Breaking or Changing a Lease

WHEN YOU SIGN A LEASE, you agree to fulfill a set of legal conditions throughout the period of the lease. Take these contracts seriously—if you violate a legal agreement, the penalties can be harsh. If you are unable to meet the terms of your lease, do your best to reach an alternative agreement with your property provider that you both find satisfactory.

Legal & Financial Risks
If you move out before your lease terminates, you remain responsible for the rent throughout the period specified in your lease. The property provider may sue you for lost rent money, and for the cost of advertising for new tenants. Legal proceedings could also involve your cosigners to the lease. Additionally, the property provider can retain your security deposit to cover the above-mentioned costs. Money can also be withheld for cleaning and repairs. If you owe more money than your deposit provides, you can be sued and your personal property and/or wages may be garnished if left unpaid.

Property Provider Responsibilities
The property provider has a responsibility to “mitigate damages” by finding new tenants as expeditiously as possible. If new tenants do move into the vacated unit, the departed tenants will only be held responsible for money that the property provider lost between the time they moved out and the new people moved in. While the property provider does have a legal obligation to mitigate damages, remember that the tenant is ultimately responsible for payment of rent if s/he breaks a lease.

Alternatives to Lease-Breaking
If you must move out before the conclusion of your lease, try to negotiate a release from your lease on terms that acknowledge your responsibility. Most property providers will release tenants if the tenant finds someone to take over the lease (called a reassignment); usually the new tenant must meet the same criteria (credit, income, etc.) that the original tenants met. Often, a property provider will require forms to be filled out and a monetary fee to be paid to complete the reassignment. Typically security deposits and prepaid rent are exchanged between the incoming and outgoing roommates. Put all agreements in writing and have it signed by all parties.

Remaining Roommates
If a roommate chooses to leave the contract, he/she is responsible for finding a replacement. The remaining roommates should not unreasonably refuse an applicant. If the departing roommate has made a good faith effort to find a suitable replacement and each potential replacement has been turned down, the departing roommate may reasonably decide to leave the remaining roommates responsible for finding the replacement and bearing all costs until then. Sometimes the roommate replacement process can be difficult if roommates are leaving on bad terms or there is difficulty finding suitable replacements.

If one of your roommates leaves without finding a replacement and without paying rent, the remaining roommates may sue the departed roommate for the recovery of the extra rent money paid. The remaining roommates have a responsibility to mitigate damages and look for additional roommate to cover the rent.

In any case, when roommates have signed a joint-and-several lease, they are all responsible for all the rent. In the event that rent (all or partial) is left unpaid, tenants risk eviction and cosigner involvement. CHO can offer advice and mediation in difficult roommate situations.

Changing a Lease Before Signing
Changes to a lease must first be agreed to by all parties. Any improvements promised by property provider (new carpet, paint, etc) should be included in lease, otherwise not enforceable. To change a clause, revise the relevant sections in ink and have all parties, including the property provider, initial the changes.

Changing a Lease After Signing
Any changes to a lease should be recorded in writing as an addendum to the original document, and signed by all parties. This includes subleases. Bear in mind that the property provider is not obligated to change your lease just because you request it.

Month-to-Month Rental Agreement v. Fixed-Term Lease
Terms and conditions stated in a fixed-term lease remain valid throughout the period specified and the rent cannot be raised. A month-to-month, or periodic, rental agreement allows either party to terminate the contract or change any terms/conditions in the lease (including the rental rate) with 30 (or 60 from property provider if you have lived there over one year) days written notice. If a rent increase exceeds 10%, tenants must receive a 60-day notice (Civil Code Section 1944).