

What is a bona fide written lease?

According to Florida law, any person who enters into a bona fide written lease, for continuous residence of a transient accommodation for longer than six months and one day is exempt from Florida sales tax and local tourist development tax. A “bona fide written lease” is a written document that clearly demonstrates it is intended for the renter to have exclusive use of the rental property. There are several elements, which will be considered to validate the lease document and demonstrate the parties’ intent. These elements include:

1. the length of the lease, including the beginning and ending date;
2. a statement giving the lessor the complete and exclusive use of the property for the entire duration of the lease;
3. execution in good faith, without deceit or fraud;
4. a sufficient description of the leased property;
5. a statement that the lease contains the complete and sole agreement;
6. a provision that the lessee will pay an agreed amount of rent;
7. a statement containing the due date, frequency and address for payment of the rent;
8. a statement specifying what conditions will result in early termination of the lease, the rights and obligations of the parties at termination and any penalties that will result from early termination;
9. Signatures of the named parties, lessee and lessor.

These are the things that may be reviewed to determine whether a lease is bona fide and the rental transaction, therefore, exempt from tax.

- The Lee County Clerk of Court Tourist Development Tax Unit may examine the lease document, as well as ***all surrounding facts*** (surrounding facts may include: information received that pertains to the examination of the lease document for “Intent,” golf transfers, lease application approvals, privacy/security gate pass(es), or other relevant and/or pertinent information as detailed/outlined in Lee County Ordinance 13-14) and circumstances, to determine the parties’ intent at the time of execution of the lease. This is important because even though all nine above elements are contained in a written document, it may be determined that the length of the lease was false and that by either separate verbal agreement or by prior experiences, it is really a short term, taxable rental.
- A “significant change in circumstances” that could not have been known at the time of the rental will generally not endanger the legitimacy of the lease. A significant change could be an illness, death, bankruptcy, loss of job, transfer, etc.
- If the lessor has a pattern of leases being terminated early, with no significant reason as suggested and no penalty to the lessee, it could be construed that there was no intent to have a long-term rental, making the entire transaction taxable. This could result in assessments for back periods plus penalties and interest.