

Important Terms for Housing Agreements

DISCLAIMER: This document does not constitute legal advice; it is merely a guide to key components for a housing agreement. The laws relating to the possession of property vary from state to state. Please consult experienced legal counsel when you are preparing housing agreements.

The following terms are recommended to be included in your housing agreements based upon extensive legal, risk management and insurance insight from both Faegre Baker Daniels LLC and MJ Insurance Sorority Department.

Not a lease. Call your document a housing agreement; do not use landlord/tenant/lease language because those who reside in a fraternity or sorority (hereafter, "fraternity") house do not have exclusive possession rights as tenants in an apartment complex do. In legal terms, your agreement is therefore not a lease but a license, although you need not use the term "license." It is recommended that you explicitly state that the document is not a lease, nor does the member hold any leasehold interest in the property,.

Payment terms. Each year strive to move closer to the university model: require payment in advance of moving in, either prior to the school year or at least prior to each semester. If possible, the agreement should provide the university "checklist" or other enforcement actions which are available for use following a default by a member. Consider requiring a specific mode of payment, such as direct payment from a bank or credit card.

Parents. It is recommended that the parents of the members are also parties to the contract, not just the guarantors. As this is an unusual transaction, the party with the greater assets should be required to respond to any balance/debt.

Parties. Include parents as parties to the agreement and not merely as guarantors. The agreement must expressly say that it is not assignable by the member.

Fraternity discipline and violation of University Rules or any laws. Provide that a member who is suspended or terminated from membership or who violates the law is automatically in breach of her agreement and must move out of the premises immediately. A violation of university, fraternity or chapter rules should also be a breach. This however does not release the member from the financial obligations of her contract.

Knowledge of fraternity discipline rules. In the agreement, members acknowledge that they have received, read, understood and agreed to follow all fraternity disciplinary rules.

Non-waiver. Provide that the house corporation's failure to enforce provisions or protections in one instance do not constitute a waiver of its ability to enforce those provisions in future instances.

Who may reside. Provide that only full time registered students who are members of the fraternity at the college or university may live in the chapter house. The members should agree that rooms may be assigned and reassigned at any time and that the owner need not resolve disputes among members or be responsible for actions of any other member.

Damage to House. It is helpful to provide that if the house is damaged the person responsible may be obligated to pay for the damages. In the absence of knowing the party responsible, it is expected that each of the members will be responsible for an equal share of the cost of repairing that damage.

Deposits. To the extent permitted by local law, define deposits as "housing deposits" that can be used to remedy failure to pay house bills or to repair damage. Provide that in the event the perpetrator cannot be determined, the house corporation may draw upon deposits to repair damage to the chapter house. Do not use the term "security deposit," as that is a term frequently used in lease agreements.

Absence/off campus study. Require members signing the agreement to pay their expenses whether they are present or not. Have agreements signed at a time when members are most likely to know whether they have been accepted for off campus study.

Chapter house uninhabitable. Provide that if the chapter house becomes uninhabitable, the house corporation will endeavor to provide for comparable housing which may include university housing as an alternative.

Member personal property (including cars). Put members on notice in the agreement itself that the house corporation does not (and cannot) insure member personal property on the premises (including cars in the parking lot), and that members must have their own coverage for such items.

Member personal property during summer break. Put members on notice in the agreement itself that the house corporation will set a date and time for the house to be closed for the summer break and that all personal property of the members (including bicycles) is to be removed. Any personal property remaining will be discarded from the premises.

Breaks. Establish procedures for occupancy, or prohibiting occupancy, of the house for winter, spring and summer breaks and address the personal property of the resident/members.

Member release and indemnification of the house corporation. Because members are also currently insured under your policy, the release and indemnification need only extend to claims involving member personal property and claims not already covered by your insurance.

Service animals. Your agreement should permit their presence if both medically necessary and approved by the housing corporation, but otherwise should exclude pets. Closely examine any state law to insure that a private entity is subject to the law. The welfare of the other members of the chapter must also be considered.

Searches. Your agreement should permit the house corporation to search rooms at any time for any reason without prior notice.

Items not permitted on the property. You should provide that members may not have the following items on the property: firearms; other weapons; illegal drugs/controlled substances; marijuana (listed separately because it is now legal under some state laws); alcohol (again, it should be separately listed because it is legal for some students under state law).

Rules. A general set of rules, which can be modified from time to time, should be established. Those typically include no smoking, no candles, no roof access and no modifications of rooms.