OPINION LETTER FROM ASUM LEGAL SERVICES

RE: Mandatory professional carpet cleaning.

This office is repeatedly presented with rental agreements from our student clients that contain a provision stating that the tenant must have the premise’s carpets professionally cleaned upon move-out. Having researched this issue, we believe this provision to be illegal.

Montana governing law in this area; the Montana Landlord/Tenant Act, MCA 70-24-100 et seq. and Security Deposit Act, MCA 70-25-100 et seq., state that premises must be returned to the landlord in substantially the same condition as when the tenant moved in, ordinary wear and tear excepted. In some cases, a professional carpet cleaning may be necessary. In many others, especially with a tenant of short duration, a simple vacuuming may be sufficient. A tenant of longer duration may be able to attain the required state by renting a carpet cleaner. Landlords have no right to involve themselves with the means a tenant uses to leave a carpet in a legal condition. If the required state is not attained, the landlord’s remedy is to demand a re-cleaning, and if the desired state is still not attained, clean the carpet him or herself and deduct that cost from the security deposit.

The reason this provision is illegal is that it forces a tenant to expend funds regardless of whether the expenditure is necessary. After premises are vacated, a landlord is required to itemize repairs and cleaning that remain undone. The landlord is not allowed to assume beforehand that a carpet will need professional cleaning. This paints with a broad brush a situation that may not need any attention at all and is per se unreasonable. If a landlord can dictate the method of cleaning the carpet, then they can dictate the manner that any other part of, or the whole premises is cleaned. There is no legal reason to single out the carpet.

Some leases go so far as to designate which company can do the cleaning. In our opinion this puts a landlord in a conflict of interest situation or at least the appearance of impropriety which they well may have to explain in court.

When a tenant requests our review of this provision, we routinely tell them what the statute requires and that they are required to comply with this provision but no more. We always state that this provision is illegal and we have so informed several property management companies. MCA 40-24-303 provides that any landlord knowingly including a prohibited provision in a rental agreement may be subject to treble damages. It is not inconceivable that this office, or another tenant attorney, may try to make out a case for these damages at some future date.

July 25, 2008