

12A-1.061 Rentals, Leases, and Licenses to Use Transient Accommodations.

(15) BONA FIDE WRITTEN LEASES.

(a) Transient accommodations that are leased under the terms of a bona fide written lease for periods longer than six months for continuous residence by the individual or entity leasing the transient accommodations to which the written lease applies are exempt. The exemption will not be allowed or disallowed based on the number of days in the rental period, but will be disallowed if the rental period is not longer than six “months,” as defined in paragraph (b).

(b)1. For the purposes of this subsection, a “month” is defined as follows:

a. For leases commencing on the first day of a month, the term “month” means a calendar month.

b. For leases commencing on a day other than the first day of a month, the term “month” means the time period from any day of any month to the corresponding day of the next succeeding month, or if there is no corresponding day in the next succeeding month, the last day of the succeeding month.

2. To be considered a lease for periods longer than six months, a bona fide written lease agreement effective the first day of a month must run through the first day of the seventh consecutive month. For example, a lease agreement that is effective July 1, 1997 through January 1, 1998, will qualify as a lease for periods longer than six months.

3. To be considered a lease for periods longer than six months, a bona fide written lease agreement effective at some other date than the first day of a month must be in effect through the day after the corresponding day of the seventh consecutive month. For example, a lease agreement that is effective July 28, 1997 through January 29, 1998, will qualify as a lease for periods longer than six months.

(c) For the purposes of this subsection, a “bona fide written lease” is a written document that clearly demonstrates that the parties’ intent is that the lessee will have the exclusive use or possession, or the right to the exclusive use or possession, of the transient accommodations to which the lease applies.

(d) The written lease must contain:

1. The length of time for which the transient accommodations are being occupied, including both the exact commencement and exact termination dates; and

2. A statement that the lessor is giving the lessee the right to complete and exclusive use or possession of the transient accommodations for the entire duration of the lease period.

(e) A “bona fide written lease” is executed in or with good faith, without deceit or fraud. The Department will examine the lease document, as well as all surrounding facts and circumstances, to determine the parties’ objective intent at the time of execution of the lease. In examining the lease document, the Department will consider and be guided by the following lease contents:

1. Language that indicates the written document is a lease;

2. A sufficient description of the leased transient accommodations;

3. A statement that the lease contains the complete and sole agreement between the parties for occupying the transient accommodations;

4. A provision that the lessee will pay an agreed amount of rental charge or room rate;

5. A statement containing the due date, the frequency, and the remittance address for payment of each rental charge or room rate;

6. A statement specifying what conditions or acts will result in early termination of the lease, the rights and obligations of the parties upon the occurrence of the terminating conditions or acts, and any penalties that will result from early termination; and

7. The signatures of the named parties, or in the case of corporate parties, the signature of the authorized corporate representatives.

(f)1. A lease does not cease to be a bona fide written lease when the lessor or lessee has experienced a significant change in circumstances and the lessor releases the lessee, with or without penalty, from the obligations under the lease.

2. A lease does not cease to be a bona fide written lease when the lessor has evicted the lessee for violation of the lease agreement.

3. A lease does not cease to be a bona fide written lease if the lessor is in violation of a fire or safety code such that the lessee is forced to move to another location.

4. For the purposes of this paragraph, the term “significant change in circumstances” means the occurrence of an event, not contemplated at the time of the signing of the lease, such as an illness, death, bankruptcy, significant change in business circumstances (e.g., long-term strike or the ceasing of doing business in the locality), loss of job, or job transfer, that would cause the lessor or lessee to suffer a hardship if the lessor or lessee were forced to honor the lease until its stated termination date.

(g) A “bona fide written lease” for periods longer than six months for continuous residence by the individual or entity leasing the transient accommodations to which the written lease applies will not be constituted when:

1. The lease contains a provision that would entitle the lessor of the leased transient accommodations to lease the accommodations back from the lessee during the lease period for the purpose of leasing the same accommodations to other lessees;

2. The lease contains a provision that would entitle the lessor of the leased transient accommodations to sublease, subrent, sublet, or license the accommodations to other persons for periods of six months or less;

3. The lease does not provide the lessee with the right to occupy the transient accommodations for the entire duration of the lease period;

4. The lease contains a provision that allows the lessee to cancel the lease, without penalty, at any time when the lessee has had no significant changes in circumstances; or

5. The lease contains a provision that would allow the lessee to avoid full payment of the stated amount of the rental charge or room rate.

(h)1. The Department will presume that the parties to the lease did not in fact intend to enter into a bona fide written lease for a period of more than six months for continuous residence when:

a. The leased transient accommodations are leased more than two times in a calendar year with each lease issued during that calendar year containing statements indicating that the lease period is for longer than six months; and

b. No lessee leased the transient accommodations for more than six months.

2. This presumption can be rebutted by documentary evidence (i.e., notarized statements, eviction documents, etc.) that provides, for each lease terminated prior to its stated termination date, that:

a. A significant change in circumstances of the lessee existed; or

b. The lessor evicted the lessee for cause.