Some families own their homes. To finance a home purchase, most people obtain a loan called a **mortgage** from a lender—a bank or other financial institution. With a mortgage, the lender pays the seller of the home the purchase price, and the buyer makes regular payments to the lender over a long period of time, usually 15 or 30 years. The buyer pays interest to the lender in return for the ability to repay the loan over many years. Depending on interest rates and the **term**, or length, of the loan, a buyer might make payments of more than $200,000 in order to pay off a $100,000 mortgage.

Most mortgages are **fixed-rate mortgages** in which the interest rate remains the same throughout the term of the loan. Some mortgages, however, are **adjustable-rate mortgages** in which the interest rate can change over time. Some begin with very low interest rates, which may initially make the loan more affordable.
However, some purchasers have found that these interest rates adjust upward faster than their ability to make higher monthly mortgage payments. This can lead to missed payments and eventually to foreclosure. When there is a foreclosure, the bank or other lender gets a court order that lets it take back the property and resell it. The money that comes in from that sale is used to satisfy the debt still owed by the borrower. Some lenders have been criticized for offering adjustable rate mortgages to borrowers who did not have the financial resources to make the monthly payments when the interest adjusted upward.

Many people eventually own a home, but initially almost all young people are renters. A renter, or tenant, pays the owner, or landlord, a certain amount of money in return for the right to live for a period of time in property owned by the landlord.

**Leases: A Special Kind of Contract**

The landlord-tenant relationship is created by a type of contract called a lease, or rental agreement. A lease specifies the amount of rent that must be paid and the length of time for which the dwelling may be rented. It also states the rights and duties of both landlord and tenant.

Before you rent an apartment or a house, you should do at least two things to protect your interests. First, completely inspect the dwelling to ensure that it meets your needs and is in good condition. Second, because most leases are written to the advantage of the landlord, carefully read the lease. If you do not understand or cannot read the lease, get help from someone else before signing it. The following list includes issues you should consider before renting:

- In what kind of area or neighborhood do you wish to live?
- What are the costs, including rent, utilities, and security deposit?
- What is the condition of the apartment or house? Will any repairs be made by the landlord before you move in?
- How long will the lease last, and how can it be ended? Can you sublet this apartment or add other tenants to the lease?
- Will the landlord make or pay for repairs after you move in?
- What services will the tenant receive?
- Are there any special rules (for example, no pets or no guests)?
- Do you understand all the clauses in the lease? Are any of them unacceptable to you?

**Problem 29.1**

Assume that you are looking for a new apartment. You are married and have a two-year-old child and a small dog.

a. What should you look for when inspecting an apartment? Make a list.

b. What questions would you ask the landlord?
After you have inspected a rental house or apartment, you will probably be asked to fill out a lease application. This is a form that the landlord uses to determine whether you qualify for the rental property. You will be asked for information such as your name, age, address, place of employment, source of income, and a list of previous residences. You will also be asked for credit references, including from previous landlords. Landlords use this information to determine your ability to pay the rent. If the landlord approves your lease application, you will then be asked to sign a lease.

A lease is a legal contract in which both the landlord and the tenant agree to certain obligations. A lease usually includes the date the tenant may move in, the amount of the rent, the dates on which the rent is to be paid, and the term or length of the lease. It also includes the amount of any security deposit, the conditions under which the rent may be raised, and information about whether the tenant can sublet the rental property to someone else. The lease also states the rules governing repairs, maintenance, and other conditions in the apartment or house.

Depending upon your particular situation, one type of lease may be better than another. For example, if you are planning to rent for only a short period of time, or if your job often requires you to move on short notice, you might prefer a month-to-month lease. While this type of lease usually enables you to leave after giving 30 days’ notice, it has the disadvantage of allowing the landlord to raise the rent or evict you with just 30 days’ notice as well. You should also keep in mind that renting an apartment on a month-to-month basis will usually be more expensive than entering into a long-term lease.

**Problem 29.2**

a. Is the student obligated to pay the additional two months’ rent?

b. Would it make a difference if the landlord rented the apartment immediately after the student moved out?

c. What should the woman have done when she found the cheaper apartment?

d. Role-play a phone call between the woman and the landlord after she finds the cheaper apartment and wishes to get the landlord’s permission to move.

**The Summer Rental**

A college student moves to a resort town to work for the summer. After searching the classified ads in the local newspaper, she finds an apartment for rent. She phones the landlord and after seeing the apartment tells him she will rent it for three months. After a month, she moves to a cheaper apartment down the street. The landlord demands rent for the two remaining months, but the young woman claims she does not owe any money because the lease was not in writing.
Another type of lease allows a tenant to move in with the understanding that the lease is for an indefinite period. This arrangement is called a tenancy at will. Tenants who remain in an apartment after their lease has expired are usually considered to be tenants at will. There is very little protection for either the landlord or the tenant in a tenancy at will, because the tenant may leave—or be asked to leave—at any time. Often, however, such a lease will have a provision requiring that the party who wants to end the lease give the other party fair notice, such as 30 days.

A lease for a fixed period of time is called a tenancy for years. This type of lease generally prevents the landlord from raising the rent or evicting the tenant during the term of the lease. If you are planning to rent for a long period of time, this may be the best type of lease for you.

Written leases can sometimes be difficult to read and understand. To protect yourself, be sure to read all clauses in your lease carefully before signing it. Never sign a lease unless all blank spaces are filled in or crossed out. If you are unsure of anything in the lease, ask to take it home and consult with a representative of a tenant organization, legal aid office, private law firm, or others experienced with leases. Also make sure that any promises made by the landlord are written into the lease. For example, if the landlord promises to paint the apartment before you move in, get the promise in writing.

Leases with a term of one year or longer must be in writing to be enforceable in court. However, leases for less than one year may not have to be written to be legally effective, and an oral agreement may be binding. To avoid problems, you should always get a written lease that is signed and dated by both you and the landlord. If there is only an oral agreement and problems arise, one of you may remember the terms of the agreement differently than the other.

**Landlord-Tenant Negotiations**

In many places, housing is in great demand and short supply. In this kind of market, landlords generally have the upper hand and can often tell tenants to “take it or leave it.” Negotiating with a landlord about rent and other lease terms can be difficult, but it is worth a try.
Negotiating is suggested particularly if you know your rights and know what you want. If you do negotiate with a landlord, it is best to be assertive, yet tactful and polite. Landlords want to know you will be a good tenant. But tenants expect something in return—namely, fair treatment and a clean, well-maintained place to live.

It may be possible to change parts of the lease. To strike a section from a lease, both the tenant and the landlord or rental agent should cross out the particular clause and put their initials and the date next to the change. If anything is added to the lease, be sure the addition is written on all copies of the lease and is initialed and dated by both the landlord and the tenant.

Some landlords ask that you sign a standard form lease, because it is usually written to the landlord’s advantage. It may even contain clauses that are unenforceable in court. The lease reprinted in Figure 29.1 contains many provisions found in standard form leases. Since landlord-tenant laws differ from state to state, a few of the clauses in this lease could be illegal in some states. You should learn about the landlord-tenant laws in your particular state.

**Problem 29.3**

a. What are the key provisions of the lease in Figure 29.1 on page 353? Who is the landlord? Who pays the utilities? Is the tenant allowed to have a pet?

b. As a tenant, would you object to any of the provisions in this lease? If so, which ones?

c. As a landlord, would you add any clauses to the lease? If so, draft them.

The following pages provide information on several of the clauses in the lease in Figure 29.1. This material is designed to help you read and understand a lease and avoid problems. After a person signs a lease and moves into a rental home, both the landlord and the tenant take on certain rights and duties. Most of these are spelled out in the lease, but others exist regardless of whether or not they are expressly stated in the lease.

If the tenant violates a provision of the lease—for example, does not pay the rent—the landlord can go to court and attempt to have the tenant evicted. The tenant may be able to defend against the landlord in court and prevent the eviction.

**Paying the Rent**

_Tenant will pay the rent at the time specified._ (Clause 1)

A tenant’s most important duty is paying the rent on time. Leases generally state the amount of rent to be paid and the dates on which it is due. Most leases require payment on the first day of each month. If you and the landlord agree to a different day, be sure that it is written into the lease and that both parties have initialed the change.
Figure 29.1  A Rental Agreement

THIS AGREEMENT, Made and executed this ___ day of __________, A.D., 20___, by and between RANDALL REAL ESTATE COMPANY, hereinafter called the Landlord, and ____________________________________________, hereinafter called the Tenant.

WITNESSETH, That Landlord does hereby let unto Tenant the premises known as Apartment No. 301, at 12 Marshall Street, Johnstown, Virginia, for the term commencing on the ___ day of __________, 20___, and fully ending at midnight on the ___ day of __________, 20___, at and for the total rental of _______ Dollars, the first installment payable on the execution of this agreement and the remaining installments payable in advance on the ___ day of each ensuing month, to and at the office of RANDALL REAL ESTATE COMPANY, 1000 Columbia Road, Johnstown, Virginia.

On the ___ day of __________, 20___, a sum of __________ shall become due and payable. This sum shall cover the period up to the ___ day of __________, 20___; thereafter, a sum of _______________________ shall be due and payable on the ___ day of each month.

AND TENANT does hereby agree as follows:
1. Tenant will pay the rent at the time specified.
2. Tenant will pay all utility bills as they become due.
3. Tenant will use the premises for a dwelling and for no other purpose.
4. Tenant will not use said premises for any unlawful purpose, or in any noisy or rowdy manner, or in a way offensive to any other occupant of the building.
5. Tenant will not transfer or sublet the premises without the written consent of the Landlord.
6. Landlord shall have access to the premises at any time for the purpose of inspection, to make repairs the Landlord considers necessary, or to show the apartment to tenant applicants.
7. Tenant will give Landlord prompt notice of any defects or breakage in the structure, equipment, or fixtures of said premises.
8. Tenant will not make any alterations or additions to the structure, equipment, or fixtures of said premises without the written consent of the Landlord.
9. Tenant will pay a security deposit in the amount of $_______________, which will be held by Landlord until expiration of this lease and refunded on the condition that said premises are returned in good condition, normal wear and tear excepted.
10. Tenant will not keep any pets, live animals, or birds of any description in said premises.
11. Landlord shall be under no liability to Tenant for any discontinuance of heat, hot water, or elevator service, and shall not be liable for damage to property of Tenant caused by rodents, rain, snow, defective plumbing, or any other source.
12. Should Tenant continue in possession after the end of the term herein with permission of Landlord, it is agreed that the tenancy thus created can be terminated by either party giving to the other party not less than Thirty (30) days’ Written Notice.
13. Tenant shall be required to give the Landlord at least thirty (30) days’ notice, in writing, of his or her intention to vacate the premises at the expiration of this tenancy. If Tenant vacates the premises without first furnishing said notice, Tenant shall be liable to the Landlord for one month’s rent.
14. Both Landlord and Tenant waive trial by jury in connection with any agreement contained in the rental agreement or any claim for damages arising out of the agreement or connected with this tenancy.
15. Landlord shall not be held liable for any injuries or damages to the Tenant or his or her guests, regardless of cause.
16. In the event of increases in real estate taxes, fuel charges, or sewer and water fees, Tenant agrees during the term of the lease to pay a proportionate share of such charges, fees, or increases.
17. Tenant confesses judgment and waives any and all rights to file a counterclaim, or a defense to any action filed by the Landlord against the Tenant and further agrees to pay attorney’s fees and all other costs incurred by the Landlord in an action against the Tenant.
18. Tenant agrees to observe all such rules and regulations which the Landlord or his agents will make concerning the apartment building.

IN TESTIMONY WHEREOF, Landlord and Tenant have signed this Agreement the day and year first hereinbefore written.

Signed in the presence of

__________________________________________

__________________________________________
Courts and legislatures in most states have decided that in situations in which a house or apartment is made unlivable by fire, landlord neglect, or other causes, the tenant cannot be forced to pay the rent. Keep in mind, however, that tenants have a duty to pay the rent and that landlords generally have a right to evict tenants who do not pay it. It is best not to assume that you are excused from paying rent.

Raising the Rent

In the event of increases in real estate taxes, fuel charges, or sewer and water fees, Tenant agrees during the term of the lease to pay a proportionate share of such charges, fees, or increases. (Clause 16)

Generally, landlords cannot raise the rent during the term of a lease. When the term is over, the rent can normally be raised as much as the landlord wants. Some leases, however, include provisions (like Clause 16 in the sample lease) that allow for automatic increases during the term of the lease. Many landlords include such clauses to cover the rising costs of fuel and building maintenance. A lease with an escalation clause is usually not favorable to a tenant.

Another factor that can affect whether the landlord may raise the rent is rent control. A few large cities have rent-control laws, which put a limit on how much existing rents can be raised. Cities with rent-control laws use various standards to control the rise in rents. Some places limit rent increases to a certain percentage each year. In other places, rent increases are tied to the cost of living or improvements in the building or are allowed only when a new tenant moves in. Rent-control laws slow down the rising cost of housing. However, there are many arguments for and against rent control. Wherever the system has been tried, it has been controversial.

Upkeep and Repairs

Landlord shall be under no liability to Tenant for any discontinuance of heat, hot water, or elevator service, and shall not be liable for damage to property of Tenant caused by rodents, rain, snow, defective plumbing, or any other source. (Clause 11)

In the past, landlords did not have a duty to maintain the premises or to make repairs to a rented house or apartment. In the few places where this is still true, tenants have to make all repairs that are needed to keep the property in its original condition. Clause 11 from the sample lease implies that the tenant must continue to pay the rent.
This is the case whether or not the landlord provides a dwelling fit to live in. In some states, this provision is unenforceable. Today, most states require landlords to keep houses or apartments in a condition fit to live in. The landlord is also responsible for maintaining common areas such as hallways and lobbies.

Many state courts and legislatures say that a warranty of habitability is implied in every lease. This means that the landlord promises to provide a place fit for human habitation. The warranty of habitability exists whether or not it is written into the lease. Thus, if major repairs are needed, the landlord has a duty to fix the problems.

**Problem 29.4**

a. If you were a landlord, what repairs and maintenance would you expect the tenant to perform? Make a list and explain each item.

b. If you were a tenant, what repairs and maintenance would you expect the landlord to perform? Make a list and explain each item.

c. Role-play the following situation.

A tenant’s apartment is seriously infested with roaches and mice. The tenant also feels that the walls should be repainted because the children have made them dirty over the seven months that they have lived there. The tenant meets with the landlord to complain.

In performing the role play, consider the following questions:

- How should the tenant present his or her rights?
- How should the landlord respond when the tenant complains?
- Should the landlord agree to correct any or all of the problems?
- Would it be better for the tenant to complain by writing a letter?

d. Would it make a difference to your role play if your state had a warranty of habitability? Explain.

In addition to the implied warranty of habitability, many communities also have housing codes. These codes set minimum standards for repairs and living conditions within rental houses or apartments. Landlords are required by law to meet the standards of the housing code, and they may lose their licenses to rent if the standards are not maintained. Housing codes differ from area to area, but in most places, tenants have the right to call a government housing inspector to examine their apartments for code violations.

Although most places hold landlords responsible for major repairs, remember that the landlord’s duty to make repairs differs from place to place and from lease to lease. It is always best to make sure the responsibility for repairs is spelled out in the lease. Also, remember that tenants have a duty to notify the landlord when repairs are needed. If someone is injured as a result of an unsafe or defective condition, the landlord cannot be held liable unless he or she knew or should have known that the condition existed.
Read the following information, then work in groups of four. In each group, two classmates should role-play the landlords (the Randalls), and two others should role-play the tenants (the Monicos). The Monicos should inspect the apartment and ask all the questions a tenant should ask before signing a lease. The Randalls should find out everything a landlord needs to know before renting to a tenant. The landlords should give a copy of the lease to the tenants. The tenants should discuss the lease and reach a decision on whether to sign it. Use a copy of the lease on page 353 for this activity.

Mr. and Mrs. Randall own an apartment building in the city of Johnstown. They have a two-bedroom apartment for rent. They require all their tenants to sign a two-year lease and to pay a security deposit equal to two-months’ rent. The rent is $900 per month plus utilities, which average about $75 a month. In addition, no pets are allowed in the building. The Randalls are eager to rent the apartment right away because it has been empty for two weeks and they are losing money.

Mr. and Mrs. Monico have just moved to Johnstown, where they have new jobs. Mrs. Monico’s job may last only one year, and they may then have to move back to Williamsport, a city 100 miles away. They have a three-year-old son and a dog. Based on their salaries, the Monicos wish to pay only $750 a month in rent and utilities. They want a nice neighborhood and are a little worried about crime in Johnstown.

The Monicos need an apartment right away because Mrs. Monico starts work in three days. The couple sees an ad for the Randalls’ apartment. They do not know much about the neighborhood but decide to go and look at the apartment anyway.

The apartment has two bedrooms, a living room, a dining area, and one bathroom with a bathtub but no shower. It is on the second floor and has a small balcony overlooking a parking lot. The paint is peeling in the larger bedroom, and a small window is broken in the bathroom. The kitchen has a new refrigerator and sink, but the stove is old and worn and has a missing handle. The front door and the door to the balcony have locks that could easily be opened by an intruder.

Problem 29.5

After the role play, answer the following questions:

a. Did the Monicos ask any questions about the neighborhood or about the building as a whole? Should they have?

b. What was decided regarding the amount of rent and other costs of the apartment? In reality, can tenants ever convince landlords to take less than they are asking? Give the reasons for your answer.

c. In discussing the condition of the apartment, did the tenants get the landlords to agree to any repairs?

d. Did the Monicos ask about such facilities as laundry, parking, and playgrounds? Should they have?

e. Are there any special rules in the lease that the Monicos did not like? Did they ask the landlords to discuss these rules? If so, what was decided? Could the Monicos have done a better job of negotiating these rules? Explain.

f. Is it worthwhile for tenants to try to negotiate with landlords? Can tenants be hurt by doing this? Explain.
Sample Housing Code

The following are examples of provisions included in a typical housing code.

**Maintenance and Repair**
- Floors and walls shall be free of holes, cracks, splinters, or peeling paint.
- Windows and doors shall be weatherproof, easily operable, free of broken glass, and equipped with workable locks.
- Stairs and walkways shall be in good repair, clean, and free of safety hazards.
- Roof shall be free of leaks.

**Cleanliness and Sanitation**
- Each unit shall be generally free of rodents and insects. Common areas shall be free of dirt, litter, trash, water, or other unsanitary matter.

**Use and Occupancy**
- Each unit shall have a minimum of 120 square feet of livable floor space per occupant.
- Each bedroom shall have a minimum of 50 square feet of floor space per occupant.
- Each unit shall have a private bathroom.
- Each common area shall be accessible without going through another apartment.

**Facilities and Utilities**
- Sinks, lavatories, and bathing facilities shall be in working order.
- Every room shall have a minimum of two electrical outlets and will have no exposed wiring.
- Water, electricity, gas, heating, and sewer services shall be in good operating condition.
- Halls, stairways, and common areas shall be adequately lighted.
- The building shall be free of fire hazards and secure from intruders.

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**Use of the Property**

*Tenant will use the premises for a dwelling and for no other purpose.* (Clause 3)

Tenants pay for the right to use a landlord’s property. As a general rule, tenants may use the property only for the purposes stated in the lease. For example, if you rented a house to be used as a residence, you would not be allowed to use it as a restaurant or, in some places, as a daycare facility.

Most leases contain clauses that permit eviction if the landlord reasonably believes that the tenants have committed crimes or allowed the commission of crimes on the rented premises. Even if the lease
does not contain a clause banning criminal activity, the landlord may still be able to have the tenants evicted. Judges frequently enforce such requests from landlords.

A lease may specify the names, ages, and number of people who will live on the premises. Although having occasional guests will not violate such a lease, there can be problems if the number of people permanently occupying the premises changes, as happens after the birth or adoption of a child or after getting married.

Although tenants have a right to use the rental property, they also have a duty to take care of the property and return it to the landlord in the same general condition in which it was rented. Tenants generally are responsible for the upkeep of the premises, including routine cleaning and minor repairs. Major repairs and upkeep of common areas, such as apartment hallways, are normally the responsibility of the landlord. However, the landlord and tenant may make different arrangements if they mutually agree to do so.

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**The Unsavory Visitors**

Mr. and Mrs. Larkin were excited about the birth of their first child. On the day they returned home with the new baby, the Larkins’ friends gathered at their apartment to greet them. The Larkins did not notice that two of their friends had some marijuana, which they took into the back bedroom and smoked. However, their landlord, who was also present for the occasion, did notice. A week later, the Larkins received a notice that they were being evicted for allowing drug use in their apartment.

### Problem 29.6

- **a.** Does the law allow the Larkins to be evicted for what their friends did in their apartment? Should the law allow this?
- **b.** Does the Larkins’ ignorance of their friends’ possession and use of marijuana affect your answer to question a?
- **c.** After the Larkins receive the landlord’s notice of eviction, are there any steps they can take to prevent her from evicting them?
- **d.** Should the government assist private landlords in identifying possible drug users and sellers and in evicting them? What are the arguments for and against doing this?
Tenants are not responsible for damages that result from normal wear and tear or ordinary use of the property. For example, tenants are not liable for worn spots in the carpet caused by everyday foot traffic. In contrast, damages caused by a tenant’s misuse or neglect are known as waste. For example, a tenant whose dog has severely scratched the landlord’s hardwood floors would be responsible for this damage. The landlord can force the tenant to pay for such repairs. Moreover, tenants have a duty to let the landlord know when major repairs are needed and to take reasonable steps to prevent unnecessary waste or damage.

**Security Deposits**

_Tenant will pay a security deposit in the amount of $__________, which will be held by Landlord until expiration of this lease and refunded on the condition that said premises is returned in good condition, normal wear and tear excepted._ (Clause 9)

In most places, landlords have the right to ask for a security deposit. This deposit is an amount of money—usually one month’s rent, but sometimes more—that is held by the landlord to ensure that the tenant takes care of the apartment or house and abides by the terms of the lease. If the tenant damages the landlord’s property, the landlord may keep the security deposit (or a part of it) to pay for the damage. Also, if the tenant does not pay all the rent, the landlord may be able to keep the security deposit to cover the portion of the rent still owed.

Some states put a limit on the amount of the security deposit. Some also require landlords to pay tenants interest on the money and to return it within a specified time after the end of the lease. When a...
landlord requires a security deposit, the tenant should always get a receipt and should keep it until the deposit is returned. The tenant may also ask that the money be placed in an interest-paying bank account (whether or not this is required by state law).

Security deposits are sometimes the subject of disputes between landlords and tenants. Whether the deposit is returned to you depends on whether damages to the property result from normal wear and tear or from tenant misuse or neglect. To protect yourself, make a list of all defects and damages that exist at the time you move in. Keep a copy of the list for your records, and give another copy to the landlord.

When moving out, you should inspect the apartment or house again and make a list of any damages. Sometimes an inspection with both the landlord and the tenant present can help avoid any disagreements. Bringing along a friend as a witness and making careful notes at the time can also be helpful in case you have a dispute with the landlord. If there are no damages, the landlord should return your money within a reasonable period of time. When a lease expires, most states require the landlord to either return the full amount of the security deposit to the tenant or provide an itemized list of deductions. In some states, you can sue for punitive damages if the landlord fails to return the security deposit or give you the list of deductions. In every state, you have the right to sue the landlord in small claims court if you disagree with the reasons for not returning the security deposit.

Finally, tenants generally have no right to make any changes in the structure or character of the property without the permission of the landlord. Even if the landlord agrees to changes or improvements, the improvement becomes the property of the landlord if it cannot be removed without serious damage to the premises. For example, if you build new cabinets in the kitchen, they become a fixture of the property and cannot be removed when you move out at the end of the lease. Fixtures are items attached to the property in such a way that their removal would damage the property. As noted, fixtures belong to the owner of the property.
Problem 29.7

In each of the following situations, the tenant is moving out and the landlord wants to keep part of the tenant’s security deposit. Decide who should pay for the damages.

a. The tenant moves without cleaning the apartment. The landlord is forced to remove trash, clean the walls and floors, wash the windows, and clean out the oven and refrigerator.

b. The toilet overflows in the apartment above that of the tenant moving out. The water leaks through the floor, ruining the ceiling and carpet in the tenant’s apartment below.

c. The tenant’s pet stains the carpet. The tenant was trying to paper train a puppy. The lease allowed one small pet.

d. The walls are faded and need repainting.

e. The roof leaks, ruining the hardwood floors. The tenant has never told the landlord about the leak.

Responsibility for Injuries in the Building

Landlord shall not be held liable for any injuries or damages to the Tenant or his or her guests, regardless of cause. (Clause 15)

Many standard form leases contain clauses stating that the tenant cannot hold the landlord responsible for damages or personal injuries that result from the landlord’s negligence. For example, the lease may say that the tenant cannot sue the landlord if the tenant is injured because of a broken guardrail that the landlord should have repaired.

This type of clause is known as a waiver of tort liability. Under this provision, the tenant agrees to waive, or give up, the usual right to hold the landlord responsible for personal injuries. Most courts will not uphold such a clause. Therefore, if you or your guest is injured as a result of a landlord’s negligence, you can usually recover damages no matter what the signed lease says. However, you are always better off getting a lease without this type of clause so that you can avoid going to court if at all possible. A few courts still enforce waivers of tort liability.
The Dormitory Rape

One Saturday night, Audrey was asleep in her college dormitory room. Her roommate was away for the weekend. There was a guard at the front door to the dormitory, and all the students were supposed to use that door to enter and leave the building after dark. Earlier in the evening, someone had gone out a side door and failed to shut it securely, but no guard ever checked it that night. Audrey was awakened after midnight by a strange man in her room, who then raped and beat her. Although she later notified the police, they never found the man.

Problem 29.8

a. Should the college have a responsibility to provide security for dormitory residents? If so, did the college provide adequate security in this instance?

b. What other measures might the college have taken to ensure the security of the dormitory residents?
If you are going to sign a lease that requires you to obey all rules—even those made in the future—it is best to have the lease state, “The tenant agrees to follow all reasonable rules and regulations.”

**Problem 29.9**

a. Suppose you own a three-bedroom house that you wish to rent. Make a list of all the rules and regulations you would want tenants to obey while living in your house.

b. Suppose you are a tenant seeking to rent the house in question a. Which rules would you consider reasonable, and which would you consider unreasonable?

c. If tenants do not like some of the landlord’s rules and regulations, what should they do?

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**Sublease of a House or Apartment**

_Tenant will not transfer or sublet the premises without the written consent of the Landlord._ (Clause 5)

Clause 5 is a _sublease clause._ It requires you to obtain the landlord’s permission before subleasing the apartment or house. A sublease takes place when the tenant allows someone else to live on the premises and pay all or part of the rent.

For example, suppose you sign a one-year lease on a small house. After six months, you find a larger house and want to move. If the landlord agrees, a sublease clause would allow you to rent the small house to someone else for the remainder of the lease. In a sublease situation, the original lease remains in effect. This means that if the new tenant fails to pay the rent, you are still responsible for paying.

To avoid continued responsibility under the lease, a tenant can seek a _release._ If the landlord gives a release, the tenant is excused from all duties related to the apartment or house and the lease.

Landlords do not have to agree to the tenants’ requests to sublease. Therefore, you are better off with a lease that says, “The landlord agrees not to withhold consent unreasonably.” Under such a lease, you would be able to sublease except when the landlord could give a good reason for refusing. Remember, even if your lease lets you sublease, you are still responsible for paying the rent if the person to whom you sublet does not pay.
Problem 29.10

a. Why do most leases require the tenant to get the landlord’s permission before subleasing an apartment?

b. Assume the lease requires the tenant to get the landlord’s permission before subletting. Bimal, the tenant, leaves town and lets his friend Daniel take over the lease. The landlord allows the sublease, but Daniel never pays the rent. Does Bimal still owe the landlord the rent?

Quiet Enjoyment

One of a tenant’s most basic rights is the **right to quiet enjoyment** of the property. This simply means that a tenant has a right to use and enjoy the property without being disturbed by the landlord or other tenants. Of course, there is always some noise involved in living in a building with other people. Nevertheless, each tenant should be able to live in relative peace.

Tenants have a right to quiet enjoyment even if it is not stated in the lease, and landlords have a duty to ensure that no tenant unreasonably disturbs the other people in the building. A tenant who is annoyed by noisy or otherwise bothersome neighbors should send a written complaint to the landlord and keep a copy of it.

Although it may not be stated in the lease, all tenants have a right to quiet enjoyment of the property. Can a tenant play a musical instrument without violating the rights of other tenants?
**Problem 29.11**

Luis and Angelina Allende sign a one-year lease, and they are pleased when they move into a beautiful old apartment building in their favorite part of town. Soon after moving, however, they discover that the building is incredibly noisy and disorderly. During the first week, their next-door neighbor throws several wild parties, keeping the Allendes up all night. They also discover that when their neighbor isn’t having parties, he is receiving visitors at all hours of the day. These visits are almost always accompanied by loud music, shouting, and constant coming and going. The partying often spills into the halls, and the Allendes are frequently hassled by visitors.

The Allendes complain to the landlord on a dozen occasions, but the late-night parties and noisy visitors continue. Finally, the Allendes decide they have had enough, and they move out. The landlord then sues the Allendes, claiming that they owe her eleven months’ rent. Will the Allendes have to pay?

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**Homelessness: Is There a Right to Housing?**

Homelessness means lack of a fixed residence. Homeless people live in public or private shelters, in emergency temporary housing, and in abandoned buildings, as well as on the street, in parks, in transportation terminals (bus and subway stations), and in automobiles. While the exact number of homeless people in America is not known, estimates suggest that there are several million.

Most housing experts agree that the leading cause of homelessness is the lack of affordable housing. Many people who need homes do not have enough money to pay for the housing that is available. Substance abuse, as well as the policy of treating more people with mental problems in the community rather than in institutions, has also contributed to homelessness in the United States.

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Homelessness affects people of different ages and backgrounds. *What are the causes of homelessness in the United States?*
Though the U.S. Constitution does not refer to a right to housing or shelter, a few state constitutions and state laws have been interpreted to include that right. In addition, some international documents expressly include housing as a human right. For example, Article 25 of the Universal Declaration of Human Rights includes the following:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right of security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

In addition, Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to continuous improvement of living conditions.” This multilateral treaty has been signed but not yet ratified by the United States. Many other countries have already ratified the International Covenant on Economic, Social and Cultural Rights.

The Case of the Homeless Family

Roman and Nora O’Reilly and their two children were evicted from their apartment after Roman, the primary wage earner, became ill and they were not able to pay the rent. After spending several nights sleeping at various friends’ and relatives’ homes, they went to the city’s emergency shelter. Workers at the shelter told them that they had no room for a family, just space for single men. Following conversations with several government social workers, the O’Reillys received a voucher to pay for the rental of an apartment or hotel room. After several days of searching, however, they found that all the voucher would pay for was an unfurnished room. They did not own any chairs or a bed on which they or their children could sleep.

The O’Reillys and several other families in similar situations have sued the city with the help of a public-interest organization dedicated to assisting the homeless. They claim that under their state’s constitution, they are entitled to adequate shelter.

Problem 29.12

a. Assume that their state constitution does not provide a specific right to housing or shelter. What other arguments can the O’Reillys or a lawyer make as to why they should receive housing? What arguments are there against them receiving housing from the government? How should the O’Reillys’ case be decided? Give the reasons for your answer.

b. Do you believe that there is a human right to shelter? Why or why not? If so, who should provide it to people in situations like that of the O’Reillys?

c. Assume that a right-to-shelter law is proposed in your state. Would you support or oppose it? Explain.

d. What other human rights are at issue in this case?

e. What do you think are the causes of homelessness in the United States? Can anything be done to solve this problem? If so, what steps should be taken? Be as specific as possible.