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Top 10 Illegal (Prohibited) Lease Provisions

But first . . . what makes a lease provision “prohibited”?

Iowa Code Chapters 562A (covering the lease of dwelling units for residential purposes) and 562B (covering the lease of mobile home lots to owners (or tenants of owners) of mobile or manufactured homes) applies to nearly all residential leases in Iowa. Section 11 of both Chapters specifies different provisions are “prohibited.”

562A.11 Prohibited provisions in rental agreements.

1. A rental agreement shall not provide that the tenant or landlord does any of the following:
 - a. **Agrees to waive or to forego rights or remedies under this chapter** provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area.
 - b. Authorizes a person to confess judgment on a claim arising out of the rental agreement.
 - c. **Agrees to pay the other party’s attorney fees.**
 - d. **Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the associated costs.**

562B.11 Prohibited provisions in rental agreements.

1. A rental agreement shall not provide that the tenant or landlord does any of the following:
 - a. Agrees to waive or to forego rights or remedies under this chapter.
 - b. Agrees to pay the other party’s attorney fees
 - c. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.
 - d. Agrees to a designated agent for the sale of tenant’s mobile home.
 - e. Agrees to modify the mobile home, manufactured home, or modular home in a way that would substantially impair the ability of the tenant to move the home from the mobile home space, unless such modification is required by federal law, including but not limited to the model manufactured home installation standards, 24 C.F.R. pt. 3285, the manufactured home construction and safety standards, 24 C.F.R. pt. 3280, or the manufactured home procedural and enforcement regulations, 24 C.F.R. pt. 3282, or by state or local law, the manufacturer’s installation instructions, any requirement arising from the landlord’s financing of

the home or of the mobile home park or manufactured home community in which the home is located, or unless such modification is otherwise necessary for the safe and proper installation of the home.

What are the consequences of using a lease that includes prohibited provisions? The differences between chapter 562A and 562B in this respect are even more different than the differences in the things prohibited.

562A.11 provides:

(3) A provision prohibited by this section included in a rental agreement is **unenforceable**. **If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees.**

562B.11 provides:

(3) A provision prohibited by this section included in a rental agreement is **unenforceable**. **If a landlord or tenant knowingly uses a rental agreement containing provisions known to be prohibited by this chapter, the other party may recover actual damages sustained.**

My Top Ten Illegal Lease Provisions

1. **If landlord can't deliver possession at time agreed, tenant agrees to accept rent abatement in full settlement of all damages.** This may sound reasonable, but Iowa Code section 562A.22 and 562B.23 provide potentially more for a tenant whose landlord doesn't deliver the premises at the commencement of the lease (both provide that "[i]f the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section [562A.14 or 562B.15], rent abates until possession is delivered." Chapter 562A section 22 provides that "[i]f a landlord's failure to deliver possession is willful and not in good faith, a tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney fees."). *See, Kline, et al v. Southgate Property Mgt.*, 895 N.W.2d 429 (Iowa 2017). Chapter 562B, section 23 provides such a tenant may recover "the damages sustained by the tenant plus reasonable attorney fees and court costs," without any requirement that the landlord's failure be willful or not in good faith.
2. **Automatic deductions from rental deposit** (*see Kline* above).
3. **Termination of lease for a single lease violation, violations that are "not remediable," without notice, with or without process of law,** or allowing landlord to "expel or remove mobile home from premises, using such force as may be necessary." "Resident waives all right to any notice of demand under any statute of this state relating to forcible entry and detainer." Many "Crime-Free Lease Addenda" are so broad that they constitute a waiver of the tenant's right to notice and an opportunity to cure or to avail themselves of exemptions to a landlord's limited right to terminate a lease with 3 days' notice and without a right to cure due to a "Clear & Present Danger" created by third parties.
4. **Provisions that the Landlord shall not be liable to the tenant for, or limits the landlord's liability to the tenant . . .** for anything that the law makes Landlord liable to the Tenant.

Most common, leases say the tenant will “indemnify” the landlord for any claims or damages of guests, or other third parties (what is this?). Even if the landlord does not know what “indemnification” means, the code prohibits leases with a provision that either party “indemnify the other.”

5. **In addition to the maximum late fees allowed by Iowa Code 562A.9(4) and 562B.10(4), many leases provide that the Landlord will charge the Tenant a fee if they serve the tenant with a 3-day notice of nonpayment of rent.** “A rose by any other name smells as sweet.” Likewise, a late fee by any other name still . . . smells bad. (A nod to Romeo and Juliet, William Shakespeare)
6. **Tenant must purchase insurance -- for whose protection?** Chapters 562A and 562B differ – the former says nothing while the latter specifically says in subsection 4, “Nothing in this chapter shall prohibit a rental agreement from requiring a tenant to maintain liability insurance which names the landlord as an insured as relates to the mobile home space rented by the tenant.” Does 562A permit landlords to require tenants to insure the landlord’s property? Do tenants have an insurable interest in the landlord’s property?
7. **Attorney fees** – sometimes, always, never?
8. **“Notices required by this lease may be served on the tenant by”** any method other than specified by Iowa Code sections 562A.8 or 562B.9 (when applicable) vs. Iowa Code section 562A.29A or 562B.27A (when applicable). Providing that a landlord may serve a notice of nonpayment of rent by texting the tenant, for example, would, if enforceable, represent a waiver of the tenant’s right to be served by one of the 3 more exacting methods set forth in 562A.29A. Waivers of rights provided by Iowa Code Chapters 562A and 562B are expressly prohibited.
9. **Section 8 side payments:** who needs to know?
10. **“Landlord’s failure to enforce any provision of this lease shall not be interpreted as a waiver of the landlord’s right to enforce the provision in the future.”** Is this a waiver of the tenant’s right to assert landlord’s waiver as a defense?