

QUESTIONABLE PROVISIONS INCLUDED IN RESIDENTIAL LEASES: LANDLORDS MUST BE ON ALERT AFTER THE *STALEY V. BARKALOW* CASE

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In May of 2013, the Iowa Court of Appeals entered a decision in the [Staley v. Barkalow](#) case, which involved a group of various tenants who affirmatively sued their landlord over the content of their lease agreements. It should be noted that while the Court was interpreting Iowa Code Chapter 562A, most attorneys believe the Court's holding is equally applicable to 562B and manufacturing housing communities.

In the case, the plaintiff, Brooke Staley, and other tenants filed a Petition against their landlord, alleging that a large number of provisions within their leases were unlawful, i.e., violated the Iowa Code and sought damages. In short, the landlord argued that she had not enforced any of the allegedly unlawful provisions against the tenants, and thus, the tenants had not been harmed or damaged by such provisions. Conversely, the tenants argued that a landlord's (knowing) inclusion of unlawful provisions within a lease agreement does constitute "use" of such rental agreement under the statute and, therefore, a landlord has violated the law notwithstanding any lack of enforcement, thereby entitling the tenants to damages and payment of their attorney's fees.

The district court ruled in the landlord's favor, but on appeal, the decision was reversed by the Iowa Court of Appeals. The appellate court held as follows: "[w]e decide 'willfully uses', in Iowa Code section 562A.11(2) does not require 'willful enforcement', but encompasses a landlord's 'willful inclusion' of prohibited provisions." Accordingly, the Court concluded that the relevant sections of 562A, when read together "make a landlord liable for the [knowing] inclusion of prohibited provisions in a rental agreement, even without enforcement, if the landlord's inclusion was willful and knowing." Under the statute, a tenant may recover "actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees."

The clear implication to all residential Iowa landlords is that they should carefully review their leases and Rules and Regulations to ensure they contain no unlawful provisions.



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