



IMPORTANT TERMS FOR HOUSING AGREEMENTS

MJ SORORITY

Prepared By:

MJ SORORITY

571 Monon Blvd., Suite 400

Carmel, IN 46032

MJSORORITY.COM



SORORITY



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We have created this document in partnership with Heather Moore and Mark Sausser of Faegre Drinker Biddle & Reath LLP in an effort to help our clients address the components of an acceptable Housing Agreement.

Because laws vary widely from municipality to municipality, we recommend that you seek local legal counsel to develop your specific Housing Agreement; however, we hope that you will use the attached resource to avoid common potential pitfalls for Greek facility housing agreements. In addition to the attached checklist, your Housing Agreement should include an addendum listing the rules and requirements expected in a community living environment, as well as a description of how the House Corporation expects that the property be used.

We also recommend that you consider a similar document for non-resident members to follow (often referred to as a membership or parlor agreement) that describes the rights and expectations for non-resident members when they visit the chapter house. As always, should you have any questions or concerns, please do not hesitate to contact your Client Executive.

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.

Not a lease. Call your document a housing agreement; do not use landlord/tenant/rent/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." You can add language stating "this is not a lease."

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. Consider requiring a direct draw from a credit card or bank account. If possible, the agreement should provide the university "checklist" or other enforcement actions which are available for use following a default by a member.

House Corporation Obligations and Student Rights. Under the housing agreement, obligations of the house corporation and rights of the student are expressly conditioned upon execution of the agreement by parents as parties to the agreement and not merely as guarantors. Parents are directly and fully liable for all obligations of the student under the housing agreement and are jointly and severally liable with student hereunder. Parents shall have no occupancy rights at the house as a result of the housing agreement. Parents

acknowledge that they are directly and indirectly benefitted from having the student live in the house and that adequate consideration for entering into the housing agreement has been received.

Fraternity discipline and violation of University Rules or any laws. Provide that a member who is suspended or terminated from membership, is expelled or suspended from the university, 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. The agreement should allow the house corporation, at its discretion, to continue the house agreements in place if the chapter as a whole is put on probation, whether by the fraternity or by the university, or is forced to close operations. If the chapter is shut down due to disciplinary matters, it is likely that the owner will want the members out of the house. But if the chapter is closed simply because of a lack of numbers or due to university actions involving Greek organizations generally (e.g., campus-wide suspensions of Greek organizations), the owner may want to reduce its losses by having the members stay until the end of the current academic year.

Knowledge of discipline rules. In the agreement, members acknowledge that they have received, read, understood and agreed to follow all fraternity and university 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 members. The agreement must expressly say that it is not assignable by the member.

Damage to House. It is helpful to provide that if the house is damaged and the responsible party is not identified, each of the members will be responsible for an equal share of the cost of repairing that damage and each of their housing deposits can be used to cover the cost of the damage.

Unexpected House Closure. In addition to the other termination rights granted to House Corporation in this Agreement, House Corporation may close the Chapter House and require the members to vacate the same in the event such action is required or encouraged by the University, or if the University has or will cancel or suspend in-person classes, whether due to public health emergencies, pandemics, communicable disease outbreaks or any other reason. In such case, the determination of whether payments made by or due from Member will be credited against future payments (or, with regard to seniors, refunded) will be made

on a case by case basis, considering all factors, including the length of time the Chapter House is closed and the fixed expenses incurred by the House Corporation.

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 rather than “security deposits” as to which the law sometimes imposes more limits.

Absence/off campus study. Generally, members should agree to pay the housing fee whether they live in the house or not. It is advisable to have a specific provision about how to handle study abroad, internship and student teaching students, which may range from requiring full payment unless a substitute resident is found, to releasing students from further payments so long as timely notice is provided. (We have attached sample language for this purpose.) It also helps to have the agreements signed at a time when members are most likely to know whether they have been accepted for off campus study. The agreement should also address other hardship causes of absence that may arise (e.g., illness, death in the family, etc.), and provide that the house corporation has no obligation to release students from the agreement, but the house corporation in its sole discretion may decide to release students in certain extenuating circumstances.

Voluntary Move-Outs. The agreement is a binding contract and if a member “changes her mind” and wants to live out after she has signed an agreement, she would be in default. The agreement should be clear that in the event a member defaults by not moving into the house or by vacating the house early, the owner's remedies would include a continuing obligation by the defaulting member to pay all amounts due under the agreement. Rarely is it possible for a replacement resident to be found after housing agreements have been signed and it is even harder mid-year so any “breakage fee” less than the whole amount due might not fully protect the owner. Because enforcing these provisions can be difficult, some organizations have elected to require a lump sum payment as a move out fee. These are generally enforceable, but as noted the likely result is that the owner will suffer economic loss.

Chapter house uninhabitable. Provide that if the chapter house becomes uninhabitable, the house corporation may use university housing or off-site housing as alternative housing; also, provide that the agreement may be terminated by the house corporation.

Member personal property (including cars). Put members on notice in the agreement itself that the house corporation does not (and cannot) insure members' personal property on the premises (including cars in the parking lot), and that members must have their own coverage for such items. The agreement should also expressly release the chapter, the fraternity, and the local housing corporation from all liability for damage to the student's property whatever the cause, including the negligence of the chapter, the fraternity, and the local housing corporation.



Breaks. Establish procedures for occupancy, or prohibiting occupancy, of the house for winter, spring and summer breaks.

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

Service Animals. Your agreement should permit their presence if both medically necessary and approved by the housing corporation. As a private club, you are not subject to the ADA legislation for the disabled, however, there may be state or local laws which apply allowing the animal. Animals that meet this area of law are dogs and miniature horses only.

Emotional Support Animals. Sometimes also referred to as therapy or assistance animals are a part of the Federal Housing Act (FHA) and can be any type of animal. Although there remains debate as to whether private clubs like a sorority chapter or local house corporation are subject to this legislation, there are stringent requirements of a landlord and this must be carefully considered.

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

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). Importantly, because marijuana is illegal under federal law, the house corporation may generally prohibit possession of medical marijuana and would not be required to permit its possession or use as a reasonable accommodation for disability.

Rules. A general set of rules, which can be modified from time to time, without the consent of the member or chapter, should be established. Those typically include no smoking, no candles, no roof access and no modifications of rooms.

Enforcement. Regardless of who the owner of the house is, the national fraternity and/or the national housing corporation should have the right to enforce the terms of the housing agreement. This is particularly true if the “owner” signing the agreement is the chapter.

Remedies. The agreement should give the owner, following a default, all rights and remedies at law. The agreement should also expressly say that the owner has the right to remove the student from the house following a default, but such removal does not release the student from her payment obligations. It is also helpful to have a provision which allows the owner to terminate a student’s agreement without a default if the owner determines at its sole discretion that the termination is best for chapter as a whole, but such a provision

should also state that no payments should be due for the period after the student has moved out.

Sample Study Abroad/ Internship Provision

**** Please note that this is just sample language and it would need to be modified to fit in the context of the applicable housing agreement.**

Off campus study. If Resident is accepted into and elected to participate in a study abroad program or internship, she will be charged a \$_____empty bed fee (the “Empty Bed Fee”) for the semester she is enrolled in the study abroad program, in lieu of paying the full payments due hereunder, provided that a copy of the acceptance letter related to such program is provided to the Chapter no later than _____ months in advance. If Resident is required by the University to student teach, or engage in similar educational opportunities required by the University for her course of study, at a location 50 miles or further from the Chapter House, and provides notice within the time period set forth above, she may, in any such case, petition the Chapter for relief from the Empty Bed Fee. The Chapter House’s decision relating to relief from the Empty Bed Fee shall be at its sole discretion and shall be binding on Resident. As all situations are unique, prior determinations of the Chapter shall in no way bind or affect its determination with regard to Resident’s petition. If Resident is studying abroad or has accepted an internship and has located another member of the Chapter who is not living in the Chapter House and is willing to replace Resident as an occupant of the Chapter House, the Empty Bed Fee will be not be charged. Resident may only receive one exception during her tenure as a member of Chapter.