

# RESIDENTIAL EVICTIONS

## CLE by the Hour 2002

**Lafayette Parish Bar Association**

**Lafayette Hilton and Towers**

Tuesday, December 3, 2002

**Presenter:**

**Greg Landry**

**Senior Attorney, Litigation Unit Leader**

**Acadiana Legal Service Corporation**

**1020 Surrey Street**

**Lafayette, LA 70501**

## **I. LEASE**

- A. Contract
  - 1. Oral or written
  - 2. Creates rights in the parties
  - 3. Cancellation disfavored, subject to judicial control
  - 4. Termination
    - a. Ends at expiration of term (C.C. 2727)
    - b. Ends upon destruction of property (C.C. 2728)
    - c. Does not automatically end on death of a party (C.C. 2731)
    - d. Lease does not end by unilateral declaration of one of the parties
    - e. Either party can seek judicial dissolution (C.C. 2729)
- B. Parties must abide by lease terms and:
  - 1. Local laws/housing codes
  - 2. State law
  - 3. Federal statutes/regulations (especially subsidized housing)
- C. Recordation to affect third parties (sale of rental property) (R.S. 9:2721)
- D. Recondition
  - 1. “Automatic”, month to month, if lessee remains in possession (C.C. 2685)
  - 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. 2686)
    - b. Lease terms may vary time or method required
    - c. Must have recognized reason (see below)
- E. May be modified by operation of State and Federal laws

## **II. KEYS TO HANDLING EVICTIONS**

- A. Information gathering
  - 1. Standard eviction questionnaire
    - a. Lease
      - i. Written or oral
      - ii. Term
      - iii. Rental amount
      - iv. Rental due date
      - v. Amount of delinquency
    - b. Move in date
    - c. Adverse Party
      - i. Name
      - ii. Address (physical and mailing)
      - iii. Phone number
    - d. Notice to Vacate
      - i. Date sent/received
      - ii. Manner of delivery/receipt
      - iii. Reason(s) for terminating lease
    - e. Pleadings
      - i. Date filed/served
      - ii. Manner of service/receipt
    - f. Type of Housing

- i. Private lessor/lessee
    - ii. Public Housing Authority
    - iii. Section 8
    - iv. Rural Rental Housing
    - v. Other subsidized
- 2. Signed retainer
  - a. Nature/extent/limits of representation
    - i. Advice
    - ii. Negotiation
    - iii. Trial representation
    - iv. Appeal
  - b. Fees & charges
- 3. Detailed story
  - a. Detailed
    - i. When did the lease start?
    - ii. When did problems with the adverse party start?
    - iii. Details of relevant conversations with adverse party
    - iv. What incidents led up to the eviction?
  - b. Both sides
    - i. Your client may not tell you the whole story
    - ii. Try to talk to the adverse party
      - Ethics Caution: Is adverse party represented by counsel?
    - iii. Opportunity for informal discovery
    - iv. In subsidized housing, you may have a right to meet with adverse party
  - c. What is the real issue requiring resolution?
    - i. Lessor wants money the lessee owes
    - ii. Lessor wants certain behavior to stop
    - iii. Lessor wants to regain possession of the property
    - iv. Lessee wants necessary repairs
    - v. Lessee wants more time to move out
    - vi. Lessee wants to retain possession
- 4. Get Copies
  - a. Lease
  - b. Receipts
    - i. Rental (especially in late payment or non-payment cases)
    - ii. Repairs (especially in damages cases)
    - iii. Utilities
    - iv. Security Deposit
  - c. Violation/Termination Notice(s)
  - d. Notice(s) to vacate
  - e. Correspondence
  - f. Pleadings
  - g. In subsidized housing, you have a right to see these w/o formal discovery
- 5. What does your Client want to do?
  - a. Lessor
    - i. Advice on rights/options/how to proceed pro se
    - ii. Demand letter/negotiation with lessee
    - iii. Help with the grievance process (subsidized housing)

- iv. Get money the lessee owes
- v. Regain possession to put in another lessee
- vi. Regain possession for lessor
- b. Lessee
  - i. Advice on rights/options
  - ii. Negotiation with lessor
  - iii. Help with the grievance process (subsidized housing)
  - iv. Force the lessor to make necessary repairs
  - v. Get more time to move out
  - vi. Retain possession of the property
  - vii. Get injunctive relief
  - viii. Get damages from lessor

## B. Legal Analysis

1. What type of housing are you dealing with?
  - a. Private lessor/lessee
  - b. Subsidized housing
    - i. Public Housing Authority
      - (a). Owned/operated by city or parish
      - (b). HUD subsidizes operations through annual contract
      - (c). Rent based on income, but with minimum rents
      - (d). Eviction only for good cause
      - (e). Housing must meet minimum standards
    - ii. Section 8, Project Based (many flavors)
      - (a). Owned by private individuals
      - (b). Local PHA subsidizes lessee's rents
      - (c). Rent based on income
      - (d). Housing must meet minimum standards
      - (e). Good cause required for mid-term evictions
    - iii. Section 8 Vouchers
      - (a). Housing is owned by private individuals
      - (b). Lessee gets "hunting license"
      - (c). Government subsidizes rent, up to amount of voucher
      - (d). Voucher amount based on income & type of unit
      - (e). Housing must meet minimum standards
      - (f). Good cause required for mid-term evictions
    - iv. Section 515 Rural Rental Housing
      - (a). Rural areas only, housing must be modest in design and cost
      - (b). Rent is capped at 30% of adjusted gross income
      - (c). Good cause required for eviction
2. What is the nature of the possession? (Will determine the applicable law)
  - a. Lessee (C.C.P. 4701)
  - b. Occupant (C.C.P. 4702)
  - c. Trespasser
  - d. Hotel/Motel occupant (R.S. 21:75)
3. Find and review the applicable statutes, regulations/rules (infra)
  - a. United States Code
  - b. Code of Federal Regulations
  - c. Executive branch handbooks

- d. Civil Code
- e. Code of Civil Procedure
- 4. Is eviction the only/best solution to the issue the parties are trying to resolve?
- 5. Evaluate notices and procedures for compliance with these
  - a. If not, and you represent the lessor, opportunity to revise
  - b. If not, and you represent the lessee, defenses present themselves
- C. Identify options and counsel your client
  - 1. Alternative methods to get what your client wants (or at least needs)
    - a. Faster
    - b. Lower cost
    - c. Longer term solution
  - 2. Revisions needed in lessor's forms, policies, procedures, staff training
  - 3. How to get through the grievance process (in subsidized housing)
  - 4. Explain how evictions work
    - a. Administrative Process
      - i. Notice to lessee that certain conduct will be considered Good Cause
        - (a). Can be incorporated in lease or house rules
        - (b). Only required in some subsidized housing
      - ii. Notice of Lease Violation – Subsidized housing only
        - (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
      - iii. Notice to Vacate (C.C.P. 4701, 4702)
        - (a). Notice to Vacate can be waived if not subsidized housing
        - (b). Wait until date for corrective action has passed
        - (c). State that occupancy terminated, lessor will file suit for eviction
        - (d). State reason(s) with specificity
        - (e). Inform lessee of opportunity to review & copy file (subsidized housing only)
        - (f). Eviction proceeding if remain in unit after \_\_\_ days (Can not give less than 5 days to move out)
        - (g). Service of notice
          - (1). First class mail
          - (2). Personal delivery
          - (3). Tacking (not in subsidized housing) (C.C.P. 4703)
        - (h). Copy to RHCDS district office (Rural Rental Housing only)
      - iv. Any grievance process required by subsidized housing rules
      - v. If also have Section 8 subsidy, those regulations must be followed
      - vi. If lessee is paying over 25% of income in rent, RHCDS may have to help seek any other available assistance (Rural Rental Housing only)

- vii. Wait prescribed period (depending on facts)
  - (a). No period if NTV legally waived in lease
  - (b). 5 day minimum under state law
  - (c). 14 days for non-payment cases in subsidized housing
  - (d). 30 days for other cases in subsidized housing

b. Legal Process

- i. File eviction in court (after notice to vacate period is over)
- ii. Court serves suit (rule or petition) on lessee
- iii. Notice of court date (at least 72 hours after service on lessee)
- iv. Court hearing (C.C.P. 4732)
- v. Judgment making rule absolute
- vi. Possibility of appeal within 24 hours
- vii. If no appeal, court officers can evict 24 hours later (C.C.P. 4733)
- viii. Appeals, Writs, New Trials

c. Protections for Lessees

- i. In subsidized housing, certain "grievance" rights prior to filing suit
- ii. Lessor may not actually or constructively evict until court says so
- iii. Court officer, not lessor effects the actual dispossession of lessee

5. Lessors should be counseled about

- a. Ways for lessors to get into trouble or end up paying lessees (& their lawyers)
  - i. No written lease or procedures for handling disputes & evictions
  - ii. Don't follow their procedures or train their personnel
  - iii. Don't give the proper notice(s)
  - iv. Ignore lessees' requests to talk about problems
  - v. Start the eviction before the grievance process is over
  - vi. Change the locks or remove the lessee's belongings less than 24 hours after getting a court's judgment making the rule absolute
  - vii. Let their personal feelings interfere with their professional judgment

b. Choice of forum

- i. Justice of the Peace (C.C.P. 4832, 4911, 4912)
- ii. City Court (C.C.P. 4844)
- iii. Parish Court (C.C.P. 4842)
- iv. District Court
- v. Federal Court (lessee may drag you here by filing bankruptcy)

c. Need for your services to design/revise lease/policies/procedures

6. Lessees should be counseled about

- a. The earliest date they can be evicted if the lessor follows the law
- b. The latest they can expect to remain in the property
- c. For tenants with rental subsidies, also cover
  - i. Any grievance rights they may have (subsidized housing)
    - (a). What those rights entail
    - (b). How to exercise their rights
  - ii. If evicted for any reason, the lessee may be disqualified from future subsidized housing
- d. Making contingency plans for other housing
- e. Plans/possibility of posting the appellate bond (C.C.P. 4735)

7. Let the client decide how to proceed, based on your professional judgment

D. Negotiation

1. Unless the lessor or his counsel discover defects in the notices or procedures used, there is little or no incentive to negotiate with the lessee
2. On behalf of the lessee
  - a. Call the manager/lessor/owner and LISTEN
    - i. Ethics caution: Is adverse party represented by counsel?
    - ii. Opportunity for informal discovery
  - b. If you've found errors in the process, explain why the eviction will be dismissed
  - c. Figure out what you can give the lessor
    - i. If you've got nothing to offer, lessor has no incentive to bargain
    - ii. Once the eviction is filed, most lessors want the court to decide
    - iii. Trade lessee's rights of action for dismissal & amnesty
    - iv. Find ways to solve the lessor's problem
  - d. Find out what the lessor wants in order to let your client stay
  - e. be aware of lessor's need to save face – often the biggest impediment to reaching a settlement

#### E. Pleadings

1. Lessor
  - a. Rule (Summary Process – regains possession only) (C.C.P. 4731)
    - i. Plaintiff's right of action
      - (a). Owner
      - (b). Usufructuary
      - (c). Lessor
      - (d). Agent
    - ii. Existence of lease
    - iii. Facts causing termination of lease
    - iv. Delivery of notice to vacate
    - v. Lessee still in possession
  - b. Petition (Ordinary Process)
    - i. Same elements as above
    - ii. Can combine other causes of action
      - (a). Damages
        - (1). Unpaid rent
        - (2). Property damage
      - (b). Lessor's privilege
      - (c). Injunctive relief
2. Lessee
  - a. Discovery
    - i. Will need to move court to shorten ordinary delays or
    - ii. Will need to move for continuance of trial date
  - b. Exceptions that are frequently available (C.C.P. 921 et seq, C.C.P. 4917) (File prior to answer or incorporate in same pleading)
    - i. Insufficient service of process
    - ii. Lack of jurisdiction over subject matter (C.C.P. 4847)
    - iii. Prematurity
    - iv. Unauthorized use of summary procedure
    - v. Nonconformity
    - vi. Vagueness

- vii. Lack of procedural capacity
  - viii. Improper cumulation of actions (damage claim in summary suit)
  - ix. No right of action
  - c. Motions (C.C.P. 961 et seq)
    - i. Expedited discovery (can be granted ex parte – C.C.P. 963)
    - ii. Continuance
    - iii. Record
    - iv. Sequestration
    - v. Limine (keep out substantive merits until exceptions decided)
    - vi. Recusation (especially in Justice of the Peace court) (C.C.P. 4862)
    - vii. New Trial ( C.C.P. 4907)
  - d. Answer
    - i. Required to preserve right to appeal (C.C.P. 4735)
    - ii. Must be verified
    - iii. Must allege affirmative defenses
    - iv. You will seldom be able to serve in advance of trial date
  - e. Petition
    - i. Can't reconvene in summary proceeding for eviction
    - ii. Can reconvene in ordinary action
    - iii. Can file separate suit
      - (a). State court
      - (b). Federal court
  - f. Bankruptcy
  - g. Appeals
    - i. Justice of the Peace
      - (a) to District Court (C.C.P. 4924)
      - (b) de novo trial
    - ii. City or District Court – to Court of Appeal (C.C.P. 5001 et seq)
- F. Strategic considerations
- 1. Lessor
    - a. Don't throw good money after bad (if he couldn't pay the rent...)
    - b. Don't over plead (what do you need to get your judgment?)
    - c. Your client wants a rent producing property, not a lifelong battle
  - 2. Lessee
    - a. The goal is to keep a roof over your client's head
    - b. Escrow the rent in client trust if the lessor won't take it
    - c. Use all available grievance procedures
    - d. Conduct discovery
    - e. Procedural defenses are easier to win than substantive ones
    - f. Preserve grounds for appeal, watch short deadlines, be practical
    - g. Don't make "bad law"
    - h. Remember, your client has to live there when you are finished

### **III. HOUSING DISCRIMINATION**

#### A. Statutes

1. Fair Housing Act – (42 U.S.C. 3601)
2. Louisiana Open Housing Act – (R.S. 51:2601)

May be advantageous to file in State court - pre-emption of eviction

#### B. Coverage

1. All dwellings (homes, apartments, mobile homes, motels, condos, shelters, etc.)
2. Except
  - a. Owner selling his own single family home
  - b. Lessor-occupied buildings, with <4 units
  - c. Housing for older persons can discriminate against families
  - d. Private clubs' & religious organizations' noncommercial lodgings

#### C. Bases

1. Race or Color
2. National Origin
3. Religion
4. Sex (or Sexual Harassment)
5. Handicap (or regarded as having one)
6. Familial Status

#### D. Practices

1. Refusal to rent or negotiate
2. Lies about availability
3. Discriminatory terms, conditions, services
4. Eviction
5. Steering
6. Retaliation
7. Coercion, intimidation, threats, interference
8. Advertising
9. Rehabilitation
10. Failure to seek subsidized housing
11. Brokerage services
12. Municipal services
13. Refusing handicapped accommodation/right to modify

#### E. Damages

1. Actual
2. Punitive
3. Equitable Relief
4. Attorneys Fees

#### F. Enforcement

1. State AG's office
2. Regional HUD office
3. Local Fair Housing agencies
4. Private suit – 2 year prescription

Disparate treatment, mixed motive or discriminatory effect claims

### **IV. FEE PROVISIONS**

- A. Unpaid Rent (R.S. 9:3534)
- B. Lease terms (contractual)
- C. Unfair Trade Practices (R.S. 51:1401)
  - 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
- D. Security Deposits (R.S. 9:3251)
- E. Wrongful Seizure (fees awarded by courts as an element of damages or using UTP)
- F. Housing Discrimination (42 U.S.C. 3613)
- G. Civil Rights (42 U.S.C. 1988)

# EVICTON PROCESS

## **ADMINISTRATIVE PROCESS (SUBSIDIZED HOUSING):**

Notice that Conduct will be Considered Good Cause for Eviction

Notice of Lease Violation/Action Adverse to Lessee

Grievance (Request for Meeting) w/in 10 calendar days

"Informal Meeting" w/in 5 working days

Written Summary of Meeting (4 copies) w/in 10 calendar days

Written Request for Hearing w/in 10 calendar days

Hearing w/in 15 days

Written Decision in Formal Hearing w/in 10 calendar days

Review by District Director w/in 10 calendar days

## **JUDICIAL EVICTON PROCESS:**

State Court Notice to Vacate  
(may be combined w/Notice of Termination)

Landlord Files Suit (Summary or Ordinary)

Court Serves Suit, Notice of Court Date

Eviction Trial

Judgment

# RESEARCH AND SUPPORT MATERIALS

RHCDS (FmHA) HOUSING PROGRAMS: TENANTS' AND PURCHASERS' RIGHTS  
(2d ed. 1995), The National Housing Law Project

HUD HOUSING PROGRAMS: TENANTS RIGHTS  
(2d ed. 1994 & 1998 Supplement), The National Housing Law Project

## Internet Sites:

Louisiana Landlord-Tenant Law (advocate's guide) –  
<http://www.loyno.edu/~gwlong/booklandlord.pdf>  
Federally Subsidized Housing Programs (advocate's guide) –  
<http://www.loyno.edu/~gwlong/bookhousing.pdf>  
United States Code - <http://uscode.house.gov/usc.htm>  
Code of Federal Regulations - <http://www.access.gpo.gov/nara/cfr/>  
Federal Register - [http://www.gpo.gov/su\\_docs/aces/aces140.html](http://www.gpo.gov/su_docs/aces/aces140.html)  
HUD Handbooks - [http://www.hud.gov/offices/adm/handbks\\_forms/handbooks.cfm](http://www.hud.gov/offices/adm/handbks_forms/handbooks.cfm)  
HUD, New Orleans Office - <http://www.hud.gov/local/la/working/neworleansoffice.cfm>  
USDA Rural Housing programs –  
[http://www.rurdev.usda.gov/rhs/ProgramBriefs/program\\_info.htm#MFH](http://www.rurdev.usda.gov/rhs/ProgramBriefs/program_info.htm#MFH)  
USDA Rural Development - <http://www.rurdev.usda.gov/>  
USDA Rural Development regulations - <http://rdinit.usda.gov/regs/>

Louisiana Civil Code - <http://www.legis.state.la.us/home.htm>  
Generally - Articles 2669 through 2792  
Eviction - Articles 2712 to 2714  
Lessor's Rights and Duties - Articles 2692 to 2709  
Lessor's Privilege - Articles 2705 to 2709  
Lessee's Rights and Duties - Articles 2710 to 2726  
Dissolving the Lease - Articles 2727 to 2744

Louisiana Code of Civil Procedure - <http://www.legis.state.la.us/home.htm>  
Evictions Generally - Articles 4701 through 4735  
Notice - Articles 4701 to 4703  
Procedure - Articles 4731 to 4735

Louisiana Revised Statutes – <http://www.legis.state.la.us/home.htm>  
Security Deposits – R.S. 9:3251  
Unfair Practices – R.S. 51:1401

Public Housing Statutes – Volume 42 of the United States Code  
42 U.S.C. §1437 and following

Public Housing Regulations – Title 24 of the Code of Federal Regulations  
Vouchers - 24 C.F.R. §813 and following  
Public Housing – 24 C.F.R. §913 and following  
Section 8 Existing Housing – 24 C.F.R. §247 and following

Rural Development Statutes - Volume 42 of the United States Code  
§§1485 and following

Rural Development Regulations - Title 7 of the Code of Federal Regulations  
§515 Generally - Part 1944, Subpart E and following –  
<http://rdinit.usda.gov/regs/regs/txt/1944e.txt>  
§515 Tenant Grievances and Evictions - Part 1944, Subpart L  
<http://rdinit.usda.gov/regs/regs/txt/1944l.txt>  
§515 Management Handbook - Part 1930  
<http://rdinit.usda.gov/regs/regs/txt/1930c.txt>  
Management Handbook - Part 1930, Subpart C, Exhibit B  
Rental Assistance - Part 1930, Subpart C, Exhibit E  
§514-516 Farm Labor Housing - Part 1944, Subpart D  
<http://rdinit.usda.gov/regs/regs/txt/1944d.txt>