

## Plain Language in Apartment Leases

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There are about 970,000 apartment rental units in Michigan. Many of the owners of these units belong to either the Apartment Association of Michigan (350 members who own or manage between 200 and 5,000 units each) or the Michigan Rental Housing Association (3,500 members who own an average of 10 units each). One of the biggest members of the Apartment Association of Michigan is The Beztak Companies. Beztak uses a plain English apartment lease for its 3,500 units in Michigan and 6,000 units in California, Arizona, and Texas. This lease, which has been in continuous use since 1980, proves that an effective apartment lease can be written in plain English.

Some 10 years ago, we sat down to revise Beztak's apartment lease form to comply with the Michigan Truth-In-Renting Act, MCL 554.631; MSA 26.1138(31). Although the Truth-In-Renting Act does not require it, we decided to cast the lease in plain language to resolve two major problems.

First was the enforceability problem. The old lease was full of typically

dense legalese and was not well suited for use in summary proceedings where decisions are generally made quickly, usually under the pressures of a crowded courtroom and docket.

Further, there was the growing perception among district court judges that the landlord-tenant laws should be generally classified as consumer protection statutes, and that the landlord must strictly comply with their requirements in order to prevail.

Finally, we found that some judges were just reluctant to evict a tenant when the judge truly believed that the tenant didn't understand his obligations under the lease.

The second problem was also practical. Because the lease was so obtuse, the landlord's management staff was not always able to use the lease in resolving problems with tenants. Although the old lease form was very complete, it was also quite intimidating to the staff. As a result, they would tend to call the lawyer to find out where any particular problem was covered in the lease, rather than trying to read and understand the lease for themselves.

With these points in mind, we set out to recast the lease in plain language. Our goals were:

- To facilitate summary hearings, where it is often necessary to quickly review and decide on provisions of the lease.

- To soften the presumption that the lease is to be construed against the landlord.

- To clearly state the landlord's and the tenant's duties and liabilities in language that was likely to be understood both by the landlord's management personnel and by the tenant.

An example of before-and-after is on the next page.

After 10 years' experience, we would like to share these observations.

A. The vast majority of prospective tenants are not interested in reading the lease form, and almost all sign the form without having read a word of it. Thus, the lease has had absolutely no effect on the marketing of apartments. The most effective way to educate a new tenant as to what the landlord expects is to have a member of the landlord's management staff sit down with the new tenant and explain the central lease terms. This is a procedure which The Beztak Companies have employed successfully for a number of years. The plain language lease allows the staff member to carry out this procedure more effectively. A plain language lease will not be a substitute for this type of chat.

B. The plain language lease will enable the landlord's management personnel to more easily read and understand the lease form. The easier a form is to use, the less likely it is that a mistake will be made, and the training of new personnel is made easier. Since management personnel can change frequently, it is important that the forms be easy to use and clearly drafted.

C. It has been much easier for management to resolve differences with tenants. Management staff understands the lease better, and can generally point to a clear and understandable provision in the lease that governs the situation. This will generally resolve the issue because most people seem willing to abide by what they signed, even in those cases where they may not be convinced that it was fair.

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"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

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## Old lease clause:

**ASSIGNMENT** 3. It is expressly understood and agreed by Tenant that Tenant's leasehold interest or any estate or interest therein may not be assigned, sublet, underlet or transferred in any manner in whole or in part without, in each case, having first obtained the written consent of the Landlord; and any attempted assignment, sublease or underlease in whole or in part by operation of law, by consent, agreement or otherwise by Tenant shall be ineffective and null and void as against Landlord without its prior express written consent hereinbefore provided. Consent by Landlord to one or more assignment of this lease or to one or more subletting of the demised premises shall not be deemed a waiver by Landlord as to any other assignment or subletting. In the event that Tenant, with or without the prior written consent of Landlord, does assign, sublet or in any manner transfer this lease or any estate or interest therein, Tenant shall in no way be released from any of its obligations under this lease except as to such obligations as are expressly waived by Landlord in writing.

## Plain English lease clause:

**ASSIGNMENT** 16. The Residents expressly understand and agree that they will not assign any part of their interest in this Lease, nor will they sublet the Apartment nor allow anyone other than themselves and the Other Occupants of the Apartment to occupy the Apartment, unless they first obtain the written consent of the Owner which the Owner may withhold for any reason whatsoever. Unless the prior written consent of the Owner is obtained, any assignment or subletting of the Lease or the Apartment will be void and completely ineffective, and will be a default allowing the Owner to regain possession of the Apartment. Whether or not the Owner consents to any assignment, the Residents will not be released from any of their obligations under this Lease unless those obligations are waived in writing by the Owner. A consent by the Owner to an assignment or subletting does not include a consent to any further assignment or subletting.

The enforceability of the lease has probably been enhanced. Often in summary proceedings, we have found that the appearance of fairness and evenhandedness is just as important as full compliance with the lease and the Summary Proceedings Act. Having a lease document that is easily understood by the defendant helps to present the landlord in that light.

The foregoing should be understood in the context of a residential lease only. We do not advocate the use of such a document in commercial lease transactions. The parties to a commercial lease are generally represented by counsel in the negotiation process. Further, the emotional issue of a landlord attempting to evict someone from their residence is absent in this setting. Finally, if a commercial lease goes into litigation, the defendant is generally represented by counsel, unlike most cases in the residential setting. We therefore see less benefit to

the use of a standard plain English document in these transactions.

In summary, the plain English lease has demonstrated a number of benefits. It is not by any means a substitute for conscientious management and good tenant relations. It does, however,

provide a document which both management personnel and tenants can more easily understand. Further, we believe that it does enhance the landlord's position in those cases where legal remedies are sought against the tenant.

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