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2nd Edition

# Landlord's Legal Kit

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rights and responsibilities

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**Laurence C. Harmon, JD**

Legal expert on rental management  
and fair housing

**Robert S. Griswold, MSBA**

Real estate expert and president of  
Griswold Real Estate Management





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**by Laurence C. Harmon, JD,  
and Robert S. Griswold, MSBA**

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## Landlord's Legal Kit For Dummies<sup>®</sup>, 2nd Edition

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# Introduction

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Success as a landlord requires more than attracting tenants, collecting rent, and performing repairs and maintenance. You also need to be familiar with and abide by federal, state, and local laws that govern residential 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 sound expert advice and guidance on how to avoid and protect against legal claims commonly filed against landlords. *Landlord's Legal Kit For Dummies*, 2nd Edition, is your guide.

## About This Book

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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, the tenant moves out, and you provide the accounting for their security deposit. You avoid 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 tenants, 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-tenant agreements and communication, so you have evidence that stands up in court.

This book is based on our personal experience and lessons from our many years of owning and managing residential rental properties, as well as helping other owners of tens of thousands of rental units successfully own and achieve positive financial results through competent management, including complying 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 these online forms, see the instructions in the “Beyond the Book” section later in this Introduction. We strongly recommend that you have your local legal counsel review them, and then print them out and start putting them to use.

## 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.



REMEMBER

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.



TIP

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



WARNING

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

## Beyond the Book

This book comes with some access-anywhere goodies on the Web. First and foremost, bookmark this website:

[www.dummies.com/go/landlordslegalkitfd2e](http://www.dummies.com/go/landlordslegalkitfd2e)

This site is where you’ll find all of the forms, agreements, and documents discussed in the book, including 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

Also, check out the free cheat sheet at [www.dummies.com](http://www.dummies.com) for tips on screening applicants, establishing security deposits and procedures, meeting your obligations as a landlord, and more. To access the cheat sheet, type “Landlord Legal Kit For Dummies cheat sheet” in the search box.

## 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 residential rental property; move on to advertising vacancies, screening applicants, and fulfilling your legal obligations to tenants; cover collecting rent, properly maintaining your property, preventing or minimizing hazardous environmental conditions, and providing a reasonably safe premises; and end with a tenant 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. 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.
- » **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 up the topic, and flip to the chapter or the specific page where that topic is covered.

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 tenant and defend yourself when a tenant or someone else takes legal action against you.

# 1 Getting Started with Landlording Fundamentals

## 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.



#### IN THIS CHAPTER

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

## Chapter **1**

# The Legal Fundamentals of Managing Residential Rentals

**W**henever 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 all types of residential rentals, including single-family homes; condominiums; and small, medium, and large multifamily apartments. 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, mitigate risk, 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, for legal purposes, 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 lender 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 or unrelated business assets from those claims.



WARNING

An LLC *doesn't* provide complete protection. If a court finds that your carelessness or negligence contributed to a tenant'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 somewhat complicated endeavor. The process is even more complicated 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 leases or rental agreements and all documents in each of the tenant files
- » Seller-verified rent roll, including a list of all security deposits
- » Building blueprints and site plans
- » All required governmental licenses and permits
- » Recent utility bills with all account numbers and due dates
- » Every service agreement or contract
- » Copy of the seller's current insurance policy, including 5-year loss history

Chapter 3 contains additional information about these items.



REMEMBER

Meet with a reputable insurance provider and purchase a policy for the property with an effective date prior to taking possession, so there's no lapse in insurance coverage when you take possession. If the property burns down before closing, it's the seller's problem. If an uninsured property burns down or floods 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 residential rental property, you have a few tasks to attend to as soon as possible, including the following:

- » Meet with the tenants in person, introduce yourself as the new owner, and answer any questions they may have.
- » 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 tenants until their lease expires or at the end of the month (for month-to-month renters), but analyze how much rent your tenants are paying now. Also consider how much you need to charge new tenants to cover your higher expenses as the new owner and turn a decent profit, so you know how much to raise the rent for existing tenants when that time comes.
- » Use current professional forms from your local affiliate of the National Apartment Association (NAA) or landlord-tenant legal advisor to prepare rental contracts (either a fixed-term lease or a month-to-month rental agreement), so they're ready for new applicants and for current tenants 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 tenants' 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 known dangerous or hazardous conditions. If you have employees, you may be liable for their legal actions as well. And tenants can file a claim against you for any number of reasons, regardless of whether those claims have legal merit.

The following sections highlight many of the most common legal issues you need to be aware of and prepared to resolve. We also guide you in best practices that help you avoid legal problems in the first place, such as screening applicants carefully and legally, as well as always honoring your tenants' legal rights.

## Obeying fair-housing laws

Fair-housing laws prohibit landlords from using certain criteria, such as race or sex, to target tenants 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 their 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; color; national origin or ancestry; religion or creed (belief system); sex (including gender, pregnancy, sexual orientation, and gender identity); familial status; or physical or mental handicap; plus certain other state or local municipality 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 their *protected class* status — 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:** Ethnicity or culture, such as African American, Caucasian, Hispanic, Asian, or American Indian

- » **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
- » **Religion or creed:** Christianity, Islam, Judaism, Hinduism, and so on
- » **Sex:** Male or female, but also relates to pregnancy, sexual orientation, and gender identity
- » **Handicap:** Physical or mental handicaps or disabilities, including mobility, hearing, or visual impairments; chronic alcoholism; and HIV/AIDS
- » **Familial status:** Whether a person or couple has a minor or is expecting or adopting or gaining custody of a minor/minors; it also makes no difference if the adult members of the household are single, related, married or civil-union status, separated, divorced, or widowed
- » **National origin or ancestry:** The country or area a person was born in, such as Canada, Mexico, the Middle East, or Nigeria



TIP

Consider only those characteristics that reflect the likelihood that the person will pay their rent in full and on time, treat your rental property with care, and get along with their 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:

- » Age
- » Occupation
- » Educational or student status
- » Medical status
- » Broader definitions of HIV/AIDS status
- » Broader definitions of sexual orientation
- » Source of income
- » Victim of domestic violence, stalking, or sexual assault
- » Military/veteran status
- » Political affiliation
- » Genetic information
- » Personal appearance, including physical size

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

Although several states do not have laws prohibiting discrimination against unmarried couples who live together, many prohibit any distinction in access to housing based on marital status. The majority of states have very broad fair housing laws forbidding all arbitrary discrimination on the basis of a person's characteristics or traits. Such laws can prohibit the use of appearance as a basis for housing decisions. If an applicant has tattoos or piercings, for example, or wears clothing that could be construed as being typical of a gang member, you can't legally use that information as a reason to deny their application.



REMEMBER

Always be sure to fully understand the fair-housing requirements and limitations that apply to your rental property.

Fair-housing laws also are a consideration 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 other factors that may suggest exclusion or preference for a prospect who may be a member of 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 U.S. 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 couple, for example, or mentioning that the property is "perfect" for certain classes of prospects.



TIP

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.