

## UPDATE ON RESIDENTIAL LEASES: LIABILITY UNDER IOWA CODE §562A.11

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## IOWA CODE §562A.11

### 562A.11 Prohibited provisions in rental agreements

1. A rental agreement shall not provide that the tenant or landlord:
  - a. Agrees to waive or to forego rights or remedies under this chapter provided that this restriction shall not apply to rental agreement covering single family residences on land assessed as agricultural land and located in an unincorporated area;
  - b. Authorizes a person to confess judgment on a claim arising out of a rental agreement;
  - c. Agrees to pay the other party's attorney fees; or
  - d. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.
2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees

**STALEY v. BARKALOW**  
834 N.W.2D 873 (TABLE), 2013 WL 2368825 (IA. CT. APP. 2013)

- Appeal following the district court's holding that Chapter 562A requires some type of enforcement of an illegal provision in a lease before relief can be obtained by a tenant.
- Iowa Court of Appeals overturned the district court's holding
  - In doing so, they specifically held "willfully uses" in Iowa Code section 562A.11 does not require "willful enforcement," but encompasses a landlord's "willful inclusion" of prohibited provisions.
- Held, "A landlord's inclusion of a provision prohibited in Iowa Code section 562A.11(1) ('shall not provide'), even without enforcement, can be a "use" under Iowa Code section 562A.11(2)."
- "[A] landlord [is] liable for the inclusion of prohibited provisions in a rental agreement, even without enforcement, if the landlord's inclusion was willful and knowing."

**CARUSO v. APTS. DOWNTOWN, INC.**  
880 N.W.2D 465 (IOWA 2016)

- Iowa Supreme Court clarified what is necessary to show a landlord willfully used a rental agreement containing provisions known by the landlord to be prohibited
- The use of the term "known" in the section 562A.11(2) requires actual knowledge
  - Actual knowledge may be established by direct proof, but also may be established by circumstantial evidence sufficient to infer the person's mental state
  - In order to prove actual knowledge through circumstantial evidence, the evidence must be sufficient to draw a conclusion that a reasonable person simply could not have known otherwise
  - Actual knowledge can be established by circumstantial evidence only in rare cases
  - Actual knowledge is a very high standard
- The Supreme Court held there was not substantial evidence to support a finding of actual knowledge beyond speculation that the landlord, as a sophisticated party, must have known the provisions were illegal
- In the future, the existence of precedent alone will not prove actual knowledge of illegality in a future case, but it will be a circumstance to be considered by the fact finder in making that determination

*KLINE v. SOUTHGATE PROP. MGMT., LLC*  
895 N.W.2D 429 (IOWA 2017)

- Interlocutory appeal where the landlord claimed, among other things, that the tenants had no claim for damages under Iowa Code section 562A.11 because, even if the lease provisions are prohibited, the landlord did not enforce them
- The landlord claimed that the tenants did not have standing because there was no injurious effect because there was no enforcement of the illegal provisions in the lease.

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- Supreme Court of Iowa held section 562A.11(2) authorizes a claim for damages against a landlord, even in the absence of an attempt to enforce a prohibited provision
  - The assessment of the nature of the tenants' right to proceed with the litigation must focus on the scope of the cause of action as enacted by the legislature in section 562A.11(2).
  - Section 562A.11(2) is ambiguous because reasonable persons could disagree as to the meaning of "uses" in its statutory context
    - Because the word "uses" is undefined in the Act, we assign it its common, ordinary meaning in the context in which it is used
  - The general assembly, when it enacted section 562A.11 prescribed different remedies in the first and second sentences of section 562A.11(2) as a means of addressing the degree of a landlord's subjective culpability
    - The defense of unenforceability was chosen as the remedy in the first sentence for tenants against landlords who mistakenly or innocently include prohibited provisions in their rental agreements
    - The consequence-of-damage remedies authorized in the second sentence is reserved for the more culpable conduct of landlords who willfully and knowingly use prohibited provisions

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- Landlord also contended proof of actual damages was a prerequisite for the recovery of additional damages of “not more than three months’ periodic rent” under section 562A.11(2)
- The Supreme Court of Iowa held the conjunctive connection in the subject phrase permitted a recovery of not more than three months’ periodic rent even if no actual damages were pled and proved
  - The landlord tried to analogize the “not more than three months’ periodic rent” formulation to a punitive damages award, meaning the rent damages were not recoverable without actual damages
- The Supreme Court rejected the landlord’s argument, holding the general assembly made a choice to provide a remedy other than actual damages as an alternative for tenants who have suffered no actual damage arising from an attempted enforcement of a prohibited provision, but still seek a remedy for their landlord’s egregious inclusion of the provision.

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**SUMMARY OF HOLDING**

- “Although ‘uses’ in this context obviously subsumes the conduct of attempting to enforce a prohibited provision, we believe it also encompasses the separate egregious act of inserting such a provision in a rental agreement with knowledge that it is prohibited.” *Id.* at 439-440.
- “...[W]e conclude section 562A.11(2) authorizes a claim for damages against a landlord, even in the absence of an attempt to enforce a prohibited provision. This interpretation best comports with the general assembly’s directive that we liberally construe 562A.” *Id.* at 440.

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**SUMMARY OF HOLDING**

- “Although chapter 562A imposes some specific restraints on the content of residential rental agreements, the statute does not completely displace freedom of contract.” *Id.* at 441.
- “Beyond [the] express prohibitions [described in Iowa Code 562A.11(1)], however, landlords and tenants are free to form residential rental contracts consistent with chapter 562A and the principles of law and equity supplementing it.” *Id.* at 442.
- The Court holds that challenged provisions are still subject to an analysis under Iowa Code 562A.7 to determine whether the provision is unconscionable and/or an unenforceable penalty under other principles of law or equity supplementing the Act. *Id.* at 442.

**PENDING LEGISLATION**  
**DEBATE OVER THE MEANING OF “USES”**

Iowa Code Section 562A.11—Proposed Legislation, introduced on 2/15/2018 by Representative Bossman which reads:

“BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 562A.11, subsection 2, Code 2018, is amended to read as follows:

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses enforces provisions in a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months’ periodic rent and reasonable attorney fees.”

After initial discussion and meeting regarding the proposed amendment, the following proposal has been made (and supported by the ISBA) to amend 562A.11(2):

“A provision in a lease prohibited by subsection (1) is unenforceable. If the landlord seeks to enforce the provision or accepts the tenant’s voluntary compliance with the provision, the court may award the tenant actual damages sustained by the tenant and an amount not to exceed three times the periodic rent and reasonable attorneys fees.”

## LEASE PROVISIONS TO AVOID

“Problem” lease terms:

- Impermissible security deposit (Iowa Code § 562A.12)
- Late fees (Iowa Code § 562A.9(4))
- Attorney fees
- Security deposit forfeiture (Iowa Code § 562A.12)
- Pest and/or mold liability limitation
- Mandatory lease termination fee
- Class action waiver language

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This outline is intended to be a review of relevant sections of the Iowa Code, case law, and other source materials related to landlord and tenant matters. However, because of the ever-changing nature of case law and legislation, the material stated herein may be subject to amendment and update. You are advised to consult legal resources and contact the author of this material if you have any questions.