

Subleasing FAQs

Fairfax Just Cause Eviction Ordinance

FMC § 5.54.030(C)(2)

1. What is a “subtenancy?”

A subtenancy is when a tenant rents a portion of their unit to another tenant (“subtenant”). The original tenant becomes the “master tenant” and enters into a “sublease” agreement with the subtenant. The subtenant is bound by the terms of the original lease between the master tenant and the landlord; however, the master tenant is responsible for ensuring the subtenant’s compliance. For example, if the subtenant fails to pay rent to the master tenant, the master tenant is responsible to serve a legal notice of violation of the lease for failure to pay rent and, if necessary, move to evict the subtenant in court. The master tenant remains solely responsible for paying the entire rent to the landlord. Landlords cannot evict subtenants because subtenants are not a party to the original lease. Landlords can move to evict the master tenant if the subtenant violates the lease. If the master tenant is evicted, the subtenant most likely will also be forced to vacate the unit because the original lease will have been terminated.

2. How does subleasing work in Fairfax?

A tenant may sublease their rental unit if specific criteria are met:

- The tenant continues to reside in the rental unit as their primary residence
- The tenant’s landlord approves their request to sublease or fails to respond to their request to sublease within 14 days
- The subtenancy does not violate terms of the lease specifying the maximum number of occupants for the rental unit
- The subtenancy does not exceed the maximum number of occupants set by the California Health and Safety Code

3. Can the landlord restrict subletting?

Yes, a landlord may restrict subletting in two ways:

- a. They may specify the maximum number of allowed occupants in their lease, which cannot be exceeded by subletting.
- b. They may refuse their tenant’s request to sublease. In order to refuse a tenant’s request to sublease, they must submit their refusal in writing within 14 days and state their reason for refusing the request. Lack of creditworthiness is not a valid reason for refusal if the subtenant will not pay rent directly to the landlord.

This flier contains general information on Fairfax’s Just Cause Ordinance based on information available in the first week of November 2022. Every situation is different and this flier is not a substitute for legal advice. Tenants and landlords are encouraged to consult with an attorney regarding their individual circumstances. Receipt of this information does not create an attorney-client relationship.

4. Can the landlord restrict their tenant's family members from moving in?

A landlord may not endeavor to recover possession of a rental unit as a result of a tenant's child, parent, grandchild, grandparent, brother or sister moving into the unit. The same goes for the spouse or domestic partner of such relatives, or the spouse or domestic partner of the tenant. However, the number of occupants may not exceed the maximum number of occupants set by the California Health and Safety Code.

5. The ordinance text does not state that landlords can set the maximum number of occupants in the lease. Where is this established?

Landlords are permitted by California state law to specify the maximum number of occupants per square feet in a rental unit.

6. What if a tenant requests to sublease their unit and the landlord does not respond?

If a landlord does not respond to their tenant's request to sublease within 14 days, then the request will be deemed approved by the landlord.

7. Can a landlord change an existing lease to restrict the total number of occupants for the rental unit?

Yes, but the landlord must comply with certain requirements before changing the lease. A written notice of the change of terms must be given to the tenant a minimum period in advance of the effective date that is equal to the length of the existing term. For a month-to-month tenancy, for example, at least 30 days' notice must be given. For a month-to-month tenancy, the change must be accepted by the tenant by express agreement or as provided for in the existing lease.

8. How does the California Health and Safety Code restrict the number of occupants in a rental unit?

In the absence of tighter restrictions set by the landlord, the maximum number of occupants per rental unit is determined under section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code section 17922. Maximum occupancy is based on square footage of the room(s) used for sleeping purposes. For example, a bedroom must be a minimum 70 square feet with a two-person occupancy. When more than two persons occupy a bedroom, the floor area must be expanded by 50 square feet for each additional occupant. Children under six are not counted. See Sec. 503(b) of the Uniform Housing Code for further explanation.

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