

# **LOUISIANA LANDLORD and TENANT LAW 101**

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Lafayette Bar Association

**2012 CLE by the Hour**

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## INTRODUCTION

Acadiana Legal Service Corporation

1. Private, non-profit law firm
2. Free legal help in non-criminal cases
3. For low-income persons and those 60 and older

## I. THE LEASE

A. It is a contract

1. Oral or written (C.C. 2681)
2. Creates rights in the parties
3. Cancellation is not favored and is subject to judicial control  
*Housing Authority of Lake Charles v. Minor*, 355 So. 2d 271 (La. App. 3d Cir. 1977), writ refused 355 So. 2d 1323 (La. 1978);
4. Termination
  - a. Ends at expiration of term (C.C. 2720)
  - b. Ends upon total destruction of property (C.C. 2714)
  - c. Does not automatically end on death of a party (C.C. 2717)
  - d. Lease does not end by unilateral declaration of one of the parties
  - e. Either party can seek judicial dissolution (C.C. 2719)

B. The two parties must abide by the lease terms and:

1. Local laws/housing codes
2. State law
3. Federal statutes/regulations (especially subsidized housing)

C. Recordation is needed to affect third parties (sale of rental property) (R.S. 9:2721, C.C. 2681)

D. Recondition (Automatic renewal of leases)

1. "Automatic", month to month, if lessee remains in possession (C.C. 2723)  
*Misse v. Dronet*, 493 So. 2d 271 (La. App. 3d Cir. 1986)
2. Presumption only - subject to rebuttal
3. Lessee's lease cancellation rights
  - a. Month to month lease - 10 days prior to end of month (C.C. 2728)
  - b. Lease terms may vary time or method required
  - c. Must have recognized reason (see II.C.4. below)

E. May be modified by operation of State and Federal laws or by custom of the parties

## II. PARTIES' RIGHTS AND OBLIGATIONS

A. Lessor's Rights

1. Rent or Possession, not both
  - a. Remember the nature of the lease
  - b. Lessor may not take the rent and get possession  
Exceptions
    - i. the money the lessor gets in subsidy is not rent (R.S. 9:3259.2)
    - ii. "Other charges" and damages are not rent
  - c. Can accelerate remaining rent due and leave tenant in possession
  - d. May demand money in ordinary process (but not in a summary eviction rule)

2. Receipt of rent
    - a. Certain amount - no duty to accept partial rent
    - b. Certain date - no duty to accept late rent
    - c. Certain place – lessor may dictate
  3. Dictate term of lease
    - a. Literal term - year, month or day (C.C. 2678-2680)
    - b. Other terms
    - c. Usually, no real negotiation is involved
    - d. Care when deviating from codal provisions - strict construction will apply
    - e. Provisions null if against the public interest (C.C. 7)
  4. Have the lessee act as a prudent administrator while in possession (C.C. 2683)
  5. Lessee's compliance with lease terms and state law
  6. Lessor's Privilege
    - a. Right of pledge over lessee's property (C.C. 2707)
      - Can seize items for 3rd party, but must release if timely demanded (C.C. 2709)
    - b. Up to amount of rent owed and other obligations (C.C. 2707)
    - c. Must have a lease and must get a writ of seizure/sequestration (C.C. 2710)
    - d. There are exemptions (R.S. 13:3881). Examples:
      - i. Tools needed for the lessee's trade, books, vehicle (up to \$7,500)
      - ii. Clothes, bed, dishes, furniture, stove, washer/dryer, refrigerator
      - iii. Musical instruments
      - iv. Wedding or engagement rings
    - e. Can chase "skips" for 15 days after items removed (C.C. 2710)
  7. Retake possession without going to court (C.C.P. 4731 B.)
    - a. Must send Notice to Vacate (see section VII, below)
    - b. Must have reasonable belief that the lessee has abandoned the property
      - i. Lessee has ceased occupying the property
      - ii. Lessee has returned the keys to the lessor
      - iii. Lessee has removed his movables from the property
  8. Terminate the lease for lessee's breach (C.C. 2719)
- B. Lessor's Obligations (C.C. 2682)
1. Deliver possession to the lessee (C.C. 2684)
  2. Give up exclusive possession
    - a. Specific period of time
    - b. Can't go on property whenever he wants absent lease provision allowing it
    - c. Can't even make alterations w/o lessee's consent (C.C. 2690)
  3. Maintain lessee in peaceful possession (C.C. 2700)
    - a. Need not protect from disturbances by trespassers (C.C. 2702)
    - b. Must protect from disturbance by other lessees
  4. Maintain the property – (see below)
  5. Liable to lessee for "vices and defects" (C.C. 2696), but can be waived (C.C. 2699)
  6. Others – see the lease

## C. Lessee's Rights

### 1. Use of the Property

- a. Exclusive use (lessors have paid damages for invasion of privacy & trespass)
- b. Without interruption or disturbance by lessor or other tenants
- c. Includes right to sublease (unless lease restricts) (C.C. 2713)
- d. Includes right to have guests

### 2. Maintenance – (see Section III A 2, below)

### 3. Peaceable possession - Lessor liable for knowing or negligent disturbances

### 4. Terminate the lease

- a. Lessor's breach (C.C. 2719)
- b. Destruction of premises or impairment of use (C.C. 2693 and 2715)
- c. Military relocation (R.S. 9:3261, 50 U.S.C. §535)
- d. Some subsidized housing – job loss, illness, etc. (7 C.F.R. §1930)

### 5. Others – see the Lease, Fair Housing, VAWA protections, etc.

### 6. In Subsidized Housing, Grievances and Appeals

- a. What housing is covered? (see more detailed descriptions in Section IV, below)
  - i. Public Housing Authority – “projects”
  - ii. Section 8 complex (Project-based Section 8 subsidy)
  - iii. Vouchers (Tenant-based Section 8 subsidy – could be anywhere)
  - iv. Rural Rental Housing

#### b. General Process

- i. Any action or failure to act, taken or proposed is subject to grievance
- ii. Lessor notifies lessee of proposed adverse action, right to respond
- iii. Lessee's right to examine and copy records and regulations
- iv. Informal meeting
- v. Lessee has limited time to request formal hearing
- vi. Selection of grievance hearing officer or panel
- vii. Formal grievance hearing

#### c. Possible exceptions:

- i. If lessee is required to escrow rent and fails to do so
- ii. Authorized rent or rule changes
- iii. Discrimination complaints
- iv. Projects with tenant associations
- v. Notice of termination of tenancy and eviction
- vi. Disputes between lessees
- vii. Displacement due to prepayment of loans
- viii. Changes in federal rules or local plans

### 7. Other rights as granted in the lease contract

## D. Lessee's Obligations

### 1. Pay the rent when due (C.C. 2683)

- a. Rent is late at midnight on due date
- b. “Late Charge” is at Lessor's option (But if so, the rent is still late)
- c. Lessor doesn't have to accept late or partial rent

2. Act as a prudent administrator (C.C. 2683)
  - a. Timely report maintenance problems (C.C. 2688)
  - b. “Tolerate” repairs, even if inconvenient (C.C. 2693)
    - i. May get a rent break if deprived of use
    - ii. Complete rent abatement if lessee has to move out
3. Repair damages that are his fault (C.C. 2692)
4. Liable for his own acts & those of his guests & family (C.C. 2692), but NOT for acts of trespassers (see especially VAWA amendment)
5. Use the property for the leased purpose (C.C. 2683)
6. Perform his lease obligations in good faith (C.C. 1759)
7. Return the property in the same condition, save normal wear & tear (C.C. 2683)

### III. REPAIRS & MAINTENANCE

#### A. Maintenance

1. Lessor’s Obligations
  - a. Warranty of habitability (even if accepted “as is”)
  - b. Delivery in suitable condition for use (C.C. 2684)
  - c. Maintain the property in suitable condition (C.C. 2682)
  - d. Make necessary repairs
    - i. Generally (C.C. 2691)
    - ii. Parties can deviate by agreement, *Bice v. Pennsylvania Millers Mutual Insurance Co.*, 188 So. 2d 502, 506 (La. App. 3d Cir. 1966)
    - iii. Lessee can sue for reimbursement (C.C. 2694) or strict performance
2. Lessee’s Obligations
  - a. Promptly notify the lessor of damage, repairs, disturbances, etc. (C.C. 2688)
  - b. Repair damage he, his family or guests cause (CC 2687, 2692)
  - c. Return with only normal wear & tear (C.C. 2683)
  - d. Lease contract may add others
3. Destruction of the property
  - a. Partial – lessee may get rent reduction or end the lease (CC 2715)
    - i. If lessor’s fault – lessee also gets damages
    - ii. If external circumstances impair use – dissolution, but no reduction
  - b. Total, Lost, Expropriated without either party’s fault – lease ends (C.C. 2714)

#### B. Repair & Deduct (C.C. 2694)

1. Requirements – strict compliance
  - a. Repairs must necessary ones that the lessor was obligated to make  
*LeBrum v. Hill*, 452 So. 2d 118 (La. App. 3d. Cir. 1984)
  - b. Lessee must call on the lessor to make repairs
    - i. Must come from lessee (notice from city not sufficient)
    - ii. Must go to lessor (not agent, family, etc.)
    - iii. Can be oral or written, but must follow any notice method in lease
  - c. Lessor must refuse or fail to make these repairs in a “reasonable” time;
    - i. Factual determination
    - ii. Depends on circumstances: exigency & cost of repair

- d. Lessee must then make the repairs;
  - e. Lessee can apply the cost of the repair to the payment of rent
  - f. Can demand immediate reimbursement as an alternative
  - g. Proof that the price paid for the repairs was reasonable.
    - i. Normal proof problems – need bills, receipts
    - ii. Unsupported testimony of lessee, probably not enough
    - iii. Expert witness for opinion testimony
    - iv. Lessee can recoup fair value of his own labor
    - v. *Trinity Universal Insurance Company v. Normand*, 220 So. 2d 583, 586 (La. App. 3d Cir. 1969)
  - 2. May be used as a defense to non-payment
    - Cameron v. Krantz*, 299 So. 2d 919 (La. App. 3d Cir. 1974)
  - 3. May be used as a set-off to a demand for monies owed
    - Brignac v. Boisdore*, 288 So. 2d 31 (La. 1973)
  - 4. If the argument fails – lessee may be able to remove improvements, but must restore the property to its previous condition (C.C. 2695)
    - Riggs v. Lawton*, 93 So. 2d 543 (La. 1957)
  - 5. Using this remedy with a private landlord is likely to prompt a Notice to Vacate
- C. Security Deposits (See VI B., below)

#### **IV. SUBSIDIZED RENTAL PROGRAMS**

- A. Public Housing Authority
  - 1. Owned and operated by political subdivision of the state (city or parish)
  - 2. HUD subsidizes operations through annual contract with PHA
  - 3. Rent based on income, but with minimum rents
  - 4. Eviction only for good cause
- B. Section 8, Project Based (many types)
  - 1. Owned by private individuals/corporations
  - 2. Local PHA subsidizes lessee's rents
  - 3. Rent based on income
  - 4. Housing must meet minimum standards
  - 5. Good cause required for mid-term evictions
- C. Section 8 Vouchers
  - 1. Housing is owned by private individuals/corporations
  - 2. Lessee gets "renting license"
  - 3. Government subsidizes a portion of rent, up to amount of voucher
  - 4. Voucher amount based on income & type of unit
  - 5. Housing must meet minimum standards
  - 6. Good cause required for mid-term evictions

#### D. Section 515 Rural Rental Housing

1. Housing is owned by private individuals/corporations
2. Rural areas only, housing must be modest in design and cost
3. Builder is unable to obtain conventional credit, gets government loan
4. Rent is limited to 30% of adjusted gross income
5. Good cause required for eviction

### V. EVICTIONS

#### A. Administrative Process

1. Notice to tenant that his conduct will be considered Good Cause
  - a. Can be incorporated in the lease or house rules
  - b. Only required in some kinds of subsidized housing
2. Notice of Lease Violation (Also only required in subsidized housing)
  - a. Refer to relevant lease provisions
  - b. State violation with specificity
  - c. State specific date for corrective action
  - d. Inform lessee of right to informal meeting
  - e. Court proceeding required for eviction
  - f. Lessee's opportunity to present a defense
  - g. Service of notice - First class mail or personal delivery
3. Notice to mortgagor or secured parties of mobile home (R.S. 9:3259.1)
  - a. Lessor's duty when lot rent becomes 60 days overdue
  - b. Penalty for failure is loss of lessor's privilege
4. Notice to Lessee of Foreclosed Property - 90 days notice under "Protecting Tenants at Foreclosure Act" (PL 111-22), and tenant retains lease rights with most new owners
5. Notice to Vacate or Notice of Intent to terminate lease or take adverse action
  - a. Notice to Vacate can be waived by the tenant if not in subsidized housing
  - b. State that the occupancy is terminated and the lessor will file suit for eviction
  - c. Give a reason for terminating the lease
    - i. subsidized housing, "good cause" is usually required to end lease
    - ii. in private housing, the owner can end lease without any reason
    - iii. must be specific enough to let lessee prepare a defense
  - d. Inform lessee of opportunity to review & copy file (subsidized housing only)
  - e. Warn of eviction proceeding if lessee remains in the unit after \_\_\_ days
    - i. Period varies with lease terms, type of housing, situation, may be 10; 14; or 30 days
    - ii. Cannot give less than 5 days to move out unless notice was waived
  - f. Service of notice - First class mail or personal delivery (more if subsidized)
  - g. Tacking allowed (but not in all subsidized housing)
  - h. Wait until date for corrective action has passed (if applicable)
  - i. Lessor cannot accept rent after sending notice to vacate, and still proceed with eviction. *Thompson v. Avenue of Americas Corp.*, 499 So.2d 1093 (La.App. 3 Cir. 1986).
6. Next comes any grievance process required by subsidized housing rules

7. If there is also a Section 8 subsidy, those regulations must be followed in addition
8. If lessee is paying over 25% of income in rent, RHCDs may have to help seek any other available assistance (Rural Rental Housing only)
9. The Owner then waits the prescribed notice period (depending on the facts)
10. Lessor may be able to re-take possession without going to court (see II.A.7., above)

#### B. Legal Process

1. After the lease ends, and notice period expires, lessor files a Petition or Rule in court
2. The Court serves a copy of the suit on the lessee
3. The lessee gets notice of the court date (at least 72 hours away)
4. There must be a court hearing to evict the tenant
5. The Owner/Lessor/Manager is the Plaintiff and has the Burden of Proof
6. The judge will either dismiss the suit or rule in favor of the owner
7. The loser can appeal, but only within 24 hours
  - a. Devolutive (won't stop the eviction, but longer delay to file)
  - b. Suspensive (stops the eviction )
    - i. Must have filed an answer to the eviction
    - ii. Must have pleaded an affirmative defense
    - iii. A bond is required to be filed
8. If there is no appeal, then Court Officers can evict the tenant 24 hours later

#### C. Protections for Tenants

1. In subsidized housing, certain "grievance" rights (See section II.C.6., above)
  - a. A right to meet with the owner *before* adverse action taken
  - b. Sometimes, there is a right to a hearing with an impartial person
  - c. Tenants have additional rights to special written notices
2. Lessor may not constructively or actually evict until the court says so
3. Lessor may not throw lessee or belongings out
  - a. Only a court officer may (C.C.P. 4733, 4734)
  - b. BIG practical problems with physically removing mobile homes

## VI. SPECIAL AREAS OF CONCERN

#### A. Admissions Screening Procedures

1. Should be case-by-case, not automatic
2. Must abide by Fair Housing laws (see below)
3. Possible legitimate screening bases
  - a. Poor housekeeping that will damage unit/interfere with other tenants
  - b. Relevant rent payment history
  - c. Credit history reflecting on ability to pay rent
  - d. Criminal history that will affect tenancy
4. Subsidized housing issues
  - a. Must screen for income eligibility, but there is no asset or resource ceiling
  - b. Preferences
    - i. substandard housing, displaced, rent overburden
    - ii. income/ economic mix
  - c. Unit size



## B. Security Deposits (R.S. 9:3251)

1. Move-In checklist before/as new tenant moves in
  - a. Standard form checklist
  - b. Both sign and get copies
  - c. Presumption in absence of checklist, is that everything was in good working order (C.C. 2684)
2. Move-Out checklist when tenant ready to depart
  - a. Same standard form checklist
  - b. Whenever possible, accompany tenant to complete
  - c. Bring along the move-in list
3. Tenant should return keys
4. Tenant is required to request a return of the deposit
  - a. If done in writing, triggers presumption under law
  - b. If tenant can prove oral request, may be sufficient
  - c. Tenant must give a forwarding address
5. Burden then on owner to do something within 30 days
  - a. Return the entire deposit, OR
  - b. Furnish an itemized list of deductions, along with balance of deposit  
*O'brien v. Becker*, 332 So. 2d 563 (La. App. 4<sup>th</sup> Cir. 1976)
6. If owner misses the 30 days:
  - a. Tenant may sue for damages
    - i. entitled to return of entire deposit
    - ii. gets up to \$200 in additional damages
  - b. Owner has to pay the costs of court
  - c. Owner has to pay tenant's lawyer

## C. Late Rent

1. If rent is due on the first, it is late at midnight on the first
2. "Late Charge" is at the owner's option, it is not required by law
3. Owner does not have to accept late rent
4. Owner does not have to accept partial rent

## D. Lessor's Privilege

1. Privilege, right of pledge on tenant's property (and some sub-lessees)
2. May include third parties' property "accidentally" on the property
3. Only secures amount up to that owed
4. Requires a valid lease
5. Exemptions from seizure  
(Examples: bedroom furniture, clothing, pictures)
6. Absent abandonment, requires writ of seizure
7. 15 day right to "chase" lessees who "skip out" owing money to lessor
8. Should exercise before ordering tenant off the property

## E. Fair Housing Act

### 1. Statutes

- a. Fair Housing Act – (42 U.S.C. §3601)
- b. Louisiana Equal Housing Opportunity Act – (R.S. 51:2601 et seq)  
May be advantageous to file in State court to pre-empt possible eviction suit

### 2. Covered Housing

- a. All dwellings (homes, apartments, mobile homes, motels, condos, shelters, etc.)
- b. Exceptions (defendant's burden of proof)
  - i. Owner selling his own single family home;
  - ii. Lessor-occupied buildings, with <4 units;
  - iii. Housing for older persons can discriminate against families;
  - iv. Private clubs' & religious organizations' noncommercial lodgings

### 3. Covered Bases

- a. Race or Color
- b. National Origin
- c. Religion
- d. Sex (gender or sexual harassment)
- e. Handicap (or regarded as having one)
- f. Familial Status

### 4. Covered Practices

- a. Refusal to rent or negotiate
- b. Lies about availability
- c. Discriminatory terms, conditions, services
- d. Eviction
- e. Steering
- f. Retaliation
- g. Coercion, intimidation, threats, interference
- h. Advertising
- i. Rehabilitation
- j. Failure to seek availability of subsidized housing
- k. Brokerage services
- l. Municipal services
- m. Refusing handicapped accommodation/right to modify

### 5. Available Relief

- a. Actual Damages
- b. Punitive Damages
- c. Equitable Relief
- d. Attorneys Fees

- 6. Enforcement
  - a. Louisiana Attorney General's Fair Housing Hotline, (800) 273-5718
  - b. Fort Worth HUD office, (800) 669-9777
  - c. Local Fair Housing agency, (337) 291-5455
  - d. Private right of action – 2 year prescriptive period
  - e. Disparate treatment, mixed motive or discriminatory effect claims
- F. Self-Service Storage Facilities (R.S. 9:4756-4760)
  - 1. Separate from Civil Code provisions on lease (C.C. 2668 et seq)
  - 2. Owner has a privilege on the unit's contents
  - 3. R.S. 13:3881 exemptions do not apply
  - 4. Options and process upon lessee's default (R.S. 9:4759)
  - 5. Not a residential lease issue
- G. Hotels & Motels (R.S. 21:75)
  - 1. 1 hour verbal or written notice
  - 2. No court proceeding, law enforcement removes the lessee & belongings
  - 3. No right of action against the lessor (if statute is followed)
- H. Lease-Purchase Agreements
  - 1. Higher than usual rent and deposit
  - 2. Buys the tenant an option to purchase the property
  - 3. Seller gets tax benefits of ownership until title is transferred
  - 4. Sometimes transfers repair and maintenance obligations to the tenant
- I. Bond for Deed (9:2941)
  - 1. If an additional payment is required at the end of the contract term in order for the buyer to complete the purchase, the courts will likely treat it as a lease with an option to purchase (as opposed to a bond for deed contract). *Smith v. Miller*, 2006 CA 1049, 953 So.2d 206 (La. App. 1st Cir. 2007)
  - 2. Seller retains title and ownership, buyer is in the position of a lessee (he has *usus* only).
  - 3. Buyer does get to claim homestead exemption, but has no other indicia of ownership.
  - 4. Strict requirements seller must follow to qualify as a bond for deed contract

## VII. FEE PROVISIONS

- A. Lease terms (contractual, recognized in R.S. 9:3534 A.)
- B. Unfair Trade Practices (R.S. 51:1409)
  - 1. "Unfair and Deceptive" acts in conduct of commerce  
(Immoral, unethical, oppressive, unscrupulous or substantially injurious)
  - 2. LA courts say look to Federal jurisprudence, FTC rulings for guidance
  - 3. Abuses of right, wrongful seizures, rent-to-own, etc.
- C. Security Deposits (R.S. 9:3253)
- D. Wrongful Seizure (fees awarded by courts as an element of damages or using UTP, above)
- E. Housing Discrimination (42 U.S.C. §3613(c)(2))
- F. Civil Rights (42 U.S.C. §1988(b))
- G. Possibly NOT for wrongful eviction, *Smith v. Shirley*, 815 So.2d 980 (La. App. 3 Cir. 2002)

## VIII. SOURCES OF LAW

- A. The Lease Contract
- B. Louisiana Civil Code (C.C.)
- C. Louisiana Code of Civil Procedure (C.C.P.)
- D. Louisiana Revised Statutes (R.S.)
- E. Federal Statutes – Volume 42 of the United States Code
- F. Federal Regulations – Titles 7 and 24 of the Code of Federal Regulations

## IX. RESOURCES

- A. Information from your client
  - 1. Copies of:
    - a. The lease (current and any prior)
    - b. House rules
    - c. Annual re-certifications (if subsidized)
    - d. Lease violation notices
    - e. Notice to vacate
    - f. Accounting/repair records
    - g. Pleadings
  - 2. Names, addresses, and phone numbers of witnesses
- B. Neighborhood Counseling Services (291-5455)
- C. Realtor Association of Acadiana
- D. Internet Resources
  - 1. LawHelp (self-help for clients) - [www.lawhelp.org/la](http://www.lawhelp.org/la)
  - 2. ProBono.net (pro bono attorneys) - [www.probono.net/la](http://www.probono.net/la)
  - 3. Housing and Urban Development - [www.hud.gov](http://www.hud.gov)
  - 4. National Fair Housing Advocate - [www.fairhousing.com](http://www.fairhousing.com)
  - 5. LA Attorney General - [www.ag.state.la.us](http://www.ag.state.la.us)
  - 6. HUD, Louisiana State Office - [www.hud.gov/local/nor/norhome.html](http://www.hud.gov/local/nor/norhome.html)
  - 7. HUD Portal - [portal.hud.gov](http://portal.hud.gov)
  - 8. HUD Phonebook - [www.hud.gov:63001/po/i/netlocator/](http://www.hud.gov:63001/po/i/netlocator/)
  - 9. United States Code - [uscode.house.gov/search/criteria.shtml](http://uscode.house.gov/search/criteria.shtml)
  - 10. Code of Federal Regulations - [www.ecfr.gov](http://www.ecfr.gov)
  - 11. Rural Development - [www.rurdev.usda.gov/](http://www.rurdev.usda.gov/)
  - 12. Rural Development regulations - [www.rurdev.usda.gov/RegulationsAndGuidance.html](http://www.rurdev.usda.gov/RegulationsAndGuidance.html)
  - 13. Louisiana Laws online - [www.legis.state.la.us/](http://www.legis.state.la.us/)
  - 14. Louisiana Civil Code - [www.legis.state.la.us/lss/lss.asp?folder=67](http://www.legis.state.la.us/lss/lss.asp?folder=67)
    - Lease Generally - Articles 2668 through 2792
    - Lessor's Duties - Article 2682
    - Lessor's Privilege - Articles 2707 to 2710
    - Lessee's Duties - Article 2683
    - Dissolving the Lease - Article 2719

15. Louisiana Code of Civil Procedure - [www.legis.state.la.us/lss/lss.asp?folder=68](http://www.legis.state.la.us/lss/lss.asp?folder=68)  
     Evictions Generally - Articles 4701-4735  
     Notice - Articles 4701-4703  
     Procedure - Articles 4731 to 4735
16. Louisiana Revised Statutes – [www.legis.state.la.us/lss/lss.asp?folder=75](http://www.legis.state.la.us/lss/lss.asp?folder=75)  
     Security Deposits – [R.S. 9:3251](#)  
     Unfair Practices – [R.S. 51:1401](#)
17. Public Housing Statutes – Volume 42 of the United States Code  
     [42 U.S.C. §1437](#) and following
18. Public Housing Regulations – Title 24 of the Code of Federal Regulations  
     Vouchers - [24 C.F.R. §982, 983](#)  
     Public Housing – [24 C.F.R. §966](#) et seq  
     Section 8 Existing Housing  
         [24 C.F.R. §247](#) et seq  
         [24 C.F.R. §880](#) et seq
19. Rural Development Statutes - Volume 42 of the United States Code  
     [42 U.S.C. §§1485](#) and following
20. Rural Development Regulations – Title 7 of the Code of Federal Regulations  
     Generally – 7 C.F.R. §3560 et seq  
     [www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d9a1235a72f87b157ffbb77fe50f9ba8&rgn=div5&view=text&node=7:15.1.13.2.2&idno=7](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d9a1235a72f87b157ffbb77fe50f9ba8&rgn=div5&view=text&node=7:15.1.13.2.2&idno=7)  
     Tenant selection – 7 C.F.R. §3560.154  
     Lease requirements – 7 C.F.R. §3560.156  
     Tenant grievances – 7 C.F.R. §3560.160  
     Termination of occupancy – 7 C.F.R. §3560.159

E. Print Resources

1. HUD HOUSING PROGRAMS: TENANTS’ RIGHTS (4th ed. 2012), The National Housing Law Project – [www.nhlp.org](http://www.nhlp.org)
2. RHCDS (FmHA) HOUSING PROGRAMS: TENANTS' AND PURCHASERS' RIGHTS, (2d ed. 1995), The National Housing Law Project

## X. NOTES

## EVICTION DEFENSE – SEQUENTIAL PROCESS OUTLINE

### I. Information Gathering

- A. Signed retainer agreement
- B. Complete eviction [questionnaire](#)
- C. Signed release of information forms
- D. Copies of:
  - 1. Lease (all versions)
  - 2. Receipts for rent, damages, late charges, utilities, etc.
  - 3. Infraction/Termination notices (including dates and manners of deliver)
  - 4. Notices to vacate (including dates and manners of deliver)
  - 5. Other correspondence/documents concerning the lease
  - 6. Papers filed with/received from courts (including dates and manners of service)
- E. Detailed story of dealings with lessor
  - 1. When tenant moved in
  - 2. Every conversation between lessor/lessee that is relevant
  - 3. Incidents leading up to eviction
- F. What does your client want you to do?
  - 1. Advice/Consultation only
  - 2. Negotiate for more time to move out
  - 3. Help with administrative grievance process
  - 4. Defense in court
  - 5. Avoid/minimize monetary damages
  - 6. Sue the lessor

### II. Analysis

- A. Determine the type of housing with which you're dealing
  - 1. Amount of rent and portion of tenant payment
  - 2. Review the lease for clues
  - 3. Internet listing of subsidized housing in Louisiana
  - 4. Call HUD in New Orleans, RHCDS in Alexandria
- B. Find applicable statutes/rules/regulations
  - 1. 42 U.S.C.A.
  - 2. 7 or 24 C.F.R.
  - 3. HUD or Rural Housing Handbooks
  - 4. Lease
  - 5. Complex/PHA, House Rules/Regulations on lease, grievance, etc.
- C. Determine if notices and procedures follow applicable rules
- D. Review for compliance with Louisiana procedural and substantive laws
- E. If needed, get help
  - 1. Acadiana Legal Service
  - 2. The Advocacy Center (for disability-related issues)

### III. Options Counseling

- A. Advise client of earliest date he could be evicted if nothing is done
- B. Advise client of latest date he could be evicted if nothing is done
- C. Advice on right to grievance procedures, how to use
- D. Advise client how the state court eviction process works
  - 1. Notice to vacate
  - 2. Filing of eviction rule
  - 3. Summons to come to court (over 72 hours after service)
  - 4. Hearing
  - 5. Order to be out in 24 hours (if he loses)
  - 6. 24 hour deadline for posting bond and filing suspensive appeal
- E. Explain any rights your client may have to sue the lessor for its breach of the lease agreement
- F. Find out what your client is willing to offer the lessor to settle the dispute (payments of past due rent, payment of damages, release of claims against lessor, etc.)
- G. Have client begin planning for other housing in case of loss
- H. Have client begin planning for posting of bond in case of loss and suspensive appeal
- I. Let your client decide on course of action (with your input & advice)

### IV. Negotiation - Call the Lessor

- A. LISTEN to that side of the story
- B. If the lessor has failed to follow the rules, explain that is also a lease violation (by the lessor), that your client also now has a right to pursue a remedy for this breach, why this eviction will be dismissed because of the lessor's failure to follow the rules
- C. Find out what the lessor wants in order to let your client stay (or not to re-file once this eviction is dismissed)
- D. Consider offering to exchange your client's right to sue the lessor for its breach of the lease & rules if the lessor will dismiss the eviction and not re-notice your client/refile the rule for eviction (if applicable)
- E. Expect to be told that they will talk with their attorney about it. The Rules of Professional Conduct may require you to cease communicating directly with the lessor at this point. Try to find out who the attorney is, if you can speak directly to them, there's a good chance you can negotiate a mutually-satisfactory settlement of the dispute.

### V. Pleadings

- A. Review Petition/Rule for compliance with applicable procedural/substantive rules
  - 1. Rule (Summary Process – regains possession only) (C.C.P. 4731)
    - a. Plaintiff with a right of action
      - i. Owner
      - ii. Usufructuary
      - iii. Lessor
      - iv. Agent (be prepared to show mandate)
    - b. Existence and terms of the lease agreement (oral or written)
    - c. Facts causing termination of lease
    - d. Delivery of a valid notice to vacate/termination of lease

- e. Lessee is still in possession
- f. Can NOT get a money judgment
  - Himbola Manor Apartments v. Allen* , 315 So. 2d 790 (La. App. 3d Cir. 1975)
- 2. Petition (Ordinary Process - broader relief available) (C.C.P. 854)
  - a. Same elements as above
  - b. CAN also combine other causes of action
    - i. Damages
      - (1). Unpaid rent
      - (2). Property damage
    - ii. Enforcement of lessor's privilege
    - iii. Injunctive relief
    - iv. Dissolution of lease
- B. Exceptions (C.C.P. 921 et seq & C.C.P. 4917)
  - Must be included in the Answer in JP court – (C.C.P. 4917 C.)
  - 1. Insufficient service of process (C.C.P. 925 A. (2))
  - 2. Lack of jurisdiction over subject matter (C.C.P. 925 A. (2), 4913)
  - 3. Prematurity (C.C.P. 926 A. (1))
  - 4. Unauthorized use of summary procedure (C.C.P. 926 A. (3))
  - 5. Nonconformity of the petition (C.C.P. 926 A. (4))
  - 6. Vagueness (C.C.P. 926 A. (5))
  - 7. Lack of procedural capacity (C.C.P. 926 A. (6))
  - 8. Improper cumulation of actions
    - a. Such as praying for damages in a summary proceeding
    - b. C.C.P. 926 A. (7)
  - ix. No right of action (C.C.P. 927 A. (5))
- C. Motions for relief (C.C.P. 961 et seq)
  - 1. Expedited discovery (can be granted ex parte – C.C.P. 963)
  - 2. Continuance to another date and time
  - 3. To make a written or taped record (especially in JP court)
  - 4. Sequestration of witnesses
  - 5. In Limine (to exclude grounds not in the Notice or Rule)
  - 6. To hear and decide exceptions prior to trial on merits (C.C.P. 929 A.)
  - 7. Recusal (C.C.P. 4861, 4862)
  - 8. New Trial
    - a. W/in 3 days of Parish or City court judgment (C.C.P. 4907)
    - b. W/in 7 days of District court judgment (C.C.P. 1974)
    - c. May extend appellate delays (C.C.P. 4925, 5002)
    - d. Court must rule on the motion w/in 10 days (C.C.P. 1979)
- D. Discovery (C.C.P. 1421 et seq.)
  - 1. Expedited
  - 2. Alternatively, continuance
  - 3. Could be extensive (for example, to examine the premises if damages alleged)



- E. Be certain to file a verified answer, raising at least one affirmative defense (C.C.P. 4735)
  - i. An answer is required
  - ii. Must be verified
  - iii. Must allege an affirmative defense. Examples:
    - a. Timely payment or tender of rent
    - b. Lessor's acceptance of rent after notice to vacate
    - c. Lessor's custom and practice of accepting late rent
    - d. Lessor's breach of the lease contract
    - e. Lessor's failure to perform in good faith
    - f. Lessor's breach of warranty of habitability
    - g. Lessor's disturbance of peaceable possession  
*Potter v. First Federal S & L*, 615 So.2d 318 (La. 1993)
    - h. Lessor's unfair trade practice
    - i. Lessor's invasion of privacy or trespass
    - j. Lessor's violation of federal statute or regulation
    - k. Violation of due process
    - l. Abuse of right - *Housing Authority of City of Abbeville v. Hebert*, 387 So.2d 693 (La. App. 3 Cir. 1980)
- F. Evaluate and discuss with your client the desirability of filing an affirmative suit in Federal or State court, in a separate action for damages against the lessor
  - 1. Can't reconvene in a summary proceeding for eviction
  - 2. Can reconvene in an ordinary action solely for possession
  - 3. Can file a separate suit
    - a. State court
    - b. Federal court (if requisite state action is present)
  - 4. Can reconvene in an ordinary action seeking other relief
  - 5. Potential claims by lessee against lessor
    - a. Breach of contract
    - b. Violation of lease terms, federal regulations, etc.
    - c. Wrongful eviction (constructive or actual)
    - d. Abuse of right (civilian theory recognized by our courts)
    - e. Retaliatory eviction
    - f. Tort claims for embarrassment, distress, etc.
    - g. Wrongful seizure
    - h. Unfair and Deceptive Act or Practice (with attendant attorneys fees)
- G. Evaluate possibility of seeking class action relief in Federal or State court
- H. Consider advisability of seeking Bankruptcy protection to prevent eviction (only works if filed PRIOR to the eviction judgment!)
- I. Appeals - 24 hours to perfect a Suspensive appeal (C.C.P. 4735)
  - 1. From City, Parish, or District court
    - a. Goes to Court of Appeal (C.C.P. 5001) (except in 19<sup>th</sup> J.D.C.)
    - b. 10 days to file for Devolutive appeal from City or Parish Court (C.C.P. 5002)
    - c. 60 days to file for Devolutive appeal from District Court

2. From Justice of the Peace court
  - a. Goes to Parish or District court (C.C.P. 4924)
  - b. 15 days to file for Devolutive appeal
  - c. Trial de novo (there is no record from the trial court)
  - d. No further appellate rights, but Court of Appeal has supervisory jurisdiction
3. You can buy a bit more time for a Devolutive appeal by filing a timely Motion for New Trial (C.C.P. 4925, 5002)

## VI. General Strategies

- A. Get as much time for your client as possible before he becomes homeless
- B. Use all available administrative grievance procedures
- C. Have your client escrow the rent monthly in your trust account if lessor won't accept it
- D. Conduct necessary discovery
- E. Get dismissals on procedure, avoiding discussion of substantive merits until necessary
- F. Try the exceptions prior to the merits
- G. Preserve grounds for appeal (file all possible defenses)
- H. File appeal and bond within 24 hours of court's adverse ruling on the merits
- I. The amount of the appeal bond will be set by the trial judge
  1. Request that it be waived due to the client's poverty (if applicable)
  2. Ask that it be set low, consistent with the client's means
  3. Ask for it to be set equitably, by keeping the rent current (no loss to lessor)
- J. Attorney's Fees
  1. Look to the lease to see if it has a "loser pays" provision
  2. Convincing the judge that the lessor's practices constitute an Unfair Trade Practice (R.S. 51:1401) and getting that finding on the record, will get you a judgment for your hourly rate in attorney's fees, regardless of whether or not your client can afford to pay you
  3. Security Deposit violations, Wrongful Seizures, Housing Discrimination, Civil Rights, and Wrongful Evictions – all carry the possibility of fee awards.
  4. Options absent those:
    - a. Flat or hourly rate billed to client
    - b. Referral to Acadiana Legal Service Corporation (if low-income or elderly)
    - c. Handle the case pro bono publico

**EVICTION QUESTIONNAIRE**

**I. REASON FOR CALL**

What does the client want to do about the eviction problem?

Get advice only    Get extra time to move    Contest the eviction    File suit

**II. LEASE CONTRACT**

1. Is the lease contract written or oral?                      Written                      Oral

2. What is the term of the lease?  
Month to Month      6 Months      1 Year                      Other (specify)

When did the applicant first move in?      \_\_\_/\_\_\_/\_\_\_\_\_

3. What is the total amount of rent due each month? \$ \_\_\_\_\_

a. On what day of the month is the rent due?

b. Does the rent include utilities?                      Yes      No

c. How much rent is currently owed? \$ \_\_\_\_\_

d. How much does the tenant pay each month (if subsidized)? \$ \_\_\_\_\_

4. What is the amount of the client's security deposit? \$ \_\_\_\_\_

5. What is the address of the property the client is renting?

Street Address:

City:

6. What is the property owner's name, address and phone number?

Name:

Address:

City:

Phone Number:

**III. NOTICE TO VACATE**

1. What reasons, if any, are stated in the Notice To Vacate or Notice of Termination of the lease?

2. For what other reasons, not listed in the notice, would the landlord want to terminate the client's lease ?

3. When was the Notice to Vacate received by the client?                      \_\_\_/\_\_\_/\_\_\_\_\_

4. How was the Notice to Vacate received by the client?  
 Mail (type)                      Hand Delivered                      Other (specify)

IV. **EVICTION PROCEDURES**

1. Were any eviction papers served by a court official?  
 a. How were they served?  
 Mail                      Hand Delivered                      Other (specify)
- b. When were they served?      \_\_\_/\_\_\_/\_\_\_\_
2. In which court were the papers filed?  
 District Court                      City Court                      Justice of the Peace                      Other (specify)
3. What is the date of the eviction hearing?      \_\_\_/\_\_\_/\_\_\_\_
4. What grounds or reasons for the eviction are listed in the eviction petition/rule?

V. **PUBLIC HOUSING**

1. Identify the manager:  
 Name:  
 Address:  
 City:    Phone Number:
2. Identify the type of government housing in question, if possible. (If the client does not know, try to get a description of the housing complex and how the housing was obtained. Where did applicant apply? Is it a complex or duplex? Is everyone there getting a rent subsidy?)  
 Public Housing Authority      Section 8                      Rural Housing                      Other (specify)
3. Does anyone other than the client pay part of the rent?      Yes      No  
 If yes, who?  
 Public Housing Authority      Section 8                      Rural Housing                      Other (specify)
4. Has the client requested or received notice of a grievance hearing or conference with the landlord, owner, or anyone else?      Yes      No  
 If so, when is that meeting?      \_\_\_/\_\_\_/\_\_\_\_