



# THE LANDLORD ACADEMY

## QUESTIONS AND ANSWERS

Provided by Attorney, John E. McMillan

**1. Does a rental applicant have a right to cancel and get a deposit refund within 72 hours?**

No. Only if the application says he does. If it is management's intention, the application should state that the deposit will not be refunded if the applicant is approved. Management has a duty to expeditiously process the application.

**2. Does a resident have the right to break his lease if he has a job transfer or change?**

No. Only if the lease grants that right or the resident is in the military. F.S. 83.682 gives a service member the right to terminate upon transfer more than 35 miles from the rental premises or upon receiving orders to move into government quarters. At least a 30-day notice and proof is required.

**3. Does a person entering the military from civilian status have the right to terminate a lease?**

Yes. This right for those entering active military service is given by the federal law. Written notice must be given to the landlord and the earliest termination date is generally the last day of the month following the month in which written notice is given

**4. If one tenant qualifies to rent an apartment alone and has a proposed "unqualified" roommate, and you are willing to let the unqualified person occupy the apartment, should he be included as a tenant or just an authorized occupant?**

He should sign the lease as a tenant. Since all tenants on a well written lease are responsible individually for the full amount due, there would be no reduction in the liability of the qualified tenant, and there is the additional possibility of collecting any unpaid sums from the "unqualified" tenant. All persons over 17 who occupy an apartment should be obligated to comply with all provisions of the lease including payment of rent. This is accomplished by naming them as tenants and having them sign the lease.

**5. If a person is guarantying payment of a lease, but not occupying the premises, should he sign the lease as a "co-signor?"**

No. Only persons who will occupy the premises should sign the lease. Someone guarantying payment should sign a separate lease guaranty form. It should be notarized (acknowledged in the presence of a notary public) if not signed in the presence of a management representative. The guarantor's identification should be verified by management if signed in the presence of management.

**6. Is there any requirement to put the duration of a lease (for example 10 months and 11 days) in a lease?**

No. It is probably best just to put the beginning date and ending date to avoid calculation errors.

**7. Is there any requirement to put the total rent to be collected for the entire lease term in the lease?** No. Only the periodic (normally monthly) payment amount is necessary. Putting the total may lead to calculation errors.

**8. Can the beginning date of a lease be different from the day it is signed?**

Yes. For example, a lease could be signed on June 15 and have a beginning date of July 1. It is best to have the lease signed by all parties as soon as possible after approval. Until the lease is fully executed, the tenant only has his deposit at risk. The tenant should promptly be given a copy of the fully executed lease.

**9. Can I refuse to rent to adults between, say, 18 and 25-years-old without children because I think they are more trouble than older adults?**

Yes, unless your city or county has an ordinance prohibiting age discrimination. Some local jurisdictions (such as Tampa and Hillsborough County) do prohibit age discrimination. Federal law prohibits discriminating against families with children under 18 but does not protect other age groups. You cannot refuse to rent to young adults with children because of age (of the adults or children) if they otherwise qualify.

**10. If I rent one bedroom apartments to two adults, can I refuse to rent to a qualified man and a 17-year-old girl over whom he has custody?**

No. You must rent if he qualifies. This qualifies as familial status under the federal Civil Rights Act and you cannot impose your moral judgment.

**11. Can I give rental discounts to old people?**

No. This would be considered by fair housing agencies to be discrimination against families with children. It is also age discrimination which is outlawed in some communities. This does not apply to qualified housing for persons 55 and over.

**12. If a tenant is evicted, can he be held liable for rent for remainder of lease term?**

Yes, or until apartment is re-rented, whichever is sooner. See F.S. 83.595. Early termination agreements could override the statute, but an early termination option in a lease applies only if the tenant elects to use it. That is, it could not be applied, for example, to a "skip".

**13. Can late charges be included in 3-day notice amount due?**

Only if lease says that late charges are "additional rent." The same applies to other charges such as for returned checks. If a judge determines the charges to be unconscionable, he or she may refuse to enforce the notice or even the entire lease.

**14. Can a tenant's improperly parked or unlicensed vehicle be towed?**

Only if the lease gives management this right. Otherwise the only remedy is a 7-day curative notice. A tow company should never be allowed to decide which vehicles to tow. See F.S. 715.111.

**15. Can commissions be paid to leasing agents or referral fees paid to others.**

No, according to the Florida Real Estate Commission. It says that you must have a real estate license (and thus be a part of its empire) to receive even nominal commissions or referral fees for apartment leases. A referral fee of not more than \$50.00 can be paid to a tenant of the apartment community. See F.S. 475.011.

**16. When must sales tax be collected?**

Unless a lease is longer than 6 months for continuous residence or the person has been a continuous resident for longer than 6 months, the landlord must collect sales tax (including any additional taxes which apply only to hotels and motels) on rental payments and then remit the tax to the Florida Department of Revenue. Any landlord liable for collecting sales tax must obtain a tax number from the Florida Department of Revenue. Most "Corporate" leases probably are not

sales tax exempt regardless of term because they are generally not for continuous residence by one person, family, or group of persons. See F.S. 212.03

**17. Must all leases be in writing?**

No. Probably all should be, but only those longer than one year must be. Although it has not been a big litigation issue, Florida Statute 689.01 requires that leases longer than one year be signed by the grantor (landlord) in the presence of two subscribing witnesses.