaws, and any HOA rules and regulations (collectively referred to in this paragraph as "HOA Rules") adopted by the HOA. Tenant's signature below acknowledges receipt of a copy of the HOA Rules. HOA Rules may prohibit: parking Vehicles on the street, overnight parking of Vehicles on the street and/or in the driveway, adding or removing trees and/or plants in the front yard, failing to maintain the front yard, and/or storing personal property in the front yard (i.e., potted plants, fountains, yard monuments, etc.). Tenant agrees to comply with and abide by the HOA Rules and to pay upon demand all fines and fees incurred by Landlord for any/all violations of the HOA Rules. Landlord shall pay for the periodic HOA dues/fees.

- Should provide for disposal of personal property after abandonment.  
No longer needed.
  - Should include an attorney's fees provision.
    - Attorney's fees "may" be awarded in contested contract action. ([12-341.01](#))
- ▣ Add this provision to your lease:

"Landlord and Tenant agree that the prevailing party in any dispute or litigation arising out of: (a) this Agreement, (b) attempts to enforce this Agreement, and/or (c) any controversy arising between the parties hereto, whether or not related to this Agreement, shall be entitled to reimbursement of or, if appropriate, an award of: reasonable attorneys' fees; litigation expenses (including, but not limited to, travel expenses for Landlord, Manager and/or property manager to appear in court, copying charges, delivery fees, expert witness fees); out-of-pocket expenses of every kind; and court costs incurred prior to trial, during trial, post-judgment and/or on appeal, without regard to whether or not the matter is/was contested. In addition, Landlord shall be entitled to recover all costs of collection, including collection agency fees (including contingency fees and/or a percentage of fees recovered), and

all expenses related to recording a judgment, creating, recording and/or releasing lien notices, and/or related to collection or enforcement of any judgment, order or award. The award of attorney's fees, costs and expenses (above), if made by a court of law, shall in all cases be made by the court and not a jury."

- Should allow landlord to recover "other expenses" incurred as a result of tenant default, such as litigation expenses that would not otherwise be recoverable.
- Should clearly state the maintenance responsibilities of the tenant and landlord.
  - Outside: yard, bushes, trees, swimming pools
  - Inside: light bulbs, A/C filters, other filters, pest control
- Should provide for regular inspections.

▣ Add this provision to your lease:

"Landlord may enter the Premises as provided by law and to inspect, which may include taking photographs, video or other recordings, and may occur as frequently as once per month. Tenant agrees that Landlord may place one or more "for rent" and/ or "for sale" (or similar) signs in and/or on the Premises during the last ninety days of tenancy."

- Should define "normal wear and tear".

Example language:

"Normal wear and tear is the natural and gradual deterioration that occurs when the Premises are used as a residence. Normal wear and tear does not include excessive and/or abusive use, misuse, negligence, carelessness, accident, criminal damage, vandalism, or theft, whether caused by Tenant, Occupants, guests, invitees, third-parties and/or trespassers. Normal wear and tear does not include holes (pinholes, nail holes, or otherwise), gouges, scratches, stains, burns, and/or damage of any kind in the ceiling, walls, doors, floor coverings, and/or appliances."



- Should provide how partial payments will be applied.
  - Landlord does not have to accept a partial payment. ([33-1371](#)).

**Example: Tenant owes:**

\$1,000	for rent for January
\$50	for a bounced check in January
\$200	for late fees in January
\$1,000	for rent in February
\$200	for late fees in February
\$50	for a notice fee for a notice sent on February 27
<u>\$2,500</u>	Total owed by tenant

\$1,600 paid by tenant on February 28

**Correct order:**

- 1 \$200 January late fees
  - 2 \$200 February late fees
  - 3 \$50 notice fee
  - 4 \$50 bounced check fee
  - 5 \$1,000 to the January rent
  - 6 \$100 toward the \$1,000 February rent
- Tenant still owes balance of \$900

- ▣ Add this provision to your lease:

"Landlord may, but is not obligated, to accept less than the full amount of Rent due. By accepting less than the full amount due, Landlord does not waive any legal rights, including, but not limited to, Landlord's right to the total amount due under This Agreement and the right to file an action for possession. When less than the full amount due is tendered and accepted, payment shall be applied: first, to legal fees and court costs, then to accrued interest on any amounts owed to Landlord, then to amounts owed for damages to the Premises, then to Late Fees, then to Notice Fees, then to any other amounts owed by Tenant to Landlord, then to unpaid past due rent and, finally, to prepaid rent."

- Should have a rent concession recapture provision

- ▣ Add this provision to your lease:

"Concession Recapture. If tenancy is terminated by Landlord, Tenant or operation of law before the end of the Term and Tenant has received a rent concession, then Tenant shall remit payment of all rent concessions and Landlord may recapture all rent concession in an eviction action, civil action or from the Deposit."

- Should have a jury trial waiver
  - ▣ Add this provision to your lease:

“To minimize delay and to reduce the cost of potential litigation, the parties hereby agree to waive their right to a trial by jury. The parties hereto understand that they are entitled to a jury trial for claims arising out of this Rental Agreement and/or the Arizona Residential Landlord and Tenant Act, but knowingly and voluntarily waive this right. This provision shall survive termination hereof.”
- Should have a Lease Guaranty form.

**(Other) BEST PRACTICES**

- Should you allow pets?
- Should you allow tenants who smoke?
- What to do with a tenant who is constantly late with the rent.
  - If tenant pays the rent and other amounts, then Act requires landlord to accept the payment and reinstate the rental agreement. ([33-1368.B](#))
  - Issue a 5-Day Notice to Pay or Quit AND also serve a 30-Day Notice of Termination.
    - Only works if your tenant is on a mo/mo tenancy.
- What is the difference between mo/mo tenancy and a fixed term lease?
  - Why do you offer a fixed term lease?
- Call your attorney BEFORE you get your self into trouble.
  - Put an attorney “on retainer” now
- How do you get an existing tenant to sign a new lease?
  - If fixed-term tenant, must wait until the current term ends.
    - Send 30 or 60 day notice of termination, new lease, and a letter
  - If mo/mo, then same thing.