

James R. Favor & Company

Phi Delta Theta Fraternity

Risk Management & Insurance Program

Risk Management Recommendations For Chapter House Leases / Housing Agreements

Since 1979 James R. Favor & Company has been developing and providing effective risk management and insurance programs for Fraternities and Sororities. This brochure was developed to address the questions commonly asked by Fraternities and Sororities, their officers, house corporations, chapters and legal counsel about leases / housing agreements. Although many variations exist, the Basic Risk Management relationships are reviewed in this brochure.

Consult With Your Legal Counsel

The responsibility for construction of lease agreements falls to the legal profession. We and your National Fraternity or Sorority recommend that you consult with your legal counsel on this and all other legal matters, especially those involving contractual or “hold harmless” agreements. Your legal counsel and our office, as your insurance brokerage representatives, should work together to develop and review agreements prior to their execution. Our Toll Free Wats Line, (800) 344-7335, is available should your legal counsel wish to review this topic with us further by phone.

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The Basic Risk Management Relationships

1) **House Corporation:** Usually a “**Not For Profit**” corporation operating under the laws of the state in which the chapter is located. Their primary purpose is to facilitate the ownership and operation of a chapter house for a collegiate or undergraduate Fraternity or Sorority chapter. (The Property Owner / Landlord / Lessor)



2) **The Chapter:** Commonly exists as an **unincorporated association of individuals**. They are established or “chartered” by a National Fraternity or Sorority organization and are usually formally “recognized” as a student organization by a school or “Host Institution” where they operate. (The Tenant / Lessee)



3) **Members / Residents:** This refers to either **individual members** of a collegiate or undergraduate Fraternity or Sorority chapter, or **non-members** wishing to live in the chapter house. (The Members / Residents / Sub-Lessees)



4) **Non-Resident Members:** All chapter members do not always reside in the chapter house. This refers to an **individual member** of a collegiate or undergraduate Fraternity or Sorority chapter **who resides elsewhere**, yet desires access and use of the Fraternity or Sorority chapter house. (The Non-Resident Members / Sub-Lessees)



5) **National Fraternity or Sorority:** A “chartering” National Fraternity or Sorority organization which establishes undergraduate or collegiate chapters at “Host Institutions” or schools. (The National Fraternity / Sorority)



6) **The School:** A college, university or other “Host Institution” at which the collegiate or undergraduate Fraternity or Sorority chapter is organized, “chartered” and operates.



Risk Management Recommendations

for

Chapter House Leases / Housing Agreements

1) **Written Agreements Only:** The **House Corporation** commonly acts as a **Landlord**. This should be always be done via a **written legal agreement** or **Lease** with the **Chapter** as the **Tenant**. It should be reviewed and signed each year by the appropriate officers for both parties.



2) **No Agency:** The **written agreement** or **Lease** should provide that **the Chapter is not a subordinate or agent of the House Corporation**.



3) **Sub-Leases or Housing Agreements:** The agreement or **Lease** should also provide for **written Sub-Leases or Housing Agreements which are enforceable by the House Corporation (Landlord)**. Often as a lease addendum, these may address various topics, but should incorporate all basic provisions of the Lease between the House Corporation (**Landlord**) and the Chapter (**Tenant**). A **written Sub-Lease or Housing Agreement should exist between each individual member, resident or non-resident member (Sub-Lessees) and the House Corporation (Landlord)**.



4) **Use & Occupancy:** The **Lease, and Sub-Leases or Housing Agreements should formalize, explain and govern the relationships between the House Corporation (Landlord), the Chapter (Tenant), and each individual member, resident and non-resident member (Sub-Lessees) regarding the use and occupancy of the chapter house**.



5) **Responsibility & Guarantees:** The **Lease and Sub-Leases or Housing Agreements should provide for broad individual and collective responsibility**. The Chapter (**Tenant**), and each individual member, resident, or non-resident member (**Sub-Lessees**), including their parents or any other co-signers or guarantors, should be fully responsible **for the performance of all financial and other obligations**.



6) Legal and Other Requirements: The Lease and Sub-Lease agreements should provide that the Chapter (Tenant), the chapter officers, and each member, resident and non-resident member individually (Sub-Lessees) will not allow the property to be used for any unlawful purpose. They should also provide that the Chapter (Tenant) and each individual (Sub-Lessee) agree to be responsible for compliance with any school or insuror requirements and the regulations or laws, of the state, province, city, or county.



7) Fraternity or Sorority Policies: The Lease and Sub-Lease agreements should provide that the Chapter (Tenant) and each member, resident, and non-resident member individually (Sub-Lessees) will adopt, comply with, and enforce any policies, rules or regulations established by the Chapter (Tenant), House Corporation (Landlord), insuror, school or the “chartering” National Fraternity or Sorority.



8) Termination Of The Agreements: The Lease and Sub-Lease agreements should provide that the House Corporation (Landlord) has the right to terminate the agreement for any breach of the agreement, if they learn that violation of any laws has occurred on the property, or if the Chapter (Tenant) or any individual (Sub-Lessee) is no longer in good standing with the school or the “chartering” National Fraternity or Sorority.



9) Responsibility For Insurance: The Lease and Sub-Lease agreements should provide that the Chapter (Tenant) and each member, resident, or non-resident member individually (Sub-Lessee), are responsible for obtaining their own insurance protection. They should be advised to secure insurance for themselves against sickness, accidents, injury or death, loss or damage to their property, or for any legal liabilities which may be imposed on them for damage to persons or property.



10) Whose Insurance is Primary: The Lease and Sub-Lease agreements should provide that the Chapter’s (Tenant’s) and each individual’s (Sub-Lessee’s) own insurance will always be primary with respect to any sickness, accident, injury or death to themselves, or for loss or damage to their property, and for any legal liabilities which might be imposed on them for damage to persons or property.



11) Whose Insurance is Excess: The Lease and Sub-Lease agreements should provide that any insurance coverage maintained by the House Corporation (Landlord) or the “chartering” National Fraternity or Sorority will always be excess of and shall not contribute with any other insurance which may be available to the Chapter (Tenant) or any individual (Sub-Lessee).



12) Waiver of Subrogation: The Lease and Sub-Lease agreements should provide that if their property is damaged or destroyed and covered by their insurance, the Chapter (Tenant) and each individual (Sub-Lessee) waive any rights of recovery or subrogation which may exist against the House Corporation (Landlord) or the “chartering” National Fraternity or Sorority.



13) Responsibility For Negligence: The Lease and Sub-Lease agreements should provide that the Chapter (Tenant) and each member, resident, or non-resident member individually (Sub-Lessees), agree that they will be responsible for their own activities and liable for their negligent acts, errors or omissions.



14) Damage Or Destruction: The Lease and Sub-Lease agreements should provide for fair Rent Abatement, Termination, and prompt Repair or Restoration of the chapter house, in the event the property is damaged or destroyed by fire or other perils insured against.



15) Hold Harmless & Indemnification: The Lease and Sub-Lease agreements should provide that the Chapter (Tenant) and each member, resident, and non-resident member individually (Sub-Lessee) will hold harmless, indemnify, and defend the House Corporation (Landlord) and the National Fraternity or Sorority organization against any claims, damages, costs or expenses which may arise out of the Chapter’s (Tenant’s) or any individual’s (Sub-Lessee’s) activities, including but not limited to their own negligent acts, breach of the agreement, liabilities for financial loss, damage to property, or for injury or death to any person.

16) Insurance Program Provisions: The Lease and Sub-Lease agreements should provide for securing and maintaining insurance protection for the House Corporation (Landlord) and Chapter (Tenant) and for the fair allocation of the insurance costs between them. (Except insurance coverage which may be secured by a member, resident, or non-resident member (Sub-Lessee) individually for their own protection), all insurance coverage should be afforded under the insurance program which is required or recommended by the “chartering” National Fraternity or Sorority.



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HELPFUL “HOUSE RULES” PROMOTING LOSS CONTROL

- ❖ Prohibit tampering with life safety systems and provide for payment of any service charges incurred.
- ❖ Prohibit inside storage of flammables, bicycles and motorcycles.
- ❖ Prohibit any firearms or weapons in the house or on the property.
- ❖ Prohibit access to the house roof.
- ❖ Prohibit chapter or individual pets.
- ❖ Require participation in scheduled fire drills each school term.
- ❖ Require that monthly life safety inspections be conducted with prompt correction of noted deficiencies.
- ❖ Require that the heat be maintained and property checked during vacations or extreme weather periods.
- ❖ Require areas, rooms and contents, which are assigned to the chapter or its members, be kept in good condition.
- ❖ Require that the premises be maintained in a safe and sanitary condition.
- ❖ Require that the chapter house be locked and secured at all times.

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