

ROOMMATE PROBLEMS – AND HOW TO AVOID THEM

UCSB LEGAL RESOURCE CENTER

Believe it or not, there are many possible legal problems that may arise if you have a roommate. In order to determine what your legal rights and obligations are, you first need to know whether you are a co-tenant or a sublessee. Generally speaking, you are a co-tenant if your name is on the rental agreement. Even if you are not named in the rental agreement with the landlord, you probably are a co-tenant if you pay your rent directly to the landlord (and not to a roommate), if you have completed a credit application or application to rent for the landlord or if your name is on the mailbox and the landlord has demonstrated a knowledge that you are a tenant.

If you have signed a sublease agreement with your roommate and you have not signed a rental agreement with the landlord, then you are a sublessee. You also may be a sublessee if your name is not on the rental agreement, you only pay your rent to a roommate, or if your roommate is the “main tenant” in an agreement with the landlord and has the right to sublease a portion of the apartment to other people. Most rental agreements require the landlord’s prior written permission to sublease, so be sure your roommate has this permission before you agree to sublease all or part of the apartment.

One important decision between being a co-tenant and being a sublessee is your liability for your roommate’s actions. If you are a co-tenant, then you and your roommate are *jointly and severally liable* for your obligations under the rental agreement. This means that each of the co-tenants is responsible for the entire amount of the rent and, if your roommate does not pay, the landlord can require you to pay the full amount owed. Similarly, each co-tenant is responsible to the landlord for all damage done to the apartment. In some cases, it may be possible for the “innocent” roommate to seek reimbursement from the “guilty” roommate, but that does not affect the tenants’ legal obligations to the landlord. In contrast, a sublessee is not automatically liable under the terms of the rental agreement between the sublessor (the “main tenant”) and the landlord; the sublessee’s obligations come from terms of the sublease agreement.

Another difference between co-tenant and sublease situations is the ability to force one of the tenants to leave. If you are a sublessee, the sublessor stands in the shoes of the landlord and may evict you if you violate a term of the sublease agreement. The sublessor must comply with California law, however, and may not just throw you and your possessions out. There are many specific legal requirements, including notice and a court hearing, with which the sublessor must comply before you may be required to leave. On the other hand, co-tenants have no legal right to force another tenant out of the apartment; even if you have the “roommate from hell,” you have no right to kick the person out. The one exception is if the roommate has threatened or engaged in physical violence against you. In

that case, you may go to court to obtain a Domestic Violence Temporary Restraining Order and ask for a residence exclusion order requiring the offending roommate to leave the apartment immediately. Even if you and your roommate are best friends, it is a good idea to have a written agreement, either a roommate agreement or a sublease agreement depending upon your situation. Unexpected problems can occur, and an agreement can set forth both the obligations and rights of the roommates. Although roommate agreements and sublease agreements can be either oral or written and both types are enforceable under California law, it is far easier to prove the terms of a written agreement. Written agreements have the additional advantage of making expectations of the roommates very clear, perhaps preventing future problems. If one roommate violates a term of the agreement, the consequences are more straightforward and may even be included in the agreement itself.

These agreements may be written in simple English without any “legalese.” It is advisable to include terms addressing the following issues:

- How long each roommate is agreeing to stay in the apartment.
- What happens if a roommate wants to leave early: who pays the rent until a replacement is found; who finds the replacement; who may approve the replacement.
- How the rent is divided.
- How the living space in the apartment is divided.
- In whose name the utilities will be and how the bills will be divided.
- What are the “house rules”: may guests spend the night; if so, where and for how long; is smoking allowed; are there quiet hours; is alcohol allowed; who will clean the apartment and how often; will food be shared; etc.
- Who gets the parking space(s), if any.

Even if the roommate agreement includes a provision allowing roommates to leave and find a replacement, it is important to know whether your rental agreement requires you to get the landlord’s written permission before you switch roommates. Most rental agreements contain a provision prohibiting subletting or assigning without the prior written approval of the landlord. Accordingly, you will want to talk to your landlord BEFORE you let a new roommate move in. Many landlords will allow a substitution if the new tenant passes a credit check and agrees to sign the rental agreement. Some landlords, however, are less reasonable. If your landlord falls into this latter category, you may want to consult with an attorney to learn what options you have. Similarly, you must obtain the landlord’s permission to have an additional tenant live in the apartment. If the apartment is subject to the Los Angeles Rent Stabilization Ordinance (rent control), the landlord may increase the rent by 10% for the additional tenant. **A word of warning:** The landlord has the right to evict all the tenants in the apartment if you violate the lease by substituting or adding a tenant without the landlord’s permission. Moreover, the departing tenant may not be relieved of his or her obligations under the lease (and could be named in an eviction lawsuit) unless the landlord specifically releases the departing tenant or allows that tenant to assign all of his or her rights and responsibilities under the lease to the new tenant.

Another issue that frequently arises in the context of switching roommates is payment of the security deposit. The landlord is not required to return the security deposit for the apartment until all tenants vacate, unless there is a provision to the contrary in the rental agreement. Consequently, it generally is up to the roommates to decide how to deal with the security deposit when one roommate leaves. One common way to handle the issue is to have the new tenant pay the departing tenant his or her share of the security deposit. If the departing tenant caused some damage to the apartment, then it is advisable for the new tenant to deduct the cost of that damage from the amount paid. To ensure that the landlord will agree to pay the security deposit to the new tenant at the termination of the tenancy, the departing tenant should “assign” his or her share of the deposit to the new tenant. Some landlords have forms to do this. If not, a short written statement, signed and dated by the departing tenant, stating: “I assign my interest in apartment #1, located at 100 Main Street, Goleta, CA and my security deposit in the amount of \$350.00 to Joe Gaucho.” You should send a copy of the statement to the landlord, so the landlord will have the assurance that the departing tenant will not later claim an interest in the deposit.

Questions asked by UCSB students:

Question: *My roommate and I signed a one-year lease with our landlord, which ends on June 30, 2009. Last weekend, my roommate moved out of our apartment to go live with her boyfriend and says she won’t be paying rent any longer. What can I do?*

Answer: Because you and your roommate both signed the lease, you are jointly and severally liable for the rent. That means that each of you is responsible for the entire amount of rent for the apartment, so you will have to pay the landlord your roommate’s share of the rent until you find a replacement roommate. You probably have a legal right to sue your roommate, however, for any money you pay on her behalf. If you had an oral or written agreement that both of you would stay in the apartment until June, then you can sue her for breach of an agreement or contract. Even if you had no explicit agreement, you can argue that she implicitly agreed to pay rent until June because she signed the lease. In the future, you should have a written roommate agreement that clearly addresses this issue, among others.

You should try to find a replacement roommate as soon as possible, because you have an obligation to minimize the amount of money you pay on your roommate’s behalf. Most leases require the landlord’s prior written approval to change tenants, so you will need to obtain this permission in writing before you

allow a new roommate to move into the apartment.

If your roommate refuses to pay her share of the rent until a replacement roommate moves in, you can sue her in small claims court. If the amount she owes you is less than her share of the security deposit, she might agree to assign her right to the security deposit to you.

Question: *I have three roommates, and we all have signed the lease with our landlord. Three of us get along really well, but the fourth roommate is terrible. We have asked him to leave, but he refuses to go. What can we do to get rid of him?*

Answer: Unfortunately, there probably is nothing you can do legally to get rid of your roommate. Because all four of you signed the lease with the landlord, you are co-tenants, and co-tenants have no legal right to force each other to move out of the apartment. If you lock him out (e.g., by changing the locks) or remove his possessions from the apartment, you could be liable to him for substantial monetary damages and penalties. Instead, you might want to give him an incentive to move, by offering to pay for the move or some other benefit.

There is one way you might be able to force out your roommate if he has threatened or engaged in physical violence against you or the other roommates. In situations involving violent behavior by a roommate, you may go to court to obtain a Domestic Violence Temporary Restraining Order and ask for a residence exclusion order requiring the offending roommate to leave the apartment immediately.

Question: *I am having financial problems and have to move out of my apartment and back to my parents' house. I have found someone who might be interested in taking my place and my roommates like her. What should I do to be sure everything works out well?*

Answer: You are wise to want to do everything legally, because there are many problems that can arise in a situation like yours. You already have cleared the first hurdle by finding a replacement who is acceptable to your roommates. Your rental agreement probably requires the landlord's prior written approval to change tenants, so you should involve the landlord in the process now. The landlord may require the new tenant to complete an application and pass a credit check. To eliminate your liability under the lease, the new tenant should sign the rental agreement and you should assign all of your rights and obligations under the rental agreement to the new tenant. This assignment can be accomplished by a written agreement stating: "We agree that Jane Gaucho is assigning all of her rights and obligations under the rental agreement for the apartment located at 100 Main Street, Goleta, CA, to Susan Student effective April 1, 2009. This assignment includes her security deposit of \$350.00." The agreement

should be signed by you, the new tenant, and the landlord; if necessary, the landlord can provide you with written permission for the new tenant to replace you in a separate document, but signing the assignment is optimal. If you don't get a writing from the landlord releasing you from further obligations under the rental agreement (and this is common among IV landlords), you remain responsible for all future problems with the apartment, including unpaid rent, the cost to repair damage, and any other breach of the rental agreement. The landlord is not required to release you from the lease even if you assign your interest to another tenant.

The security deposit is mentioned in the assignment agreement because that is one of the easiest ways in which to handle the issue of your security deposit. The landlord typically is not required to return the deposit for the apartment until all the tenants vacate, so one common approach is to have the new tenant pay you your share of the deposit. You then assign your share of the deposit to the new tenant. By providing the landlord with a copy of the assignment agreement, the landlord will have the assurance that you will not later claim an interest in the deposit.

The information contained in this article is of a general nature. If you have a similar problem, you should consult with an attorney. Currently registered UCSB students are encouraged to call A.S. Legal Resource Center for an appointment (805.893.4246). Appointment hours are in the afternoons, Monday through Friday. Or drop by during afternoon hours.