
KANSAS LANDLORDS HANDBOOK

Written and Produced by

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FOREWORD

As we celebrate the 35th Anniversary of Housing and Credit Counseling, Inc., we are proud to bring you the 3rd Revision to the 3rd Edition of our Kansas Landlords Handbook.

Updates this time include reflection of everyone's increased use of the Internet, changes in credit reporting sources and practices, and increases in the amounts people can sue for and the number of times people can file in Small Claims Court. Lead paint disclosure requirements have been increased by the federal government. There has been enough concern about mold issues that we have included resource information on that as well.

Many people assisted with our revisions to this **Kansas Landlords Handbook** as well as our **Kansas Tenants Handbook**. This time, kudos especially go to Louise Kirkpatrick, who took the lead to rework both texts. Louise also spent the two years leading up to this handbook revision adding to and reworking HCCI's various notices, developing the new 14/30-Day Noncompliance Notices, and more. Great job, Louise! Heartfelt thanks also go to Jonell Passariello, who has done the final layout and word processing on this handbook ever since we had the capacity to do it ourselves. What could we ever do without you!

Housing and Credit Counseling, Inc. Staff: Robert Baker and Debbie Eubanks for their review and comments.

Special Thanks: A special thanks to the Boeing Company, Wichita, Kansas, for contributing the printing of this handbook. In particular, thanks to Louis Walthers, Imaging Resource Specialist and Chrissie Nixon, Public Affairs Manager. You have been fabulous to work with!

We hope this Handbook continues to be as useful to you, and the people with whom you share it, as our previous publications have been.

Enjoy!

Karen A. Hiller
Executive Director and Author
Housing and Credit Counseling, Inc.
September 2007

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Material in this book is dated. If your *Kansas Landlords Handbook* is very old, you may want to double-check your information with an attorney or local housing counseling center or contact Housing and Credit Counseling, Inc. for information about a new publication.

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References in the text and at the end of this book generally refer to Kansas Statutes Annotated (K.S.A.). These laws may be found at most libraries, many businesses, and government offices. Kansas Statutes and many local ordinances are available on the Internet. For state statutes, go to www.kslegislature.org. Do a statute search using the numbers listed in this handbook. Copies of the Kansas Residential Landlord and Tenant Act, Kansas Mobile Home Parks Residential Landlord and Tenant Act, rent escrow ordinances, sample forms, and relevant court cases may be purchased from HCCI, 1195 SW Buchanan, Topeka, KS 66604, or ordered by phone, mail, or from HCCI's website www.hcci-ks.org.

DEFINITIONS

The text of this book has been prepared in accordance with the Kansas Residential Landlord and Tenant Act. Under that Act,

TENANT is defined as "a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

LANDLORD is defined as "the owner, lessor, or sublessor of the dwelling unit, or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by K.S.A. 58-2551."

OWNER is defined as "one or more persons, jointly or severally, in whom is vested: 1) all or part of the legal title to property; or 2) all or part of the beneficial ownership and a right to prevent use and enjoyment of the premises; and such term includes a mortgagee in possession."

PERSON "includes an individual or organization."

ORGANIZATION "includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or an association, two or more persons having a joint or common interest, and any other legal or commercial entity." (K.S.A. 58-2543)

The following relationships are not governed by the Act:

COMMERCIAL rental agreements are not covered.

"Unless created to avoid application of this Act, the following relationships are not governed by this Act:

- (a) Residence at an **INSTITUTION**, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
- (b) Occupancy under a **CONTRACT OF SALE** of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;
- (c) Occupancy by a member of a **FRATERNAL OR SOCIAL ORGANIZATION** in the portion of a structure operated for the benefit of the organization;
- (d) **TRANSIENT** occupancy in a hotel, motel, or rooming house;
- (e) Occupancy by an **EMPLOYEE** of a landlord whose right to occupancy is conditional upon employment in and about the premises;
- (f) Occupancy by an owner of a **CONDOMINIUM** unit or holder of a proprietary lease in a **COOPERATIVE**; and
- (g) Occupancy under a rental agreement covering premises used by the occupant primarily for **AGRICULTURAL** purposes." (K.S.A. 58-2541)

The definition of "dwelling unit" says that it "... shall not include **REAL PROPERTY USED TO ACCOMMODATE A MOBILE HOME** unless such mobile home is rented or leased by the landlord." (K.S.A. 58-2543) Refer to KSA 58-25,100 through 58-25,126 for detailed statutes regarding mobile homes.

APPLICATIONS AND SCREENING PROCEDURES



Start out by doing a good job of setting policies, educating tenants about your property and policies, and carefully screening applicants. You will wind up with a much higher percentage of people who pay their rent on time, observe your rules and regulations, and remain with you year after year.

Fair housing considerations are very important, both because you want to be an “equal opportunity” landlord and because penalties can be serious if you violate the laws. If you are unfamiliar with fair housing laws, you may want to read the Discrimination chapter (next in this book) now, then come back to this chapter.

SETTING POLICIES

Start out by having in mind what you are looking for in the way of tenants, in general and for each property.

Use the Applications and Checking References section in this chapter, step by step, to think through what things you will insist on and where you are flexible. Then, develop your own Occupancy Policy. This policy may vary slightly from property to property. That is OK, as long as you know why and it is nondiscriminatory. (See Sample Occupancy Policy in this chapter.)

To be useful, policies should be written down. You may not want to hand out copies of your screening standards, but you should be willing to discuss them with any prospective or rejected tenant.

EDUCATING TENANTS ABOUT YOUR PROPERTY

Have a copy of your lease (if you use one) and your rules and regulations available for

tenants to review when they first look at your property. (See chapters on Rental Agreements and Rules and Regulations for more information on these.) There is no point in going through the application and screening procedure if the tenant is not aware of and agreeable to all of your terms.

Restrictions and Allowances Tenants should know in advance whether you will be restricting pets or pet walking areas, play areas, car washing or repair, ham or CB radio usage, waterbeds, and the like. Optional features such as garage space, gardening privileges, lawn mowing, snow shoveling, or deductions from rent for certain work or improvements should be mentioned.

Special Conditions Bring up anything unusual to the property. For instance, perhaps the rent has been adjusted to cover the fact that lights in common spaces or an appliance that serves more than one unit are hooked to an electric or gas meter for which the tenant will pay the bill. Perhaps a basement leaks and, though the tenants can use it, you want to warn them that any possessions stored should be up on blocks and that you will not be liable for damage. Maybe you will be reserving storage space in a garage or attic for your own use.

Items like these should be in writing somewhere for the tenant’s information and your legal protection. You might even want to make sure they are signed or initialed by the tenant if they are not in the lease or rules.

ADVERTISING METHODS

You can advertise any way you want — word-of-mouth, sign in the window, sign in the yard, newspaper ads, Internet, whatever.

Be careful to be accurate Misrepresentations can come back to haunt you (tenants wanting to get out of contracts, etc.). For example, be careful about what you represent as bedrooms. Sleeping porches, basements, oversized closets, and the like can be used for sleeping or living space only if they are cleanable, dry, reasonably weathertight, have safe exits, etc. (Check your local housing code, if there is one.) Advertise fireplaces only if they work. Advertise appliances only if you plan to be responsible for them.

Advertising must comply with **fair housing laws** also. Preferences such as "mature women" or "single men only" can **not** be stated. Newspapers and other advertising media are subject to the same penalties as landlords if illegal

advertising is used. Legally allowable rules or restrictions or identifying information such as "upstairs apartment" or "no guests or liquor" can usually be stated. (See chapters on Discrimination and Rules and Regulations for further details.)

When prospective tenants begin to call or come by, **make a practice of noting down the date, time, name and phone numbers.** This serves two purposes: (1) If a discrimination complaint is ever filed against you, you will be able to show how you processed the applications, and (2) If someone backs out of a commitment to rent your unit, you can go back to your other prospects, possibly getting a replacement tenant sooner and not having to re-advertise.

SAMPLE OCCUPANCY POLICY

1. Equal Opportunity Statement No person/s shall be denied the opportunity to apply for available housing or be denied the opportunity to lease or rent any suitable dwelling if they have been determined eligible. We, _____ (Owner, Manager, or Name of Complex) shall not discriminate on the basis of race, creed, color, sex, disability, familial status, or national origin in leasing or other disposition of housing or related facilities included in any developments under our jurisdiction.

2. Occupancy Standards The following are standards that prospective tenants must meet to rent in my/our properties. Prospective tenants whose application or reference information indicates they do not meet these standards should expect to be declared ineligible for occupancy. However, before such determination is made, consideration shall be given to favorable changes in the family's pattern of behavior, lapse of time since the offense, or other extenuating circumstances which offer reasonable assurance that the tenants can meet these Occupancy Standards.

Accuracy in Application Information We expect all application information to be complete and true.

Adequate Income It is important to us that tenant income is adequate to support reasonable living expenses, as well as to make rent and installment payments in full and on time.

Rent On Time and In Full History of chronic late payment or non-payment of rent not acceptable.

Proper Notices Tenants who have not given proper notices prior to maintenance complaints, for change in lease status, for notice to vacate/terminate, and in other lease-required or appropriate situations will be rejected unless adequate explanation can be made.

Good Housekeeping We expect our property to be maintained in a clean manner. "Clean" will be defined to mean free of dirt, grease, impurities, or extraneous matter. Establishment that prospective tenants were responsible for any condition that seriously affected property

by causing infestations or foul odors, accumulation of trash/garbage, creation of fire hazards and/or severe damage to premises and equipment will be cause for rejection.

Good Neighbors We expect patterns of behavior from our tenants, members of their households (including pets, if allowed), and their express or invited guests which do not endanger the life, safety, morals or welfare of other persons. This includes physical violence, gross negligence or irresponsibility which damages the equipment or premises in which the tenant or others reside. This includes threats or behavior indicating an intent to assault other tenants, neighbors, a landlord, or representatives of a landlord. It includes neglect of children which endangers their health, safety, or welfare; history of objectionable conduct resulting from alcohol or substance abuse or frequent loud parties; and other situations which have created serious disturbances to family or neighbors.

History of Recent Serious Criminal Activity Not Acceptable This includes cases in which a member of the applicant's family was or is engaged in prostitution, sale of narcotics or drugs, or other criminal activity (includes property loss or damage and physical violence or sexual crimes against individuals) provided that involvement in such activities shall not be a ground for denial if it occurred more than five years prior to the application and there is no evidence that this behavior has continued.

Special Considerations for Particular Properties If the tenant is to be responsible for particular tasks – lawn mowing, for instance – landlord will expect appropriate skill or financial ability to hire the work done as well as reliability to see that the task is completed in a timely manner.

3. Occupancy Limit _____ (Federal fair housing law says that any reasonable local, state, or federal code applies in determining the amount of habitable space required to accommodate a person and or family of a given size and composition. In the absence of a local or state code, the landlord has the right to establish **reasonable** occupancy limits – not family based – with a maximum acceptable number of occupants per unit. (HUD says two to a bedroom.)

4. Leasing of Dwelling Unit

a. Rental Term _____
Weekly, monthly, 6 mo., 1 yr., etc.

b. Lease Type _____
Verbal or written

c. Rules/Special Conditions _____

d. Lease Change If at any time during the life of the lease agreement a change in the resident's status (i.e. birth of child, death of household member, divorce) results in the need for changing or amending any provision of the lease, a new lease agreement must be agreed to and/or signed.

5. Security Deposit \$ _____ Prior to an application being accepted, a monetary deposit will be required. If the applicant is rejected, the deposit will be returned. (It is permissible to charge a nonrefundable application fee instead and not request the security deposit until an application is accepted). If the applicant withdraws after the application is in process, the landlord has the right to recover his/her losses.

SCREENING PROCEDURES

"Screening" means to evaluate each applicant based on your particular set of criteria – your occupancy policy. It is important to treat everyone who contacts you the same.

Do not "pool" applications in order to select the "best." It could be discriminatory. The first person who meets your standards should be housed.

Screening techniques vary from landlord to landlord. Some just look people in the eye, talk to them a little and make a decision to accept or reject them. Some just note down a few references and make a phone call or two, and others have tenants fill out application forms, make phone calls, and/or pay for credit checks. Because the 1988 Fair Housing Amendments Act established new administrative and judicial enforcement mechanisms and provides for monetary penalties for violations of discrimination, it is more important than ever for landlords to document how they accept or reject an applicant. Even if you did not intend to discriminate, you can be found guilty.

Copies of written agreements and lists of rules or regulations should be available for tenants to review. Any special agreements desired or problems with the property should be explained; any related written documents should be offered for review.

Professional screening is done by having all prospective tenants informed about your property and policies, having them complete a thorough application form, actually confirming a selected number of references, and comparing both written and verbal reference information to your occupancy policy.

"Rental reference" or "consumer reporting" services (available in some cities) will check a variety of references for you for base fees ranging from \$20 to \$30. Check your local directory.

APPLICATION INFORMATION

The questions below follow the sections of Housing and Credit Counseling, Inc.'s Model Rental Application Form (available separately from this handbook). These are questions that you first ask your prospective tenants, then you double-check with their references. You should check with your city's local Human Relations office for inquiries that may be prohibited by local civil rights ordinances.

1. Applicant Information

- a. What are the exact names of all adults and children who will live full time in the household?
- b. What are the household members' birth dates and ages?
- c. What is the sex of each member?
- d. What are their social security numbers?
- e. What is their marital status?

It is important to know who will be occupying your premises and who is just visiting. Social security numbers, sex, and ages of household members will help you to identify the right person if you do a credit and/or reference check. Date of birth can help you determine if a 17 year old is about to reach the age of majority. Check marital status for clues as to whether there are other family members not listed as members of the household, or that there might be unlisted credit problems related to a recent separation.

2. Residence History

- a. Where are the last 3 places they have resided? If they didn't live together, get separate references.
- b. What were the dates of residence? If they did not live at places longer than 1 year, why?
- c. Should you expect good references? Were there any problems?
- d. Get names and phone numbers for the former landlords.

Remember, the current landlord may really want these folks out, so your second or third landlords back could be your better references.

3. Employment & Income

- a. Who are their current employers and how long have they worked for them? (If less than 1 year find out why, and if the work is seasonal find out if the income is also.)
- b. What is their net income?
- c. Is the job expected to last at least 90 days?
- d. Are there other sources of income?

Length of time on the job also can show stability and that the income is fairly steady.

4. Bank History & Credit References

- a. Does the applicant have a checking or savings account? Where?
- b. Do they have outstanding credit obligations? Where?
- c. Have they paid their credit obligations on time?

Bank and credit references will help you to determine if applicants pay their bills and also give you valuable references in the unlikely event you have to later trace this person or garnish assets.

5. Personal References – Get Three.

Character references are a good source of information regarding a person's ability to be a good tenant and can confirm that this tenant has or has not had a stable lifestyle.

6. Convictions

- a. Has any member of the household been convicted of a felony? How long ago?
- b. What was the conviction for?
- c. Has the person continued to exhibit similar criminal behavior?

Landlords have the right to take into consideration a person's felony convictions. Check at

the courthouse for this type of information.

7. Pets

Landlords have the right to refuse pets except assistive pets/service animals. When pets are allowed, type and size may be limited.

8. Cars – How Many?

- a. What are the applicants' drivers license numbers?
- b. What is the make, year, and license number of each car?

This information will help you to cross check references and determine parking arrangements. Ask to see a drivers license at this point or when the application form is complete to see if photo, address, number and signature match what has been given to you.

9. Physical Modifications Requested

Modifications to provide physical accessibility must be allowed to disabled tenants who can afford them. Others are optional. If the tenant has requested modifications for which he or she is responsible:

- a. Can he or she afford the work personally or otherwise secure necessary financing?
- b. Are the workers proposed reputable and do the materials meet your standards (if the tenants are to do the hiring)?

10. Emergencies

Get the name, address and phone of a close relative or friend who lives outside the home who could be contacted in case of an emergency.

This can be very important in case something happens to the tenant (i.e. illness/injury that requires hospitalization) or something happens to you and the tenant is unavailable to get a message.

11. Legal Release

For your own protection and to protect reference givers, you should have a Legal Release signed by all adult prospective tenants before you start your check. (It can be at the end of an application form or separate.) The following language would be acceptable: I/we agree to allow (landlord's name) authorization to investigate any personal, financial, criminal, and credit records, through investigative or credit checking means of the landlord's choice for the purpose of determining my/our acceptability to rent property at (address). (Signature)

CHECKING REFERENCES

You can do your own checking by phone or in person, or you can have someone else do it for you.

You have the right to check with both listed and unlisted references.

All landlords are covered by the Fair Credit Reporting Act. Information gathered by you is to be used by you in your business only and should not be shared by you with others.

PROCEDURE - Have your list of questions prepared in advance. Introduce yourself. Write down the name of the person you are talking to.

When you ask questions, try to phrase them so the person has to give you a complete answer rather than "yes" or "no." For instance, if you ask "Did they give notice?" a former landlord could answer "Yes" when in fact the tenants had told him two days before they were leaving when he asked them why they were moving boxes. Open questions such as "how much notice did they give?" "was notice written or verbal?" And so on, will give you more complete information. You may want to practice your questions on someone else before you use them.

Always ask if the reference can suggest any concerns not already mentioned that you and

the prospective tenant might need to work on.

Always complete landlord or personal reference interviews by asking the person to make a final positive statement about why you might want to rent to this applicant.

Always thank the person.

Rental References Ask how much the rent was and whether it was paid promptly. Ask how long the tenants were there, whether they were under a long-term lease, and whether the lease commitment was fulfilled. Ask if proper notice to vacate/terminate was given. Ask if the tenants kept the property in good condition and whether the landlord or neighbors ever felt the tenants were excessively noisy, demanding or complaining. Ask if the security deposit was returned and, if not, why not. Finally, ask if the landlord would rent to these tenants again. Don't delude yourself into thinking references are good when they are not. Beware of desperate landlords who will give good references in hopes of getting rid of undesirable tenants!

Drop in unannounced on the tenants at their current residence if that is feasible. You will not only get a true picture of how the home is maintained, but you will also see if there are motorcycles on the porch or in the house, how many people are there, etc.

Employment References Ask how long the person has been there and whether the job is permanent (person is off probation, job is expected to last). You may want to ask about the person's work habits (promptness, productivity, etc.). Ask for verification of pay. (Some will directly give you a quote on hourly or annual pay, but the policy of many is to ask you what figure you have, then they will "verify" whether their payroll information agrees.) If the employer won't give you information (some won't), you will have to ask

the tenant to bring you a recent pay stub, tax return, or statement from the employer.

Bank References As long as you have the account number and signed release, banks should be willing to confirm whether the person has open checking or savings accounts, how long the accounts have been open and whether there have been overdrafts. These are good indicators of stability and reliability. Banks are unlikely to be willing to give you account balances; since that can change so quickly, it's not particularly useful information anyway.

Credit References The credit source should give you the date the account was opened and for how much, the date of the last payment, the current balance, regular payment amount, and the number of late payments (if any) and how late they were.

Now that credit reports can be obtained free via the Internet, some landlords require a credit report to be submitted with the application. Landlords may choose to contract with a professional screening or credit reporting company found locally or on-line. Fees are generally in the \$20 - \$35 range.

All local Kansas credit bureaus associate with one of the three national credit bureaus (Experian, Equifax, and TransUnion) and will check credit and financial references for a base fee of \$10 to \$20.

Personal References Ask each person how long he or she has known the prospective tenants and in what capacity (relative, work, church, socially, etc.). Ask the person to cite the tenants' most recent address(es) and employment. (This is a chance to confirm what the tenant has told you. Sometimes, you will get different information!) Ask how many people are in the household, and how many vehicles there are. Are there pets? Ask what this person knows about the prospects' housing experiences – good? bad? ever had hassles with landlords or neighbors? troublesome guests or roommates? Ask about the prospective tenants' housekeeping and how well they take care of other people's property.

Ask how much company the tenants usually have and whether the person is aware of visitors staying for long periods of time. Based on what you have learned from other references, ask any other questions you want. Especially in this situation, make sure to wrap up your conversation by asking the person to tell you something good about the tenants that would make you want to rent to them. This will end your conversation on a comfortable note, easing the reference's anxiety somewhat about you and what he or she has just told you.

Convictions/Court Cases You can contact the District Court in the county or counties where your prospective tenant has recently lived. Give as complete a name as you can and ask if the person has sued or been sued in the past couple of years. Court records are public. You may have to go in person to ascertain the information. Many counties now post records on the Internet. This simple check can turn up not only criminal information, but also credit or other noteworthy items.

DECISIONS/REJECTIONS/ DISCLOSURE

If you reject a tenant, you are not required by law to tell the tenant why, though it is a good idea. Without disclosing sources, you can generally state the problem area and the tenant will confirm it. If one reference was particularly bad, you can name it and offer the tenant the chance to check with the source and correct anything erroneous. Give a deadline if this happens. Your occupancy standards, as long as you are consistent, will support your acceptance or rejection. And remember, keep the information you gather to yourself. Fair Credit Reporting says you have the right to it only for your own use.

PROTECT CONFIDENTIALITY OF INFORMATION

Be sure all information you have collected is kept in a secure, confidential place at all times.

"Identity theft" is a major issue these days. You do not want there to be any possibility that an applicant's credit card or bank account numbers would be copied and misused because you left a completed application lying around where someone besides you could see it.

APPLICATION DEPOSITS AND FEES

Landlords may ask for a deposit (either the entire security deposit or part) when an application is filled out. Regardless, insist that the security deposit be paid in full as soon as a tenant is accepted, no matter how long it will be until the move-in date. This deposit is your assurance that the tenant seriously wants to rent your property and your insurance against financial losses if the tenant changes his or her mind.

Another way to handle this, if you regularly use an application form and incur expenses in checking references, is to charge a

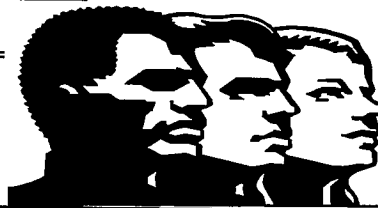
non-refundable application fee (\$15 to \$30 is customary), then ask for the security deposit only after the applicant is accepted. You should be as speedy as possible in your application processing/reference checking. Inform the tenant approximately how long the "check" will take. There is some merit to the argument that some tenants make when asking for their money back because, hearing nothing from the landlord to whom they had applied and needing a commitment, they had gone ahead and found another place. Make sure you notify the tenants "yes" or "no" just as soon as you have made your decision.

If you reject an applicant, you must return any deposit collected.

If you accept an applicant, then the applicant withdraws, you have the right to keep money from the security deposit to cover your actual itemized cash losses. (See chapter on Security Deposits for more detail.)

References: Use of Premises K.S.A. 58-2558; Kansas Fair Credit Reporting Act, K.S.A. 50-701 through 50-722; Fair Credit Reporting Act, 15 U.S.C. § 1681; Model Rental Application Form with instructional booklet can be ordered from Housing and Credit Counseling, Inc.

DISCRIMINATION



Basically, all prospective and current tenants must be respected and treated equally.

Current federal fair housing laws extend protection from discrimination on the basis of race, sex, religion, national origin, ancestry, color, familial status and disability. This protection applies to all sections of the United States.

Enforcement procedures in discrimination cases include the use of administrative law judges, the power to get injunctions, and the power to secure awards of up to \$100,000.00 for fair housing complaints handled through administrative or federal court procedures.

Although Kansas state discrimination laws are in compliance with federal laws, not all local governments have included families with children and persons with disabilities.

Fair housing laws cover not only the specific decision on whether to sell or rent to certain persons or classes of people, but also issues such as charging higher rent or establishing different requirements, conditions, or services. They cover the individuals involved and situations involving families or guests may apply as well.

Many landlords fear that, to protect themselves, they must rent to anyone who comes along. This is not true. The key to avoiding problems with civil rights claims is to have routine standards that are not discriminatory. (See chapters on Applications and Screening, Leases, Rules and Regulations, Landlord Responsibilities, and elsewhere in this handbook.) Then you can explain why you rejected, evicted, or took some other action against an individual and show that you have applied the same standards to all of your other tenants.

If you live in one of your rental properties yourself and there are four or fewer living units, most levels of fair housing law exempt you from prosecution for discrimination in that property. This exemption does not apply to managers, only to owners. Also, this exemption does not allow you to advertise in a discriminatory manner.

The following listing details the powers and procedures for the various sources of fair housing complaints:

LOCAL GOVERNMENT

(See box for which cities have fair housing ordinances - page 14))

Groups Covered: Varies. Generally include race, sex, religion, national origin, color, ancestry. Some include age, disability, marital status, families with children, welfare income.

Who Investigates: Volunteer board members or paid staff.

Limit to File: May vary. Generally 180 days.

How Soon Investigation Must Start: Varies. Generally 10 days.

Powers: 1) Voluntary conciliation agreements which can include cash awards, agreements to rent, not evict, change management practices, etc. 2) Public hearings before volunteer boards, legal counsel often available. Ability to order injunctions and limits on awards will vary. Enforcement assistance and appeals to District Court should be applicable, but may vary based on specific local ordinance.

How to Defend: Generally can handle personally. Can be represented by an attorney.

For Information: Call City Hall and inquire about "Human Relations," "Human Resources" or "Civil Rights" board or staff.

STATE GOVERNMENT

Groups Covered: Race, sex, religion, national origin, ancestry, color, disability, and families with children.

Who Investigates: Paid staff, based in Topeka, Wichita, Independence and Dodge City.

Limit to File: 1 year.

How Soon Investigation Must Start: Respondent must be contacted within 10 days. Investigation completed within 100 days, if possible.

Powers: 1) Voluntary conciliation agreements. (See above.) 2) Hearings generally held in the city where the complaint was filed. Administrative hearings, option of using staff attorney or private counsel, staff hearing examiner. Can award actual damages, no limit, and "pain and suffering" damages up to \$25,000. Decisions are enforced by or appealed to Kansas District Court.

How to Defend: Generally can handle personally, especially at investigation level. Can be represented by an attorney.

For Information: The main office is in **Topeka** at 900 SW Jackson, Suite 568 South, 66612,

phone (785) 296-3206. The **Wichita** office is at 130 South Market, Suite 7050, 67202, phone (316) 337-6270. The **Independence** office is at 200 ARCO Place, Suite 311, 67801, phone (620) 331-7083. The **Dodge City** office is at 100 Military Plaza, Suite 220, phone (620) 225-4804. Any of these offices will send you a copy of the Kansas Act Against Discrimination upon request.

FEDERAL GOVERNMENT

Groups Covered: Race, sex, religion, national origin, color, ancestry, disability, and families with children.

Disability is the same as "handicap" and is broadly defined to include anyone who has or is regarded as having a physical or mental disability (protects people with illnesses such as AIDS, specifically does not protect people with substance abuse problems). Landlords must allow physically disabled tenants, at their own expense, to make "reasonable" modifications to a rental unit to make it accessible. (The landlord does have the right to insist on certain standards of workmanship and, in some cases, on restoration of the property to its original condition at move-out.)

Renting to families with children can still be limited by occupancy limits in local housing codes in terms of how many people a landlord can rent to, but buildings or complexes which are operated exclusively or almost exclusively for senior citizens are the only ones which can exclude families.

LOCAL HUMAN RIGHTS COMMISSIONS

Currently, 24 Kansas cities have fair housing ordinances. Copies of these ordinances should be available through the city. A Community Development or Human Resources department is usually responsible for investigation. Most cities have a Human Relations Commission, a board of local citizens appointed to settle disputes.

Arkansas City	Emporia	Junction City	Manhattan	Salina
Atchison	Fort Scott	Kansas City	Olathe	Topeka
Chanute	Garden City	Lawrence	Ottawa	Wichita
Coffeyville	Hutchinson	Leavenworth	Parsons	Winfield
Dodge City	Independence	Liberal	Pittsburg	

All new rental construction with 4 or more units must be "accessible" or "adaptable" for the disabled persons. Copies of the law are available from HUD, your library, your congress person and on the Internet.

Who Investigates: Paid staff of Department of Housing and Urban Development (HUD), based in area or regional offices, who will travel as needed.

Cost: None for investigation, might be some for witness fee or court costs. Can be waived if complainant cannot afford.

Limit to File: 365 days (1 year).

How Soon Investigation Must Start: Respondent must be contacted within 10 days, investigation completed within 100 days, if possible.

Powers: 1) Voluntary conciliation agreements which can include cash awards, agreements to rent, not evict, change management practices, etc. 2) Administrative hearings. Complainant assisted by HUD investigator and HUD legal counsel, before HUD administrative law judge. Power of injunction, right to award actual damages and attorneys' fees, fines up to \$50,000. Hearings are to be held "in the vicinity" of where the complaint occurred. 3) Federal District Court, by request. Federal Department of Justice would represent complainants before federal judge and/or jury. Power of injunction, right to award actual damages and attorneys' fees, fines up to \$100,000. Federal courts in Kansas are in Kansas City, Topeka, and Wichita.

How to Defend: Generally can handle personally, especially at investigation level. Recommend attorney if goes to administrative hearing or to court.

For Information: Call 1-800-669-9777 for national information or 1-800-743-5323 for the Kansas City Regional HUD office, 400 State Avenue, Kansas City, KS 66101.

PRIVATE ATTORNEY

Groups Covered: Any covered by local, state or federal law, or other policy or regulation.

Who Investigates: Varies.

Cost: Negotiable, can be high, can be low, or "contingency fee."

Limit to File: Federal law allows up to 2 years for private lawsuit, Kansas and local law may vary up to 5 years depending on nature of lawsuit.

How Soon Investigation Must Start: Varies. Can take some time to prepare case and get through various court systems. In the past, however, there have been times when this was faster and more effective than using government procedures.

Powers: No limit on settlements, all administrative procedures, no limit on penalties requested or awarded.

How to Defend: Hiring attorney recommended.

The Rule of thumb, if you are contacted by a fair housing investigator, is to be as cooperative as possible. Many times, complaints can be resolved simply by a visit with you.

Make sure you do not threaten, intimidate, or otherwise retaliate against tenants who file complaints. Even if a complaint is totally groundless, or the tenant is a bad tenant, negative action by you is not appropriate and can weaken your position.

If an investigator finds "no probable cause," the case will be administratively closed which will end it unless the tenant is able to file a timely complaint with another level of government or hires an attorney.

To find a good defense attorney, check with local, state, and federal courts for names of attorneys who have been involved with discrimination cases. Check with local and state bar association "lawyer referral" programs. Contact libraries or human relations boards for names

of attorneys nationally who have successfully defended fair housing lawsuits. Even if you do not hire the nationally prominent person, that attorney could be a good resource for your local attorney. (Also see How to Shop for an Attorney elsewhere in this book.)

References: United States Civil Rights Act of 1968, Title VII, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 through 3619, 3631; Federal Civil Rights Act, 42 U.S.C. 2000; Americans With Disabilities Act, 42 U.S.C. 12101; Kansas Act Against Discrimination, K.S.A. 44-1001 through 44-1043; local ordinances.

MOBILE HOME PARKS

The Kansas Mobile Home Parks Residential Landlord and Tenant Act (MHRLTA) is patterned after the Kansas Residential Landlord and Tenant Act and ***applies to owners of mobile homes renting lots***. Where the mobile home itself is rented, the Kansas Residential Landlord and Tenant Act (the law described in this book) applies. Most of this book applies to mobile home owners as well **EXCEPT**:

- The security deposit on a mobile home lot can be as much as two times the lot rent. Pet deposits are NOT addressed.
- The park owner is to maintain security deposits in a separate account. Payment of interest is not required.
- When a park is sold, the owners must notify each tenant in writing of the amount of the security deposit transferred to the new owners. Tenants have 20 days to dispute the amount in writing.
- A lease can be for a maximum of one year.
- When no written lease exists, 60 days' notice to terminate must be given by either party.
- Renewable, written 30-day leases may require only 30 days' notice to terminate.
- No move-in inspection of the lot is required, but it's a good idea.
- A mobile home owner can give a 14/30-Day Notice of Landlord Noncompliance for any period. It's not tied to the rent due date as with residential tenants.
- Any improvements on the lot, except a lawn, made by the mobile home owner are the property of the mobile home owner and can be removed at move out.
- A mobile home is considered abandoned if rent is more than 3 days late and the home owner is absent more than 30 days. The home owner is responsible for all past due lot rents, removal and storage costs, utilities due, and costs of serving any company that has a lien on the mobile home. Costs to the lienholder begin accruing from the date of written notification.
- A mobile home owner on active military duty renting a lot **CANNOT** give 15 days' notice to terminate a month-to-month rental agreement (as residential tenants can) when transfer orders have been received.

Tiedowns (anchors holding a mobile home to the ground) are required on any mobile home measuring 8' x 36' or larger that is not on a permanent foundation. Specifics on what is required and what has been approved for use in Kansas can be obtained from the Division of Architectural Services, Kansas Department of Administration, 900 Jackson, Room 107, Topeka, Kansas (785) 296-1318. It is a criminal offense in Kansas not to have proper tiedowns.

References: MHRLTA, K.S.A. 58-25,100 through 58-25,126; Tiedowns, K.S.A. 75-1226 through 75-1234. Some cities and counties have ordinances which set out standards for mobile homes and/or mobile home parks. Check with your own city or county for further information. Copies of the Mobile Home Parks Act may be ordered from Housing and Credit Counseling, Inc.

SECURITY DEPOSITS



A security deposit is money which you collect from the tenant prior to move-in and hold throughout the tenancy as insurance that the tenant will not leave owing you money. In general, the security deposit can be used by you after the tenant moves out for past-due rent, physical damage to the property, and/or for other itemized expenses that you suffer if the tenant breaches the rental agreement.

You do not have to charge a security deposit, but it is highly advisable. Keep in mind that simply to replace a piece of carpeting, for example, can cost \$200 to \$1,000.

LIMITS

For an unfurnished dwelling, Kansas law allows a landlord to charge as much as the equivalent of one month's rent as a security deposit. For a furnished dwelling, a landlord can charge as much as one and a half month's rent. It is important to remember that if you are renting to roommates and charging each person a security deposit, the total cannot go over the legal limits.

If pets are allowed, a pet deposit equal to as much as one-half month's rent (the total, not per pet) can additionally be charged.

Some landlords try to charge nonrefundable pet or cleaning deposits or fees. The legality of these is questionable primarily because of interpretations of the law regarding security deposits. Their usefulness is questionable as well. Tenants are often less careful about cleaning if they do not have the deposit return as an incentive. Also, if cleanup or repairs cost more than the fee, it could be argued that the fee is the limit of the tenants' liability. That would not be good! If you expect abnormal wear and tear because of certain tenants or pets, or you need more income to cover your standard pre-rental cleaning and improvements, you should probably simply charge more rent.

PAYMENT

Some tenants may say that they don't have enough money to pay the entire security deposit and the first month's rent at the same time. If you choose, you can allow tenants to make payments over a period of months, but this is inadvisable. If a tenant does not have enough money to pay the security deposit at move-in, how can you be sure that the person will be able to pay the rent in the months to come? Three-day eviction notices (see Evictions chapter) are available only for nonpayment of rent, not nonpayment of security deposits. If you agree to a payment plan, get it in writing.

PURCHASE OF PROPERTY

If you have purchased a property where there are already tenants in place, you want to make sure of the security deposit situation. Technically, the law says that when a rental property is sold, the former landlord is responsible to return whatever security deposit was owed to the tenant. As a practical matter, what normally happens is that when the purchaser acquires the business property, the purchaser also acquires its assets and debts. Therefore, you need to get from the former owner and confirm with the tenant the amount of the security deposit paid at the initial move-in. A short note or letter should be sent to the tenant stating that the security deposit of \$XXX has been transferred to you. If there was no security deposit with the original owner or you want to charge a higher security deposit than was originally held, you have the right to do this. In a month-to-month tenancy, the best way to handle this is to give the tenant a notice in writing at least 30 days in advance of a rent-paying date, stating that you are requiring \$XXX additional security deposit and it is to be paid on or before the next rent paying date. If you have acquired a property where the tenant is under a long-term lease, you will need to wait until the end of the lease

to adjust the security deposit as well as, of course, the rent or any other lease provision.

INTEREST

A private landlord in Kansas is not required to pay interest on security deposits. If you are willing to do so, you should agree at the time of payment on a fixed percentage rate, either simple or compound interest, that the interest will be paid at move-out time, and that, if the tenant owes the landlord more than the security deposit, the interest will be applied to the charges before any remainder is returned to the tenant.

Some tenants offer to do cleanup and repairs in lieu of paying a security deposit. This must be carefully agreed to: How many hours at what rate? Who pays for supplies and materials? When must the work be done? Will the tenant get a cash deposit if they move out and leave the place in good condition? In any event, the agreement should be in writing and attached to the rental agreement.

NO USE DURING TENANCY

The Kansas Residential Landlord and Tenant Act says that if a tenant attempts to use the security deposit for maintenance charges, other charges, or rent owed during the course of the tenancy, the tenant can forfeit the security deposit and still owe the charges. This includes the last month's rent.

Two Kansas Supreme Court decisions on this issue, however, indicate that this forfeiture provision may only be enforceable when language about that is included in bold face in a written lease.

If tenants suggest that you use a security deposit during the course of a tenancy, simply tell them that it is illegal and refer them to K.S.A. 58-2550 if they don't believe you.

REASONS FOR WITHHOLDING

A security deposit can be kept by the landlord for itemized deductions from three categories

– accrued rent, physical damages above and beyond normal wear and tear, and other damages.

1) "Accrued Rent" is rent that was due and owing before the date the tenant returned possession to the landlord. For instance, if your tenant gave notice on May 31 for a June 30 move-out but did not pay June's rent, that would be accrued rent and could be withheld from the security deposit. Whether the tenant has given notice to the landlord or the landlord has given notice to the tenant, the tenant does owe the last month's rent.

2) "Physical damages above and beyond normal wear and tear" are damages caused by the tenant, the tenant's family, guests, or pets. You have the right to bill the tenant for labor, cleaning, or repairs that you have hired done. You also have the right to bill the tenant at a reasonable rate, similar to what you would pay someone else, for your own labor in doing repairs or cleaning. Check with your local court to see what rates they allow for a landlord's personal labor.

"Normal wear and tear" can vary depending on the age and condition of the dwelling and who is occupying it. Your move-in inspection sheet (see Move-in Inspections chapter) becomes very important here because you don't want to charge this tenant for damages caused by a previous tenant.

Paint is an issue that comes up often. A general rule of thumb is that it should not be necessary to paint within six months, and that one would expect to paint even with the tenant in place after four years. Regardless of how long a tenant has been there, if the paint is of a quality or condition that makes it difficult to clean, it may be hard to hold a tenant responsible for it. If a landlord normally repaints before re-renting a unit, but the tenant has caused damage which requires special preparation prior to painting (such as special primer paint needed to cover smoke, stains, marks, grease, etc.), the deposit could be held to pay for the special preparation but perhaps not the entire paint job.

Carpeting is another issue that comes up often. If a carpet has been left dirty, a landlord needs to consider what condition it was in at move-in time, what efforts the tenant made to clean, and whether further cleaning will solve the problem. A tenant can be liable for your attempts to clean or re-clean. If the carpet is burned, stained, or otherwise damaged to where part or all of it needs to be replaced, the tenant can be held responsible. If it is possible to patch, then the tenant can be responsible for that cost. If a patch is not available or not feasible, the landlord needs to figure out the depreciated value of the carpeting as of that day. That value can be assessed to the tenant. An example – you purchased a carpet three years ago for \$500 and it now needs to be replaced. Using a straight line depreciating schedule of five years, that carpet today would be worth \$200 (depreciating \$100 per year). Therefore, you could charge the tenant \$200.

Taking the original purchase price and depreciating on a reasonable basis to come up with the current value of items damaged or destroyed is one that can be used to come up with dollar figures on any items in the dwelling. Depreciation formulas approved by the Internal Revenue Service (check your tax books or with your tax consultant) should give you figures that a landlord-tenant judge would approve of and that, if you can't collect from your tenant, you can use when claiming business expenses on a tax return.

3) "Other Damages" are those suffered by the landlord because the tenant has not complied with the rental agreement or tenant's duties by law. Simply saying that a tenant has "forfeited" a deposit or that a deposit is being kept as a "penalty" or as "liquidated damages" is generally considered **NOT ALLOWABLE** under current law. Kansas contract law allows compensation for actual losses but not penalties if someone breaks a contract. Landlord-tenant law requires itemized deductions; the above general clauses, by their nature, are not itemized. Your time to adver-

tise and show property, to do financial and legal paperwork, etc., is generally considered a routine business expense **NOT** chargeable to the tenant. However, there are a number of circumstances where you can clearly show an actual loss. You can collect future rent if a tenant has given inadequate notice or broken a lease. For instance, in the case of a month-to-month tenancy where a tenant gives no written notice or does not give a full 30 days in advance of a rent paying date, you have the right to collect rent up until the end of the next full rent period or the date that a new tenant moves in, whichever comes first. (See Notice to Terminate from Tenant chapter for more details.)

If certain advertising expenses are caused by a tenant's improper move-out and were expenses that you would not normally have incurred, those can be charged to the tenant's security deposit. For example, if month-to-month tenants give inadequate notice, the charge of running an ad probably would not be billable to the tenants. Within a couple of weeks, they could have given proper notice and you would have had the advertising as a regular business expense anyway. However, if a tenant breaks a one-year lease after only three months, that advertising expense is one that you did not expect; therefore, it would be chargeable. Complexes that advertise regularly should not charge.

If a tenant's actions (you will probably want to check K.S.A. 58-2555 in this instance) have caused you to lose neighboring tenants and you have incurred unrecoverable expenses, these could possibly be charged to the responsible tenant.

If a tenant has caused you to be unable to re-rent your place in a timely manner (refused entry for showing, kept the place so dirty no one wanted it, did so much damage you had to leave it vacant for a time while you had it repaired, did not move out on time), you may be able to keep some of the deposit to cover rent lost until you get a new tenant.

RETURN

The law requires that you return the tenant's deposit money and/or a written itemized list of deductions to the tenant within 14 days of your determination of the "damages," but in no case more than 30 days after the return of possession of your property to you and demand by the tenant. "Possession" is generally considered "returned" when the tenant has returned the keys. If you do not know where the tenant has gone – do not have an address – the law requires that you send the itemized list and/or the check to the tenant at the tenant's last known address, even if that is your own house. If you use certified mail (not required), you should either have a receipt proving that the tenant got the letter or have the letter back to prove that you made an attempt to send it.

"Itemized list" means list each item and how much it cost to repair or pay for that item, detailing cost of labor and materials where you can. (Of course, it is important to keep all of your receipts.) Without regard to the amount of the security deposit, you need to then total this list. Next on your paper, enter the amount of the security deposit in comparison to the amount of damages and note the difference. If there is a remainder, you need to send the tenant a refund check with a copy of your itemized list. If the security deposit is not adequate to cover the expenses, you need to indicate at the bottom of the page how much is still due and owing from the tenant. At this point, it is up to you whether you indicate to the tenants that you want them to pay and give them a deadline. In terms of your business, you can choose to handle it one of two ways. You can give the tenants a certain amount of time in which to pay the remainder and take them to Small Claims Court or a higher court to collect if they don't pay. Or, you can deduct it as a business expense for tax purposes. Of course, you can try the first and

do the second if the first doesn't work. Either way, you will need that complete itemized list with receipts both to satisfy Kansas landlord-tenant law as well as for your own tax records. No matter what has happened, make sure that you send the tenant something in writing within the thirty days. Kansas law provides that if a landlord has not at least attempted to send the tenant the money and/or the itemized list of deductions within thirty days, the tenant can sue for not only the amount due, but an additional one and one-half times that amount.

If you feel that you aren't ready to send your letter by the end of thirty days because you still aren't sure what all of the expenses will be, you need to send the tenant something in writing indicating what the expenses are to date and what information you are still waiting for. Presumably, in that situation, the tenant isn't getting any money back anyway; you are simply waiting to see what the total indebtedness to you is. Even if you settle the security deposit issues verbally with the tenant, agreeing to return all or none of the deposit, send the tenant the letter with the itemized list of deductions regardless so that you have protected yourself by complying with the law.

Once the tenant gets your letter, he or she may disagree with your itemized list. At that point, the tenant may call or write you a letter to attempt to negotiate further. The tenant has the option of going straight to Small Claims or a higher court and suing for what the tenant feels is due. It is entirely up to you once you have sent your itemized list of deductions whether you want to negotiate further. Be sure that you have carefully thought out your list, that you can prove your expenses, and that your charges are fair. Going to court does take time. If the tenant prevails, you possibly could have to pay the tenant's court costs as well. (See Small Claims Court chapter for small claims procedure.)

References: K.S.A. 58-2543, 58-2550, 58-2554, 58-2562, 58-2563; 1979 Kansas Supreme Court case **Clark v. Walker**; 1992 Kansas Court of Appeals case **Burgess v. Stroud**, re: forfeiture provisions; 1982 Kansas Court of Appeals case **Buettner v. Unruh**, re: when move-in inventory was not done; 2001 Kansas Court of Appeals case **Wurtz v. Cedar Ridge** re: landlord can't keep security deposit as liquidated damages; Model Security Deposit Return Letters can be ordered from Housing and Credit Counseling, Inc.

RENTAL AGREEMENTS



Kansas law defines a legally enforceable “rental agreement” as all agreements between the tenant and landlord, written or verbal. A rental agreement can be from month-to-month or for a specific term such as six months or a year. A verbal agreement cannot be for more than a year.

In all cases, whether or not there is a written agreement, the landlord and tenant are subject to the laws of the state of Kansas and any governmental subdivision. This includes the requirement for a written move-in inventory in **every** rental relationship. (See chapter on Move-in Inspections.)

LEASE VS. NO LEASE

You have probably heard many landlords say, “A lease is not worth the paper it’s written on.” In terms of having absolute assurance that tenants will stay as long as they say they will or you want them to, it’s true that a tenant’s signature is no better than his or her word. And, no matter what kind of penalties you write into a lease, Kansas law generally lets you collect only for your actual losses, no more.

A written lease can make your rental relationships clearer and more comfortable through its recording of promises and agreements between tenant and landlord. A written lease can include more crime-free and drug-free language and also give you additional leverage in getting problem tenants out. A long-term lease can give you greater ability to collect advertising expenses if someone moves out early, or vacancy or utility expenses if someone moves out at a bad time of year and the unit is hard to re-rent.

IF THERE IS NO WRITTEN LEASE

Verbal rental agreements are considered to be month-to-month agreements unless you specify otherwise. It’s important to be clear

in your agreement with your tenant if you decide that the agreement is every two weeks or week-to-week. If you are allowing your tenant to pay more than once a month, but you consider the rental agreement to be month-to-month, you need to make that clear.

Unless otherwise specified, Kansas law says that the rent date is assumed to be the first of the month. You need to state to your tenant when you enter into the rental agreement what the rent date will be. The rent receipt will be the key to backing that up. To protect yourself against misunderstanding, always indicate the appropriate rent period somewhere on the rent receipt so that it is clear what the rent date was. If the tenant is moving in in the middle of a rent period and you have a preferred rent date and rent period, you can pro-rate the rent for the first month, indicating what dates were covered and then start the full rent at the first full rent period.

You need to specify how the rent is to be paid – check, cash, or money order (if you care) – and whether it is to be delivered or sent to a certain address by the tenant or picked up by you or your agent. Kansas law says that unless you specify otherwise, you are responsible to pick up the rent from the tenant at the property.

Kansas law requires that the tenant be informed in writing of the name and address of the owner or the person authorized to manage the property on behalf of the owner. It is a good idea to offer at least one phone number as well. The law further requires that the information be kept current in writing to the tenant if the ownership or management changes.

IF THERE IS A LEASE

Since you are likely to be the one offering a lease (or “contract” or “rental agreement,”

whatever you call it), take some time and find or write one that you are comfortable with. Your lease does not have to be long but it should cover all aspects of the tenancy, mentioning any things that are particularly important to you. Though you can draft your lease agreement yourself, it is a good idea to have your final product checked by an attorney so that you know what you have included there is legal.

Some things to make sure to include:

- **name and address** of the owner or person authorized to manage the property
- **phone number(s)** for landlord and maintenance
- **clear listing** of what is and is not being leased to the tenant for exclusive use (dwelling, yard, parking space or garage or carport, basement, certain appliances, etc.)
- **listing of names** of all tenants, saying also that no other tenants are allowed without permission of the landlord
- **the amount of rent**, due date, and how rent is to be paid; also which utilities are the responsibility of the tenant
- **the term of the lease** (month-to-month, six months converting to month-to-month, etc.)
- **requirement that landlord be notified** if tenant plans to be gone more than seven days
- **security deposit** cannot be used to cover expenses during the course of the tenancy
- **special prohibitions** (pet and noise policies, illegal activity as cause for eviction, etc.)
- **special agreements** (See examples.)
- **spaces** for tenant(s) and landlord and possibly a witness to sign

Things which must not be included (by law):

- **“exculpatory clauses”** (evidence or statements which tend to clear, justify or excuse a defendant from fault or guilt) which say that the landlord is not liable for damage or personal injury to the tenant, the tenant’s guests, or the tenant’s property
- **“confession clauses”** in which the tenant admits guilt in advance to any charges for damages in court

- **clauses which say the tenant will pay the landlord’s legal fees** if they ever go to court
- **“as is” or “disclaimer of duty to repair”** clauses which say that the landlord is not responsible for making repairs which Kansas law requires the landlord to do
- **clauses which permit the landlord to enter** the property at any time without notice
- **clauses which allow the landlord the right to evict** the tenant without proper notice
- **clauses which allow the landlord to take the tenant’s personal possessions** if the tenant does not pay the rent.

It is possible to make changes in leases. If you and your tenant agree, cross out what you don’t want, write in what you do want, and initial and date in the margin on both copies. If you want to add something, write or type it in on the lease itself above the signature, then date and initial the addition. If there is not room, add another page. Each of you should get a signed copy.

When you have a written rental agreement, any later changes or additions should be in writing also. Our legal system expects that, once any part of an agreement is in writing, all of it should be in writing to be legally binding.

PET PROVISIONS

Decide what your policy is and stick with it. Legally, through leases, you can allow some tenants to have pets and not others. As a management practice though, that’s not a good idea unless you have some clear guidelines everyone must follow. Don’t forget that some people come up with some pretty weird pets!

Some possibilities:

No Pets If you say this in a lease, be sure you don’t later give verbal permission or “overlook” the fact that someone has a pet. Make sure that what is in writing reflects reality. You may need to further define this also. Does this mean “no cats or dogs” or “no pets” at all?

Limited In your lease or rules, you might want to say something like "No more than two caged birds. Fish limited to one 20-gallon tank. No other pets allowed."

Size and Weight Limits Rather than setting general limits, you might want to say, "Dogs no higher than 14 inches or weighing more than 20 pounds full grown," or "Tenant must be able to easily carry pet."

SPECIAL AGREEMENTS

Whether your general rental agreement is written or verbal, if some specific agreements have been arranged between the tenant and landlord, it is a good idea to have these in writing for the protection of both parties. Such agreements include special allowance for a certain pet or that no pets are allowed, who is responsible for lawn mowing or snow shoveling, where a truck or bus used in a tenant's business can be parked, permission to provide day-care in the home, etc. The law indicates that any agreement requiring the tenant to take care of maintenance, repairs, alterations, or improvements must be in writing.

IF THE TENANT OFFERS YOU A LEASE

If you have not offered a written rental agreement, your tenant may want to have one. If a tenant offers you a written rental agreement, try not to make any response immediately. Take the agreement and say you will look it over. That way, you have time to think about whether or not you want a lease and to consider the particular lease privately when it is convenient for you.

Kansas law provides that if a tenant offers the landlord a signed lease, whether or not the landlord signs and returns a copy of the lease to the tenant, if the landlord accepts rent "without reservation," the lease will be binding on both parties for a term of as much as a year. What this means is that, if a tenant offers you a signed lease and you want to

negotiate it further or reject it, it is important that you write a letter or note to the tenant saying so by the time you accept the next month's rent. This note can be on the rent receipt. It should clearly say that the rent is accepted "with reservation" and that the offered lease has not been signed by you. You do not have to accept a lease that a tenant offers you.

IF THE TENANT DOESN'T SIGN THE LEASE

Likewise, if you offer the tenant a signed lease which the tenant does not sign and return, then the tenant pays rent "without reservation," the lease will be binding on the tenant for its term or a year, whichever is less. If the tenant does express "reservation," then your rental agreement would continue as month-to-month or whatever it had been before until you can agree.

PURCHASE OF TENANT-OCCUPIED PROPERTY

If you purchase a property where there are already tenants in place, you want to make sure of the rental agreement situation. As a practical matter, what normally happens is that when the purchaser acquires the business property, the purchaser also acquires its assets, debts and obligations. Therefore, you need to get from the former owner and confirm with the tenant the type of lease or rental agreement in effect. In Kansas, the prevailing consensus is that where the tenants in place have a term lease or rental agreement with the previous owner for a definite term (i.e., 3 months, 6 months, 9 months, 12 months, etc.), both the purchaser and tenants are obligated to honor the terms of the lease or rental agreement until it terminates.

In situations where a property is purchased and the purchaser does not wish to continue the rental relationship with tenants who have term leases or rental agreements, the use of what is called the "buy out" is an option that

may be considered. This is where the purchaser and the tenant mutually agree to terminate the lease or rental agreement on the condition the purchaser covers the reasonable expenses for the tenant's relocation within the community and the

reasonable difference between the monthly rent the tenant was paying (difference can be \$100 or more per month) and that to be paid at the new residence. Agreements should be in writing and copies retained by all the parties involved.

References: K.S.A. 58-2543 through 58-2547, 58-2549, 58-2551, 58-2556, 58-2558, 58-2565; Subleasing; K.S.A. 58-2511, 58-2512, 58-2515; Disclosure of Ownership, K.S.A. 58-2551, 58-2554; Kansas Contract Law (not detailed here) also applies; 1979 Kansas Supreme Court case **Chelsea Plaza Homes, Inc. v. Moore**, ruling that the Kansas Consumer Protection Act does not apply; Model Leases can be ordered from Housing and Credit Counseling, Inc.

LEAD-BASED PAINT REGULATIONS

Federal Environmental Protection Agency (EPA) and Housing and Urban Development (HUD) regulations concern lead-based paint for housing built before 1978. To comply, landlords must:

- Disclose the presence of known lead-based paint and/or lead-based paint hazards in the rental unit.
- Provide tenants with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards.
- Provide tenants with a federally approved lead hazard information pamphlet.

Tenants must sign a document confirming that tenants received the 3 items above.

Whenever repair/renovation work that will disturb an area of two square feet or more is going to be done, landlords must:

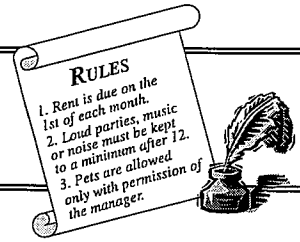
- Provide tenants at least 7 days' prior written notice.
- Provide a federally approved lead hazard information pamphlet again.
- Provide a disclosure form about the planned work.

Tenants must sign a document confirming that tenants received the above information.

Copies of the pamphlet and disclosure form may be obtained FREE by calling The National Lead Information Clearinghouse at (800) 424-LEAD. Copies may also be obtained on the Internet at www.epa.gov/lead/pubs/leadpdf.pdf or www.unleadedks.com. HCCI's Model Lease includes an approved disclosure form.

References: 40 CFR Part 745 and 24 CFR Part 35 published on March 6, 1996, in the Federal Register; Pre-Renovation Lead Information Rule, effective June 1, 1999.

RULES AND REGULATIONS



ESTABLISHING

In addition to the rental agreement (written or verbal), a landlord may have a list of rules and regulations. Include them as a page in written leases. Post them in rental offices and lobbies and/or give copies to tenants. The law says that tenants must have notice of rules and regulations at move-in time to be bound by them.

Legally, rules and regulations must apply to all tenants equally, be designed to benefit the tenants and/or protect the landlord's property, be clear enough for tenants to understand what they can or cannot do, and cannot be for the purpose of evading any responsibilities of the landlord.

When establishing rules, make sure they are nondiscriminatory. An example would be setting of pool rules. Reserving a certain time of day for "adult swim" would not be legal, because it discriminates against families with children. But, reserving a certain time of each day or hour for "lap swim" only, regardless of age, would be OK.

There is no limit to the number of rules you can have, but you might want to keep your list relatively brief (no more than a page?) so that you do not frighten away good tenants. It is also a good idea for you or your rental agent to review the list of rules carefully with each prospective tenant before rental applications are signed or security deposits are paid. If the rules and regulations for your property do not suit a tenant's lifestyle, there is no reason to even discuss a rental relationship further. Tenants get mad when they feel that there are

rules that they are trying to follow while others are not bound by them. They suspect that you either don't mean what you say or that you have favorites.

A Kansas landlord cannot change or add any rules or regulations during the term of the rental agreement unless the tenant voluntarily agrees in writing to accept the new or changed rules.

In a month-to-month rental agreement, the best thing to do if you want to change a rule or regulation is to give the tenant written notice at least 30 days in advance of a rent-paying date. That way, when the "new" rental agreement begins, the new rule will be binding on the tenant.

When the rental agreement is for more than a month, you should give notice in writing at least 30 days before the end of the agreement that the rules and regulations will change as stated when the rental agreement either renews or reverts to month-to-month. This can be a little tricky when the rule changes involve pet regulations, use of common space or pools, or something like that, especially when you have multiple tenants under long-term leases. Individualized notices based on lease renewal dates will be needed in such cases. This means that you could end up phasing in new rules and regulations over a period of six months to a year. That will be awkward, but as long as new tenants come in under the new rules and regulations and you fairly enforce the phase-in on the tenants who are already in place, everyone will know what's going on and it will be a workable system.

References: K.S.A. 58-2556.

MOVE-IN INSPECTIONS



Within five days of the day a tenant moves in, Kansas law requires that you and your tenant go together through the property and jointly make a detailed written list describing the condition. This list is commonly known as move-in "inventory," "inspection," or "check-list."

You can use a printed form or just a plain piece of paper. What is important is that, when it is signed, it contains all the details of what condition the place was in and what was in it.

Either by writing two copies exactly the same, by using carbon paper, or by photocopying the list when you get done, both you and the tenant must, by law, have copies of the list signed by both of you.

If there are discussions at inspection time of repairs that you will take care of, or improvements or repairs that the tenant wants to take responsibility for, the inspection list can be used to make note of those agreements as well.

The move-in inspection list can be very useful both to the tenant and to the landlord. For the tenant, the list should show what items were wrong with the dwelling at move-in time so that at move-out the tenant is not charged for cleaning or repair of those items. For the landlord, the list should show clearly what was not damaged or what was in particularly good condition so that the list can be used as a foundation to charge the tenant for any things that happen above and beyond normal wear and tear during the person's tenancy.

Many times, if a dispute over a security deposit goes to Small Claims Court, the judge will inquire whether the move-in inspection was done or the tenant may raise that issue to the judge. You want to make sure you

have your copy of the list so that the judge will not question your intentions or consider you irresponsible. Some Kansas judges have even refused to consider landlord claims for damages where there was no list for proof, saying that landlords, as business people, should know the law and have their paperwork in order.

For your own protection, you should take the time to make the list as detailed and as accurate as possible. You may want to fill out a rough copy of the inventory before you do the inspection with the tenant. The law says that you and the tenant are supposed to go together to inspect the property, but it doesn't say that you have to do all of your writing at that time. If you have already prepared a rough copy of the list, you and the tenant can go through and simply make sure that the list is accurate, adding or deleting as necessary for your final copy. If the tenant is unavailable to do the inspection with you, make sure that you do the inspection yourself anyway. Then, with a cover letter explaining the circumstances, send a copy of the list to the tenant. Suggest in the cover letter that, if there is anything missing or inaccurate, the tenant should let you know. Keep a copy of both the cover letter and inspection list for your file; this should take care of your responsibility if there is some question about the list later.

Move-out inspections with the tenant present are not required by law in Kansas but they are a good idea. If it is possible for you to arrange a joint move-out inspection with your tenant, you can both go through together with the original move-in inventory and compare, discussing at the time whether there is cleaning or repair work that you feel is the tenant's responsibility. If the pressure of going through the dwelling with the tenant and making your decisions or observations instantly seems too much, go through yourself first, then meet the tenant to discuss what you observed.

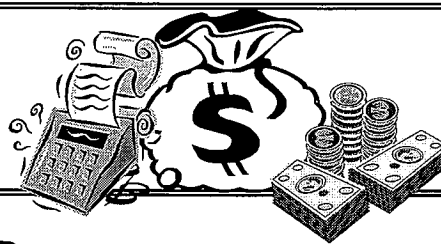
References: K.S.A. 58-2548; 1982 Kansas Court of Appeals case **Buettner v. Unruh**, re: when move-in inventory was not done; Model Move-In Inspection forms can be ordered from Housing and Credit Counseling, Inc.

KEEP YOUR RELATIONSHIP BUSINESSLIKE

This handbook explains the legal relationship between landlords and their tenants, but you must also keep in mind that this is a business relationship. Many tenants have begun to realize this and are handling their affairs accordingly. In order to develop a good business relationship with your tenant, you must likewise develop good business practices.

- You should make certain that any agreement between you and your tenant is written and that each of you has a copy.
- You should always correspond with the tenant in writing, making a copy of each letter for yourself. If very important, send letters by certified mail (where you get a return receipt) or deliver in person with a witness. That way, the tenant cannot claim that he or she never received your letter.
- Keep a file on each tenant. In it you should have a copy of your rental agreement and your move-in checklist, further correspondence or agreements that you've had with that tenant, copies of any maintenance notes that you've made about work on that particular tenant's unit, and copies of any receipts that you have for work that you have done on that unit that was the tenant's responsibility.
- Whether your tenants have requested maintenance in writing or not, you should keep a log of each maintenance request when it comes in by date, problem, and address so that you can go back and check off maintenance as you have taken care of it. This log can also include, in some manner that is comfortable for you, a list of improvements or regular maintenance that you plan to do on each of your units.

RENT, COLLECTION AND LATE CHARGES



SETTING RENTS

This book will not deal with how to set your rents in detail. In general, you should have an idea of what rent can be charged in your market and what income you need from your property before you ever purchase or otherwise acquire your rental property.

To check market rental rates, try three basic sources. **First**, check the newspaper or other published rental listing, make telephone inquiries, and actually go and look at properties that are available to see what kind of properties are available for what price. **Second**, ask other landlords what they are getting from their properties.

Third, if there is a Board of Realtors, Landlord Association, or other professional group in your area that might have some statistical information, you could check with them.

To judge what income you need, you should have a budget for each of your properties. Set for at least one year, this budget should show your expected expenses for purchase payments, utilities, taxes, insurance, routine maintenance, major maintenance reserve, etc.; expected off-sets such as tax deductions (depreciation, interest, etc.); tax shelter factors you may have; and desired cash profits, if any. Obviously, you may want to consult with your accountant on this.

Then, set your rents reasonably. Set too low, you may have trouble attracting the quality of tenants you desire. Set too high, you may have trouble attracting or keeping any tenants at all. Plan ahead so that you do not find that you need to raise the rent during the lease term (when you can't) or more often than once a year (which will cause you to lose good tenants).

RENT RAISES

Kansas law does not limit how much or how often rent can be raised. The only exception to this is that retaliatory rent raises and service decreases are illegal. (See "No Retaliation" subsection in Evictions chapter.)

Because a rent raise is similar to an eviction, you do have to give advance written notice. If the tenancy is month-to-month (written or verbal), at least 30 days' notice in writing in advance of a rent-paying date is required; week-to-week tenancies require a week's notice; etc. If your tenant is under a lease for a term of six months, a year, or whatever, and the lease does not have an "escalator" clause allowing you to raise rent during the term, you will have to wait until the lease ends or renews.

Check the lease to see if it has any language about rent raises and renewals. If not, and you want the tenant to stay after the initial term is up, treat it as a month-to-month from that time on and give notices accordingly.

It is a good idea to give more than the minimum notice required – for instance, giving 45 days' notice in a month-to-month tenancy. This gives tenants time to decide whether they can pay and, if not, time for them to give you a full legal 30-day notice to quit. (The pressure of forcing tenants to decide in one day whether to stay or move can have negative consequences for all involved.)

Changes in who pays for utility services and decreases in services provided by the landlord to the tenant are considered the same as rent raises in the eyes of the law.

COLLECTIONS

Rent should be paid in full on or before the rent-paying date.

It is important that if you accept late rent, you do so only "with reservation of all rights" in writing. Note on the receipt that the late rent payments are not acceptable and that the due date was "X." Note also that the payment is a partial payment for the entire rent period, not a payment in full for "X" number of days, with the remainder to be applied to the other. You don't want your tenants to get the idea that they can pay by the day. Also, the law indicates that continued acceptance of late payments of rent by the landlord can reduce some of the rights that you have to evict.

If you arrange a payment plan that is different from the rent period, it should be in writing to protect both parties. For instance, on a month-to-month agreement, you might agree that the tenant can pay half the rent on the 1st and half the rent on the 15th. Having this in writing would protect the tenant in that it would show whether the arrangement was indefinite or for a certain period of time; it would protect you by showing clearly that the tenancy is still month-to-month, not two weeks-to-two weeks.

LATE CHARGES

Late charges are optional. Common rates are either a \$10 or \$15 fixed charge after the 5th or the 10th of the month, or a \$1 per day charge that accumulates from the date the rent is due. To avoid "excessive interest" implications, it is advisable to limit a late charge to 10% of the monthly rent. An issue here is possible conflict with Kansas usury (excessive interest) laws.

Late charges can be useful to encourage tenants to pay rent on time but sometimes the reverse happens and tenants see it as

you expecting and okaying late payments. The law does not say anything for or against late charges on rental agreements in Kansas. You need to establish them in your original rental agreements or you will have to wait until the agreements renew (new leases or at least 30-day written notices) before you can start charging. You cannot charge late fees unless they are a part of the rental agreement.

If a tenant refuses to pay late charges, you can give regular or 14/30 type eviction notices. Late charges can be included in non-payment of rent eviction suits, but a judge may not allow you to pursue such a suit for non-payment of late charges alone. Court experiences on collecting late charges are mixed. Generally, judges tend to award no more than a month or so total to the landlord.

Some landlords encourage promptness by offering discounts for early rent payments or setting the rent due at a lower level if paid in full prior to the rent date. Some apartment complexes have "Early Bird" programs where prizes are awarded on a monthly or yearly basis to tenants who pay early.

RENT WITHHOLDING

Kansas law does not provide for tenants, of their own accord, to withhold or "escrow" rent. The law doesn't say they can, and it doesn't say they can't. Tenants who take such action risk eviction action from their landlords. (Ordinances in Manhattan and Atchison, Kansas, provide for escrowing of rent under certain conditions. These are the only exceptions to this rule to date.) Of course, if a tenant of yours tries this as a "last-resort" attempt to get you to make needed repairs, you should consider making the repairs, making adjustments (if appropriate) in rent due, and forgetting about it. A successful "warranty of habitability" counter-suit in an eviction case could be costly.

“Repair and deduct” is also not provided for by Kansas law unless there is a “good faith” written agreement between landlord and tenant. Again, use good judgment about the entire situation before you refuse such an arrangement. If you choose not to accept a rent deduction and go to court, it is usually cheaper for both tenant and landlord to settle disputes over repairs in Small Claims Court rather than through eviction suits.

Kansas law requires that the rent be reduced in proportion to the reduced value of the property until repairs are complete if a rental property has been damaged by fire or casualty so that its “use and habitability ...is substantially impaired...and continued occupancy (of part of the unit) is lawful....” In any situation where you allow a rent

adjustment, make sure there is a written record and that, when appropriate, you have copies of bills and receipts.

No DISTRAINT FOR RENT

Unless there has been an “abandonment” or the tenant has left possessions in the property after an apparent move-out (see Notice to Terminate from Tenant chapter for “Abandonment” and Evictions chapter for “Disposal of Leftover Possessions”), a landlord in Kansas does **not** have the right to take a tenant’s property and hold it until the tenant pays money that is due. The law provides **only** for legal action and court-approved collection procedures.

References: K.S.A. 58-2545, 58-2564, 58-2566, 58-2572; Damage or Destruction by Fire or Casualty, K.S.A. 58-2562; Liens, K.S.A. 58-2567; City of Manhattan Housing Code, Article VIII, Section 8-178 and City of Atchison Housing Code, Article 11, Section 34-19 provide for escrow of rent under certain circumstances; ordinances are available on the cities’ websites and can be ordered through Housing and Credit Counseling, Inc.

ILLEGAL ACTIVITY / "PARTY SHACKS"

Kansas law declares various activities "common nuisances" and provides that landlords and their properties could suffer serious restrictions or penalties if landlords are aware of the illegal activities and have not made "bona fide attempts to abate" them.

"Common nuisances" include the tenant using the property, or knowingly allowing others to use the property, for:

- gambling
- promoting obscenity
- promoting prostitution
- illegal drug use or sale
- habitual illegal sale or exchange of alcoholic or cereal malt beverages
- habitual illegal sale or exchange of cigarettes or tobacco products

If a person on the property is arrested for any of the above listed common nuisances, the attorney general, city, county, or district attorney may call for a hearing with the courts to determine whether the illegal activity occurred on the owner's property. The owner may be given notice of this hearing which will be held within 30 days of the notification. If the court finds through preponderance of evidence that an unlawful act occurred, the illegal activity shall void any lease that the tenant holds. Possession shall then return to the owner who may evict the tenant. If the owner does not begin the eviction process within 30 days after the court decision, the attorney general or the city, county or district attorney may proceed to file a petition of their own.

"Bona fide attempts to abate" are:

- notifying the authorities in writing of suspected activity
- 3-day, 14/30-day, and/or 30-day eviction notices to the tenant
- careful screening in the first place

Owner remedies provided by the law are:

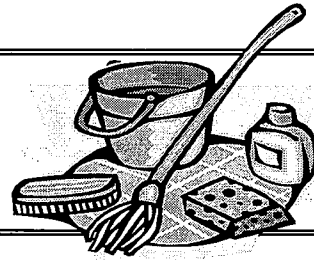
- if a tenant has maintained one or more of the above "nuisances," or allowed someone else to do so and a court hearing affirms that, the rental agreement (written or verbal) becomes null and void and the landlord may then start eviction proceedings immediately

Possible penalties to landlords who do not make "bona fide attempts" when they are aware of "common nuisances" are:

- property can be padlocked for up to 2 years
- landlord may be required to post a bond with the court
- fine of up to \$25,000 (can additionally be imprisonment for up to a year in the case of liquor law violations)
- court could require landlord to pay legal fees of prosecution and court costs
- any costs assessed by the court against the landlord will be filed as a lien against the property involved

References: K.S.A. 22-3901 through 22-3904, 41-805.

TENANT RESPONSIBILITIES AND IMPROVEMENTS



MAINTENANCE

Your tenants are responsible to maintain your property in as good a condition as possible. This means that they should use the structure and appliances carefully and as they were intended, meanwhile keeping everything reasonably clean. This also extends to your tenant's family and their friends, guests, and their pets. Any damage done to the property is the tenant's responsibility to either pay for or repair. (This can include insurance deductibles where major damage is tenant-caused.)

Some tenants will offer to make repairs themselves, to hire someone they know, or get a family member to take care of something for which they are responsible in order to save money. You have the right to say no and hire your own help or do the work yourself and charge the tenant. If you want to let the tenant take responsibility for repairs, depending on how major the work is, you might want to ask for references so that you are satisfied that the work to be done on your property will meet the standards you desire. You may also want to check your insurance policy for liability issues.

If tenants, with or without your permission, make repairs or improvements which leave your property in unacceptable condition, you may have it repaired again either at that time or at move-out time and be compensated financially.

BEHAVIOR

Tenants are responsible for their behavior and that of their family, friends, guests (invited or otherwise) and pets.

Kansas law requires that tenants must make sure not to "disturb the quiet and peaceful enjoyment of the premises by other tenants." This goes for neighbors too.

Although your tenants may sometimes plead "no responsibility," this responsibility for guests means that in a roommate situation, roommate "X" can be legally liable for the friends of roommate "Y". It also means that tenants are responsible for the behavior of anyone to whom they give keys.

PROBLEMS

When an item comes up and you can't settle it immediately, the best thing to do is put the problem in writing. If there are damages or maintenance that need to be done, perhaps at first you will simply want to write the tenants a note asking them to take care of the particular maintenance or repairs or pay a certain amount of money, either in advance or afterward, to cover your costs. In the case of a behavior problem, your first note needs to say specifically what behavior is the problem and what needs to be done to correct it to your satisfaction. Make sure you state a specific deadline in your note, both for the tenant's benefit and for yours.

If the note doesn't solve your problem, there are a number of options that landlords have to get money or action from tenants:

14/30-day Notice Fourteen days of any thirty-day period can be used as a warning in month-to-month tenancies and also to break a lease if necessary. (See Evictions chapter for details.)

Local Housing Code Officials can be called out to inspect, write up, and prosecute tenant violations where there is a local housing code.

Small Claims Court Use either during or after tenancy to collect amounts due. (See Small Claims Court chapter for details.)

Security Deposit Deductions can be used to cover “damages.” (See Security Deposit chapter for how to put a value on damages as well as for withholding process.)

Eviction Use a 30-day notice for month-to-month or as noted in the lease for long-term. (See Eviction chapter for details.)

IMPROVEMENTS

Many times tenants want to “improve” your property by painting, installing bookshelves, hanging speakers or plants, or by doing other things. What many tenants think are “improvements” many landlords consider damage!

It is important that you make it clear to the tenant at move-in time that **any** physical alterations to your property require your

written permission – your permission at least, but written is best. It seems that having written agreements causes people to consider more seriously what is involved. For instance, if a tenant wants to paint, it is in your best interest to know what type of paint, what color, and what skills the tenant has in painting, and to make sure that the tenant understands that if any damage is caused to the property in the course of the improvements, he or she will be liable.

Tenants should also know that any time they permanently affix anything to your property, it legally becomes yours. Therefore, if a tenant wants to remove an item at move-out time and take it with him or her, you need to make sure, if you allow removal, that the tenant knows your property must be restored to its original condition (e.g., fill holes and spot paint). This should be in writing.

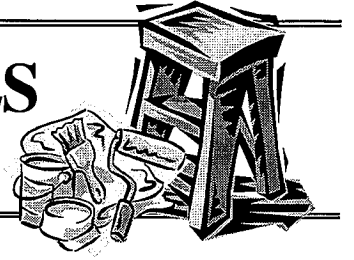
References: K.S.A. 58-2555, 58-2558, 58-2564, 58-2570.

HOUSING CODES

These cities currently have Housing Codes. If you go to your city hall and ask for a copy of the Housing Code and they say that they’ve never heard of it, **INSIST!** It’s there somewhere. And you want the Housing Code (it may also say “property” or “maintenance” or “occupancy” in the title), not the building code, zoning code, electrical code, plumbing code, or some specific code.

Abilene	Galena	Lyons	Plainville
Anthony	Garden City	Manhattan	Russell
Atchison	Goodland	McPherson	Salina
Augusta	Great Bend	Merriam	Shawnee
Baxter Springs	Hays	Minneapolis	South Hutchinson
Belleville	Hoisington	Neodesha	Sterling
Beloit	Independence	Newton	Topeka
Bonner Springs	Junction City	Norton	Ulysses
Chanute	Kansas City	Olathe	Wellington
Colby	Lawrence	Ottawa	Wichita
Dodge City	Lenexa	Paola	Winfield
Emporia	Liberal	Parsons	

LANDLORD RESPONSIBILITIES AND IMPROVEMENTS



KANSAS LAW

If a place you are renting out is not in compliance with state law and the rental agreement at the time tenants are to move in, Kansas law says that the tenants have the right to give you a written five-day notice (doesn't say from when or to when), move out, and get all of their money back. If an unacceptable condition is deemed willful and not in good faith, a tenant can even get 1-1/2 times the rent or 1-1/2 times his or her cash losses, whichever is greater.

In **Steele v. Latimer** (Warranty of Habitability), a 1974 Kansas Supreme Court decision, a Wichita woman and her five children were awarded the refund of a substantial amount of back rent in an eviction case because the landlord had knowingly not made needed repairs. Since then, citing this case and provisions of the Kansas Residential Landlord and Tenant Act, many tenants have successfully defended themselves and won counterclaims based on the "implied warranty of habitability" that all landlords in Kansas are expected to provide places that are basically decent, safe and sound.

Specifically, you are required to:

- **Keep your rental unit in compliance** with city or county building or housing **codes**.
- **Maintain areas of the building** and the grounds outside which are open to all tenants. **Common areas** such as hallways, parking lots, stairways, sidewalks, and laundry rooms are a few examples.
- **Make sure there is** an adequate supply of hot and cold running **water**.
- **Supply heating facilities** capable of maintaining adequate room temperatures. Check

local housing and building codes, if you have them, for more specifics.

(On these last two, the landlord does not necessarily have to pay for the utility services, but he or she must provide the equipment and it must work.)

- **Maintain all electrical, plumbing, sanitary, heating, ventilation, and air conditioning systems** in good and safe working order.

- **Maintain all appliances** that are provided with the property. This includes such things as stove, refrigerator, and window air conditioners. (If there is an appliance in the property that you do not want to be responsible for but you are willing to leave for the tenants for their use, you should note that in writing to the tenant and keep a copy.)

- **Make sure** there is some way to appropriately store and **remove garbage and trash** from the premises. You do not necessarily have to pay for these services, but you must make sure they are available.

Tenants have the right to expect that repairs and routine maintenance items get taken care of in a reasonable amount of time. You need to keep in mind that "reasonable" in this case may, unfortunately, be a little less time than you would allow if the repair or maintenance was needed in your own home. Part of your responsibility as a landlord is to provide service and, whereas you might decide to live with some problem or let something go in your own home because you had other priorities, a tenant may not feel the same way and does not have that responsibility.

You could be liable for damages (money losses) to the tenant if you do not take care of maintenance or repairs in a reasonable amount of time. For instance, if a refrigerator goes out, for the first 24 hours the law may look upon

the event as an “act of God.” After that, if you have not tried to provide repairs or replacement at least on a temporary basis, you might be liable for the tenant’s food spoilage and/or for the tenant having to eat out for a time. Another example would be where heavy rains cause unexpected flooding in below-level rooms or apartments. The tenants should try to get the furniture up on blocks or do whatever can be done on an emergency basis to prevent damage to the property and furniture. But, after that, the landlord has a responsibility to respond on an emergency basis — get the carpeting water-vacuumed or even pulled up, take care of drying out the unit and/or, if necessary, temporarily or permanently relocate the tenant. Major problems are usually covered by insurance. Regardless, the landlord needs to act.

OTHER CODES

Other codes exist at the state and local level. You should learn about those that apply to your properties. They can be used for you and against you.

Structures housing three or more residential rental units must be in compliance with the **Kansas Fire Prevention Code**. That code requires smoke alarms, does not require fire extinguishers, and generally requires two safe exits from any building. Local governments that adopt their own fire codes can make them stricter, but not more permissive, than the state’s. Check with your local fire department to see if you have a local code. If not, questions can be directed to the State Fire Marshal in Topeka at 368-4026 or www.state.ks.us/firemarshal.

Get a copy of your local housing code, if there is one. (See Housing Codes box on page 34.)

What is the difference between a “**building**” code and a “**housing**” code? A housing code is what people normally call a “performance code” in that it sets out standards for housing that is already constructed in terms of how things should be or how they should work. For instance, a housing code will say that there should be adequate hot and cold running water

but will not specify what kind of pipes there have to be to carry the water to the tap. That is performance. A building code, on the other hand, specifies exact materials and construction and installation methods for the systems and structure of houses. Building codes generally apply to new construction and to substantial repairs or improvements made to existing housing. A building code may require certain kinds of plumbing or wiring in new construction; however, if you have an older property that has plumbing or wiring that is no longer recommended, as long as it works and is safe, it will be okay as far as housing codes go.

Be aware of ordinances that cover **water** — for instance, clean water for wells.

Many counties have ordinances about **noxious weeds** and other **nuisances**. These ordinances have language about over-grown grass and weeds, as well as prohibitions against storing of junk, etc. on residential property.

Some cities and counties also have ordinances defining and controlling **abandoned or junk cars**.

If your local unit of government has any of these codes, it should have inspectors to enforce them. Voluntary inspections should be available at no charge. After observing problems, inspectors generally send letters giving the responsible party (tenant or landlord) ten to sixty days to correct problems. Most codes allow for extensions of time, if needed. At a certain point, the codes usually give the authorities the power to take care of the problem and bill it to the person or property involved and/or take the responsible person to court and get judgment for fines or jail.

UTILITIES

Make sure, whether your agreement is written or verbal, that who pays which utilities is clear.

If the tenants are responsible to pay any utilities and their usage is the only usage to be billed to that meter, make sure that the billing with the utility company is in the tenant’s name.

EXAMPLES FROM TOPEKA'S PROPERTY MAINTENANCE CODE

Screens: Screens and screen doors are required on almost every dwelling unit in Topeka for the months of April through October.

Pests: The landlord is required to deliver units to tenants pest-free. Rats, roaches, and other pests must be exterminated by the landlord when they are found in buildings with more than one apartment or when they exist because of a landlord's improper maintenance. For a single-family house and there were no pests when the tenant moved in, the Code says it's the tenant's responsibility.

Ventilation: Every room must have a window or, in the case of a bathroom or kitchen, a ventilation system which is in good working condition.

Heat: The owner must provide a heating system that is capable of heating to a temperature of at least 65 degrees at a distance of three feet above floor level in every habitable room.

Exits: There must be two exits to safe and open space at ground level from each level in each dwelling unit.

Locks: There must be safe, functional locking devices on all exterior doors and first-floor windows. Padlocks on the outside of exterior doors are prohibited.

Lighting: Every room, including the bathroom and kitchen, must have at least two electric outlets or one outlet and one wall or ceiling fixture. Each public hall and/or stairway in a building with three or more units must be adequately lighted by natural or electric lights at all times.

Structural Maintenance: The building and foundation must be maintained watertight, rodent-proof, and in good repair. Staircases must be stable with hand rails. Porches and steps must have a railing if they are over three feet off the ground.

Kitchen: The sink must be in good working condition. The drainage must flow into an approved sewer system, and it cannot leak into storage cabinets or shelves. The refrigerator or device for safe storage of food must maintain a temperature of between 32 degrees and 45 degrees Fahrenheit under ordinary maximum summer conditions. There must be adequate hot and cold water at all times.

with large bills because they have tried to do tenants a favor and have left utility billings in the landlord's name. If a prospective tenant has been required by the utility to put up a deposit and doesn't have the money, you probably don't want that person as a tenant. Particularly in the winter, many landlords fear that tenants will leave or not pay bills and utilities will be shut off without the landlord's knowledge causing damage such as frozen water pipes. Leaving the utility in your name or having an arrangement with the utility where it automatically reverts into your name when the tenant orders a shut-off is risky since high bills could accumulate in your name before you get your first statement and realize what has happened.

The best thing to do, if possible, is to leave a written standing order with the utility company that you will be notified whenever a shut-off is imminent. At that point, you can decide whether to have the utility reconnected in your name or make other arrangements.

If you pay the utilities (utilities are included in the rent), make sure you pay them! If a landlord is responsible for utility payments and the utility ends up being cut off while the tenant is in place either because of the landlord's direct request or for non-payment of bills, the landlord can be liable for as much as one and a half times a month's rent or one and a half times the actual damages the tenant suffers, whichever is greater.

Sticky situations can develop when utility bills are split either with the landlord receiving a bill and billing one or more tenants for reimbursement or when a landlord tells tenants, "You divide it up however you want to." There is serious question whether this type of arrangement is legal the way the laws that the Kansas Corporation Commission administers are written. (Language in them prohibits the resale of utilities.) If you set up some arrangement like this, it is important that full disclosure of utility bills and expenses be included and that you be willing to work with tenants to figure out what their share of utility payments will be.

The following is an example of a situation that could occur: In an up-down duplex, the downstairs tenant is at home all day with the heat on pretty high; the upstairs tenant who is at work all day, comes home and finds the apartment so hot that he has to open the windows to be comfortable. You then find the upstairs tenant not wanting to have to pay his share of the bill because he is not there all day and wouldn't have had the heat on had the bill been in his control versus the down-stairs tenant saying that the bill was high because the upstairs tenant always opens the window. Obviously, some accommodation can be made by adjusting vents and so on so that the upstairs apartment is not overly heated, but a setup like that is always going to be difficult.

The best solution is normally to either include the utilities in the rent or separate meters and separate heating/cooling appliances altogether so that the tenants are only responsible for what they actually use.

Weatherization and insulation may be worth considering even though it is not required by

weatherization and insulation money can pay for itself in a short period of time in terms of lower utility bills, more comfortable living spaces, and long-term, satisfied tenants.

If you are housing low-income tenants, there periodically are government programs which provide utility payment and weatherization assistance to low-income people even in rental property as long as the landlord agrees not to evict the tenant without good cause or raise the rent within a certain period of time. These programs might be worth looking into.

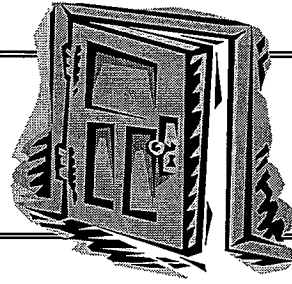
MAKING REPAIRS AND IMPROVEMENTS

Don't promise anything you can't do. You are better off to surprise a tenant with a major improvement or repair than to promise and discover that you can't deliver it as you said.

Some types of repairs and improvements are easiest to do when your property is vacant. However, if you have good tenants in place and you expect them to stay, you do have the right to go ahead and work while they are there. As you plan the work and the timing, you need to attempt to have as little inconvenience for the tenants during the course of that work as you would have for yourself if the work was being done on your own home. Make sure your contractors or workmen show your tenants the same courtesy you would. You should not have liability to your tenants for displacement or inconvenience unless, due to your negligence, the situation gets entirely out of hand in terms of time or other inconvenience.

References: 58-2549, 58-2552, 58-2553, 58-2559, 58-2561, 58-2562, 58-2563, 58-2569, 58-2572; Possession, K.S.A. 58-2552; Fire Code, K.S.A. 31-134 through 31-171; 1974 Kansas Supreme Court case **Steele v. Latimer** established "implied warranty of habitability"; 1986 Kansas Court of Appeals case **Jackson v. Wood** established that landlords have the same responsibilities to provide for guests as for tenants; Utility company "tariffs" can be obtained from each utility company or from the Kansas Corporation Commission (KCC governs all Kansas public utilities except those owned by local governments and privately owned utilities except those in the Kansas City metro area); Model Maintenance Request Form can be ordered from Housing and Credit Counseling, Inc.

LANDLORD ENTRY



Kansas law says that you can enter your tenant's premises for the following reasons: 1) to inspect it; 2) to make necessary or agreed repairs, alterations or improvements; 3) to show it to prospective workmen, buyers or tenants. However, you can enter only at reasonable times, after reasonable notice (usually 24 hours) to your tenant, and only with the tenant's consent. The only time that you have the right to enter your tenant's property without that tenant's consent is in a dire emergency involving potential loss of life or property (such as the place is on fire, you think the tenant is dead inside, or you suspect the pipes have burst and water is running out the windows). You are not to use the right of entry to harass tenants; neither are tenants supposed to refuse reasonable requests for entry. Lease provisions giving landlords the right of entry cannot exempt them from the above requirements.

"Reasonable notice" is something you and your tenant have to decide together. If your tenant doesn't care whether you call in advance of when you come over, or even would just as soon not be there when you're there, fine. Not all tenants feel that way. Although Kansas law does not specify "reasonable notice," tenants seem to prefer from one to twenty-four hours. Around the country, state laws give as much as forty-eight. If tenants want a certain amount of notice so that they can make arrangements to be at home, the tenants need to be willing to tell you times that they can be there and give you phone numbers or other appropriate, relatively easy methods for reaching them. If it is impossible to arrange a mutually agreeable time, the tenants should be willing to consider whether someone else, for instance a friend or family member, could be there in their place. Everyone must be flexible.

"Reasonable time" depends on the schedules of both landlord and tenant. If the tenant works 3 to 11 and wants to be at home when the apartment is entered, reasonable time might mean 8 a.m. to 2 p.m. and any time on days off. A mother with young children has the right to ask not to be disturbed during nap time. On the other hand, tenants need to accommodate the schedule of a landlord who works an 8 to 5 job and needs to make repairs on evenings or on weekends, or to make sure to allow weekday entry to a contracted repair person who might charge extra to come outside normal business hours.

It is best to establish "reasonable time" and "reasonable notice" with your tenant, preferably in writing, early in the tenancy. That should eliminate many misunderstandings and problems.

ENTRY WHEN TENANTS ARE OUT

A good practice, if you find you must enter when tenants are not home, is to leave a note. This will let the tenants know who was there, when, and what for – a reassurance that you are taking care of your business. It will also allay their fears if they come home and find something amiss or neighbors tell them someone was seen entering while they were out. This applies even when advance notice has been given.

Many large companies use duplicate or triuplicate "work order" forms and leave copies for tenants whenever maintenance is performed. (This gives them a good way to track the activities of their maintenance people and to monitor time spent on certain jobs and on certain units as well.)

IF THE TENANT CAN'T BE REACHED

If the tenants can't be reached by phone (don't answer or don't have one), you have been unable to contact them at the property, and you have failed at reaching them any other way, you can still safely arrange entry.

Go to the property and tack or tape a note on the door (perhaps with a witness if you think there's a chance you'll have trouble later on) saying that, unless the tenants contact you to make other arrangements, you are planning to enter the property at "X" time (usually the next day) to do "X" (whatever you need to do). Keep a copy of your note and the date and time you posted it. At your specified time, unless you have heard otherwise from the tenants, feel free to go ahead and let yourself in and do what you need to do.

The law does say that if the tenant has been or has said he or she will be gone for more than thirty days, the landlord can enter whenever it is "reasonably necessary."

PENALTIES

If a tenant refuses to allow you legal entry, that tenant can be held liable for any "damages" (money losses) that you suffer. This can include such items as physical damage that worsens because it is not repaired in time, even loss of rent in some situations if you have not been allowed to show the property. It can also include the costs of your expenses to gain entry (locksmith, broken window) if the tenant had not allowed you to have a key.

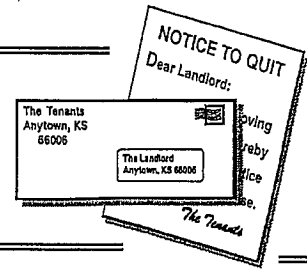
The law also allows you to get court orders to gain access and allows you to evict tenants who unreasonably refuse you entry.

On the other side, tenants have the same rights and remedies (damages, injunctions, notices to quit) if landlords enter unlawfully, make unreasonable demands for entry, or use the right of entry to harass.

A practical way to look at this, in order to talk yourself out of entering illegally, is that you could really get stuck if something turned up damaged or missing.

References: K.S.A. 58-2557, 58-2565, 58-2571.

NOTICES TO TERMINATE FROM THE TENANT



30-DAY NOTICE

If a tenant who is renting from month-to-month decides that he or she wants to move, that tenant is required to give the landlord a written notice at least 30 days in advance of a rent paying date saying that the tenant is planning to move out. Key words are **written** (no exception) and **rent-paying date** (other dates will not do unless the tenant and landlord agree). This applies whether the rental agreement is written or verbal. If the tenancy is week-to-week or two weeks-to-two weeks, the notice requirement would be the equivalent of the rent period (one week's notice in advance of a rent paying date for week-to-week tenancy, etc.). Kansas law provides that military personnel with "orders," who have month-to-month written or verbal agreements, are required to give only fifteen (15) days' written notice.

WHEN THERE IS A LEASE

If there is a written lease or rental agreement, you need to check that document for what it says about notice. For instance, though the state law requires a 30-day notice to be from rent-paying date to rent-paying date, if a lease simply says "thirty days' notice in writing," then that tenant's notice would not be tied to rent dates. Also, some leases require more than thirty days' notice. As long as the landlord's requirement for notice is similar and the period is not what the courts consider excessive, then the notice period stated in the lease would be what is required. Some leases require less than a 30-day notice or don't require a notice in writing. The court would likely uphold any notice period of less than thirty days from tenant to landlord as long as it had been agreed to by both parties.

It is important to have a renewal clause providing renewal for an equal term or month-to-month. Otherwise, if your lease just ends and the tenants move out without notice, don't be surprised!

14/30-DAY NOTICE OF LANDLORD NONCOMPLIANCE

Another kind of notice a tenant can give to a landlord is what is called a 14/30-Day Notice of Landlord Noncompliance. This notice is tied to rent-paying dates and can be given by a tenant to the landlord when the landlord is in violation of maintenance or rental agreement responsibilities. A tenant must give this type of notice to a landlord on or before a rent-paying date, stating what items the landlord needs to take care of, and giving the landlord at least 14 days to take care of the items or at least begin a "good faith" effort to do so. The notice should further state that if these items are not taken care of within the 14 days, the tenant will be leaving on the last day of the next rent-paying period.

If the items are taken care of or at least a good faith effort has begun, the tenant stays. If the items are not taken care of, the tenant goes. This type of notice can be used to break a lease. If it is used and the landlord does not comply, the tenant can not only move out and owe no further rent, but also has the right to the return of the security deposit less any deductions that would have been considered under normal circumstances.

If a "good faith" effort, begun during the 14 days, is not completed within a reasonable time, or a problem resolved during the 14-day period becomes a problem again, the tenant can give a 30-Day Notice to terminate, whether or not there is a lease, and move out without further obligation.

5-DAY NOTICE - FAILURE TO DELIVER

Kansas law provides that if a rental unit is not ready for move-in as promised (in accordance with state law, local codes, and the rental agreement), tenants can give a 5-day written notice, move out (if they ever moved in), have all prepaid rent returned, and have the security deposit (less deductions for tenant-caused damage only) returned as well. Presumably, since the law is not clear about exactly what the five days means, tenants should give this type of notice as soon as they have decided that the landlord is not going to make things right and move as soon as they reasonably can.

5-DAY NOTICE - DAMAGE OR DESTRUCTION

The law provides a similar 5-day notice to quit when fire or casualty has damaged a rental unit to where it is uninhabitable. In such a case, the tenant is to move out as soon as possible, rent responsibility ceases as of the move-out date, and the security deposit is to be returned as in a normal move-out. If continued occupancy is lawful, the tenant can stay, paying a reduced rent based on the reduced value of the rental unit until repairs are complete. Your property insurance should compensate you for the loss of rent.

IRREGULAR TERMINATION

You can't stop someone from moving without proper notice, but you can protect your interests and try to make sure you don't lose any money. If a person gives you verbal instead of written notice, you can accept it but it's risky. Let's say, for instance, you have a tenant who tells you verbally she plans to be out by a certain day. You say okay and secure a new tenant. Then, on moving day, the new tenant arrives and the old tenant is still there. The old tenant says her plans didn't work out and she has no place to go. You are in a spot! (So is the old tenant, but you are probably the one

who will get stuck the worst.) You need that notice in writing so the first tenant is clearly liable for any expenses you and/or the new tenant suffer. If tenants won't offer you a written notice, write it for them and offer it to them to sign. If they don't want to sign, tell them they'll be liable for rent until they have given and fulfilled a proper notice.

If one of your tenants dies, is unexpectedly hospitalized for a long period of time, is arrested and jailed, is kidnapped, or leaves due to some other reason outside his or her control, obviously you won't have proper notice. What you need is as much notice as possible in writing from an appropriate party specifying exactly what date that tenant's belongings will be out. Do your best to get identification and references from people who claim "to represent" departed tenants.

Whether or not a tenant has given legal notice to quit, you, as a landlord, are required to "mitigate your damages" by attempting to re-rent the property as soon as you have notice that it will be vacant.

To assist you in getting a new tenant as soon as possible, the first tenants should be as cooperative as they can by keeping the place clean and allowing you to show it. If the tenants who are leaving are not cooperative, it could be their fault if you aren't able to get a new tenant in quickly. Once your new tenant moves in, the first tenant's liability for rent ceases since you can't collect rent twice on the same place. If the first tenants have prepaid rent, then you owe a refund for the days that the new tenant is in residence. If the tenants have not prepaid, you have the right to charge rent up to the date the new tenant moved in or the day that a proper notice or the lease would have ended, whichever comes first, as well as any other extraordinary expenses involved with the lease breakage. If the security deposit is not adequate to cover these charges, they can be billed to the tenant and you can take legal action, Small Claims Court or otherwise, to collect. (See Security Deposit and Small Claims Court chapters.)

If a tenant leaving early is due to a “good faith” effort to comply with a notice or order from you that did not comply with the law, you need to work out some reasonable arrangement on how much rent the tenant owes.

Situations like this come up when, for instance, a landlord, in a moment of anger says, “Well, then, just move out!” and the tenant does; when a landlord says, “Move out as soon as you can, I want to let my son live there” and the tenant moved the next week; and so on.

MOVE OUT

If tenants do not move out on time, even if they gave you notice to vacate/terminate, you have legal remedies to get them out and penalties that can be charged against them for “holdover possession” if you are unable to move a new tenant in. These remedies are discussed in more detail in the Evictions chapter in this handbook.

ABANDONMENT

There is a procedure that you can legally use to get your property cleaned out and re-rented if someone simply disappears on you and you don’t know where they are.

The legal definition of “abandonment” requires that three conditions be met: 1) the tenant is at least ten days behind in rent, 2) the tenant has removed a substantial portion of the tenant’s belongings from the unit, and 3) the tenant has not advised you that he or she is planning to stay.

To determine the first and third points is easy. To determine the second point, you may say, “Well, I don’t bother my tenants. How do I know how much this person had in the first place or how much of it is gone?”

You will have to use your best judgment in terms of what is there, what is gone, and what you’ve heard to decide whether a “substantial” portion is gone. If you cannot see inside the property through the windows, you will also need to arrange legal entry to check. (See subsection entitled “If the Tenant Can’t Be Reached” in the chapter on Landlord Entry.) Because this situation can get very sticky legally, you may want to check with your attorney before you proceed.

If a rental situation meets the definition of abandonment, you have the right to immediately pack up all the things that were left and put them in storage. You then must run an ad or do what you normally do to advertise and get the place re-rented.

The law says that you can charge rent to the abandoning tenant until a new tenant moves in or until the rental agreement ends, whichever comes first. (See the subsection on “Disposal of Leftover Possessions” in the Evictions chapter regarding getting rid of the tenant’s things and what costs can be charged to the tenant.)

Don’t forget to send your security deposit letter to the last known address as required by law, even in cases like this. (See Security Deposit chapter.)

References: K.S.A. 58-2559, 58-2560, 58-2562, 58-2563, 58-2564, 58-2570, 58-2571; Abandonment, K.S.A. 58-2565; Damage or Destruction by Fire or Casualty, K.S.A. 58-2562; 14/30-Day Noncompliance Notice, K.S.A. 58-2559; Tenancy Termination by Military Personnel, Servicemembers’ Civil Relief Act, 50 U.S.C. App. §§ 501-596; Model Notices are available from Housing and Credit Counseling, Inc.

HOW TO SHOP FOR AN ATTORNEY

When shopping for an attorney for a landlord-tenant case, you want someone who will take care of your business quickly and inexpensively and who will win – right!? Because landlord-tenant cases usually do not involve a lot of money, many attorneys are unfamiliar with that area of the law. Even your family or business attorney may not be the best person for you. It pays to shop around!

Things to look for:

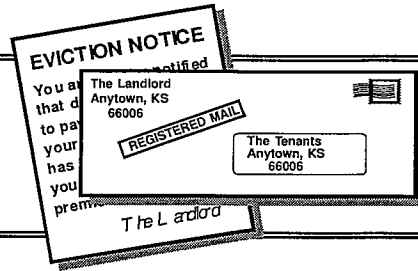
- **Landlord-Tenant Case Experience.** How recent? How much? Landlord-tenant law is complex. It will pay you in time, money, and success to hire someone who is already familiar with it.
- **Courthouse Time.** Is the attorney there often? In most landlord-tenant cases there are many papers to be filed and speed is important. If your attorney is often at the courthouse anyway, speed should not be a problem and it shouldn't cost you extra.
- **Initial Consultation.** This is crucial if you don't know the attorney or he or she has not done this type of work for you before. Many attorneys charge nothing or a small charge for a first consultation. Remember, you are hiring this person, not the reverse. If you don't like the person or feel he or she is not interested in your case, keep looking!
- **Estimated Fees.** Get a written estimate of what this process should cost you. Some attorneys have basic flat rates on routine processes such as evictions. Most will charge by the hour but can still estimate what the total should be.

You can check out the first two items by phone. Then, just as if you were getting bids on a major purchase or repair, you might want to plan to interview three attorneys who sound like they might meet your qualifications.

Save Money. You can help keep your costs down by being sure to bring with you any documents, letters, or reports related to your situation. It may be helpful to write out the facts of your case in chronological order and bring that with you as well. Also write down your questions ahead of time and be prepared to provide names and addresses of all parties involved. These steps may save on the lawyer's time (and thus cut down on legal fees). Note: All communications within the attorney-client relationship are *confidential*, even if you decide not to hire the lawyer after all.

If you run out of possible names or don't have any in the first place, you can call **Lawyer Referral Service** at (800) 928-3111. They will give you the name of an attorney in your area who has indicated that he or she does your kind of case (fees range from \$100-\$200 per hour). For advice only, you will be connected with an attorney on the **Lawyer Advice Line** (charges are \$3 per minute and can be charged to MasterCard, VISA or debit cards). If you are over 60, you can contact the **Kansas Elder Law Hotline** at (888) 353-5337 for a referral to an attorney in your area who is paid with public funds to provide legal consultation (maybe not representation, but at least advice) to senior citizens without charge.

EVICCTIONS



The most important thing to keep in mind when considering evicting a tenant is **DON'T WAIT!** In many cases, landlords never recover lost rent and other "damages" from tenants they desire to evict. The longer they wait, the more money they lose. Looked at another way, the sooner you get bad tenants out, the sooner you will get good tenants in. When you are budgeting, expect that you can write and serve your own notices but that you will have to hire an attorney to handle an eviction in court. Your legal fees and court costs will probably be at least \$150.00. Legal fees are usually not recoverable in landlord-tenant suits, so expect that they will be a business expense to you.

30-DAY NOTICE

In Kansas, if a tenant is renting from month-to-month and a landlord wants the tenant to move, the landlord must give the tenant a written "notice to terminate" or "notice to vacate" at least thirty days in advance of a rent paying date that is specified in the notice. If the rent period is less than thirty days, the notice requirement is equivalent to the rent period (i.e., week-to-week, seven days' notice; rent paid twice a month, fifteen days' notice). If there is a lease agreement, the notice to terminate/vacate must be in compliance with the lease agreement.

The key thing to remember here is that the notice must be given at least 30 days in advance of a rent-paying date. This means that, if your tenants pay their rent on time, perhaps you can exchange the eviction notice for the rent. If the tenants pay late, you're going to have to serve the 30-day notice before you get the rent. Tenants owe the last month's rent whether they have given or received the notice to quit and you need to make this clear to your tenants. (Some tenants don't want to or won't pay.) If you hold off on giving the 30-

day notice until you have the rent in hand, a wise or devious tenant will know that, at that point, the notice is too late and that the tenant has the right to stay in the place another thirty days.

A 30-day eviction notice can be very short and needs simply to say something like:

(Date)

Dear (Tenant) : The purpose of this letter is to ask you to move out of the property that you are renting from me at (Address) by (Date).

Sincerely, (Landlord)

You do not have to state a reason in a 30-day notice. In fact, it is better that you don't, so that the tenant does not have a defense in a possible suit based on the reason. Some tenants may tell you that they're sure there is a law that says that you cannot evict a tenant who is pregnant or if someone in the house is ill. This is not true.

The only time that you cannot give a tenant a 30-day notice is if there is a lease for longer than month-to-month and it does not provide for giving a 30-day notice during that time or if your motive is retaliatory. (See subsection entitled "No Retaliation" later in this chapter.)

3-DAY NOTICE (72 HOURS)

If a tenant is behind in rent, a "3-day notice" can be given. Kansas law has no statutory "grace period" for rent payments. So, unless your rental agreement provides a grace period, this notice can be issued the minute the rent becomes delinquent. Non-payment of rent is the **ONLY** time that less than a full rent period of notice can be given.

Because a portion of your lawsuit involves collecting money, be aware that the Federal Fair Debt Collection laws apply and may require

certain warnings when you write the tenant about money due.

The following is an example of how you might word a non-payment of rent eviction notice.

(Date) _____
Dear (Tenant) _____: As my tenant at (Address) _____, you are currently behind in rent payments. My records show that you owe \$ (Amount) _____ which was due (Date(s)) _____. If you do not either pay the above amount in full or move out of the property within (Number) _____ days, I will be forced to take legal action against you for the money and/or possession of my property. (Option: I hope that this situation can be worked out satisfactorily, as legal action would be costly to both of us.)
Sincerely, _____ (Landlord)

Note that the sample notice says to pay the rent in full or move out within "X" number of days. The law requires that you give no less than 3 days. If delivered by mail, an additional 2 days from the date of mailing must be allowed. You can give more days if you like. You do not have to accept partial payments and you do not have to accept any payments after the time is up. If you do choose to accept partial payments or late payments, be very careful in your receipt to indicate whether by accepting that payment you are voiding the eviction notice and/or whether you are planning to continue with your legal action. If you agree to forestall legal action because the tenant has offered an acceptable payment plan, get the plan in writing. Make sure it is clear that, if any of these payment dates are not met, you have reserved all rights to proceed with legal action. With that kind of written agreement and your file copy of your eviction notice, you should not have to issue another 3-day notice if the tenant defaults on a payment plan. All of the above notwithstanding, agreeing to a payment plan is not a good idea. Unless the tenant can show to your satisfaction that enough money will be coming in to allow payment of past-due rent

as well as future rent and all other anticipated expenses, you are better off to take what you can get at the time, agree to no payment plan, and proceed with eviction. If the tenant offers the over-due rent in full within the three days, you must accept the money. At that point, the legal situation is as if the notice had never been given. If you still want the tenant to move out, for whatever reason, you must serve a regular eviction notice. (See "30-Day Notice" subsection above.)

14/30-DAY NOTICE OF TENANT NONCOMPLIANCE

Sometimes you will get into a rental relationship and discover that something is wrong - the tenant isn't paying on the security deposit as promised, the tenant has broken something and should be paying for it or repairing it, an unauthorized pet or person has been moved in, or the neighbors are complaining about noise. You don't mind having the tenants stay if it is taken care of; otherwise, they will have to go.

A 14/30-Day Notice of Tenant Noncompliance is probably the thing to do. Kansas law says that, if a tenant does not comply, a 14/30-Day Notice of Noncompliance can be used to terminate a lease. It can also serve as a warning to a month-to-month tenant.

If there is only one violation, your notice might read as follows:

(Date) _____
Dear (Tenant) _____: You have been violating our rental agreement and your legal responsibilities as a tenant at (Address) _____ by (Violation) _____. If the situation is not corrected within 14 days of your receipt of this letter, you must move out no later than 30 days after receipt. If the situation is corrected, you may stay. (Option: If you would like to discuss this matter, you can reach me at (Address & Phone Number) _____.)
Sincerely, _____ (Landlord)

If the tenant has more than one violation, your notice might read as follows:

(Date) _____

Dear (Tenant) _____: You have been violating our rental agreement and your responsibilities as a tenant at _____ Address _____ in a number of ways. If the following situations are not corrected within 14 days of your receipt of this letter, you must move out no later than 30 days after receipt. If all situations are corrected – and ALL, not just some of them, must be corrected – you may stay.

(Violations)

(Option: If you would like to discuss this matter, you can reach me at

(Address & Phone Number) _____)

Sincerely, _____
(Landlord)

You may substitute actual dates for the 14- and 30-day language. If a tenant gives this type of notice to a landlord, it is tied to rent-paying dates. When a landlord gives this type of notice to a tenant, it can be in any thirty-day period; there is no tie to rent-paying dates.

If the tenant corrects the violation/s (pays money, makes a repair, whatever) or makes a “good faith” effort to correct within the 14 days specified in the notice, the tenant gets to stay. It is as if the notice had never been served. You do have the right to insist, if there are multiple violations, that all violations are taken care of, not just one or two.

The law goes on further to say that if the tenant corrects the violation/s within the 14 days, then a violation recurs after the 14 days, the landlord can immediately serve an irrevocable 30-Day Notice to terminate (regardless of rent-paying dates). You would be responsible for the security deposit return as in any normal move-out (see Security Deposit chapter).

HOLDOVER POSSESSION

If a tenant has given or been given a legal notice to terminate and does not get out on time, the landlord can sue that tenant for up to 1-1/2 times a month’s rent or 1-1/2 times the landlord’s cash losses, whichever is

greater, if the tenant’s holdover is “willful and not in good faith.”

This is an important point to note in eviction notices if you think your tenant needs a little “encouragement” to get out on time.

It is also important to make sure your attorney is aware of this provision in the law so that if you ever have to file legal papers and go to court on an eviction, you include this penalty in your suit.

HOUSING PROVIDED TO EMPLOYEES

A minimum of ten days’ written notice to terminate is required if a tenancy is employment-related. (Employment-related tenancies are not included under the Kansas Residential Landlord and Tenant Act but are covered in K.S.A. 58-2504.)

NO RETALIATION

The City of Topeka has a local ordinance which says specifically that no landlord may evict, raise the rent, or decrease services to a tenant within six months after the tenant has (a) made a valid complaint about health and safety to the landlord, (b) made such a complaint to a governmental body charged with enforcing related statutes, and/or (c) has been actively involved in a tenant organization. This ordinance is enforced by the City Attorney’s office and through Municipal Court; it also can be used by a tenant as a defense in a state court.

The Kansas Residential Landlord and Tenant Act, though it is a little bit more vague in the writing, says basically the same thing, though it does not specify a time period.

Presumably, aside from specifically outlawing getting back at people for complaints that they think are legitimate, these laws provide a “cooling-off” period for disputes between landlord and tenant.

No Lock-Outs Or Constructive Evictions

The law provides that the notices reviewed above are the proper ways to handle evicting a tenant. It recognizes no other. Such actions as shutting off the utilities, padlocking the door, changing the locks, putting the tenant's things out in the yard or the street, or even wild suggestions such as taking the doors off the hinges or removing windows are specifically illegal in Kansas. In fact, the Landlord and Tenant Act provides that the landlord could be liable for 1-1/2 times the rent or 1-1/2 times the tenant's actual financial losses, whichever is greater, as a penalty. In addition, it says that if the landlord does anything like the actions mentioned above, the tenant may move out immediately, recover actual "damages" (money losses), and have the security deposit returned as it would have been under normal circumstances, within 30 days.

A situation like this where a landlord in Junction City barred his tenants from the property after they left one morning ended up in the Kansas Supreme Court in June of 1983. The court awarded the tenant in that case \$1000 in punitive damages against the landlord because the landlord's action was considered "wanton and willful." Be careful on this one.

The actions mentioned above are considered in legal terms to be "constructive evictions" – evictions arranged by action rather than the legal process. Even though you may not like your tenant and want your tenant to move, it is more straightforward and more legally acceptable to simply "bite the bullet," get out your checkbook, hire an attorney and do it right.

When No Notice Is Necessary

If the lease has a specified termination date and does not have clauses about renewal, then, unless other arrangements are made,

the relationship legally terminates on that final date. No notices are necessary from either landlord or tenant in this case. In fact, if either party expects that the tenant will stay on from month-to-month or for a similar term, it is a good idea to exchange notices to that effect at least thirty days before the end of the rental period.

In cases where tenants cause extreme damage to property or have threatened the lives of others, it is possible to ask them to leave immediately and to proceed with legal action if they don't.

Finally, if the landlord/tenant relationship does not exist, no notice to quit is required. This could happen, for instance, in the case of "squatters" where you either find someone living in property that you thought had been vacant for some time or you discovered that the people to whom you rented the property have gone and left other people in their place. In these cases, you can approach the problem either from a civil or criminal point of view.

From the civil point of view, you have your lawyer file suit against the people for immediate possession of your property, claiming that they are not your tenants and have no right to be there. You ask for whatever reasonable amount of money they might owe you in rent and for other expenses based on the situation. From the criminal point of view you could file a police report or approach the local county or district attorney's office and ask them to prosecute the people on grounds of trespassing because they have no legal right to be on your property. If you use the criminal remedy to get them out of the property, you can still use the small claims procedure or other civil remedies to collect some money.

GUESTS

Tenants have the right to have guests in their homes for reasonable periods of time unless the rental agreement specifically prohibits company. The problem is trying to decide when a guest becomes a tenant. A rule of

thumb to use is that a guest would become a tenant after being in residence for thirty days or more. If a tenant has a guest who, for instance, stays regularly two or more days per week but has another residence where he or she receives mail and does other personal business, then you may not be in a position to say that this person has become a tenant.

If your tenant has taken in a guest who, in your opinion, has become a tenant, you can give a 14/30-day notice specifying that, if the other person is not gone within fourteen days, both of them must be gone in thirty OR you could take action against the person whom you do not consider your tenant as mentioned in the "Where No Notice is Necessary" subsection. If you do not have a written rental agreement specifying who can live in the property, you may find that you have to take eviction action against everyone in the property because you can't prove who is your tenant and who is not.

DELIVERING NOTICES

First make sure you date and sign any notice and keep a copy for yourself. Your copy can either be a hand-written copy that is exactly the same, or, preferably, a carbon or photo copy. Your signature does not have to be notarized.

You can write a notice yourself and you can "serve" it yourself. The law recognizes a number of ways to deliver.

Serving the notice in person is legal and is usually quick and effective. You go up to the tenant's door and simply hand the notice to the tenant or anyone who resides at the property who is over the age of twelve years. (The person must reside at the property, not simply be there.)

If your tenant is not home or will not answer the door, you can post the notice on the door by tacking or taping it. If you think you are going to have any trouble with the tenant

claiming that the notice was not received (saying it must have blown away or some such story), take an impartial witness along with you to testify that you did in fact either hand the notice to someone or leave it in the door at the specific day and time. Since the law regarding landlord entry does not allow you to enter the tenant's property without permission unless there is an emergency, going into the dwelling unit and leaving the notice on the kitchen table or somewhere else inside is not advisable.

Certified and registered mail are often considered to provide the best proof of service. One problem with this method of serving is that often tenants who are expecting trouble will not pick up or accept their letters. Then, after two or three weeks, the mail is returned to the sender. On the other hand, you get a signed receipt as proof of service or your returned letter as proof of a "good-faith" attempt to serve. Some judges will consider an unsuccessful attempt at certified or registered delivery as adequate service; some will not.

The law neither encourages nor disallows the use of regular mail. Most courts accept the "mailbox rule" whereby, if you say you mailed a notice, the court will assume the tenant received it, even if the tenant denies receipt. Having a witness to your posting of the letter can help in such cases; on the other hand, some people's mail does get stolen. It is possible to get a "Certificate of Mailing" for a small fee if you mail a letter at the post office.

If you have a problem tenant that you fear will not accept service and you want to ensure "good service," you can try dual service. Serve duplicate notices both at the door and by regular mail or by regular mail and certified or registered mail.

THE EVICTION PROCESS

A proper 30- or 3-day notice must have been served before your attorney can start the court process to regain "possession" of your property for you and to collect any money that

is due. Up until this point, you can handle all notices and service yourself, although, for a fee, your attorney can do that for you.

If your tenant has already responded to your eviction notices by moving out but still owes you money, you can have your attorney collect for you. The Small Claims Court option would also be available. You cannot get an eviction order in Small Claims Court, but you can get a judgment for unpaid rent and/or other money or items the tenant owes you to the value of \$1800. You can do this yourself. (See Small Claims Court chapter for process.)

Your eviction action will probably be in Limited Actions, a division of the court at your county courthouse. Although state law does not require that you be represented by an attorney, it is advisable. The clerks in the courthouse are not authorized to assist you in preparing the complex legal papers that can be involved in such a suit, nor are they supposed to advise you on court procedure. If you want to try to represent yourself, it would be advisable to at least pay the money to have an attorney advise you on how to go about the process and how to fill out the papers. (See "How to Shop For An Attorney" in this handbook.)

It is a good idea to already have an attorney in mind and have this attorney ready to file as soon as the final day of an eviction notice is up. The sooner you file in court, the sooner the eviction action will be over. For that reason, you want to make sure that you have an attorney who will act promptly on your case.

The legal papers that your attorney draws up should probably include a request for the following:

1) Immediate return of possession of your property to you (known as a "writ of restitution") This is the "eviction" part.

2) Payment of any money due you - This usually includes any past-due rent and a request that the tenant pay the rent on a per-

day basis as long as the tenant stays in possession of the property. This may also include a request for other money that the tenant owes the landlord because of damage to the property or other losses the landlord has suffered.

3) Hold-over possession charges where the tenant is still in property The law provides that landlords can collect one and a half times a month's rent or one and a half times their actual financial losses, whichever is greater, if tenants willfully do not move out at the end of legal notices to quit. The law does not provide for you to collect your attorney's fees and court costs from tenants in eviction cases. This money can help pay part of those expenses.

As soon as your eviction suit is filed, your attorney will be given a date and time for the "docket call" of the court. This docket date is normally about ten days from the filing of the suit and is basically a roll call. During the ten days, the court has the sheriff find your tenants and serve papers on them notifying them of what the suit is about and when they must appear in court.

Court procedures can vary a bit here. Some courts will go to great lengths to attempt to serve people personally; others instruct the sheriff to routinely tack notices on the door if no one answers. Both are considered legal service.

If your court is one that strives for personal service, it is important that you advise your attorney and/or the sheriff of any information you can think of regarding when and where to find your tenants.

Check with your attorney about the use of a "special process server" if you need speedy service and/or think you have a tenant who will avoid being served papers by the sheriff. The "special process server" process involves having your attorney do some extra paperwork with the court, having a judge appoint

someone besides the sheriff (this could be a friend or neighbor of yours or someone your lawyer knows) to serve papers for you. That way you can help this person find your tenant, perhaps in odd places or at odd hours where the sheriff might not be quite as diligent in looking.

At docket call, the judge or a clerk will basically check to make sure that both you and your tenant are there and that there is still some dispute. If someone representing you does not show up at docket call, whether or not the tenant is there, the case will probably be dismissed "for lack of prosecution." If your tenant does not appear but you and/or your attorney do, your tenant will probably lose the case in what is called a "default judgment." In this case, unless there is something wildly unusual in your legal petition, the judge will award you whatever you have asked for.

If both you and the tenant appear, the judge or clerk will ask the tenant whether the tenant is aware of the charges and agrees that he or she is responsible. If the tenant says "yes," the judge or clerk will say something to the effect of, "Okay, you lose." As soon as your attorney records the appropriate "journal entry" in the file, that will be it. You will have a judgment for whatever you requested in your petition. If, however, the tenants object, saying that they don't owe certain money or they propose counterclaims against you, a date will be set for a trial. This trial, by law, in an eviction case, must be set within eight days of the docket call.

The tenant might have a claim against you or might just want the extra eight days to trial. If a trial occurs, the judge will hear both your testimony and the tenant's and, hopefully, will make a fair decision. Normally, the judge will order that the tenants move out, whether or not there are issues.

In complicated cases, judges sometimes decide whether or not the tenant can stay at the property on the trial day, then postpone the hearing on all the other issues until a later

date. If there is some dispute about whether a landlord should get the rent (for instance in a suit where the tenant has strong counterclaims about maintenance of the property), the judge may order the tenant to pay the rent into the court instead of to the landlord until the rest of the issues are decided.

FORCIBLE DETAINER ACTION

If the judge has ordered your tenant to move out and the tenant does not go, the court can assist you with move-out. A form called "Writ of Restitution and Execution" is needed for this. It is often filed at the same time the journal entry is entered. There are no extra court costs for this procedure.

What generally happens here is that the judge orders the sheriff to assist you in a "forcible detainer" action. The sheriff, by law, has ten days to carry out this order.

The sheriff goes out the first day or two of the ten days to see if the tenant's belongings are still there and, if so, to serve the Writ of Restitution and Execution on the tenants or the property. If the tenants insist that they can be out by the end of the ten days, the sheriff may leave and come back on day nine or ten to see if they are gone and only proceed with the forcible detainer action if the tenants are still in possession. In some counties, the sheriff waits and checks with the landlord by phone on the eighth or ninth day to see if the tenants are still there, making arrangements for entry and action at that time if it is still necessary. Some act the same day.

Depending on the county, the sheriff may personally move the tenant's things out, possibly even renting a truck or some vehicle and hauling the things away to storage. More often, what happens is that the sheriff shows up and makes the tenants leave the property, bars them from coming back and gives possession of the property to the landlord. This can include simply moving the tenant's belongings out of the property onto the lawn; it can mean mov-

ing them into an adjacent structure such as the garage or storage; it can include hauling the property out to some other storage facility; and it can include hauling it to the dump and throwing it away.

DISPOSAL OF LEFTOVER POSSESSIONS AFTER ABANDONMENT, SURRENDER, OR EVICTION

Where there has been an abandonment, or where the tenant has been removed as a result of a forcible detainer eviction action, or where a tenant has given or received a notice to quit and has left as expected and has left items in your property, Kansas law spells out a procedure for holding and then disposing of this property.

First, the law says to collect all the personal property and put it in storage. You must hold it at least thirty (30) days. "What if it is trash or junk?" you say. Use your judgment. If you think there is likely to be any question at all, you may want to consult with your attorney first. At least, take some photos of what it is that you're disposing of so that later you can prove to a judge or someone else that it truly was broken-down junk. It is also a good idea to make an item by item inventory specifying the items and their condition.

Next, within fifteen days of when you plan to dispose of the items, you need to have a notice published in your local general circulation newspaper stating the name of your tenant, a brief description of the property you are holding, and an approximate date (at least thirty days after the date you took possession of the property) after which you plan to dispose of the property.

The ad may read:

Abandoned property of (Tenants Name), (Address of Rental): (description of items, i.e., chair, shelving, W/D, small TV, misc.) will be disposed of if not claimed by (Date to be Disposed).

Then, within seven days after your notice is published, you need to mail a copy of the notice to the tenant at the tenant's last known address that you have. It may be your rental unit, but the Post Office may have a forwarding order. If the letter is not returned to you by the post office, it will be legally presumed that the tenant got it. If it is returned to you, then it will be proof that you did attempt to send it. Use certified mail for better proof.

Enclosing a personal note along with the published notice is optional.

The reason for the notices listed above is so that any "secured creditors" such as the owners of a rented TV or stereo or rented furniture can come and claim items that belong to them after showing appropriate proof. (You have the right to charge secured creditors reasonable moving and storage expenses for their items.) It also gives the tenant a chance to claim the items himself or herself. If the tenant arrives to claim the items anytime before the thirty days are up, the landlord must return them to the tenant as long as the tenant pays the landlord for the expenses of taking and holding the property, running the ad, and any other amount due from the tenant to the landlord (such as rent or damages, or court judgments). After thirty days are up, as long as the above requirements have been met, the landlord has the right to sell or dispose of the property (keep it, take to the dump, etc.). The law spells out the fact that the landlord can apply the proceeds from the sale of the property first to the debts that are due him or her from the tenant, and, if there is profit left over after all those debts are paid, the landlord has the right to keep the money.

Note: Though the law allows landlords to refuse to release possessions if the tenant cannot pay, many landlords opt to release the possessions anyway simply so the items are gone and there is no further hassle with them. It's up to you.

FRAUDULENT ACTION

If someone leaves owing rent money and you think that the person did this on purpose and never wanted or intended to pay you, there

may be an opportunity to pursue that person through criminal charges. Contact your county District Attorney's office, explain the situation, and see whether they feel it would qualify for prosecution.

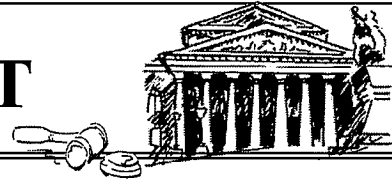
References: K.S.A. 58-2504, 58-2509, 58-2510, 58-2542, 58-2552, 58-2560 through 58-2572; Court Process (Forcible Detainer), K.S.A. 61-3801 through 61-3808; Employment Related, K.S.A. 58-2504; Liens, K.S.A. 58-2565, 58-2567; Lock-Outs, K.S.A. 58-2563, 58-2567, 58-2569; Retaliation, K.S.A. 58-2572, City of Topeka Code 82-272; Service of Notices, K.S.A. 58-2510, 58-2550, 58-2554, 58-2562, 58-2563, 61-2907, 61-3003 through 3006, 61-3803; Squatters, K.S.A. 58-2509, 58-2511; Collecting Judgment, K.S.A. 61-3604 through 61-3611, 60-729 through 60-744; Public Housing "One-Strike" rules, HUD regulation 24 CFR 966.4; 2002 United States Supreme Court case **Rucker v. Davis** upheld HUD "one-strike" eviction of tenants; 1983 Kansas Supreme Court case **Geiger v. Wallace** established punitive damages in constructive eviction; 1986 Kansas Court of Appeals case **Davis v. Odell** established that landlords could be liable for damages if possessions are not returned without reservation after forcible detainer action and 2003 **Statewide Agencies, Inc. v. Diggs** clarified a landlord's right to dispose of property acquired through eviction action; Model 3-Day, 30-Day, and 14/30-Day Noncompliance Form Notices can be ordered from Housing and Credit Counseling, Inc.

MOLD CONTAMINATION

The issue of mold contamination in housing has become an issue of concern. Kansas Department of Health and Environment officials say to be concerned but not alarmed. You can keep informed about this issue and the most current information available by going to the following websites:

Environmental Protection Agency – www.epa.gov/mold/moldguide.html
Center for Disease Control – www.bt.cdc.gov/disasters/mold/protect.asp

SMALL CLAIMS COURT



Small Claims Court exists to provide a forum for the speedy trial of fairly simple claims at a minimal cost.

WHAT IS A SMALL CLAIM?

A small claim is defined in Kansas as a claim for recovering money or personal property from an individual, a business, or an organization where the amount involved is \$4000 or less. It is especially useful for the collection of back rent from a tenant who has moved out or a decision on who should pay a disputed repair bill. Evictions are not handled in Small Claims Court.

WHO MAY FILE A SMALL CLAIM?

Anyone may file a small claim, but there are some restrictions.

1) Most important, you represent yourself and the tenant represents himself or herself. If any person filing in Small Claims Court has someone representing them and the representative is an attorney or was formerly an attorney, then the other party is entitled to have an attorney represent them. If an attorney or former attorney is representing themselves in a small claims suit, then the other party is allowed an attorney as well.

2) Persons under 18 must be represented by an adult.

3) You may not authorize a third party to sue on your behalf. (Rare exceptions to this rule can be made with the consent of the judge in situations where, for instance, a person is senile or is otherwise unable to represent himself or herself.)

4) The statute of limitations varies depending on the type of claim (i.e., 2, 3 and 5 years). Generally, the sooner you file the better.

5) No person or entity may file more than 20 small claims in any calendar year in any one county. Any attempts to do so may result in fines being assessed and judgments which cannot be enforced.

HOW DO YOU FILE A SMALL CLAIMS SUIT?

A small claims suit should be filed in the county where the tenant resides or has a place of business or where the incident in question took place. Some courts will allow you to file on someone outside the county but within the state of Kansas; some will not. If your case is against someone who is out of state, you may not be able to use the Kansas small claims procedure.

To start a small claims suit, you must fill out a form provided by the clerk of the court. To find the right office, look for a sign in the county courthouse saying Small Claims or Limited Action or District Court.

The form you fill out is not complicated. You must simply list your name and address, the defendant's name and address, and state your claim. After you have completed the form, return it to the clerk and pay a filing fee which may range from \$30 to \$50 depending upon the amount of the claim. The judge may waive this fee if good cause is shown that you cannot afford it. You must sign your form in front of the clerk or, if you file by mail, you must have it notarized.

The clerk will then assign a date and time for your claim to be heard. The sheriff will serve a summons on the defendant to notify him or

her of the court proceedings. (See "The Eviction Process" subsection in the Evictions chapter for details about service of notices.)

If you have not heard from the court, check in at least a day before your hearing is scheduled to make sure the defendant was served the court summons. If not, you will need to give the court any clues you can (addresses, times, etc.) on how to find this person. There cannot be a trial until the defendant is notified. A "publication" process is available if your opponent truly can not be found, but you can't collect money that way.

It is important to remember that the person you are suing may bring a countersuit against you. So, know as much as possible about the circumstances involved in your claim.

WHAT IF YOU ARE THE ONE BEING FILED AGAINST?

You will receive a summons stating that the tenant claims you owe an amount of money up to \$1800 for a security deposit return, damages, or whatever. You can defend yourself if you feel the tenant owes you money. It costs nothing to counter-sue unless your claim is over \$1800 and you choose to take it to a higher court.

WHAT IF YOUR OPPONENT OFFERS TO SETTLE?

To "settle" means to make some sort of deal regarding a certain amount and payment terms and "drop" the case from court.

It is advisable to settle only if you have been paid or your items returned in full. (This settlement should include any court costs and interest desired.) If you aren't totally satisfied, go ahead to court and get your hearing and official judgment on the entire claim.

If a case is settled, the plaintiff (person who filed) should notify the court in writing and

have the hearing cancelled. Check with the court to see if there is a form that can be filled out and signed; otherwise, a letter of dismissal should be written and delivered to the court. The defendant should check with the court the day before the scheduled court date and make sure the plaintiff did have the case dismissed. When in doubt, you should appear at the appointed date and time for your own protection.

WHAT PREPARATION IS NECESSARY BEFORE GOING TO COURT?

Make sure you have all materials and papers that are important to your case. If you are suing for rent, bring your rent ledger. If you are suing for damages, bring repair receipts and proof of payment. It is important that you write down all of the facts of the case before the hearing and take them with you. You should not expect to read this at the trial, but it can be an important reference so you don't forget any details or dates when you are speaking to the judge.

Be sure to inform any witnesses you have of the date and time of the hearing. It is up to you to see that they are there. Witnesses can be subpoenaed by the court. However, if the court calls them, you will have to pay a witness fee. Depositions (signed statements from witnesses) are not allowed.

If you need more time to prepare your case or if for some very important reason (such as serious illness) you, as either plaintiff or defendant, cannot make it to court on the day of your hearing, you must request a "continuance" from the clerk or judge at the Small Claims Court. This must be done as far in advance as possible. Although everyone has a legal right to one continuance, the court may set a deadline (usually a day or two before) after which time none will be granted. If you fail to ask for a continuance and do not appear in court for the hearing, you may lose your right to be heard by the judge and may automatically lose your case.

You might consider sitting in on Small Claims Court before you file or at least before your hearing date comes up. Small Claims hearings are public. By attending at least one session in advance, you will know how small claims cases are handled by the court and the judge in your county. The clerk's office can advise you when a landlord/tenant case is scheduled.

WHAT HAPPENS IN COURT?

Be sure that you appear in court on the date and time assigned by the clerk. **Get there early!** If you are not present, your side of the case will not be heard and your opponent will win.

At the hearing, the claim is heard by a judge. There is no jury. You and your opponent represent yourselves. The only information the judge should have ahead of time is the original claim form and possibly a counterclaim form (though counterclaim forms can be turned in at the trial).

The procedure is very simple. You present your side of the story to the judge. In doing so, you show any evidence and call any witnesses you have to testify. You can testify on your own behalf. If you do, tell your side. You don't need questions. The judge may then ask questions of you and your witnesses. Your opponent will be asked to present his or her case and any claim that he or she may have against you. When your opponent is finished, the judge may question your opponent and your opponent's witnesses.

SOME HINTS!

You may want to prepare an "opening statement" – one or two sentences that summarize your side of the case – and practice it in advance.

When presenting your case, make your statements short and present any pertinent documents.

If you have any witnesses, take them with you when your case is called. If you don't, they may

never be called forward by the judge. It is important to answer the judge's questions directly and in a calm manner.

Speak clearly, directly, and only when spoken to. If you must interrupt or insert a point, do it as politely as possible. Never be rude to the judge or your opponent either in speaking or by making gestures or faces.

WHAT ABOUT THE RULING?

The judge considers the argument and evidence and decides the validity of your claim. He or she may award an entire request, part of it, or none of it. If you win, the judge may order your opponent to pay you interest and/or reimburse you for your filing fee in addition to the amount you asked for. The judge may decide that your opponent's claim is more valid than yours and order you to pay money to your opponent.

COLLECTING

Winning in court does not necessarily mean that you get paid promptly, in full, or ever.

Payments can be made through the court or directly between you and your opponent. Installment payments are allowed if both parties are willing. Use of the court will provide an official record. Use receipts, whatever you do.

Your judgment is "good" almost forever as long as you keep checking in with the court and officially renewing it at least every five years or so.

After 10 days, assuming no appeal has been filed, the court can assist you in collecting your money. It will be up to you to make sure appropriate papers are filed and to find out where this person's money is. You may hire an attorney or use a collection service to assist at this time. "Aid in Execution" and "Garnishment" are the two court-assisted collection procedures.

AID IN EXECUTION

You can go back to the court clerk and ask to have the court "aid" you in "execution" of the

her of judgment. Most courts will provide the necessary form. There should be no cost to you.

The sheriff will send an order summoning your opponent to return to court. You will have to appear, too. At the appointed time, the judge will assist you in questioning the person to determine whether a payment can be made immediately to you directly or through the court; whether an acceptable payment plan can be worked out; and/or to discover where the person banks or works so that garnishment can proceed.

This procedure can be used as often as necessary.

GARNISHMENT

In a garnishment procedure, the court gets the money owed you directly from your opponent's source of income or bank account. You will have to find out where the person works or banks and fill out a garnishment request form with the court clerk. Then the court will contact the business and arrange the garnishment at no cost to you. If you can't find out whether the person has income, employment, or money, you can ask the court to assist you through an "Aid in Execution" (see above).

The law permits garnishment from each paycheck, though a certain minimum amount must be left in each check. Welfare, disability, and Social Security checks cannot be garnished.

Limited action garnishments continue until you stop them. You must keep careful track of the amount you receive and file a form to stop the garnishment as soon as the judgment has been paid.

A checking or savings account can be garnished in one lump sum. When filing for this type of garnishment, you must enter 1-1/2

times the amount due on the form. Give the court a week or so to issue the garnishment. Once a business has received garnishment papers, it should be holding your money. The business must file an "answer" with the court. The court will send a copy to you. Next, you must sign or call the court for an "order to pay in and disburse." Then the court will collect the money from the business and send it to you.

WHAT IF IT TURNS OUT THAT THE SCOPE OF THE CLAIM IS BEYOND THAT OF SMALL CLAIMS COURT?

You may decide that your claim is too complicated for Small Claims Court or a judge may decide that. You then have three options.

- 1) **You can drop the claim.** Your filing fee will not be returned.
- 2) **You can reduce your claim** to fit the limits of Small Claims Court, thereby waiving the right to pursue what you left out.
- 3) **You can go to the next higher court level.** There you will probably need an attorney and the fee will be higher if your claim is over \$4000.

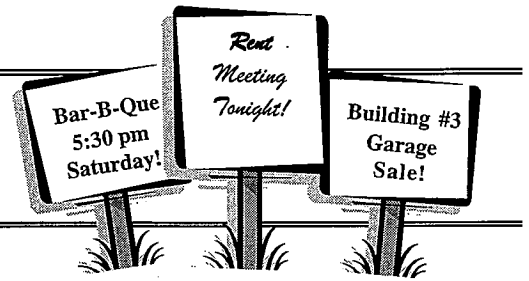
A claim cannot be split into two suits.

CAN SMALL CLAIMS COURT DECISIONS BE APPEALED?

A judgment made in Small Claims Court may be appealed to the next higher level of the District Court within ten days. This will give you a trial "de novo" (completely new) on your original claim. You will have to pay court fees again. Hiring an attorney is advisable because of the complexity of the forms and the legal arguments. If you lose a second time, the judge is supposed to order you to pay your opponent's attorney's fees.

References: Kansas Small Claims Procedure Act, K.S.A. 61-2701 through 61-2713; Aid in Execution, K.S.A. 61-3604 through 61-3611; Garnishment and Attachments, K.S.A. 60-729 through 60-744.

TENANT ORGANIZATIONS



Notwithstanding the nervousness you may have in your heart of hearts when you discover that your tenants are considering forming an organization, tenant organizations can be a good thing. If you are approached about whether you are willing to work with them, say yes. (It should be noted that tenants rarely organize in Kansas except in large complexes.)

Landlords have various amounts of personal interest in working with people or organizations and also various amounts of time that they can commit. You need to look at your own situation and figure out what would be comfortable to you and let the tenants know.

Most organizations develop because some tenants have an issue or a problem about which they wish to negotiate with the landlord. The future of the organization will depend on who those tenants are, how their organizing efforts go, and what the overall composition of the tenants in your complex or among your properties is. The organization could die quickly. It could develop into a fighting force that you contend with every day. Or, it could develop into what is largely a social or neighborhood-type organization. Be prepared for any of these, but know that how you respond will in large part determine how comfortable it is for you.

ISSUE ORGANIZATIONS

Hopefully, you have made your management decisions in an organized fashion handling notices properly and administering fairly to all tenants concerned. If so, generally tenants will be satisfied with your reasons and methods and that will be the end of the issue(s). If not, you should be willing to re-assess and perhaps make some changes.

“Rabble rousers” or “trouble makers” who want to pursue an issue that has been handled

legally and fairly may be able to get some people out to a meeting or two and perhaps organize a confrontation, but are not likely to get long-term support from other tenants. For one thing, someone usually insists on checking out the tenants’ legal rights and recourse. If there isn’t anything there, it generally sets them back a bit. So, if you take the position that you would be glad to talk with the organization but you think that you’ve worked out your issue in a fair and equitable manner, you are likely to be successful and to come off with the general respect of the other tenants.

Keep good faith even in your negotiations for how you’re going to negotiate.

The way many negotiations go is that a small committee meets with the landlord (or a small group representing management) and discusses the details of the situation at hand. Either at that meeting or subsequent meetings, this group works out a proposed solution. Then, if appropriate, the representatives go back to their separate groups to establish whether or not the settlement is acceptable. Ultimately, there is at least one large meeting where the landlord or management team is present with the tenant organization general membership to announce a decision and the reasons for it.

Some of the tenants on either the negotiating team or in the membership as a whole may try to bully or threaten you and/or may not be good tenants. Therefore, they may not seem worthy of respect. However, if the points they are raising are valid, it is probably worth ignoring their behavior for the moment. If these people are so disruptive it is impossible to conduct business, it will likely be worth it to respectfully appeal to the other tenants and ask to have the disruptors removed; the other tenants will consider them a problem too. Remember

that most of the tenants are good people that you do want to deal with.

In the area of questions about your costs or your profits, you might want to consider sharing some of that paperwork or at least some sort of summary. Many landlords have found that if they can show what maintenance costs used to be a year ago and what they are today, or security costs, or whatever their basis for a rent raise, for instance, most tenants will understand and accept that kind of information. Generally (you can probably relate to this in terms of when you have been a consumer or wanted some information), if someone refuses to divulge certain information, people assume that there's some reason to hide it. On the contrary, when people are willing to disclose well-founded details behind a certain management or other decision, people can accept the decision even if they don't agree with all aspects of it.

SOCIAL ORGANIZATIONS

Perhaps your tenants are organizing strictly for security or social reasons. Why not? Studies in the area of security have shown that one of the most effective ways to improve security in any neighborhood is to have the neighbors know one another and look out for one another. So, supporting social activities and interaction among your tenants can

not only make for happier tenants but a much more secure complex and therefore a better business arrangement for you. Realize that even if tenants are attempting to organize for issue-type reasons, this benefit of increased security and tenant interaction is likely to result.

Perhaps your tenants are interested in organizing something like a children's Easter egg hunt or summer barbeque. You may want to check your insurance and advise your tenants of what limits there are or aren't on your liability if some accident should happen but, in general, why not? The tenants may ask you to contribute money or materials to the event and you may or may not want to offer, this really doesn't matter. If the tenants will be using a complex facility or a certain part of the grounds, you may want to have a short written agreement with an individual of the organization about the tenants' responsibilities to set up and clean up the area. Sometimes landlords even have a rental fee or a refundable deposit for use of a building, this will depend on you.

So, as long as you work with a tenant organization when necessary or appropriate, you will not be the reason that it lives or dies. That should be a relief! Experience shows that most tenant organizations are not very long-lived anyway. Simply look at them from a business point of view and go on.

References: KSA 58-2572.

LANDLORD ORGANIZATIONS



Whether or not there are any tenant organizations in your area, a landlord association or organization may be a good idea for you and your fellow landlords.

To be honest, many people will want to get together in a landlord organization just to trade stories or socialize. Fine! That could be a good way to get people into your organization. Nonetheless, there are also a lot of other productive things a landlord association can do.

INFORM membership and/or the public about educational and legislative issues.

LOBBY local, state, or federal government for things that you want changed.

EXCHANGE information on reliable contractors. Good help is hard to get. You can do listings, possibly noting references from your membership, etc.

NEGOTIATE discounts for members with local suppliers (building materials, paint, pest control services, etc.).

JOINTLY retain legal, accounting, bad check, or screening services.

MAINTAIN listing services for vacancies and/or cooperate with local social services in helping to place local families in need of housing.

MEETINGS

Structured meetings that are relatively short with speakers and agendas publicized in advance will help you get and keep satisfied members. Leave time at the end of or after each meeting for story swapping. You may want to periodically have a pot-luck or

barbeque or some other strictly social event. Almost everybody needs the socializing. Some people will come only for that and that activity will help unite the organization for times when you need power in numbers.

PRECAUTIONS

Avoid letting people who are dishonest or otherwise have bad reputations become powerful in or spokespersons for your organization. This could be devastating to your attempts to attract reputable members and to your organization's image in the community. Along the same lines, do your best to have your members and leaders look fairly at both the tenant's and the landlord's point of view on issues. This will help you come up with better, more defensible, and successful positions on issues and will enhance your level of respect in the community. Avoid the "all tenants are bad" and the "we put out and put out and never make any money" line. Everyone knows that for the most part, neither of these statements are true. Citing specific problems supported by facts and suggested solutions will make you look much better.

A FEW TIPS ON BUILDING INFLUENCE IN YOUR COMMUNITY

Always have your spokespeople be **ARTICULATE** and understanding of various points of view that people have or issues.

Become familiar with both the public and not-so-public **PLANNING** and decision-making processes of the governmental units that you desire to influence. Get to know legislators and their staffs and become useful as a resource to them. **THEY** will begin to call **YOU** for advice or to sit in on their meetings.

Get your members appointed to **BOARDS** and task forces that relate to issues about which you are concerned, for instance civil rights, energy costs, housing code enforcement and the like. The members should expect to put in some time and do a fair amount of work but the alliances this will create for you can be invaluable.

Do your **HOMEWORK**. Collect specific information from your members (statistics, case stories) and resources such as your local planning commission or the research division of the unit of government you are trying to influence.

Be prepared to turn out a large **CROWD** of your membership and your allies when appropriate. Make sure that those involved can be relied on to behave in a respectable manner. Plan your speakers and what they will say in advance so that everyone knows who is to speak, roughly in what order things are expected to happen, and whether they will personally be called on to do anything. If you ask your entire membership and allies to come, at some point in your presentation, you should

ask those people to stand up, raise their hands, or otherwise identify the fact that they are there in support of your position. (This impresses your audience and unites your members.)

ANALYZE your opposition. Acknowledge their strong points and try to use them to your best advantage.

Using **ROLEPLAYING** to do this can not only be instructive, but can be a lot of fun.

Sometimes individuals and organizations you might at first think would be your enemies may turn out, at least on a particular issue, to be good **ALLIES**. Assuming that what you want is something that is fair, think about your issue from that individual's, agency's, or organization's point of view and think of good reasons why they would want to support it too. Then, solicit that support. If you are successful, not only will you have an ally, something that is always useful, but you have also eliminated someone from your list of potential opposition.

GOVERNMENT HOUSING ASSISTANCE

Thousands of rental units in Kansas are subsidized (the government pays part of the rent) through the federal Department of Housing and Urban Development (HUD) and Rural Development (RD) programs. Public Housing, Housing Authority, Section 8, Rental Assistance, and Low Rent are names you may hear or recognize. Formulas for calculating the tenant's share of the rent are similar in all programs. They are based on a government-adopted preference that Americans should not spend more than 30% of available income for housing (including housing payment and utilities). Common programs are:

Public Housing –Low rent housing built all or in part with government funds. With few exceptions, public housing is owned by a local housing authority, governed by a local board of directors, and managed by their staff or on contract.

Project Based Section 8 – Privately owned complexes where HUD Section 8 rent subsidies are available for some or all tenants through a contract between the complex owners and the government. Prospective tenants apply directly to the owner or manager for housing.

Section 8 Voucher Program – A program that allows tenants to take vouchers anywhere in a certain geographic area as long as, following an inspection and approval by the managing agency, the property meets certain size and condition standards. There is no limit on how much the rent can be, only how much assistance is available. The government provides subsidies through managing agencies that contract with the tenant and the owner. The subsidy is paid directly to the owner who applies it to the rent; an additional amount may be owed by the tenant if the full rent amount is greater than the HUD assistance. Housing Authorities, Community Action Agencies, and Agencies on Aging often are the managing agencies.

Special Section 8 Programs – There are periodically special Section 8 programs targeted at improving certain types of properties or targeted at certain groups of people (i.e. homeless, mentally ill). These programs may have special names such as Shelter Plus Care and are generally operated like the Section 8 Voucher Program.

Tax Credit / Section 42 – A program for new or updated apartment or townhome complexes. The program is available for elderly, families, and single persons. There are limits on income based on the number of bedrooms in units. Rents are the same for all residents. These units are generally not available to households comprised entirely of full-time students.

There are special rules that the federal government sets up for Section 8 programs. The laws of the state of Kansas and local communities also apply.

If you are interested in participating in the Section 8 Voucher program, information may be obtained by contacting the following:

- **Arkansas City**
South Central KS Area Agency on Aging
(620) 442-6063
Serves 10 counties in South Central KS
- **Atchison**
Atchison Housing Authority
(913) 367-3323
- **Bonner Springs**
Bonner Springs Housing Authority
(913) 441-3816
- **Chanute**
Chanute Housing Authority
(620) 431-7320
- **Dodge City**
Ford County Housing Authority
(620) 225-8230
Serves 28 counties in Southwest KS
- **Dodge City**
Dodge City Housing Authority
(620) 225-1965

- **Girard**
SEK-CAP, Inc.
(620) 724-8204
Serves 10 counties in Southeast KS
- **Great Bend**
Great Bend Housing Authority
(620) 793-7761
- **Hays**
Ellis County Housing Authority
(785) 625-5678
Serves 18 counties in Northwest KS
- **Hays**
Hays Housing Authority
(785) 625-1188
- **Hiawatha**
NEK-CAP
(785) 742-2222
Serves 7 counties in Northeast KS
- **Hutchinson**
Hutchinson Housing Authority
(620) 663-8415
- **Junction City**
Junction City Housing Authority
(785) 238-5882
- **Kansas City**
Kansas City Housing Authority
(913) 281-3300
- **Lawrence**
Lawrence/Douglas Co. Housing Authority
(785) 842-8110
- **Lenexa**
Johnson County Housing Authority
(913) 715-6601
- **Leavenworth**
Leavenworth Housing Authority
(913) 682-9201
- **Manhattan**
Manhattan Housing Authority
(785) 776-8588
- **Manhattan**
North Central Flint Hills Area Agency on Aging
(785) 776-9294
Serves 18 counties in North Central KS
- **Newton**
Newton Housing Authority
(316) 283-8500
- **Olathe**
Olathe Housing Authority
(913) 971-6260
- **Ottawa**
ECKAN
(785) 242-7453
Serves 6 counties in East Central KS
- **Pittsburg**
Pittsburg Housing Authority
(620) 232-1210
- **Salina**
Salina Housing Authority
(785) 827-0441
- **Topeka**
Topeka Housing Authority
(785) 357-8842
- **Wichita**
Sedgwick County Housing Authority
(316) 660-7270
Serves Butler, Harvey and Sedgwick counties
- **Wichita**
Wichita Housing Authority
(316) 462-3700

If you cannot find a contact number in your area, you can contact the Public Housing Division of HUD at (800) 955-2232 or www.hud.gov OR contact the Kansas Housing Resources Corporation at (785) 296-5865 or www.kshousingcorp.org or contact Rural Development at (785) 271-2700 or www.rurdev.usda.gov/ks/.

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